



IUSS

Scuola Universitaria Superiore Pavia



**UNIVERSITÀ DEGLI STUDI
DELL'INSUBRIA**

Legal Solutions to Gender Inequality in the Climate Crisis. A Critical Investigation of the Gender and Climate Change Nexus in Law, Policy, and Litigation

A Thesis Submitted in Partial Fulfilment of the Requirements
for the Degree of Doctor of Philosophy in

Sustainable Development and Climate change

Doctoral Programme of National Interest



PhD SDC

SUSTAINABLE DEVELOPMENT
AND CLIMATE CHANGE

In the Curriculum
Theories, Institutions, and Cultures of the Ecological Transition

Elena Nalato

March, 2025



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Supervisor: Prof. Barbara Pozzo

ABSTRACT

Climate change litigation is a growing legal phenomenon, object of research and knowledge production, which in turn nourish its development in the exchange of possible strategies and solutions between litigators, civil society organisations, and scholars. Research on climate change litigation is often focused on trends, based on the information available in the main dedicated online databases. A growing trend sees the mobilisation of most vulnerable categories to climate change impacts for strategic purposes, such as fostering ambitious climate change mitigation commitments and measures at the national level. Among these categories, the youth. The academic and institutional debate on intergenerational justice, the mobilisation of the youth climate movement, the availability of scientific literature about their exposure to the impacts of climate change in the coming future, find correspondence in a remarkable number of climate cases. However, if we look at the different though possibly overlapping category of women and gender, the overview is not equally linear: the feminist climate justice movement, the growing amount of academic literature on the gender and climate change nexus, the dedicated policymaking and the evolution in the interpretation of some relevant international agreements, only find few cases in the main databases, thus few scientific contributions studying climate change litigation under gender equality lenses. This observed, the research process, after a comprehensive interdisciplinary literature review on the gender and climate change nexus, included two streams of investigation. The first focused on law, policy and litigation: has the awareness of multiple interrelations between gender inequality and climate change informed any of these so far? The mainstreaming of gender equality in the United Nations Framework Convention on Climate Change (UNFCCC) multilateral process and its outcomes was explored, including its national ramifications such as the Nationally Determined Contributions, as well as the evolving interpretation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in the context of the climate crisis. The National Gender and Climate Change Plans adopted in more than twenty countries were analysed and compared in their structure, key areas of implementation and reference legal framework. The UNFCCC and the CEDAW emerged as the main reference regimes for gender and climate change policies and plans, as well as equality rights enshrined in national constitutions and regional Human Rights legal instruments. Object of a case study was *Verein KlimaSeniorinnen Schweiz v.*

Switzerland at the European Court of Human Rights (ECtHR), also including the previous national proceedings. In its complexity, the case concerns one of the expressions of the gender and climate change nexus, and namely elderly women's peculiar vulnerability to heatwaves, and was led by a group of women, though initiated by an environmental NGO for strategic purposes. Concluded in 2024 with a landmark judgment of the ECtHR, after an in-depth analysis the case appeared not as a model with respect to the mobilisation of law for gender equality in the climate crisis, though mentioned as such in some academic contributions and news articles. The second stream of investigation focused on challenging the use of climate change litigation databases as a research tool. The study of their functioning, including a direct collaboration with the developers of the database of the Climate Rights and Remedies Project at the University of Zurich, revealed relevant limits exist and brought to the formulation of recommendations. Limits are related to definitory issues, to the underrepresentation of some regions, to the absence of gender-disaggregated data and to the need for further methodological clarification on the attribution of categories and tags. The implementation of AI-powered databases may overcome some of these but also risks reproducing biases and exacerbating previous unsorted shortcomings. Overall, the small number of cases may both depend on the complexity of gender inequality in the climate crisis as ground for legal mobilisation, and on the limitations of the available databases – in turn influencing knowledge production, solutions exchange, and further litigation.

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This work is dedicated to my grandmother, an unshakable woman who would have loved to study and travel but lived her childhood amid World War II and then, like many other women of her generation, her life as a seamstress, wife and mother under the burden of what today I can recognise as gender-based discrimination and domestic violence. My desire for discovery is hers.

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LIST OF SYMBOLS

LIST OF ABBREVIATIONS

AIDA	Asociación Interamericana para la Defensa del Ambiente
APA	Administrative Procedure Act (Switzerland)
BINGO	Business and Industry Non-governmental Organisations (UNFCCC)
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
COP	Conference of the Parties (UNFCCC)
CRRP	Climate Rights and Remedies Project (UZH)
CSW	Commission on the Status of Women (UN)
DETEC	Federal Department of Environment, Transport, Energy and Communication (Switzerland)
DRM	Disaster Risk Management
DRR	Disaster Risk Reduction
ECHR	European Convention on Human Rights
ECOSOC	Economic and Social Council (UN)
ECtHR	European Court on Human Rights
EGIA	Environmental-gendered impact assessment
ELWPG	Enhanced Lima Work Programme on Gender (UNFCCC)
ENGO	Environmental Non-governmental Organisations (UNFCCC)
FAC	Federal Administrative Court (Switzerland)
FAO	Food and Agriculture Organisation (UN)
FSC	Federal Supreme Court (Switzerland)
GAP	Gender Action Plan (UNFCCC)
GBV	Gender-based Violence
GCF	Green Climate Fund
GCT	Gender Climate Tracker (WEDO)
GDP	Gross Domestic Product
GGCA	Global Gender and Climate Alliance
GHG	Greenhouse Gas
IPCC	Intergovernmental Panel on Climate Change
IPO	Indigenous people organisations (UNFCCC)
IUCN	International Union for the Conservation of Nature
LAC	Latin America and the Caribbean
LDCs	Least Developed Countries (UNFCCC)
LLM	Large Language Models

LMGA	Local government and municipal authorities (UNFCCC)
LOS	Legal Opportunity Structure
LSE	London School of Economics and Political Science
LWPG	Lima Work Programme on Gender (UNFCCC)
NAPs	National Adaptation Plans (UNFCCC)
NDCs	Nationally Determined Contributions (UNFCCC)
NGO	Non-governmental Organisation
OECD	Organisation for Economic Cooperation and Development
OHCHR	Office of the UN High Commissioner for Human Rights
OPEC	Organisation of Petroleum Exporting Countries
PLR	Radical Liberals Party (Switzerland)
PVL	Green Liberal Party (Switzerland)
RINGO	Research and Independent Non-governmental Organisations (UNFCCC)
SBI	Subsidiary Body for Implementation
SDGs	Sustainable Development Goals
SIDS	Small Island Developing States (UNFCCC)
SLAPP	Strategic Lawsuit Against Public Participation
SP	Socialist Party (Switzerland)
SRHR	Sexual and Reproductive Health and Rights
TUNGO	Trade Unions Non-governmental Organisations (UNFCCC)
UDC	Swiss People's Party (Switzerland)
UN	United Nations
UNCBD	UN Convention on Biological Diversity
UNCCD	UN Convention to Combat Desertification
UNDP	UN Development Program
UNDRR	UN Office for Disaster Risk Reduction
UNFCCC	UN Framework Convention on Climate Change
UNGA	UN General Assembly
UNHCR	UN High Commissioner for Refugees
UZH	University of Zurich
WECAN	Women's Earth and Climate Action Network
WEDO	Women Environment and Development Organisation
WEHRD	Women Environmental Human Rights Defenders
WGC	Women and Gender Constituency (UNFCCC)
WGII	Working Group Second (IPCC)
YOUNGO	Children and Youth Non-governmental Organisations (UNFCCC)

CHAPTER 1



Introduction

‘There are now many different stories being told in the law, different theaters and rich new plots and scenes depicting new vantage points for understanding previously ignored characteristics and subjects of the law.’
(G. Minda, 1995)

1 INTRODUCTION

1.1 KEY CONCEPTS

For the sake of clarity, the key concepts around which this work is developed are defined, even in the attempt to eschew essentialisation: ‘Instead of looking for the essence behind a word or concept, we need to explore what aspect of reality this word opens up for us’.¹ Many of these concepts have multiple or complex definitions that can only be briefly mentioned or synthesised in this space. The following definitions are chosen for the aims of the research work, and more details about this choice can be found in the dedicated chapters or paragraphs.

1.1.1 Gender Inequality

As Cerutti illustrates in his introduction to the fundamental categories of politics, equality first appears in the Greek polis as equality of those considered as citizens before the law, while the extension to all human beings was introduced by the monotheistic religions in the form of equality before God, and equality as a social principle emerged during the modern revolutions.² The concept of equality may be differently defined according to different models and doctrines: the focus may be on resources, opportunities, and capabilities. Moreover, the subject may vary from any individual to citizens, to communities or States, to

¹ Bernd Reiter, ‘The Epistemology and Methodology of Exploratory Social Science Research: Crossing Popper with Marcuse’ (Government and International Affairs Faculty Publications 99, University of South Florida 2013) 7.

² Furio Cerutti, *Conceptualizing Politics: An introduction to Political Philosophy* (Routledge 2017) 163.

different generations in time.³ Gender is – without going deeper into the vast, not only academic, debate on its definition – one of the features on the basis of which individuals are differentiated and this may give rise to inequalities. In many countries, a person's gender is assigned at birth as male or female based on specific sexual characteristics. A person expresses their gender identity, which may not or only partially align with the gender assigned at birth, through attitudes and behaviours falling under the notion of gender roles. The latter vary according to the context in time and space, and are notably influenced by gender stereotypes.⁴ This work, though the author acknowledges the limitations of the male/female gender binary in representing the multiplicity of identities people experience in real life and the consequent discriminations, focuses on those who identify or are socialised as women, welcoming the extraordinary complexity this term evokes. This choice is due to the lack of properly disaggregated data, and is meant as a first step: a 'temporary act' towards a deeper understanding of the inequalities linked to climate change.⁵ Women and girls may face during their lives gender inequality in its several manifestations: gender-based violence, unpaid care and domestic work, the gender pay-gap, and the gender gap in power and leadership, to name only a few. According to Cerutti, the proper venue of gender equality 'is not nature but the polity, though many existing polities fail to enforce or even to acknowledge gender equality',⁶ and data confirm that 54% of the countries still lack laws in all key areas of gender equality.⁷

1.1.2 Climate Change and Climate Crisis

The weather is the ensemble of the conditions of the atmosphere in a precise moment and place, while the climate is the weather of an area over a long time; climate change is the alteration of the climate, due to natural causes or human activities.⁸ To the aim of this work, the definition included in the 1992 United

³ *ibid* 164-167.

⁴ Alessandra Daphne Fisher and Jiska Ristori, *Atlante del Genere* (Edizioni Clichy 2022) 19-25.

⁵ Adriana Cavarero, 'Il pensiero femminista. Un approccio teoretico', in Adriana Cavarero and Franco Restaino (eds), *Le filosofie femministe* (Mondadori 2002) 83-85.

⁶ Cerutti (n 2) 166.

⁷ UN Women and UN Department of Economic and Social Affairs Statistics Division, 'Progress on the Sustainable Development Goals: The Gender Snapshot 2023' (2023) 4.

⁸ IPCC, 'Summary for Policymakers' in IPCC, *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2023).

Nations Framework Convention on Climate Change (UNFCCC), Article 2, is adopted: climate change is the ‘change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods’. Most human activities emit greenhouse gases into the atmosphere, and the increased amount of these gases causes global warming: the average global temperature has already increased by 1.64°C compared to preindustrial times.⁹ The effects of global warming on the climate are already tangible all over the world: an increase in the frequency and intensity of extreme weather and climate events such as droughts, floods, heatwaves and storms, and the spreading of vector-borne diseases, to name only a few.¹⁰ These negatively impact ecosystems and biodiversity, exacerbate conflicts over natural resources and force people to migrate from most hit areas, with escalating humanitarian costs.¹¹ The expression *climate crisis* highlights the complex impacts of climate change on people and societies. According to Cerutti, climate change is one of the few global challenges, being these ‘lethal, physical, and man-made threats that can hit everybody on earth and can be addressed with some chance of success only by the joint effort of all peoples or countries’.¹² This global challenge endangers the survival of civilisation, meant by the author as the ‘set of social and technical institutions that enable the human race’.¹³ Climate change questions human – and not only – life as we know it: quoting the words of the poet, novelist and environmental activist Margaret Atwood, we should rather call it ‘the *everything* change’.¹⁴

1.1.3 Gender and Climate Change Nexus

Climate change acts as an amplifier of existing inequalities. According to the latest report of the Second Working Group of the Intergovernmental Panel on Climate Change (IPCC) on Impacts, Adaptation and Vulnerability, there is high

⁹ Surface air temperature anomaly for July 2023 to June 2024. ERA5. Reference period 1991-2020. Credit: C3S/ECMWF. Source: Copernicus/ECMWF.

¹⁰ IPCC, ‘Summary for Policymakers’ in IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2022) 8-19.

¹¹ IFRC, ‘The Cost of Doing Nothing’ (2019).

¹² Cerutti (2) 134.

¹³ *ibid.*

¹⁴ Ed Finn, Interview with Margaret Atwood, Arizona State University (Phoenix, November 2014) (emphasis added).

confidence that gender and other social inequalities such as racial or ethnic inequality, age, income, and geographic location compound vulnerability to climate change impacts.¹⁵ The nexus between gender and environment has been the object of scholarship since the Seventies, with the analysis of the dualistic structures opposing men and culture to women and nature. The first ecofeminist thinking, then criticised for its essentialism, and ecological feminisms were the bases for the elaboration of Feminist Political Ecology in the Nineties, initially focusing on gendered scientific and ecological knowledge, gendered rights and responsibilities concerning the environment, and gendered politics as well as grassroots activism. If the work of Feminist Political Ecology demonstrated that 'gender, understood as culturally defined male/female sex roles, structures access to particular types of knowledge, space, resources, and social-political processes', and therefore 'men and women have differential opportunities and challenges in relation to environmental change and development',¹⁶ gender relations also 'mediate experiences with climate change'.¹⁷ Fletcher and Reed illustrated in their excursus how a body of literature dedicated to the nexus between gender and climate change emerged in the early 2000s, starting from analysing through gender lenses the disasters climate change is increasing in frequency and intensity.¹⁸ A breakthrough moment was the aftermath of Hurricane Katrina. Some of the key themes were the disproportionate female fatality during major disasters, climate adaptation and gendered work roles, women's underrepresentation in climate policy and decision-making, the gendered nature of climate change discourse and techno-scientific solutions, gendered vulnerability and the feminisation of poverty.¹⁹ Later, the adoption of an intersectional approach allowed for more nuanced analyses of inequalities. To the aim of this work, the gender and climate change nexus condenses all the multiple and complex correlations between gender and climate change, which are extensively described in Chapter 2.

¹⁵ IPCC, 'Gender' cross chapter box in IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2022) 2700.

¹⁶ Andrea Nightingale, 'The Nature of Gender: Work, Gender, and Environment' (2006) 24 *Environment and Planning D: Society and Space* 165-185.

¹⁷ IPCC, 'Gender' (n 14).

¹⁸ Amber J Fletcher and Maureen G Reed, 'Different Experiences, Diverse Knowledges: Gender, Intersectionality, and Climate Change in Rural and Resource Contexts' in Amber J Fletcher and Maureen G Reed (eds), *Gender and the Social Dimensions of Climate Change* (Routledge 2022) 3-4.

¹⁹ *ibid.*

1.1.4 Climate Justice

Quoting Harris, 'Climate change is fundamentally a problem of justice: injustice is at the root of its causes, at the heart of its impacts and vital to whether and how effective policies will be devised and implemented to mitigate the associated hardships'.²⁰ Benefits and burdens are unequally distributed: the least responsible are suffering the most from climate change, while the most responsible, having the greatest capabilities to mitigate and adapt, are not doing enough, also impacting future human generations and other species.²¹ Focusing on the States as actors and on International Law, the principle of *common but differentiated responsibilities and respective capabilities* which is enshrined in Article 3 of the 1992 UNFCCC is the outcome of early international climate negotiations, when concerns around climate justice emerged. However, agreement was never reached on specific responsibilities and consequent commitments.²² Moreover, climate justice is differently understood and claimed by social movements, NGOs, policymakers and scholars.²³ There is no univocal meaning of climate justice, as the context is relevant.²⁴ According to the review of definitions conducted by the Glasgow Caledonian University's Centre for Climate Justice, climate justice:

[R]ecognises humanity's responsibility for the impacts of greenhouse gas emissions on the poorest and most vulnerable people in society by critically addressing inequality and promoting transformative approaches to address the root causes of climate change.²⁵

Among several and interconnected transformative approaches to address the root causes of climate change is the feminist perspective on climate justice, which will be illustrated in Paragraph 2.1.4.6.

²⁰ Paul G Harris, (2019). 'Climate Justice: The Urgent Research Agenda (s)' in Paul G Harris (ed), *A Research Agenda for Climate Justice* (Edward Elgar Publishing 2019) 12.

²¹ *ibid* 4.

²² Harris (n 19) 2.

²³ David Schlosberg and Lisette B Collins, 'From Environmental to Climate Justice: Climate Change and the Discourse of Environmental Justice' (2014) 5/3 WIREs Climate Change 359-374.

²⁴ Teresa M Thorp, *Climate Justice: A Voice for the Future* (Springer International Publishing 2014) 1-22.

²⁵ Mandy Meikle, Jake Wilson and Tahseen Jafry, 'Climate Justice: Between Mammon and Mother Earth' (2016) 8/4 International Journal of Climate Change Strategies and Management 488-504.

1.1.5 Legal Mobilisation

Legal mobilisation can be defined, choosing in literature a broad understanding of it, as ‘any process by which individuals or collective actors invoke legal norms, discourse or symbols to influence policy or behaviour’.²⁶ Scientific investigations of legal mobilisation may allow to identify the reason why an individual or a group choose to act in court or not, and these conditions may be related to the success or failure of that legal action. Explanations include political disadvantage, possibilities to mobilise resources of different kinds, procedural rules regulating access to court, framing of legal discourses, and legal translation.²⁷ The Legal Opportunity Structure (LOS) approach is one of the leading frameworks in legal mobilisation studies; it emerged in years 2000s, representing ‘the degree of openness or accessibility of a legal system to the social and political goals and tactics of individuals and/or collective actors’.²⁸ Insights from legal mobilisation scholarship enrich analyses of strategic litigation, including strategic climate change litigation, allowing for a broader appreciation of legal actions, from a comparative perspective too.

1.1.6 Climate Change Litigation

The search for a definition of climate change litigation represents a significant part of the international and interdisciplinary literature on the subject: according to some, there are as many notions as there are authors who write about it.²⁹ An authoritative definition proposal proceeds in concentric circles: at the centre are the cases in which climate change is the main issue or argument while moving outwards the connection between the issue raised, the supporting arguments and climate change becomes increasingly indirect.³⁰ The main database that collects information on climate change litigation cases brought around the world is composed on the basis of the following definition: ‘cases brought before judicial or para-judicial bodies that present material questions of

²⁶ Lisa Vanhala and Jaqueline Kinghan, ‘Literature review on the use and impact of litigation’ (Public Law Project 2018) 5.

²⁷ *ibid* 7-9.

²⁸ Lisa Vanhala, ‘Legal Opportunity Structures and the Paradox of Legal Mobilization by the Environmental Movement in the UK’ (2012) 46/3 *Law & Society Review* 527.

²⁹ Johanna Setzer and Lisa Vanhala, ‘Climate Change Litigation: A Review of Research on Courts and Litigants in Climate Governance’ (2019) 3 *WIRE’s Climate Change* 4.

³⁰ Jaqueline Peel and Hari M Osofsky, ‘Climate Change Litigation’ (2020) XVI *Annual Review of Law and Social Science* 23.

climate change science, politics or law'.³¹ At the time of writing, 2764 cases are identified based on this definition.³² Climate change litigation can be therefore imagined as a large container of cases united by the fact that the matter of the dispute is related, in different ways and to different extents, to climate change. Classifications and categories may help in understanding the relevance of a case among many. Cases of climate change litigation, as defined, can be summarily distinguished, according to the categories suggested by Payandeh, based on the judicial body before which they are brought, on which actors and stakeholders are involved, and on the objectives pursued by the parties.³³ A strategic case is defined as a legal action designed to achieve objectives that are not limited to a positive outcome for the claimants but include, for instance, the progress of climate change policy and changes in social norms or corporate practices.³⁴ Notably, a small but increasing number of cases are not aligned with climate goals, seeking to delay or stop climate action;³⁵ this shows how climate litigation mirrors the utmost complexity of the climate crisis, and how litigation offers a last resort space for stakeholders to confront when competent institutions are inert or not properly balancing their interests. Most recent trends see the overall number of cases growing, with actions spreading to new jurisdictions, an increasingly relevant role of international courts and tribunals, and significant developments in cases against governments and corporate climate litigation.³⁶

1.2 PREMISES

This work embraces the approaches of transdisciplinary and exploratory research, which are most suitable for investigating a complex and inherently social matter such as gender equality in the climate crisis. Dealing with *wicked* problems such as climate change requires a combination of scientific and non-

³¹ Johanna Setzer and Catherin Higham, 'Global Trends in Climate Change Litigation: 2024 Snapshot' (Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science 2024) 7.

³² Climate Change Litigation Databases of the Sabin Centre for Climate Change Law <<https://climatecasechart.com>> accessed 5 September 2024.

³³ Mehrdad Payandeh, 'The role of courts in climate protection and the separation of powers' in Wolfgang Kahl and Marc-Philippe Weller (eds), *Climate Change Litigation. A Handbook* (Bloomsbury Publishing 2021) 66.

³⁴ Ben Batros and Teresa Khan, 'Thinking Strategically About Climate Litigation' (2020) SSRN 3.

³⁵ Setzer and Higham (n 30) 40.

³⁶ *ibid* 1-6.

scientific knowledge and insights.³⁷ If *multidisciplinarity* is the collaboration of scholars from different disciplines on the same issue ‘with little cross-fertilisation’ and ‘combined findings’, *interdisciplinarity* implies more interaction, even approaches and methods sharing.³⁸ *Transdisciplinarity*, instead, has multiple definitions and marks crucial shifts in research such as those:

[F]rom fragmentation to relationality, from unity to an integrative process, from homogeneity to heterogeneity and hybridity, (...) from simplicity to complexity, from linearity to non-linearity, from universality to situated practices.³⁹

Since the first definition of transdisciplinarity as a ‘common system of axioms for a set of disciplines’ in a dedicated OECD seminar in 1970,⁴⁰ different variations emerged,⁴¹ which can be considered not exclusive.⁴² Considering the seven key characteristics encompassed by transdisciplinarity according to Lawrence and others, this work fulfils many of them: the incorporation of multidisciplinary and interdisciplinary scholarships, the choice of a complex and societally relevant real-world problem, the transformative potential of the outcomes and the orientation towards the advancement of society (as illustrated in Section 1.5 dedicated to research goals and aims), the involvement of societal actors in the process - even though this point was not completely developed.⁴³ The exploratory approach to research rests on ‘an explicit recognition that all inquiry is tentative; that reality is, in part, socially constructed; that researchers are part of the reality they analyse’ and is intrinsically interdisciplinary.⁴⁴ As an ‘act of gradual, structured and theory-led heuristic expansion from an original set of models, explanations and questions’, it allows ‘to think, not just measure; to use our imagination, experience, insight, and skill

³⁷ Mark G Lawrence and others, ‘Characteristics, potentials, and challenges of transdisciplinary research’ (2022) 5/1 *One Earth* 44.

³⁸ *ibid* 45.

³⁹ Julie T Klein, ‘Unity of Knowledge and Transdisciplinarity: Contexts of Definition, Theory and the New Discourse of Problem Solving’, *Encyclopedia of Life Support Systems* (2002) 3.

⁴⁰ OECD, ‘Interdisciplinarity: Problems of Teaching and Research in Universities’ (OECD Publications Center 1972).

⁴¹ Jay H Bernstein, ‘Transdisciplinarity: A Review of its Origins, Development, and Current Issues’ (City of New York University 2015).

⁴² Roderick J Lawrence, ‘Introduction’ in Roderick J Lawrence (ed), *Handbook of Transdisciplinarity: Global Perspectives* (Edward Elgar Publishing 2023) 20.

⁴³ Lawrence and others (n 36) 46-47.

⁴⁴ Reiter (n 1) 3, 15.

to propose new and innovative ways how to understand and interpret reality'.⁴⁵ Exploratory inquiry starts by outlining the theoretical framework delimiting the research field and formulating clear hypotheses, aiming not merely to verify them but to assess their potential in explaining a relationship between two variables if compared with other, non-competing hypotheses.⁴⁶ To provide a new or better understanding of a relationship, the researcher shall engage in expanding their conceptual tools.⁴⁷ Climate change litigation attracted the attention of scholars worldwide in recent years, as the number of cases and involved jurisdictions increased, while this increase was also due to the development of dedicated research and the building of an international community of interest and practice. The object of multi- and inter-disciplinary studies on climate change litigation ranges from its definition,⁴⁸ and therefore the quantification of cases, to the identification of trends,⁴⁹ from meticulous analyses of milestone judgments,⁵⁰ to comparative analyses of similar legal strategies in different jurisdictions,⁵¹ from vertical national or regional reports,⁵² to horizontal considerations on the boundless exchange of knowledge and practices between involved actors.⁵³ Legal disciplines meet social sciences, and both quantitative and qualitative methods are applied. The attempt to look at this set of information and data – climate change litigation – under different,

⁴⁵ *ibid* 7-8.

⁴⁶ *ibid* 4.

⁴⁷ *ibid* 5-6.

⁴⁸ Peel and Osofsky (n 29); Jaqueline Peel and Hari M Osofsky, *Climate Change Litigation* (Cambridge University Press 2015).

⁴⁹ The most prominent source is the annual Global Trends in Climate Change Litigation: Snapshot elaborated by the Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science.

⁵⁰ See for example the impressive number of scientific contributions dedicated to *Urgenda v The Netherlands*.

⁵¹ Sudha Kavuri and Anjana Ramanathan, 'Climate Change Litigation: Chronicles from the Global South. A Comparative Study' (2022) 28 *Comparative Law Review*; Barbara Pozzo, 'Climate Change Litigation in a Comparative Law Perspective' in Francesco Sindico and Makane Moïse Mbengue (eds), *Comparative Climate Change Litigation: Beyond the Usual Suspects* (Springer International Publishing 2021).

⁵² Francesco Sindico and Makane Moïse Mbengue (eds), *Comparative Climate Change Litigation: Beyond the Usual Suspects* (Springer International Publishing 2021); Kim Bouwer and others, 'Africa, Climate Justice and the Role of the Courts' in Kim Bouwer and others (eds), *Climate Litigation and Justice in Africa* (Bristol University Press 2024).

⁵³ Chris Hilson, 'Climate Change Litigation: A Social Movement Perspective' (2010) SSRN; Heather Colby and others, 'Judging Climate Change: The Role of the Judiciary in the Fight Against Climate Change' (2020) 7/3 *Oslo Law Review* 168-185.

almost unprecedented lenses, those of gender inequality, returned complex outcomes, questioning some of the research tools and categories commonly applied so far and paving the way for further exploration.⁵⁴ The premises of the exploratory approach to research briefly summarised above also imply the researcher's awareness and transparency about their particular vantage point, recalling the arguments of feminist epistemology as Haraway's 'situated knowledges'⁵⁵ and Harding's 'strong objectivity' and reflections on standpoint theories.⁵⁶ Positivist epistemology is based on the assumption that it is possible to produce universal, objective, neutral, impartial and value-free knowledge. This requires separating knowledge from the historical, geographical, and social space of production and the body of those involved,⁵⁷ privileging quantitative methods. On the contrary, Haraway affirms that knowledge can only be partial and incomplete, as experiences and points of view are countless. The researcher is influenced by their socio-economic position, context and worldview, interests, desires and prejudices.⁵⁸ The knowledge produced by traditional research has never been impartial and value-free: it reflects exclusively the values and the worldview of the subject who held the monopoly on it, that is, the dominant subject at a social level, thus excluding all the subjectivities and knowledge that this subject is not interested in.⁵⁹ Feminist research adopts a contextualist approach to the production system of scientific knowledge: science is always tied in various ways to the context in which it is

⁵⁴ Scientific contributions specifically addressing gender inequality in climate change litigation are few and recent: Natalia Urzola Gutiérrez, 'Gender in Climate Litigation in Latin America: Epistemic Justice Through a Feminist Lens' (2024) 16/1 *Journal of Human Rights Practice* 208-226; Pedi Obani, 'Climate Litigation in South Africa and Nigeria: Legal Opportunities and Gender Perspectives' in Kim Bouwer and others (eds), *Climate Litigation and Justice in Africa* (Bristol University Press 2024).

⁵⁵ Donna Haraway, 'Situated Knowledges: The Science Question and the Privilege of Partial Perspective' (1988) 14/3 *Feminist Studies*.

⁵⁶ Sandra Harding, 'Feminist Standpoint Epistemology' in Muriel Lederman and Ingrid Bartsch (eds), *The Gender and Science Reader* (Routledge 2001) 145-168; Sandra Harding, 'Rethinking Standpoint Epistemology: What is "Strong Objectivity"?' in Linda Alcoff and Elizabeth Potter, *Feminist Epistemologies* (Routledge 1993).

⁵⁷ Gaia Ballatori, 'Resistenze alla Conoscenza e Conoscenza come Forma di Resistenza' in Alessandro Dividus and others (eds), *Itinerari del Sapere. Teorie e Pratiche della Conoscenza in Età Contemporanea* (Carocci 2022) 14-21.

⁵⁸ Haraway (n 54) 586-587.

⁵⁹ Elena Nalato and Federica Piras, 'Pratiche Femministe nella Produzione di Conoscenza Scientifica. Applicazioni Possibili nella Ricerca Giuridica' in Carmela Leone and Chiara Perini (eds), *Metodologie della Ricerca Interdisciplinare*, (Mimesis 2023) 291.

produced and to the interests of those who practice it.⁶⁰ Feminist theories propose a production of knowledge that is situated, not neutral, and therefore conscious of the body and the geo-historical place from which it is produced and based on feminist values. Haraway's 'situated knowledges' indicate knowledge produced in a critical, positioned way and not from any place, avoiding relativism by means of a 'passionate detachment'.⁶¹ *Reflexivity* is a common trait in transdisciplinary, exploratory and feminist approaches to research, as their respective elaborations crossed over in time. It implies the recognition and clarification of the social position and the role played by the researcher in the creation of data and knowledge.⁶² This work's author's position is described below, inspired by Bahaffou and Gorecki.⁶³ The author is a cisgender white woman of European origins, born and raised in a lower-middle-class Catholic family. She is mainly based in Italy but temporarily lived in France and Switzerland for her studies. She has been volunteering in a humanitarian movement for eight years, dedicated to youth engagement first and to climate change mitigation and adaptation later. Keen on social justice and environmental issues, she trained in hard sciences and Law, before meeting feminist thoughts and gender studies during her PhD. The author adheres to feminist scholars' understanding of research as a political practice,⁶⁴ and to the objective of counteracting epistemic privilege, enriching scientific production as much as possible with the diversity of points of view.⁶⁵ This implies a specific commitment in every phase of the research process: from the formulation of the research question to the choice of theory and methodology, up to the drafting, publication and dissemination.⁶⁶ Research questions, in particular, shall document the lives, experiences, discriminations and needs of women and

⁶⁰ Eleonora Severini, 'Scienza, Filosofia e Donne: la Prospettiva Femminista in Epistemologia' (2015) 13 *Riflessioni Sistemiche* 129.

⁶¹ Haraway (n 54) 581-584.

⁶² Andrea Doucet and Natasha S Mauthner, 'Feminist Methodologies and Epistemology' in Clifton D Bryant and Dennis L Peck (eds), *21st Century Sociology: A Reference Handbook* (Sage Publications 2007) 40.

⁶³ Julie Gorecki and Myriam Bahaffou, 'Préface' in Françoise D'Eaubonne, *Le Féminisme ou la Mort* (Le passeger clandestin 2020), 8-10.

⁶⁴ Peace Kiguwa, 'Feminist Approaches: an Exploration of Women's Gendered Experiences' in Sumaya Laher and others (eds), *Transforming Research Methods in the Social Sciences* (Wits University Press 2019) 220-235.

⁶⁵ Abigail Brooks and Sharlene N Hesse-Biber 'An Invitation to Feminist Research' in Sharlene Hesse-Biber and Patricia Leavy (eds), *Feminist Research Practice* (Sage Publications 2007) 2-24.

⁶⁶ Nalato and Piras (n 58) 292.

marginalized groups, promoting their empowerment and providing the tools to address and eliminate entrenched power inequalities in society.⁶⁷

1.3 THE RESEARCH QUESTION AND HYPOTHESES

The research question arose from the observation of climate change litigation trends and data. Since the first Greta Thunberg's School Strike for Climate took place in August 2018, the youth climate movement, in its various souls, took the streets and expanded the mobilisation to and thanks to virtual spaces, demanding climate action and intergenerational justice.⁶⁸ These claims find correspondence in several lawsuits or requests of advisory opinions brought by young claimants or on their behalf or interest, to the point that guidelines have been elaborated for child rights strategic litigation.⁶⁹ Engaging youth in strategic climate change litigation could be key to satisfying legal standing requirements: they are more exposed to the intensifying impacts of climate change and therefore may be considered to have a more specific interest in climate change mitigation and adaptation measures.⁷⁰ Querying the main climate change litigation databases, the ones created and managed by the Sabin Center for Climate Change Law of the Columbia Law School, a relevant keyword search gave the following quantitative results (see Table 1.1, the full list of results is available as appendix).⁷¹ The total number of relevant cases is obtained by not taking into account: repetitions of the same case under different entries; cases that appear under the entry only because that word appears in the case's summary or documents but the applicants are not young and/or the main or secondary objective of the lawsuit is not explicitly relevant for the youth. As a consequence, the table shows the number of cases led by young applicants or youth organisations, and/or aimed at a main or secondary objective relevant to youth, as for instance, the reduction of greenhouse gas emissions to avoid

⁶⁷ Katy Jenkins, Lata Narayanaswamy and Caroline Sweetman, 'Introduction: Feminist Values in Research' (2019) 27/3 *Gender & Development* 415-425.

⁶⁸ Valentina E Albanese, 'Environmental Crisis and Climate Change: Social Mobilization and Digital Activism Arisen from Territorial Identities' in Oana-Ramona Ilova (ed), *Territorial Identities in Action* (pp. 123-148) (Presă Universitară Clujeană 2020) 123-148.

⁶⁹ Aoife Nolan, Ann Skelton and Karabo Ozah, 'Child Rights Strategic Litigation: Key Principles for Climate Justice Litigation' (ACRiSL 2023).

⁷⁰ The greater exposure of younger generations to global warming under different emission scenarios is effectively illustrated by Figure 1a of the IPCC AR6 Synthesis Report's Summary for Policymakers (n 7).

⁷¹ Climate Change Litigation Databases of the Sabin Centre for Climate Change Law <<https://climatecasechart.com>> accessed 31 May 2023 and 28 August 2024.

further global warming in the next future. Considerations on the advantages and limits of doing research through climate change litigation databases are developed in Chapter 5, as well as the possibility of relying on databases other than the Sabin Center's well-known ones. However, it is worth mentioning here that the increase in the number of listed cases in time does not only depend on the date of filing of new legal actions but also on the availability of the information for the creation of the entry in the database (e.g., a lawsuit filed in 2022 may appear on the database in 2024 because information about it was not available before to the database's editors).

Table 1.1 Search by keywords in the Climate Change Litigation Databases, Youth category. Author's elaboration.

Entry	May 31, 2023		August 28, 2024	
	U.S. Database	Global Database	U.S. Database	Global Database
<i>Child/ren</i>	15	21	17	38
<i>Student/s</i>	4	5	4	6
<i>Teen/ager/s</i>	0	0	0	0
<i>Young</i>	11	21	11	26
<i>Youth</i>	12	46	16	58
Relevant Cases	28	62	33	77
Cases in the Databases	1590	751	1818	944
Ratio	1,76%	8,26%	1,82%	8,16%

A similar reasoning was then followed taking into consideration a different, even though possibly overlapping, category: women. The body of multi- and interdisciplinary literature investigating the multiple correlations between gender and climate change is expanding, while the feminist climate justice movement has increasing visibility. Both trends, which are detailed in Chapter 2, are linked to a renewed interest in ecofeminist theories and practices.⁷² If a specific vulnerability of women to climate change is described in literature, as youth they may be considered to have a more specific interest in acting in court. The human tendency to anticipate and formulate falsifiable hypotheses is welcomed in exploratory research.⁷³ In this case, a possible anticipation and hypothesis is

⁷² Giovanna Di Chiro, 'Making Ecofeminism(s) Matter... Again' (2021) 50/8 Women's Studies 820-828.

⁷³ Reiter (n 1) 9.

that if the premises are similar for the two categories, it is reasonable to expect a similar number of cases in the databases. A relevant keyword search in the Sabin Center’s Climate Change Litigation databases gave the following results (see Table 1.2, the full list of results is available as an appendix). The total number of relevant cases is obtained as illustrated above, therefore the table shows the number of cases led by women applicants or women organisations, and/or aimed at a main or secondary objective relevant to women and gender equality, for instance, measures to avoid the risks of intensifying heatwaves.

Table 1.2 Search by keywords in the Climate Change Litigation Databases, Women and Gender category. Author’s elaboration.

Entry	May 31, 2023		August 28, 2024	
	U.S. Database	Global Database	U.S. Database	Global Database
<i>Gender</i>	0	1	0	3
<i>Girl/s</i>	0	2	0	3
<i>Woman</i>	0	3	0	3
<i>Women</i>	2	6	2	11
Relevant Cases	2	11	2	14
Cases in the Databases	1590	751	1818	944
Ratio	0,13%	1,47%	0,11%	1,48%

Since the two categories considered above may intersect, cases common to both the most recent enquiries were assigned a main category based on the analysis of their summary, obtaining the results shown in Table 1.3 (the full list of results is available as an appendix).

Table 1.3 Search by keywords in the Climate Change Litigation Databases, comparison of the quantitative results between the two categories. Author's elaboration.

Category	Youth, Aug. 2024		Women and Gender, Aug. 2024	
	U.S. Database	Global Database	U.S. Database	Global Database
Relevant Cases	33	77	2	7
Cases in the Databases	1818	944	1818	944
Ratio	1,2%	8,16%	0,11%	0,74%

Women and gender cases are notably fewer than youth ones, especially considering the Global Database. This difference in numbers may indicate that age-related vulnerability to climate change is preferred as the ground of a legal strategy by litigators, and this may be related to the greater complexity of the gender and climate change nexus and/or to the existence of specific norms to rely upon. Moreover, data may suggest that the youth climate movement is closer to climate change litigation than the women's rights groups or the feminist climate justice movement, and this may depend on the availability and accessibility of knowledge about possible legal actions and solutions, but also on the previous point as often litigators involve groups in legal mobilisation. It is crucial not to overlook that the search through keywords in the databases may not be efficient in outlining relevant cases, and this may depend on how the database is structured and works but also on the choice of tags in the phase of entries' creation, as well as on the lack of gender-disaggregated data. Based on these reflections, the research question emerges:

why are there a few cases of climate change litigation in the databases dealing with the gender and climate change nexus?

According to Casula and others, 'If one begins with a research question, the working hypothesis could be viewed as a statement or group of statements that answer the question'.⁷⁴ A working hypothesis is provisional by definition, and there is a real chance that evidence will contradict it; as a conceptual tool, it

⁷⁴ Mattia Casula, Nandhini Rangarajan and Patricia Shields, 'The Potential of Working Hypotheses for Deductive Exploratory Research' (2021) 55 *Quality & Quantity* 1709-1710.

fosters research in early phases or transitions.⁷⁵ In this work, the working hypotheses are elaborated as follows:

1. if there are few cases of climate change litigation in the databases dealing with the gender and climate change nexus, then the gender and climate change nexus is not a good ground for legal action;
2. if there are few cases of climate change litigation in the databases dealing with the gender and climate change nexus, then the databases are not properly working to outline those cases.

1.4 THE RESEARCH DESIGN AND METHODOLOGY

1.4.1 Background Research

Before addressing the working hypotheses, a deeper exploration of the gender and climate change nexus was necessary. Therefore, the first step of the research process was dedicated to a multi- and interdisciplinary literature review, then updated in time. A narrative and general literature review was conducted on the gender and climate change nexus.⁷⁶ The sources included: electronic databases (mainly Google Scholar), academic libraries (University of Insubria, University of Zurich, University of Bologna, University of Modena and Reggio Emilia), archives of relevant organisations and existing networks' resources (mentioned in the text), conference proceedings. The literature review also relied on the effort of the research projects "ENTRUST – Women's Work and Sustainability: Towards Gender Just Transitions" and "COSMO – Climate Change Observatory of Social Mobilisation" at the University of Insubria, to which the author contributed in 2023. The search returned an extremely heterogeneous body of scientific literature, with pieces from different disciplines and scholarships. Grey literature constituted a relevant amount of the analysed items, mainly including reports of relevant international institutions and documents produced by NGOs and movements.⁷⁷ Concerning the limitations of the research, the evaluation of the accuracy of the items found for

⁷⁵ *ibid.*

⁷⁶ Anthony J Onwuegbuzie and Rebecca Frels, *Seven Steps to a Comprehensive Literature Review: A Multimodal and Cultural Approach* (Sage Publications 2016) 24-25.

⁷⁷ Alberto A Lozano, 'Social Movements as Learning Communities, Researchers and Knowledge Producers' in Laurence Cox and others (eds), *Handbook of Research Methods and Applications for Social Movements* (Edward Elgar Publishing 2024) 63-76.

the literature review was challenging, given the great heterogeneity. The outcomes of the literature review were organised under the four dimensions of the substantive equality framework as meant by Fredman,⁷⁸ to move a step further compared to the existing literature on gender and climate change and return a more nuanced and comprehensive picture of the nexus.

1.4.2 Addressing the First Working Hypothesis

To address the first working hypothesis - if there are few cases of climate change litigation in the databases dealing with the gender and climate change nexus, then the gender and climate change nexus is not a good ground for legal action - on the one hand, relevant law sources and related policies were analysed under the lenses of the gender and climate change nexus. On the other hand, relevant cases of climate change litigation were outlined, and a case study was elaborated. The object of the first analysis were sources of law, documents, and literature related to the UNFCCC, meant not only as a legal regime but as a broader multilateral process. It is worth mentioning that the database Climate Change Laws of the World of the Grantham Research Institute on Climate Change and the Environment at the London School of Economics and Political Science,⁷⁹ partially AI-powered, was not selected as the proper tool to search for relevant law and policy sources in this case, as the outcomes were too wide-ranging. More in detail, the dimension of gender equality in the UNFCCC process was considered, in parallel with the influence of the climate change discourse on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Moreover, resources from existing networks and online platforms – Gender Climate Tracker, NAP Global Network – were employed to analyse and compare under gender lenses national outcomes of the UNFCCC process, such as the Nationally Determined Contributions (NDCs) and the National Adaptation Plans (NAPs), as well as the Gender and Climate Change Plans some countries adopted so far. Assuming that Comparative Law is ‘a field of legal study that is dynamic and open to innovation and is not cemented to any particular special research approach of the legal discipline’,⁸⁰ the gender and climate nexus and the UNFCCC categories are employed in the

⁷⁸ Sandra Fredman, ‘Substantive Equality Revisited’ (2016) 14/3 International Journal of Constitutional Law 712-738.

⁷⁹ Climate Change Laws of the World <<https://climate-laws.org/>> accessed 7 November 2024.

⁸⁰ Roberto Scarciglia, *Methods and Legal Comparison: Challenges for Methodological Pluralism* (Edward Elgar Publishing 2023) 33, citing Jaakko Husa.

abovementioned analyses as possible alternative coordinates for legal comparison. NDCs and NAPs, taken into consideration under 'a richer conception of law',⁸¹ as in recent years 'the role played by non-binding tools to induce legal change across jurisdictions is remarkable',⁸² share a common reference to the UNFCCC regime and process, which acts as a vertical element in the comparison:

[I]mplementing the functionalist legacy and considering the sustainability of difference, the vertical comparative approach has the merit of seeking common ground, where recognition of the 'other' can be based on shared factors.⁸³

Reference to the regime's categories, such as the Parties' groupings based on differentiated responsibilities as set by the Convention, draws a different taxonomy, where asymmetries are explicit and dictated by the treaty's principles.⁸⁴ The investigation's focus on the gender dimension may allow for a 'thicker, more narrative, quality of comparison'.⁸⁵ The Gender and Climate Change National Plans count 25 acts of planning in 23 countries, interestingly all UNFCCC Non-Annex I Parties. The plans were adopted in a time range from 2010 to 2024, so they can be analysed diachronically, and many saw the pivotal contribution of the same international organisation, namely the International Union for the Conservation of Nature (IUCN). The plans' structure and key themes were compared in light of the literature review. The comparison was then extended to the plans' anchoring and relevance in the respective legal system, and to what extent their implementation can be challenged. To outline relevant cases of climate change litigation research was conducted through the Climate Change Litigation Databases of the Sabin Center for Climate Change Law, Columbia Law School. The keyword search, as illustrated in Section 1.3, returned a few cases, which were then categorised as women-led and/or gender-based. Falling within both the introduced categories, *Verein KlimaSeniorinnen Schweiz v. Switzerland*, including both the national proceedings and that in front of the European Court of Human Rights, was

⁸¹ Günter Frankenberg, *Comparative Law as Critique* (Edward Elgar Publishing 2016) 227-228.

⁸² Michele Graziadei, 'Comparative Law, Transplants, and Receptions' in Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law*, (2nd edn, Oxford University Press 2019) 455.

⁸³ Scarciglia (n 78) 172-173.

⁸⁴ Frankenberg (n 79) 231-232.

⁸⁵ *ibid* 227-228.

considered the most appropriate case for the case study. The case study covered: the scrutiny of the documents of the proceedings and of the hearings in Strasbourg; a comparative analysis of the legal strategy, with respect to the milestone cases indicated as sources of inspiration by the legal advisors of the Swiss association, and of how the gender dimension is intertwined in it, with respect to a different case of climate litigation which can be categorised as gender-based - *Maria Khan and Others v. Pakistan and Others*. Comparative Law tools proved to be the appropriate equipment in the study of climate change litigation, as they shed light on the legal transplants - or circulation of legal models - in this field and, therefore, on the directions and on the players of the development of Environmental and Climate Law globally.⁸⁶ The concept of *legal transplant*, though residual uncertainty in the associated terminology, was a successful one in literature, indicating the 'continuous (...) process that sometimes leads to legal change through the appropriation of foreign ideas'.⁸⁷ This process is far from linear, especially when change is fostered by the urgency of responding to transnational or global crises, but the main factors considered in literature are the imposition, the prestige, the economic performance, and the role of politics.⁸⁸ Looking at Environmental and Climate Law, peculiar characteristics of the circulation of models emerge, as this would be facilitated by the transnational if not global nature of the issues, the existence of supra-national regulatory frameworks, and by the highly technical content of the rules.⁸⁹ If any formant of the legal system can be interested by change and even independently from the others,⁹⁰ some scholars suggest to pay attention when considering strategic climate change litigation to the role of environmental activism as a 'lawyer's formant' and to the exchange happening before and outside of the judicial proceedings.⁹¹ To allow for a broader appreciation of the legal action, an LOS analysis of the KlimaSeniorinnen mobilisation was conducted too.

⁸⁶ Pozzo (n 50) 609.

⁸⁷ Graziadei (n 80) 444. See also John W Cairns, 'Watson, Walton, and the History of Legal Transplants' (2012) 41 *Georgia Journal of International & Comparative Law* 637.

⁸⁸ Graziadei (n 80) 454-456, 458.

⁸⁹ Barbara Pozzo, 'Modelli Notevoli e Circolazione dei Modelli Giuridici in Campo Ambientale: tra Imitazione e Innovazione' in Ugo Mattei and others (eds), *Un Giurista di Successo. Studi in Onore di Antonio Gambaro* (Giuffrè 2017) 354-358.

⁹⁰ Antonio Gambaro and Rodolfo Sacco, *Sistemi Giuridici Comparati* (Utet 2018) 24.

⁹¹ Silvia Bagni, 'La Costruzione di un Nuovo "Eco-sistema Giuridico" Attraverso i Formanti Giudiziale e Forense' (2022) 50 *DPCE Online*; Attilio Pisanò, 'Potere Avvocatile e Processualità dei Diritti' (2020) 9/2 *Rivista di Filosofia del Diritto* 419-438.

1.4.3 Addressing the Second Working Hypothesis

To address the second working hypothesis - if there are few cases of climate change litigation in the databases dealing with the gender and climate change nexus, then the databases are not properly working to outline those cases - a dialogue was established with scholars working, in various roles, at the creation and development of climate change litigation databases. More in detail, one of the rapporteurs of the Sabin Center's Peer Review Network of Climate Litigation was contacted and the guidelines for the members of the network creating the Climate Change Litigation Databases' entries were analysed. Then in February 2023 a collaboration with the Climate Rights and Remedies Project at the University of Zurich (UZH) was launched, as the project included the creation and development of a climate change litigation database with a focus on Human Rights. The collaboration implied a direct contribution to the database maintenance and growth, therefore the analysis of the related guidelines, and the tentative introduction of a new label to filter gender-based cases on the platform. As the KlimaSeniorinnen association, the protagonist of the case study, is based in Switzerland, exploratory interviews with one of their legal advisors and with one of the Co-Presidents were organised, mainly aimed at testing the applicability of the abovementioned label to the Swiss case. Greenpeace Switzerland was contacted to request a similar interview but declined the invitation.

1.4.4 Methodological Choices

Methodological choices that are common to all the abovementioned research steps were those implied by the author's adhesion to feminist scholars' understanding of research. Adopting a feminist methodology poses the challenge of a more in-depth exploration of the research process itself and making this process transparent by elucidating the values, beliefs, and emotions that guide the research,⁹² as sketched in the Premises. Feminist research favours qualitative and mixed methods, while promoting the innovation of methodologies. Choices shall be functional to take into account social reality in its complexity while avoiding extractivist practices.⁹³ According to Liboiron, even the consultation of sources can turn into an extractive practice when reading

⁹² Nalato and Piras (n 58) 293.

⁹³ Bianca R Parry, 'Feminist Research Principles and Practices' in Sumaya Kramer and others (eds), *Online Readings in Research Methods* (Psychological Society of South Africa 2020).

and writing are not recognised as relational activities.⁹⁴ In this regard, Ahmed highlighted the importance of the citation policy, either in terms of giving priority to less visible subjectivities when choosing sources, and in terms of editorial rules, such as reporting names in full.⁹⁵ Gusmano proposed a methodology that is based on feminist circular reciprocity, concretised by making sure that the research outcomes will be beneficial for the subjects involved and not only to the scientific community.⁹⁶ The adoption of these proposals in this work is illustrated in the following section, as well as in the bibliography. Crucial in research dedicated to gender inequality is the approach of intersectionality, to avoid flattening complex experiences in a category such as that of *woman*. The intersectional approach allows to deconstruct the presumed homogeneity of social groups, outlining how different experiences of marginalisation may depend on the combination of different elements of one's identity.⁹⁷ Social categories and their interactions are understood as systems of power that intertwine, the first considered in this sense being racism and sexism in the experience of black women. Intersectionality also proposes to take into account the historical, geographical, political, geopolitical, and legal aspects of power relations in order to grasp its materiality.⁹⁸ The intersectional lens is applied in the analyses of law, policy, and litigation described above.

1.5 THE RESEARCH GOALS, AIMS AND OBJECTIVES

1.5.1 Goals

The mission of the PhD program in Sustainable Development and Climate Change is strongly related to the Agenda 2030 and the Sustainable Development Goals (SDGs), which is to define tools and methods to promote the ability of future generations to understand the evolution of the climate, as well as to design and implement new solutions for a sustainable society in all its aspects.⁹⁹ As is known, the 2030 Agenda for Sustainable Development, built on

⁹⁴ Max Liboiron, *Pollution is Colonialism* (Duke University Press 2021) 31-37.

⁹⁵ Sarah Ahmed, *Living a feminist life* (Duke University Press 2017) 16.

⁹⁶ Beatrice Gusmano, 'I Would Prefer Not To. Doppia Presenza Femminista e Pratiche Collettive di Complicità e di Impoteramento' (2020) 126 DWF 24.

⁹⁷ Kimberlé W. Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' (1989) 139 University of Chicago Legal Forum.

⁹⁸ Patricia Hills Collins, *Intersezionalità come Teoria Critica della Società* (Utet Università 2022).

⁹⁹ <<https://www.phd-sdc.it/our-phd-program>> accessed 7 November 2024.

decades of work of the UN and its member States (see for instance Agenda 21 and the Millennium Development Goals, or MDGs), was adopted in 2015 by the United Nations Member States. It provides a 'plan of action for people, planet and prosperity', and seeks 'to strengthen universal peace in larger freedom'.¹⁰⁰ The 17 SDGs are at the core of the Agenda and call for a global partnership to end poverty and deprivations while contrasting inequalities, even in the context of the climate and biodiversity crises. This research work may be considered to fit the efforts to achieve SDGs 5, 13, and 16, which are briefly described.

1.5.1.1 SDG 5

The fifth SDG is to 'Achieve gender equality and empower all women and girls'. Most relevant to this work is the first target under this goal, 'End all forms of discrimination against all women and girls everywhere', with its indicator 'Whether or not legal frameworks are in place to promote, enforce and monitor equality and non-discrimination on the basis of sex'.¹⁰¹ According to the latest progress report by the UN Secretary-General at the time of writing, 'only seventeen per cent of SDGs targets are on track to be achieved, nearly half are showing minimal or moderate progress, and progress on over a third has stalled or even regressed'.¹⁰² Looking at the fifth SDG in particular, the same report states that 'progress towards gender equality is clearly off track', with harmful practices decreasing at an insufficient pace, gender parity in public life and managerial roles to be achieved in 176 years, and lack of control over sexual and reproductive health. Violence, biased social norms and discriminatory law persist.¹⁰³ Morrow examined the factors affecting the pursuance of gender equality and women's empowerment under the SDGs and highlighted some criticalities.¹⁰⁴ As the previous set of global development goals, the MDGs, and notwithstanding a more participated negotiation process permeated by rights talk,¹⁰⁵ the SDGs lack integration with the human rights regime and therefore produce looser legal obligations upon the States, if any.¹⁰⁶ Given that the UN's

¹⁰⁰ G. A. Res. 1, U.N. GAOR, 70th Sess., U.N. Doc. A/70/1 (2015) Preamble.

¹⁰¹ *ibid* (n 98) p. 18; G.A. Res. 313, U.N. GAOR, 71st Sess., U.N. Doc. A/71/313 (2017) pp. 9-10.

¹⁰² G.A. Res. 54, U.N. GAOR, 79th Sess., U.N. Doc. A/79/79-E/54 (2024) p. 2.

¹⁰³ *ibid* 10.

¹⁰⁴ Karen Morrow, 'Gender and the Sustainable Development Goals' in Duncan French and Luis J Kotzé (eds), *Sustainable Development Goals* (Edward Elgar Publishing 2018).

¹⁰⁵ John H Knox, 'Human Rights, Environmental Protection, and the Sustainable Development Goals' (2015) 24/517 *International Law Journal* 524.

¹⁰⁶ Morrow (n 102) 19-22.

growing engagement with gender in time has been rights-based, the detachment of the SDGs from the human rights discourse is even more significant for gender development goals.¹⁰⁷ Moreover, with particular reference to SDG 5, Morrow outlines a tension between the choice to have a dedicated goal and the necessity to integrate gender concerns into the other goals, as well as the risks of relying on quantitative indicators while facing the so-called gender data gap.¹⁰⁸

1.5.1.2 SDG 13

The thirteenth SDG is to 'Take urgent action to combat climate change and its impacts'. The second target 'Integrate climate change measures into national policies, strategies and planning' is the most relevant to this work under goal 13, with its first indicator 'Number of countries with nationally determined contributions, long-term strategies, national adaptation plans and adaptation communications, as reported to the secretariat of the United Nations Framework Convention on Climate Change'.¹⁰⁹ The 2024 UN Secretary-General's progress report about the Sustainable Development Goals describes the climate crisis as unfolding in real-time, with broken climate records and daily destruction of lives and livelihoods, warning that time is limited to 'avoid the worst of climate chaos'.¹¹⁰ It is interesting to note that, as stated by the IPCC Working Group II, climate change hinders the efforts to meet all the SDGs, while 'climate responses and adaptation options have benefits for ecosystems, ethnic groups, gender equity, low-income groups and the SDGs'.¹¹¹

1.5.1.3 SDG 16

The sixteenth SDG is to 'Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels'. Most relevant to this work is the third target 'Promote the rule of law at the national and international levels and ensure equal access to justice for all', with its third indicator 'Proportion of the population who have experienced a dispute in the past two years and who accessed a formal or informal dispute resolution mechanism, by type of mechanism'.¹¹² According to the abovementioned progress report, achieving

¹⁰⁷ *ibid* 23-24.

¹⁰⁸ *ibid* 10-18.

¹⁰⁹ G. A. Res. 1 (n 98) p. 23; G.A. Res. 313 (n 99) pp. 17-18.

¹¹⁰ G.A. Res. 54 (n 100) p. 19.

¹¹¹ IPCC (n 9) 9, 23.

¹¹² G. A. Res. 1 (n 98) p. 25-26; G.A. Res. 313 (n 99) pp. 20-22.

global peace and security has become more complex under multiple and persistent threats and a lack of trust.¹¹³ Looking at institutions, the growth in women's share of parliamentary leadership is slow but steady (23.8% of parliament Speakers as of January 1, 2024), and more than 40% of countries now have independent national human rights institutions. These institutions recorded a decreasing number of killings of human rights defenders, journalists, and trade unionists in 2023, but more journalists and media workers were killed in conflict zones.¹¹⁴ The International Development Law Organisation (IDLO) values the accent of SDG 16 on the rule of law as an enabler of peace and justice and therefore of the institutional transformation needed to deal with climate change consequences, also in the area of gender equality.¹¹⁵ According to the IDLO, transformative climate action through the rule of law may be achieved by empowering those who are most vulnerable to climate change to realise their environmental rights and actively take part in decision-making processes, but also by strengthening regulatory frameworks. Among their policy recommendations, 'champion feminist climate action and integrate gender-transformative approaches' appears.¹¹⁶



Figure 1.1 The icons of the Sustainable Development Goals this research work is dedicated to. Author's elaboration.

1.5.2 Aims and Objectives

Towards the achievement of the goals recalled above, this research work is aimed, more specifically, at providing the actors differently involved in environmental and climate change litigation - being them scholars, practitioners or stakeholders - with a comprehensive picture of the gender and climate change nexus and its possible interactions with legal mobilisation and action. A secondary aim of the work is to foster timely reflections within the same

¹¹³ G.A. Res. 54 (n 100) p. 22.

¹¹⁴ *ibid* 23.

¹¹⁵ IDLO, 'Climate Justice: A Rule of Law Approach for Transformative Climate Action' (2021) 5.

¹¹⁶ *ibid* 4.

community on the use of climate change litigation databases as research tools when the implementation of AI functionalities is under consideration for their development. The concrete objective of the research process is to produce an accessible summary to distribute in open access in the English language, following the examples of Friends of the Earth Netherlands's 'How We Defeated Shell' dedicated to corporate climate litigation,¹¹⁷ or of the International Bar Association's 'Model Statute for Proceedings Challenging Government Failure to Act on Climate Change' dedicated to government framework litigation.¹¹⁸ The summary will be distributed after the defence of this Ph. D. thesis through the author's LinkedIn profile and sent to the following chosen organisations in the most appropriate translation:

- Verein KlimaSeniorinnen Schweiz, as the Association was the protagonist of the case study in Chapter 4;
- Women's Environment and Development Organization (WEDO), as it runs the Gender Climate Tracker;
- Women's Earth and Climate Action Network International (WECAN), Women Engage for a Common Future (WECF), Italian Climate Network, GenderCC as members of the UNFCCC Women & Gender Constituency;
- Sabin Center's Peer Review Network of Climate Litigation, Climate Rights and Remedies Project, Business & Human Rights Resource Centre, Grantham Research Institute on Climate Change and the Environment at the London School of Economics and Political Science as they run, monitor and integrate climate change litigation databases;
- Notre Affaire à Tous, Climate Litigation Network, Client Earth International, Friends of the Earth International, Greenpeace International as organizations involved in and promoting climate change litigation.

¹¹⁷ Vereniging Milieudefensie (Friends of the Earth Netherlands), 'How we defeated Shell' (2021).

¹¹⁸ International Bar Association, 'Model Statute for Proceedings Challenging Government Failure to Act on Climate Change' (2020).

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CHAPTER 2



Gender Inequality in the Climate Crisis: An Overview

2 GENDER INEQUALITY IN THE CLIMATE CRISIS: AN OVERVIEW

2.1 THE GENDER AND CLIMATE CHANGE NEXUS: A FOUR-DIMENSIONAL LITERATURE REVIEW

2.1.1 Introduction

Climate change and gender inequality are *interwoven challenges*. We will not meet the 1.5 degrees Celsius goal, or any other goal, without gender equality and the full contribution of women and girls.¹

To the aim of this work, the expression *gender and climate change nexus*, borrowed from policymaking language, condenses all the multiple and complex correlations between gender inequality and climate change. Since the Seventies, a dedicated scholarship has studied the nexus between gender and environment, starting from the analysis of the dualistic structures opposing men and culture to women and nature.

2.1.1.1 Gender and Environment

In those years, the first ecofeminist thinking with Françoise d'Eaubonne, later criticised for its essentialism, attempted to analyse the global ecological crisis from the gender perspective assuming that patriarchy was at the basis of both men's dominance over women and over nature, and it recognised not only the need to prioritise the environmental challenge but also to make other struggles converge on it.² In parallel, in a different milieu, Ester Boserup opened the debate on women's role in economic development.³ Ecofeminism and ecological feminisms were the basis for the elaboration of Feminist Political Ecology in the Nineties, initially focusing on gendered scientific and ecological knowledge, gendered rights and responsibilities with

¹ Remarks by UN Women Executive Director Sima Bahous at the Twenty-seventh session of the Conference of Parties to the UN Framework Convention on Climate Change (COP 27), Sharm El-Sheikh, Egypt, 14 November 2022 (emphasis added).

² Julie Gorecki and Myriam Bahaffou, 'Préface' in Françoise D'Eaubonne, *Le Féminisme ou la Mort* (Le passeger clandestin 2020).

³ Ester Boserup, *Woman's Role in Economic Development* (St. Martin's Press 1970).

respect to the environment, and gendered politics as well as grassroots activism. As synthesised by Nightingale,

[M]ost of the work done within feminist political ecology demonstrates how gender, understood as culturally defined male/female sex roles, structures access to particular types of knowledge, space, resources, and social-political processes' [and therefore] 'men and women have differential opportunities and challenges in relation to environmental change and development.'⁴

The gender and environment debate went through several phases and evolutions, either in academic research and in policymaking: Women in Development, Women Environment and Development, Gender and Development.⁵ It entered the first UN Conference on Environment and Development, the so-called Earth Summit, in Rio de Janeiro in 1992 thanks to lobbying by international feminist NGOs, as well as the World Conference on Women in Beijing in 1995.⁶ The 24th chapter of the UN Agenda 21 adopted at the Rio Conference is dedicated to 'Global Action for Women Towards Sustainable and Equitable Development', while the 4th chapter of the Beijing Platform for Action includes, among other strategic objectives and actions, 'Women and the Environment'. Seema Arora-Jonsson, in her 2014 overview of forty years of 'varied, rich and often contradictory gender research in relation to environments', points to the most important insight: the understanding that distinct groups, such as women and marginalised people, differently experience the environment and therefore environmental policy should not have a unique and implicitly male subject; the relevance of property rights and economic security for women, whose unpaid labour in the care and environmental sectors shall be recognised; the complaint for women's exclusion from decision-making and environmental governance; the recognition of how transformative the struggle for emancipation can be but also that support from agencies may be ambiguous.⁷ According to Arora-

⁴ Andrea Nightingale, 'The Nature of Gender: Work, Gender, and Environment' (2006) 24 *Environment and Planning D: Society and Space* 165-185.

⁵ Rosi Braidotti and others, *Women, the Environment, and Sustainable Development* (Atlantic Highlands 1994).

⁶ Sophia Huyer and others, 'Can We Turn the Tide? Confronting Gender Inequality in Climate Policy' (2020) 28/3 *Gender & Development* 571-591.

⁷ Seema Arora-Jonsson, 'Forty Years of Gender Research and Environmental Policy: Where Do We Stand?' (2014) 47 *Women's Studies International Forum* 295-308.

Jonsson, building on thinkers as Foucault, Barad, Butler, and Haraway, 'researchers made a case for how gender relations do not precede or succeed environmental issues but that gender and power are intrinsic to these issues', and the most relevant achievement in time was the awareness that the category of women is, on the one hand, not crystalised, but on the other hand imperative for analyses.⁸ This space does not allow for sketching a more nuanced and exhaustive picture of the different streams of research in gender and environment, which can be found, among many sources, in the Routledge Handbook of Gender and Environment.⁹

2.1.1.2 Gender and Climate Change

The gender and *climate change* scholarship emerged in the early 2000s building on the work of feminist scholars who outlined the gendered nature of natural disasters. Fatma Denton in 2002 took a step forward from the linkages between gender, environment and development to climate change vulnerability, with a focus on rural areas in the African continent.¹⁰ While the gendered experience of disasters was already documented,¹¹ data about the impacts of Hurricane Katrina in 2006 cemented the evidence of the social nature of disasters,¹² also marking a turning point for the development of the debate on environmental justice towards climate justice.¹³ Key themes of the gender, disasters and climate change literature were: the disproportionate female fatality; gendered work roles in climate adaptation; women's underrepresentation in climate policy- and decision-making; the gendered nature of climate change discourse and techno-scientific solutions; gendered

⁸ Arora-Jonsson (n 7).

⁹ Sherilyn MacGregor (ed), *Routledge handbook of gender and environment* (Routledge 2017); see also Susan Buckingham (ed), *Gender and Environment* (Routledge 2020).

¹⁰ Fatma Denton, 'Climate Change Vulnerability, Impacts, and Adaptation: Why Does Gender Matter?' (2002) 10/2 *Gender & Development* 10-20.

¹¹ Betty Hearn Morrow and Elaine Enarson, 'Hurricane Andrew Through Women's Eyes: Issues and Recommendations' (1996) 14/1 *International Journal of Mass Emergencies & Disasters* 5-22.

¹² Kimberley Thomas and others, 'Explaining Differential Vulnerability to Climate Change: A Social Science Review' (2019) 10/2 *Wiley Interdisciplinary Reviews: Climate Change* 1-18.

¹³ David Schlosberg and Lisette B Collins, 'From Environmental to Climate Justice: Climate Change and the Discourse of Environmental Justice' (2014) 5/3 *WIREs Climate Change* 359-374.

vulnerability and the feminisation of poverty.¹⁴ According to Pearce, 'a growing and interdisciplinary body of research has established that gender is an integral feature of social transformations associated with climate change', while vulnerability to climate change is not gendered because of a characteristic of women, but rather because of the social organisation of labour in various social, economic, and cultural circumstances.¹⁵ As Kaijser and Kronsell highlighted, the study of interconnections of climate change and human societies cannot prescind from a deep, interdisciplinary investigation of human relations, to which the adoption of an intersectional approach is functional: it 'illuminates how different individuals and groups relate differently to climate change, due to their situatedness in power structures based on context-specific and dynamic social categorisations'.¹⁶ Intersectionality avoids essentialisation and shows how in the context of climate change categorisations and power structures may become stronger as well as be questioned. Indeed, Fletcher and Reed place in years 2010s the emerging and then growing resorting to intersectionality as a framework in gender and climate change literature, to maintain 'an explicitly feminist approach while avoiding homogenising categories or universal claims'.¹⁷ The above-mentioned Hurricane Katrina, for instance, had not only gendered impacts but also racialised and intersecting ones.¹⁸ If identity in its complexity mediates climate change impacts as well as mitigation and adaptation measures, an intersectional approach focuses not only on this assumption but also on how people 'cope, resist, and adapt across changing landscapes'.¹⁹ The dichotomy between Global North and Global South – though problematic – appears as relevant in the literature and in policy

¹⁴ Amber J Fletcher and Maureen G Reed, 'Different Experiences, Diverse Knowledges: Gender, Intersectionality, and Climate Change in Rural and Resource Contexts' in Amber J Fletcher and Maureen G Reed (eds), *Gender and the Social Dimensions of Climate Change* (Routledge 2022) 1-14.

¹⁵ Rebecca Pearce, 'Gender and Climate Change' (2017) 8/2 Wiley Interdisciplinary Reviews: Climate Change 1-16.

¹⁶ Anna Kaijser and Annica Kronsell, 'Climate Change Through the Lens of Intersectionality' (2014) 23/3 Environmental Politics 417-433.

¹⁷ Fletcher and Reed (n 14).

¹⁸ Alvin DuVernay, 'Race, Social Class, and Disasters. The Katrina Version of Reality' in Phoebe Godfrey and Denise Torres (eds), *Systemic Crises of Global Climate Change* (Routledge 2016).

¹⁹ Amber J Fletcher and Maureen G Reed, 'Conclusion. Welcoming a New Climate Future' in Amber J Fletcher and Maureen G Reed (eds), *Gender and the Social Dimensions of Climate Change* (Routledge 2022) 204.

dedicated to gender and environment before and gender and climate change later. If knowledge production in this field is led by researchers working in the Global South,²⁰ Chandra Mohanty and others criticised resorting to the category of the 'victimised woman of the Global South' during the Eighties and Nineties, therefore reproducing detrimental stereotypes.²¹ More recent investigations tried to focus on the uneven distribution of climate change burdens out of this dichotomy without neglecting contexts and global climate justice issues. Arora-Jonsson focused on the complex relationship rural communities have with climate change,²² while Buckingham suggested focusing on the Fourth World as meant by Castells.²³ Sultana combines the tools of Feminist Geography, Feminist Political Ecology, Decolonial Studies and the intersectional approach.²⁴ The peculiarities of the gender and climate change nexus in rich countries are described in the volume edited by Griffin Cohen,²⁵ at a time when attention to the nexus is growing in highly industrialised countries' policymaking.²⁶ This North-South tension around gender and climate change is explored and problematised in Section 3.3 of this work in relation to national planning. The IPCC is the United Nations body for assessing the science related to climate change. Through its assessments, the Panel ascertains the state of knowledge on climate change, identifying on which topics there is agreement in the scientific community and to what extent. The IPCC reports are the result of a complex process which guarantees objectivity and transparency and involves the representatives of the Member countries. Considering the most recent Assessment Cycle, the theme of gender and climate change entered the effort of IPCC Working Group II (WGII) on Impacts, Vulnerability and Adaptation. In WGII contribution, a cross-chapter box dedicated to 'Gender' was included, stating that there is *high confidence* that gender and other

²⁰ Pearse (n 15).

²¹ Arora-Jonsson (n 7) 297.

²² Fletcher and Reed (n 14).

²³ Buckingham (n 9).

²⁴ Farhana Sultana, 'Gendering Climate Change: Geographical Insights' (2014) 66/3 *The Professional Geographer* 372-381; Farhana Sultana, 'The Unbearable Heaviness of Climate Coloniality' (2022) 99 *Political Geography*.

²⁵ Marjorie Griffin Cohen (ed), *Climate Change and Gender in Rich Countries. Work, Public Policy and Action* (Routledge 2017).

²⁶ Arora-Jonsson (n 7).

social inequities compound vulnerability to climate change impacts.²⁷ Looking at the whole Sixth Assessment Report, the main outcomes are: that structural inequality is one of the causes of the damages related to climate change and that those who are structurally disadvantaged are disproportionately vulnerable to these negative impacts; that women – not neglecting the heterogeneity of this group – are among the most vulnerable due to gender inequality but also are agents of change with knowledge and skills; prioritising equity and justice in climate action leads to more effective and sustainable outcomes; efforts to mainstream gender equality in climate action did not have a structural impact so far.²⁸ Though the body of gender and climate change literature is growing, it is not vast, and dominant approaches to the theme can be outlined. According to Arora-Jonsson women are described as vulnerable to impacts or virtuous in low-emitting lifestyles, and this may strengthen biases when vulnerability is more often associated with women in the Global South and virtuousness with those in the Global North.²⁹ Albertyn and others warn about the risk of ‘reproducing familiar gendered tropes that feminists have long resisted, threatening to undermine and even reverse feminist gains in rights, law, policy and practice’ when describing women exclusively as victims or champions, knowledge custodians and nature guardians, mere tokens or decision-makers, neglecting the complexity of their identities.³⁰ MacGregor called for moving the discussion ‘past this simplistic emphasis on victimisation and material impacts’,³¹ as decades of research but also different ideas of equality and diverse theories of feminism may be mobilised. Giovanna Di Chiro gives an example with her research and practice combining ecofeminism and

²⁷ IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2022) 2700.

²⁸ Lorena Aguilar Revelo and others, ‘Gender Considerations in the IPCC Sixth Assessment Report (AR6)’, (Kaschak Institute, Binghamton University 2023).

²⁹ Seema Arora-Jonsson, ‘Virtue and Vulnerability: Discourses on Women, Gender and Climate Change’ (2011) 21/2 *Global Environmental Change* 744.

³⁰ Cathi Albertyn and others, ‘Introduction – Feminist Frontiers in Climate Justice: Gender Equality, Climate Change and Rights’ in Cathi Albertyn and others, *Feminist Frontiers in Climate Justice* (Edward Elgar Publishing 2023) 1-16.

³¹ Sherilyn MacGregor, ‘Moving Beyond Impacts: More Answers to the “Gender and Climate Change” Question’ in Susan Buckingham and Virginie Le Masson (eds), *Understanding Climate Change Through Gender Relations* (Routledge 2017) 16.

intersectionality, as well as Greta Gaard matching insights from queer and post humanist theories.³²

2.1.1.3 Fredman's Substantive Equality Framework

In this work, to return to the complexity of the gender and climate change nexus and avoid falling into the vulnerability or virtue binary, the results of the dedicated literature review are organised in the following four paragraphs according to the framework of substantive equality elaborated by Sandra Fredman. Fredman, drawing on understandings of substantive equality which are 'sensitive to the wrongs experienced by women and other out-groups on account of their status' and on the comparison of U.S., U.K., Canadian and South African legal materials, provides a four-dimensional analytic framework for inequality.³³ This framework is based on the principle that the right to equality, which is pivotal in Human Rights Law but has an ungraspable content, cannot be understood apart from the social context and therefore should be 'responsive to those who are disadvantaged, demeaned, excluded, or ignored'.³⁴ The dimensions are four and may interact: 'to redress disadvantage; to address stigma, stereotyping, prejudice and violence; to enhance voice and participation; and to accommodate difference and achieve structural change'.³⁵ The grouping of sources under one or the other dimension depends on the author's interpretation and therefore is open to challenge.

2.1.2 First Dimension: Redressing Disadvantage

2.1.2.1 Gender Disadvantage in the Climate Crisis

Fredman describes this dimension as bridging 'the gap between the traditional sphere of anti-discrimination law and distributive equality'.³⁶ Disadvantage not only accounts for the uneven distribution of resources but also for the restrictions imposed by power structures and based on a person's status. It can also be understood as the privation of opportunities to

³² Giovanna Di Chiro, 'Making Ecofeminism(s) Matter... Again' (2021) 50/8 Women's Studies; Greta Gaard, 'Ecofeminism and Climate Change' (2015) 49 Women Studies International Forum 20-33.

³³ Sandra Fredman, 'Substantive Equality Revisited' (2016) 14/3 International Journal of Constitutional Law 712-738.

³⁴ *ibid.*

³⁵ *ibid.*

³⁶ *ibid* 729.

chase a person's own preferences.³⁷ The author's understanding of the *disadvantage* for women and gender-diverse people in the context of the climate crisis is the increase in vulnerability, with particular regard to meeting basic needs and situations such as disasters and migration. This increased vulnerability, explored in the following paragraphs, depends on unequal resources and power structures and hinders affected individuals' choices. Two themes surfaced from the literature review in relation to basic needs, namely food security and sexual and reproductive health and rights (SRHR), while two peculiar and often interrelated situations, such as disasters and migration, appeared as the most critical for gender inequality in the climate crisis.

2.1.2.2 Food Insecurity

The Food and Agriculture Organization of the United Nations (FAO) defines *food security* as the simultaneous fulfilment of four key objectives of the right to food: availability of sufficient quantities of food of appropriate quality; accessibility of adequate food for a nutritious diet; consumption of adequate, diversified and nutritious food that is equally distributed within the household, along with equal access to clean drinking water, sanitation and health care; stability of the these three over time.³⁸ Gender inequality reinforces food insecurity, and the other way round: societies with a high degree of gender inequality register a significantly higher proportion of women and girls' undernourishment.³⁹ Women's food security is challenged by several constraints even without considering climate change: absent or discriminatory laws; lack of technical and financial resources to implement laws; controversial interferences between formal and informal legal systems in contexts characterised by legal pluralism; obstacles in access to justice such as the lack of proper mechanisms for claiming rights or holding businesses accountable, the scarce legal literacy and possible social costs.⁴⁰ In the midst of climate change, food insecurity particularly affects rural

³⁷ *ibid* 730.

³⁸ EC-FAO Food Security Programme, 'An Introduction to the Basic Concepts of Food Security' (2008).

³⁹ FAO, 'The Unjust Climate. Measuring the Impacts of Climate Change on Rural Poor, Women and Youth' (2024). The report includes the following countries: Ecuador, Peru, Senegal, Ghana, Mali, Niger, Nigeria, Sierra Leone, Burkina Faso, Camerun, Uganda, Rwanda, Malawi, United Republic of Tanzania, Ethiopia, India, Pakistan, Iraq, Armenia, Georgia, Nepal. Viet Nam, Mongolia, Bangladesh

⁴⁰ *ibid*.

people, either directly, due to reduced agricultural production, or indirectly, due to increased prices of food and decreased income from other sources. According to FAO investigations, ‘female-headed households experience significant income losses relative to male-headed households when extreme weather events occur’, but also linked to slow-onset events as for instance the long-term increase in temperature.⁴¹ Women are disadvantaged compared to men due to the burden of care work – even augmented in case of extreme weather events –, have a lower adaptive capacity due to gaps in assets, and incur in discriminatory social norms. The interplay of these hinders the access to less climate-sensitive employment out of the farms, with the exception of ‘part-time, informal, low-paid and precarious work’ they are also more likely to lose than men.⁴² Looking to access to land, which is crucial for climate adaptation, ‘women’s land productivity and income from agricultural labour are substantially lower than those of men’, as informal gendered norms condition the choice of livestock and crops towards species of lower value and for consumption limited to the household.⁴³ The protection of women’s food security is linked in many national and international laws and policies to the role of mothers and caregivers, emphasising their reproductive role while diverting the focus from individuals’ human rights and the positive obligations these entail.⁴⁴

2.1.2.3 Sexual and Reproductive Health and Rights

According to the Guttmacher-Lancet Commission, sexual and reproductive health (SRH) is ‘a state of physical, emotional, mental, and social wellbeing in relation to all aspects of sexuality and reproduction, not merely the absence of disease, dysfunction, or infirmity’.⁴⁵ Commonly recognised constituents of sexual and reproductive health are contraceptive services, maternal and newborn care, prevention and treatment of HIV/AIDS. In addition, the Commission also includes care for other sexually transmitted infections, comprehensive sexuality education, safe abortion care, prevention and treatment of infertility and cervical cancer, prevention and counselling for gender-based violence, and counselling for sexual health and

⁴¹ *ibid.*

⁴² *ibid.*

⁴³ *ibid.*

⁴⁴ *ibid.*

⁴⁵ Ann M Starrs and others, ‘Accelerate Progress. Sexual and Reproductive Health and Rights for All: Report of the Guttmacher–Lancet Commission’ (2018) 391/10140 *The Lancet* 2646.

well-being.⁴⁶ Sexual and reproductive health is mentioned among the targets of two of the SDGs. Under the third SDG, 'Ensure healthy lives and promote well-being for all at all ages', the seventh target states 'By 2030, ensure universal access to sexual and reproductive health-care services, including for family planning, information and education, and the integration of reproductive health into national strategies and programmes'. Moreover, under the fifth SDG, 'Achieve gender equality and empower all women and girls' – also commented in par. 1.3.3 –, the sixth target states 'Ensure universal access to sexual and reproductive health and reproductive rights'. The right to SRH can be considered as integrating the 'right to the highest attainable standard of physical and mental health' in Article 12 of the International Covenant on Economic, Social and Cultural Rights of 1966. SRHR is often considered a women's issue only, but data shows its wide relevance: each year, 350 million people, regardless of their gender, need treatment for STIs and nearly 2 million people are newly infected with HIV; 4.3 billion people are in their reproductive age worldwide and almost all will experience inadequate SRH services in their lives. Considering women and people who can be pregnant, each year more than 45 million have inadequate or no antenatal care, while 25 million unsafe abortions take place.⁴⁷

Climate change, gender equality, and SRHR are inextricably linked. SRHR must be considered as a key component of climate adaptation and resilience action and of climate justice.⁴⁸

The linkages between SRHR and climate change are multiple, and here synthesised in four issues. The first issue is that of access to infrastructures and services, which may be interrupted due to disasters and lack in humanitarian settings. The second issue is related to pregnancy, a situation of increased vulnerability which may be worsened by heat stress, inhalation of smoke from wildfires and other types of air pollution, and saltwater intrusion. The third issue is the increase in cases of gender-based violence, including sexual violence, transactional sex, and sex trafficking. This will be explored further in par. 2.1.3. The fourth issue is the global demographic trends. Some scholars and policymakers have pointed to contraception as a measure for climate mitigation, following the logic that the increase in global population results in increasing greenhouse gas (GHG) emissions. Among

⁴⁶ *ibid* 2643.

⁴⁷ *ibid*.

⁴⁸ Women & Gender Constituency and SRHR & Climate Justice Coalition, 'Issue Brief. Climate Justice and Sexual and Reproductive Health and Rights' (2021) 1.

many, Project Drawdown, a science-based and independent collection of almost one hundred available climate solutions, lists 'family planning'. According to the author's calculation, family planning would reduce CO₂ emissions by 59.6 gigatons by 2050 – the monetary impact is not calculated as it is deemed 'inappropriate to monetise a human right'.⁴⁹ If mere logic and a global overview support this reasoning, the breakdown of data suggests a more cautious approach to the issue. Fertility rates are comparatively higher in lower-income countries, having lower per capita GHG emissions and higher social, economic, cultural, and political barriers – even heightened by climate change – to the achievement of SRHR.⁵⁰ The SRHR and Climate Justice Coalition warns that 'restrictions on women's and girls' fertility as a means to solve social and environmental problems has a long, racist and violent history, evoking population control and eugenics'.⁵¹ Jade Sasser critically named 'women's *embodied environmental responsibility*' this framework which interprets contraception as a three-sided solution to women empowerment, climate mitigation, and climate adaptation.⁵² Cathi Albertyn similarly approaches the issue, discussing the possibility to instrumentalise climate change to realise SRHR without taking a step back to racist, classist and gender unjust population control programmes.⁵³

2.1.2.4 Displacement and Migration

The Internal Displacement Monitoring Centre calculated that the average of people displaced by disasters annually, considering the period from 2009 to 2018, was of over 25 million, of which 23 million by weather-related disasters.⁵⁴ Women's disadvantage due to climate change and displacement or migration – while the specific situation of planned relocation is not considered here as sources is composite. Climate change increased the

⁴⁹ 'Women and Girls #7 Family Planning' in Paul Hawken (ed), *Drawdown: the Most Comprehensive Plan Ever Proposed to Reverse Global Warming* (Penguin Books 2017) 214-217.

⁵⁰ Women Deliver, 'The Link Between Climate Change and Sexual and Reproductive Health and Rights. An Evidence Review' (2021).

⁵¹ Women & Gender Constituency and SRHR & Climate Justice Coalition (n 48).

⁵² Jade S Sasser, 'Population, Climate Change, and the Embodiment of Environmental Crisis' in Phoebe Godfrey and Denise Torres (eds), *Systemic Crises of Global Climate Change Intersections of Race, Class and Gender* (Routledge 2016) 58.

⁵³ Cathi Albertyn, 'Radical Connectedness: Reproductive Rights, Climate Justice and Gender Equality' in Cathi Albertyn and others, *Feminist Frontiers in Climate Justice* (Edward Elgar Publishing 2023) 138-164.

⁵⁴ CARE, 'Evicted by Climate Change: Confronting the Gendered Impacts of Climate-Induced Displacement' (2020).

frequency and intensity of disasters, also causing displacement and pushing affected people to migrate. Women may be displaced or migrate and be exposed to higher risk of gender-based violence in informal settlements or along the journey, or stay behind, also due to care burdens and social conventions, and be impacted. Disasters may strike on shelters too, characterised by a lower resilience, which can lead to 'harmful coping measures such as child marriage and sale and exchange of sex', as well as to an increased susceptibility to trafficking.⁵⁵ The United Nations Commissioner for Refugees (UNHCR) states that 'policies on planned relocation, displacement and migration are often insufficiently gender responsive',⁵⁶ on top of the unresolved debate on climate refugees. From the perspective of host communities, migration and displacement can have a relevant impact on women and the environment too. If the host area is not or not sufficiently prepared, the enjoyment of human rights may deteriorate, gender-based violence may increase and natural resources may be overexploited, affecting in turn women from host communities, primary responsible for resources collection.⁵⁷

2.1.2.5 *Disasters and heatwaves*

The United Nations Office for Disaster Risk Reduction recognises that:

[P]eople of diverse gender identities have distinct vulnerabilities in each context that determine their risk levels, in terms of vulnerability, exposure, and coping capacities, and shape the way that they experience and recover from disaster impacts.⁵⁸

This is further compounded by socioeconomic characteristics of the identity in an intersectional way.⁵⁹ Bernadette Resurrecion suggested expanding the definition of vulnerability to collective elements such as 'threatened social and cultural heritage, a history of colonisation and resource appropriation, glaring inequality and unfair distribution of wealth, forcibly dispersed

⁵⁵ UNHCR and Potsdam Institute for Climate Research, 'Gender, Displacement and Climate Change' (2022) 2.

⁵⁶ *ibid.*

⁵⁷ Itzá Castañeda Camey and others, *Gender-based Violence and Environment Linkages. The Violence of Inequality* (IUCN, 2020) 144-145.

⁵⁸ UNDRR, 'CSW66 Informational Paper: Implementing the Sendai Framework for Disaster Risk Reduction' (UN Women 2021).

⁵⁹ *ibid.*

settlements'.⁶⁰ Although insufficient disaggregated data hinders the analysis of differential impacts, research shows that women tend to have restricted access to important information before disasters, as early warning systems are often designed neglecting gender and education levels, and relief resources during and after.⁶¹ According to Resurreccion, 'cultural stigmas in some places can mean that women are not taught lifesaving skills'.⁶² Gendered work roles and occupational conditions influence the impact of disasters: women often work at home in poor and hazardous housing, or in manufacturing sites where they are exposed to extreme heat.⁶³ CARE calculated that 'poor women and children are up to 14 times more likely to be killed than men by a climate-fuelled disaster, such as a hurricane, typhoon, cyclone, or flood'.⁶⁴ A study considering reports on disasters in 141 countries found that gender intersects with the enjoyment of economic and social rights: no significant differences were registered in the number of deaths based on sex in communities where men and women enjoyed equal rights.⁶⁵ Among the various extreme weather events intensified by climate change, heatwaves are of peculiar interest for this work. The elderly are the most at risk in the population for heat-related mortality, and some studies registered an even worse impact on elderly women. Van Steen and others reviewed the presence of sex-specific results in studies on mortality in over 65 years old after heat waves in Europe: 13 out of 68 papers presented results distinguished by sex and age group; 8 of these showed worse health outcome for elderly women compared to men. If sex-stratified data on mortality after heat waves appear to indicate a higher risk for elderly women, further research is needed to clarify underlying physiological or social mechanisms.⁶⁶ Margareta Windisch tried to go deeper into these aspects, and found that if older people are 'significantly overrepresented in heatwave related excess mortality statistics internationally' due to '*biological* factors,

⁶⁰ Bernadette Resurreccion, 'CSW66 Background Paper: Gender, Climate Change and Disasters' (UN Women 2021) 6.

⁶¹ International Federation of Red Cross and Red Crescent Societies, 'Gender and Climate Change' (2014).

⁶² Resurreccion (n 60).

⁶³ Bernadette Resurrección and others, 'Gender-Transformative Climate Change Adaptation: Advancing Social Equity' (2019).

⁶⁴ *ibid.*

⁶⁵ UNDRR (n 58) 4.

⁶⁶ Yvette van Steen and others, 'Sex Differences in Mortality After Heat Waves: Are Elderly Women at Higher Risk?' (2019) 92 *International Archives of Occupational and Environmental Health* 37-48.

such as reduced thermal regulatory capacity, increased frailty and higher rates of pre-existing chronic illnesses', then the higher risks for elderly women appears driven by the lower the *socio-economic* status.⁶⁷ Windisch concluded that 'the literature identified most of the heat stress factors as socially constructed, illuminating how social systems of power create most heat-related vulnerability'.⁶⁸

2.1.3 Second Dimension: Addressing Stereotyping and Violence

2.1.3.1 Gender-based Violence and Stereotyping in the Climate Crisis

Fredman illustrates this as 'the dimension of equality which speaks to our basic humanity' as 'individuals should not be humiliated or degraded through racism, sexism, violence, or other status-based prejudice'.⁶⁹ The author tries to overcome the limits of the concept of *dignity* recurring to the relational one of *recognition*: 'identity is shaped through the ways in which others recognise us, and we recognise others. Misrecognition or recognition inequalities arise through denigration, humiliation, and failure to value individuals'.⁷⁰ A wealth of themes emerged from the literature review in relation to gender-based violence, prejudice and stereotyping in the climate crisis. This paragraph is composed by a brief overview of the linkages between gender-based violence, environment and climate change; a brief exploration of the gendered and racial profiles of the mainstream climate discourse; and a focus on care work.

2.1.3.2 Gender-based Violence in the Climate Crisis

Gender-based violence (GBV) is defined as 'any harm or potential of harm perpetrated against a person or group on the basis of gender' and it can be considered as a violation of human rights.⁷¹ Itzá Castañeda Camey and others collected in a comprehensive piece of research the description of all the multiple linkages between GBV and the environment. In the first instance, GBV is a form of control over natural resources: it can be perpetrated to enforce land and property grabbing, to maintain gendered hierarchies in

⁶⁷ Margareta Windisch, 'Denaturalising Heatwaves: Gendered Social Vulnerability in Urban Heatwaves, a Review' (2019) Australian Institute for Disaster Resilience 146-153 (emphasis added).

⁶⁸ *ibid.*

⁶⁹ Fredman (n 33) 730-731.

⁷⁰ *ibid.*

⁷¹ Castañeda Camey and others (n 57).

forest use and tenure, in agriculture, in water management and in the fishery.⁷² In the second place, GBV is linked to environmental crimes such as wildlife trade, illegal logging, illegal charcoal trade, illegal fishing and illegal mining.⁷³ Large-scale infrastructure projects, agribusiness and extractive industries also have an impact on GBV: these tend to deepen inequalities and exacerbate patriarchal norms, attract male construction workers and armed forces, foster workplace GBV and work-for-sex practices as well as forced prostitution and sex trafficking.⁷⁴ Climate change also impacts GBV, primarily due to the increase in frequency and intensity of climate and weather-related disasters: in those situations, domestic and intimate partner violence is magnified, especially in temporary housing and emergency shelters; child marriage, sexual exploitation and human trafficking increase after disasters strike or due to the consequences of slow-onset events as coping solutions in the face of resource scarcity.⁷⁵ Furthermore, GBV is used as a weapon to daunt women environmental human rights defenders and indigenous women defenders.⁷⁶ A. Emmet Boyer and others explored in their research the triple nexus of gender inequality, state fragility, and climate vulnerability, as these issues share some common drivers and social consequences: access to available natural resources is notably linked to conflict emergence and spreading, and both have gendered dimensions.⁷⁷ The authors built ‘the triple nexus indicators framework’ and applied it to a sample of 122 countries: Somalia, Yemen, South Sudan, Afghanistan, Chad, the Democratic Republic of the Congo, Central African Republic, Sudan, Mauritania and Syrian Arab Republic showed a very high prevalence of the triple nexus. Moreover, countries scoring high in one issue area tend to score high in the others.⁷⁸

2.1.3.3 *Stereotyping and Prejudice in the Climate Discourse*

Gendered stereotyping, prejudice and stigma in the climate crisis emerge in their complexity from the discourse around climate change. Several scholars analysed climate discourse, focusing on different elements. Toban Black considered not only the gendered dimension, partially illustrated in

⁷² *ibid.*

⁷³ *ibid.*

⁷⁴ *ibid.*

⁷⁵ International Federation of Red Cross and Red Crescent Societies, ‘Unseen, Unheard: Gender-based Violence in Disasters: Global Study’ (IFRC 2015).

⁷⁶ Castañeda Camey and others (n 72).

⁷⁷ A Emmet Boyer and others, *Advancing Gender in the Environment: Exploring the Triple Nexus of Gender Inequality, State Fragility, and Climate Vulnerability* (IUCN & USAID 2020).

⁷⁸ Boyer (n 78).

Paragraph 2.1.1, but also the racial one, capturing how racially oppressed groups are marginalised in official climate fora and discourse even though they are paying the ultimate price of the climate crisis.⁷⁹ If 'major sources of greenhouse gases have often been bound up more with whiteness, males, and masculinity',⁸⁰ Julie Bacon analysed the relationship between sexism and climate denial in the U.S. media and unveiled gendered and racialised cultural influences under what is commonly considered as political disagreement on scientific debate.⁸¹ Bacon built on McCright and Dunlap's theory about the tendency towards the justification of the system of those who benefited most from it: conservative white men who gained 'disproportionate advantages in power and wealth from modern capitalist systems [...] may be more motivated to deny climate change rather than acknowledging it as a failure of the existing status quo'.⁸² Salil Benegal and Mirya R. Holman also conducted their research on the U.S. context between 2012 and 2018, and found a consistent correlation between sexism, disagreement with climate science and opposition to climate policy: 'associations develop between sexist values and climate denialism as both beliefs represent investments in the current capitalist status quo and perceive climate action as threatening'.⁸³ Both sexism and the capitalist system have been at the core of criticism toward the concept of *Anthropocene*, which had success regardless of disciplines as it allows to express the magnitude of human activities' impact on the Earth, at the cost of hiding specific responsibilities. Donna Haraway, referring to the work of Jason Moore, discussed the concept of *Capitalocene*.⁸⁴ Cathi Albertyn and others point to the 'the deep enmeshment of neoliberalism with the climate emergency', as overreliance on market solutions, accentuation of consumerism and primacy of profit have built on and led to gender inequalities.⁸⁵ Karen Morrow argued

⁷⁹ Toban Black, 'Race, Gender, and Climate Injustice' in Phoebe Godfrey and Denise Torres (eds), *Systemic Crises of Global Climate Change* (Routledge 2016) 172-184.

⁸⁰ *ibid.*

⁸¹ Julie Bacon, 'The Rush Limbaugh Show and the Expanding Culture War. Whiteness, Masculinity, and Conservative Media Denials of Climate Change and Sexism' in Phoebe Godfrey and Denise Torres (eds), *Systemic Crises of Global Climate Change* (Routledge 2016).

⁸² Salil Benegal and Mirya R Holman, 'Understanding the Importance of Sexism in Shaping Climate Denial and Policy Opposition' (2021) 167 *Climatic Change* 48.

⁸³ *ibid.*

⁸⁴ Donna J Haraway, *Staying with the Trouble: Making Kin in the Chthulucene* (Duke University Press 2016); Jason W Moore, *Anthropocene or Capitalocene?: Nature, History, and the Crisis of Capitalism* (PM Press 2016).

⁸⁵ Albertyn and others (n 30) 11-12.

that ‘we find ourselves not so much in the Anthropocene as the *Andropocene*’ as governance at any level, legal systems, economies, and education are predominantly led and driven by men.⁸⁶ Climate change would be the ‘hallmark of the Andropocene’, exhibiting and augmenting ‘the continued toxicities of a way of being that profoundly affects interhuman relationships, as well as characterising a fatally flawed incarnation of the humanity-nature interface’.⁸⁷ Rob Connell coined the concept of ‘hegemonic masculinity’ in 1987 to describe the organisation of society that ensures male domination, adding to ideas such as masculinity and patriarchy the acknowledgement that plural masculinities exist and few persons embody the hegemonic one all aspire to.⁸⁸ Hegemonic masculinity is not only about male domination on women, but also with racialisation, social class, nationality, religion, body features, and more.⁸⁹ Among plural masculinities, Robin Hedenqvist and others distinguished, building on Hultman and Pulé, ‘industrial or breadwinner masculinities’, defined as ‘malestream patriarchal, hegemonic and normative masculinities who background the social and environmental implications of industrialisation for the sake of capital growth and its associated accesses to power and privileges’, and ‘ecomodern masculinities’, defined as ‘gendered identities that dominate systemic pathways that aim to protect and preserve economic growth while also offering nominal care for society and environment’.⁹⁰ Opposed to these, the authors theorised and promoted the ‘ecological masculinities’, philosophically aligned with feminist and ecofeminist achievements.⁹¹

2.1.3.4 Care Work

When looking at the gender and climate change nexus, special attention shall be paid to the theme of care work. This theme suits this paragraph dedicated to gender-based violence, stereotyping, and prejudice in the climate crisis as the enduring common assumption that care work belongs to women as part of their gender role has extremely relevant consequences. Care work is the

⁸⁶ Karen Morrow, ‘Tackling Climate Change and Gender Justice—Integral; Not Optional’ (2021) 11/1 *Oñati Socio-Legal Series* 207-230. See also Adélaïde Bon and others, *Par-delà l’Androcène* (Seuil 2022).

⁸⁷ *ibid.*

⁸⁸ Phoebe Godfrey, ‘Hegemonic Masculinity in Three Parts’ in Phoebe Godfrey and Denise Torres (eds), *Systemic Crises of Global Climate Change* (Routledge 2016).

⁸⁹ *ibid.*

⁹⁰ Robin Hedenqvist and others, ‘When Gender Equality and Earth Care Meet. Ecological Masculinities in Practice’ in Gunnhildur L Magnúsdóttir and Annica Kronsell, *Gender, Intersectionality and Climate Institutions in Industrialised States* (Routledge 2021).

⁹¹ *ibid.*

‘the daily and generational labor that human beings undertake to renew and sustain life, societies, and environments’.⁹² The 2023 UN Gender Snapshot registered that unpaid care work is still not equally distributed: globally women spend 2.8 more hours than men on unpaid care and domestic work which should be recognised, reduced and redistributed by means of investments in care policies, services, jobs, and infrastructure.⁹³ Also due to care charges, women earn only a third of global labor income.⁹⁴ Beyond average data, the participation of women in productive work in some areas, mainly in the Global North, without a proper sharing of care work, produced the so-called *global care chains*, defined by Arlie Russel Hochschild as ‘series of personal links between people across the globe based on the paid or unpaid work of caring’.⁹⁵ Scholars and organisations refer to the ‘care crisis’ as the phenomenon resulting from the multiple privations care work imposes, and climate change compounds it. In its 2022 dedicated report, Oxfam warns that neglecting care work, ‘efforts aimed at the nexus of climate change and gender could end up entrenching gender inequality rather than addressing it’.⁹⁶ Not only climate change enhance care burdens and hinders the access to public services, especially in marginalised contexts: climate change will exacerbate mostly the care crisis among those living in low-income countries and relying on subsistence agriculture. Measures of climate mitigation and adaptation too may reproduce, deepen and originate inequalities. Desirable change in behaviours and use of technologies may be ignored if they add on care efforts, while when imposed they weigh on women or other caregivers.

2.1.4 Third Dimension: Enhancing Voice and Participation

2.1.4.1 Women’s Lack of Participation in the Climate Crisis

The third is the participative dimension. According to Fredman, ‘the right to equality is concerned with two aspects of participation’.⁹⁷ The first aspect is political voice and participation, while the second is social inclusion, meant

⁹² James Morrissey, Sheryl MacGregor and Seema Arora-Jonsson, *Addressing the Climate and Care Crises* (Oxfam 2022) 59-60.

⁹³ UN Women, ‘Progress on the Sustainable Development Goals: The Gender Snapshot’ (2023).

⁹⁴ *ibid.*

⁹⁵ Arlie Russel Hochschild, ‘Global Care Chains and Emotional Surplus Value’ in Daniel Engster and Tamara Metz (eds), *Justice, politics, and the family* (Routledge 2015) 249-261.

⁹⁶ Morrissey and other (n 93) N.

⁹⁷ Fredman (n 33) 731-732.

as the ‘ability to participate on equal terms in community and society more generally’, also characterised as *solidarity*.⁹⁸ The issues that surfaced from the literature review in relation to women’s lack of voice and participation in the climate crisis are: the education gap and disproportionate contribution to scientific research, underrepresentation in decision-making, and troublesome though meaningful involvement in environmental and climate social movements and mobilisations.

2.1.4.2 Education

Education stands among the most important enablers of full participation in community and society. According to a 2018 report produced by the World Bank, the cost of not educating girls, due to economic, cultural and safety-related barriers, is extremely high. Negative results range from earnings and standards of living, occupational segregation, child marriage and early childbearing, family planning, health and well-being, agency and decision-making, social capital and institutions.⁹⁹ Completing secondary school appeared from research as the real changemaker, as students learn socio-emotional skills on top of the basic ones, and each additional year of secondary education decreases the risk of child marriage and early childbearing before age 18 by six percentage points on average.¹⁰⁰ According to the Malala Fund, ‘providing girls with 12 years of quality education’ would be one of the most powerful yet underused strategies in the fight against climate change’, and in turn climate change affects girl’s access to education.¹⁰¹ The organisation’s projections show that ‘increasing gender equality through investment in education will lead to stronger and more equitable climate adaptation efforts, improved mitigation of greenhouse gas emissions and greater climate resilience in societies and communities’.¹⁰² Indeed, education is linked to more productive agricultural plots and better nutrition, but also to the possibility of integrating traditional and indigenous

⁹⁸ *ibid.*

⁹⁹ Quentin Wodon and others, ‘The Cost of Not Educating Girls. Missed Opportunities: The High Cost of Not Educating Girls’ (World Bank, 2018).

¹⁰⁰ *ibid.*

¹⁰¹ Malala Fund, ‘Why Leaders Need to Invest in Climate and Girls’ Education’ (2020).

¹⁰² *ibid.*

knowledge with scientific – in the strict sense – information.¹⁰³ Educated women better cope with disasters and this decreases the vulnerability of those they may take care of. In the calculations of Project Drawdown, closing the education gender gap could result in 59.6 gigatons of CO₂ emissions reduced by 2050 as higher levels of education are linked to a decrease in population growth;¹⁰⁴ criticalities in this approach to climate mitigation and SRHR were illustrated in Paragraph 2.1.2.

2.1.4.3 Research

Moving from education to research as a form of contribution to society, the amount of literature dedicated to the gender gap in the scientific community and its consequences is extensive. Looking at climate science and at its quintessential institution, the IPCC, Miriam Gay-Antaki and Diana Liverman noted that the proportion of women authors since the start in 1990 increased slowly, increasing from less than 5% in 1990 to more than 20% as of 2018.¹⁰⁵ Their study also surveyed the experiences and perceptions of 100 female IPCC authors and registered how some felt 'poorly represented and heard and encountered barriers beyond their gender including race, nationality, command of English, and discipline'.¹⁰⁶ The IPCC adopted its Gender Policy and Implementation Plan in February 2020, aimed to: enhance gender equality in IPCC processes; promote a gender-inclusive environment; and raise awareness of gender-related issues through training and guidance. The IPCC Gender Action Team oversees the implementation plan.¹⁰⁷ Séverine Le Loarne-Lemaire and others reviewed almost 1300 journal articles to assess whether the presence of women within institutions, companies included, impacted their innovation processes.¹⁰⁸ According to the results of their study, more women in science would accelerate the development of technological innovation for climate change, as well as more women board members in

¹⁰³ 'Women and Girls #6 Educating Girls' in Paul Hawken (ed), *Drawdown: The Most Comprehensive Plan Ever Proposed to Reverse Global Warming* (Penguin Books 2017) 214-217.

¹⁰⁴ *ibid.*

¹⁰⁵ Miriam Gay-Antaki and Diana Liverman, 'Climate for Women in Climate Science: Women Scientists and the Intergovernmental Panel on Climate Change' (2018) 115/9 PNAS.

¹⁰⁶ *ibid.*

¹⁰⁷ <<https://www.ipcc.ch/about/gender/>> accessed 20 November 2024.

¹⁰⁸ Séverine Le Loarne-Lemaire and others, 'Women in Innovation Processes as a Solution to Climate Change: A Systematic Literature Review and an Agenda for Future Research' (2021) 164 *Technological Forecasting & Social Change* 1-11.

companies and public institutions would bring to better climate change policies and a different, more effectively helpful approach to technology. Interestingly, the authors also opened the discussion on whether the key is gender identity or feminine qualities regardless of it.¹⁰⁹

2.1.4.4 Decision-Making

Similarly to educating girls, allowing for a more proportionate involvement of genders in the political arena and in decision-making could be an underestimated climate action. Women's underrepresentation in decision-making is a trope in gender equality literature, but few studies considered whether the disproportion influences climate policies. Astghik Mavisakalyan and Yashar Tarverdi collected and analysed data from a large sample of national parliaments and concluded that 'female representation leads countries to adopt more stringent climate change policies', therefore resulting in lower CO₂ emissions.¹¹⁰ The authors acknowledged that a closer look at the dimensions of identity other than gender may reveal these play a role. Yulia Maleta inquired into gender tokenism on climate panels, unveiling how 'patriarchal control of environmental politics reinforces women's otherness and dualist insider/outsider status in climate panels and meetings, even in their own organisations' and that 'Men's cultural hegemony is evident in Parliament, scientific panels, corporate boards, Professorship posts'.¹¹¹ Maleta registered that women in Green parties tend to enjoy gradually higher internal gender equality. However, environmentalism, according to Clara Greed, both includes and excludes women.¹¹² Notwithstanding and women's crucial contribution to the environmental movement, such as ecofeminist perspectives or the concept of sustainability, and some influential women leaders, this has been considered as male-dominated. Global environmental governance focused on the *planet*, disembodied policy issues with low sensitivity to human needs and especially those of women and gender-

¹⁰⁹ *ibid.*

¹¹⁰ Astghik Mavisakalyan and Yashar Tarverdi, 'Gender and Climate Change: Do Female Parliamentarians Make Difference?' (2019) 56 *European Journal of Political Economy* 151-164.

¹¹¹ Yulia Maleta, 'Gender Tokenism on Climate Panels' in Yulia Maleta, *Feminism, Republicanism, Egalitarianism, Environmentalism. Bill of Rights and Gendered Sustainable Initiatives* (Routledge 2019) 92-108.

¹¹² Clara Greed, 'How Environmentalism Includes and Excludes Women. Planning, the Personal and the Planet' in Karen Bell (ed), *Diversity and Inclusion in Environmentalism* (Routledge 2021) 34-50.

diverse people. Biological functions such as pregnancy, menstruation, and breastfeeding did not enter the environmental agenda until recently, with the exception of considering them in terms of waste production. Due to care burdens, women are often the main consumers, and therefore responsibilities for a sustainable lifestyle weigh on them, such as recycling and waste sorting became 'an extension of female housework duties'.¹¹³ Dorceta Taylor recently examined executive compensation in U.S. environmental nonprofits and found that, even though top executive positions were almost equally distributed between men and women, 92% of the CEOs were white and the gender pay gap was relevant (women CEOs earning almost 25% less).¹¹⁴ Looking at the ethnic/racial pay gap too, white men obtained the highest median compensation of all gender, and racial/ethnic groups studied.¹¹⁵

2.1.4.5 Women Environmental Human Rights Defenders and Indigenous People

Often outside the more formal environmental movement, women environmental human rights defenders (WEHRD) dedicate to the protection and enjoyment of both human rights and the environment. This commendable form of participation in community and society is hindered as their actions expose them to

systematic violations and abuses of their fundamental rights to life, liberty and security of person, to psychological and physical integrity, to privacy and respect for private and family life and to freedom of opinion and expression, association and peaceful assembly.¹¹⁶

Lisa Chamberlain reported, among many, the experience of the Women Affected by Mining United in Action (WAMUA) network in South Africa, resisting patriarchy, exclusion and poverty perpetuated by the mining industry, which had an apartheid history.¹¹⁷ The WAMUA fight is particularly

¹¹³ *ibid.*

¹¹⁴ Dorceta E. Taylor, 'The Role of Gender, Race/ Ethnicity, and Other Factors in Influencing Top Executive Compensation in American Environmental Nonprofits' (2022) *American Behavioral Scientist* 1-33.

¹¹⁵ *ibid.*

¹¹⁶ G.A. Res. 181, UN GAOR, 68th Sess., U.N. Doc. A/68/181 (2013) p. 2.

¹¹⁷ Lisa Chamberlain, 'The Value of Litigation to Women Environmental Human Rights Defenders in South Africa' in Cathi Albertyn and others, *Feminist Frontiers in Climate Justice* (Edward Elgar Publishing 2023) 213-245.

relevant to this work as the network chose the tool of environmental litigation. WEHRD often belong to Indigenous communities. Indigenous women often perform work related to landscape and ecosystem management, reflecting cultures and cosmovisions. However, their contribution to biodiversity protection is disregarded.¹¹⁸ Indigenous women's safeguarding and cherishing of Indigenous land may also turn into political mobilisation, as in the case of the Indigenous women's movement in Brazil against Bolsonaro's government and deforestation in the Amazon area.¹¹⁹ This movement 'challenged the populist logic by demanding inclusion and recognition of their cosmovision and constitutional rights' and defended 'a stronger stance against individualism and neoliberal practices by pressing for a collective solution to the climate crisis'.¹²⁰

2.1.4.6 *The Movement for Feminist Climate Justice*

Participation, and therefore influence on climate policymaking, is considered as the first step towards the achievement of *feminist* climate justice, meant as 'a critical and intersectional approach that links the problem of climate change to questions of social and economic injustice'.¹²¹ The theme of feminist climate justice, in its various conceptualisations in interpretations, gained visibility in recent years, both in climate policymaking and in academic literature. UN Women synthesised feminist climate justice in a framework for action, 'based on decades of feminist economist, ecological and decolonial thinking'.¹²² The framework is four-dimensional and builds on Nancy Fraser's theory of justice, as well as on the principles of interdependence and intersectionality (Table 2.1).

¹¹⁸ Georgina M. Catacora-Vargas, 'CSW 66 Expert Paper: Indigenous Women's Rights in Biodiversity Conservation and Sustainable Use' (UN Women 2021).

¹¹⁹ Marta Rodriguez de Assis Machado, Denise Vitale and Danielle Hanna Rached, 'Indigenous Women Against Bolsonaro's Government in Brazil: Resisting Right-wing Authoritarianism and Demanding Climate Justice' in Cathi Albertyn and others, *Feminist Frontiers in Climate Justice* (Edward Elgar Publishing 2023).

¹²⁰ *ibid.*

¹²¹ Albertyn and others (n 30) 10.

¹²² UN Women, 'Feminist Climate Justice. A Framework for Action' (2023).

**Table 2.1 UN Women’s Framework for Feminist Climate Justice Action.
Author’s elaboration.**

Redistribution	Resources that prioritise care for people and the plan
	Land, employment opportunities and technology so that women benefit from the green transition
	Public finance for gender-responsive social protection systems
Recognition	Multiple and intersecting forms of discrimination
	Women’s unpaid labour supporting social and ecological reproduction
	Situated, Indigenous and experiential forms of knowledge
Reparation	Recognition of historical responsibility and cumulative emissions
	Global climate finance, debt cancelation and regulation of corporations
	Gendered economic and non-economic loss and damage
Representation	Women and other marginalised groups in environmental decision-making
	Communities affected by climate change and biodiversity loss in climate policymaking
	Robust accountability mechanisms

Feminist climate justice supporters envision a ‘world in which everyone can enjoy the full range of human rights, free from discrimination, and flourish on a planet that is healthy and sustainable’, where ‘economic and social policies will have to be substantially transformed away from the pursuit of growth at any cost and profits for the few’.¹²³ Attention to the profile of economic justice was particularly paid by some coalitions such as the Feminist Action Nexus

¹²³ *ibid.*

for Economic and Climate Justice, which suggested principles and recommendations. Among these, are the 'primacy of human rights and well-being of the planet over the primacy of growth and GDP' and the promotion of debt justice.¹²⁴ The coalition proposed the adoption of a UN Framework Convention on Tax, an UN-based debt resolution mechanism, on top of loss and damage financing for climate-vulnerable countries.¹²⁵

2.1.5 Fourth Dimension: Accommodating Difference and Structural Change

2.1.5.1 Difference and Structural Change

The fourth dimension and aim of Fredman's substantive equality framework is 'to respect and accommodate difference, removing the detriment [attached to it] but not the difference itself' and therefore change existing social structures and transform institutions where specific exceptions are not a sufficient solution.¹²⁶ The cost for accommodation is only apparent: dominant groups produce costs too, which in the absence of legal intervention are charged to the out-groups.¹²⁷ The number of sources that emerged from the literature review and are considered to fit this dimension is smaller than for the previous categories. Concerning the issue of structural change, research on gender and the socio-ecological transition towards sustainability was explored, with a focus on the world of work. Other relevant endeavours to accommodate gendered differences in the climate crisis through institutional reform are reported, such as entwined environmental-gendered impact assessment, women empowerment in disaster risk governance, and efforts for gender equality in global climate governance.

2.1.5.2 The Gendered Dimension of the Socio-Ecological Transition

The concept of socio-ecological transition can prove to be particularly helpful. Sustained reductions in greenhouse gas emissions are needed to avert the climate catastrophe, and thus a transition away from high-emitting productive and economic systems towards low and then zero-carbon ones. The

¹²⁴ Feminist Action Nexus for Economic and Climate Justice, 'A Feminist Agenda for People and the Planet. Principles and Recommendations for a Global Feminist Economic Justice Agenda' (2021).

¹²⁵ Feminist Action Nexus for Economic and Climate Justice, 'Towards Economic and Climate Justice: A Feminist Analysis of Critical Trends' (2024).

¹²⁶ Fredman (n 33) 733-734.

¹²⁷ *ibid.*

transition is a long-term process of profound change made of many interconnected changes reinforcing one another, and societies go through transitions to face great challenges. The sustainability transition towards a socially, environmentally, and economically sustainable society, is composed of a socio-technological transition and a socio-ecological transition. The socio-ecological transition is defined by Marina Fisher-Kowalski and others as the 'transition between two different societal energy regimes': indeed, 'what is changing is not just the source of energy and technologies, but many other features of society change as well: the economy, the demography, the settlement patterns, the social relations, and the very make-up of human personalities. [...] In co-dependence, the natural environment changes'.¹²⁸ This is not the first socio-ecological transition, and the transitions don't develop simultaneously in the world. Human societies already witnessed the socio-ecological transition from the agricultural energy regime, based on sun power and land use, to the industrial regime, based on fossil fuels, first on coal and then also on oil and gas. The use of materials registered a tenfold increase while the global population grew four times, deeply changing the relationship between many human groups and the ecosystems they lived in. The current sustainability transition towards renewable energies is expected to bring in Europe a decrease in energy and raw materials consumption, a shift from the production and consumption of products to the provision of services, a decrease in the consumption of animal-based products, and the development of more resilient infrastructures. This will have consequences on the quality and quantity of work, in all its forms, regarding agriculture and forestry, the construction industry, waste management, trade, and transport. Physical labor may increase, while intellectual labour could be, at least partially, substituted using AI or delocalised. Interestingly, according to the expectations of Fisher-Kowalski and others, care jobs, either paid or unpaid, will increase, as technology can hardly substitute the required empathy.¹²⁹

2.1.5.3 *The Just Transition*

The idea that the consequences of the socio-ecological transition away from fossil fuels ought not to be charged to workers and societies affirmed itself in the debate around climate change mitigation efforts under the expression 'Just Transition', which identifies a multifaceted reform agenda rather than a

¹²⁸ Marina Fischer-Kowalski and others, 'Socio-ecological Transitions: Definition, Dynamics and Related Global Scenarios' (2012) Institute for Social Ecology-AAU, Centre for European Policy Studies.

¹²⁹ *ibid.*

conceptual category. Several conceptualizations of just transition can be found in scientific and grey literature. The original concept emerged in the Seventies from the Oil, Chemical, and Atomic Workers Union in North America, then spread to other trade unions, institutions, NGOs, and grassroots movements around the world, which evolved its interpretations.¹³⁰ Tamara Antonia Krawchenko and Megan Gordon distinguished among interpretations that are either jobs-focused, environment-focused, or society-focused.¹³¹ For instance, the Just Transition as elaborated by the International Trade Unions Confederation and the International Labor Organization is criticized as the focus is the creation of decent and green jobs, but social inequalities produced by the current capitalist economic system are not addressed and those who are not workers in the strict sense but perform fundamental reproduction activities are excluded.¹³² Fredman highlighted how 'some of the most prominent Just Transition frameworks are dominated by a male norm'.¹³³ Annica Kronsell attempted to combine transition and gender theories as a heuristic device to illustrate how gender relations are relevant for climate governance. Three factors towards a transition also align with gender concerns: the challenge to institutionalized norms, the struggle against oppressive power relationships, the need to increase participation.¹³⁴

2.1.5.4 Gender and Economic Models for the Transition

The scientific and institutional debate around decarbonisation, the core of the socio-ecological transition, is influenced by economic models that orient a large part of the scientific production on these topics and, to varying degrees, the institutional debate. However, the implementation of some of the most prominent economic models for the sustainability transition – namely, the Green Economy, the Circular Economy, and Degrowth – may have

¹³⁰ Halliki Kreinin, 'Typologies of "Just Transitions": Towards Social-Ecological Transformation' (2020) WU Vienna University of Economics and Business 1-12.

¹³¹ Tamara Antonia Krawchenko and Megan Gordon, 'How Do We Manage a Just Transition? A Comparative Review of National and Regional Just Transition Initiatives' (2021) 13/11 Sustainability: Science, Practice and Policy 6070 ss.

¹³² Irina Velicu and Stefania Barca, 'The Just Transition and Its Work of Inequality' (2020) 16/1 Sustainability: Science, Practice and Policy 263-273.

¹³³ Sandra Fredman, 'Greening the Workforce: A Feminist Perspective' (2023) 39 International Journal of Comparative Labour Law and Industrial Relations 337-358.

¹³⁴ Annica Kronsell, 'Gender and Transition in Climate Governance' (2013) 7 Environmental Innovation and Societal Transitions 1-15.

backlashes in terms of gender inequality in the world of work.¹³⁵ The implementation of the Green Economy agenda is often illustrated in terms of job creation, destruction, and substitution. Fredman criticised the International Labor Organisation's estimates about green jobs creation as the root causes of occupational segregation in the labour market are not addressed: education, gender stereotypes, the responsibility for care work, and the lack of representation in decision making.¹³⁶ In the European Union, most job growth within the green transition is expected in sectors that are dominated by men. Moreover, the job opportunities created by the green transition demand skills and education in sectors where gender inequality is already significant.¹³⁷ Littig also pointed to the quality of the green jobs: women are mainly employed in trade, tourism, and agriculture, with poorer working conditions and income.¹³⁸ The Degrowth economic model, which may be considered poles apart, revolves around the idea of social reproduction but the gendered distribution of reproductive work and the gendered character of time are hardly taken into consideration in dedicated literature.¹³⁹ Barca and others highlighted how theories of Degrowth did not enter into a dialogue with feminist ecological economy and feminist political economy. In this sense, aiming for a liberation *of* work instead of a liberation *from* work, the authors suggested to recognise the sexual division of work as a mechanism of the socio-ecological crisis and subsistence work as fundamental for the industry.¹⁴⁰ The Circular Economy model is relatively unexplored in terms of scientific research content and some critical

¹³⁵ Elena Nalato and Barbara Pozzo, 'Considerations Around the Theoretical Discourse on Gender and the Environment in the Ongoing Socio-ecological Transition' (2023) 4/VI Professionalità Studi 30-49.

¹³⁶ Sandra Fredman, 'The World of Work: A Green and Feminist Future?' in Cathi Albertyn and others, *Feminist Frontiers in Climate Justice* (Edward Elgar Publishing 2023) 116-137.

¹³⁷ EIGE, 'Gender Equality Index 2023. Towards a Green Transition in Transport and Energy' (Publications Office of the European Union 2023).

¹³⁸ Beate Littig, 'Good Green Jobs for Whom?: A Feminist Critique of the Green Economy' in Sherilyn MacGregor, *Routledge handbook of gender and environment* (Routledge 2017) 318-330.

¹³⁹ Christine Bauhardt, 'Solutions to the Crisis? The Green New Deal, Degrowth, and the Solidarity Economy: Alternatives to the Capitalist Growth Economy from an Ecofeminist Economics Perspective' (2014) 102 *Ecological economics* 60-68.

¹⁴⁰ Stefania Barca, 'An Alternative Worth Fighting For: Degrowth and the Liberation of Work', in Ekaterina Chertkovskaya and others (eds), *Towards a Political Economy of Degrowth* (Rowman&Littlefield 2019) 175-192.

perspectives are emerging in literature. Among the key findings of the research project JUST2CE – A Just Transition to Circular Economy is that

[T]he systematic ways of approaching production processes from a life cycle perspective, do not contemplate gender differences in the organization or at the consumer end, and much less a value transformation based in gender justice principles.¹⁴¹

According to the document, the promotion of gender justice was not taken into consideration as a goal for the Circular Economy, and the authors suggested a transformation of valuation mechanisms so that value is produced by both paid and unpaid work, with an orientation towards care work.¹⁴² Overall, the risk is that a post-carbon future may look ‘a lot like the past, when livelihoods were secured, and environments were mediated through rigid divisions of labour along gender lines’.¹⁴³

2.1.5.5 Proposals for Institutional Change: Environmental-gendered Impact Assessment and Gendered Disaster Risk Management

Among the relevant endeavours to accommodate gendered differences in the climate crisis through institutional reform, Meghan Campbell pointed to the environmental-gendered impact assessment (EGIA), which she considered as a tool ‘to redress the structural and participation elements of substantive equality’.¹⁴⁴ EGIA, if transparent, inclusive, and independent, allows women to participate and express their concerns about gender equality and the environment. The CEDAW Committee warned States that ‘EGIA should not be collapsed into a performative tick-box exercise, but should have a substantive influence on law and policy’.¹⁴⁵ Differently, Mary Picard looked at disaster risk management (DRM) institutions established by DRM legislation: ‘very few make any provision for gender balance or women’s participation or have any provisions for representation of women’s ministries or women’s organizations’, but also ‘many derive DRM leadership

¹⁴¹ Bibiana Martínez Álvarez and Stefania Barca, ‘Gender Justice and Circular Economy’ (2023) JUST2CE 1-24.

¹⁴² *ibid.*

¹⁴³ MacGregor (n 31) 24.

¹⁴⁴ Meghan Campbell, ‘A Greener CEDAW: Adopting a Women’s Substantive Equality Approach to Climate Change’ in Cathi Albertyn and others, *Feminist Frontiers in Climate Justice* (Edward Elgar Publishing 2023) 113.

¹⁴⁵ *ibid.*

and committee positions from other senior roles in government which few women occupy, adding an additional filter'.¹⁴⁶ Many disaster laws encompass specific norms and priorities for women's needs in pregnancy, childbirth and post-natal care, or mention of women as a vulnerable group only. Picard saw a potential for gender responsiveness in national DRM policy documents, whether informed by the Sendai Framework and listed some examples from Lao, Philippines, Bhutan and Nepal.¹⁴⁷

2.1.5.6 Gender and Climate Institutions

Annica Kronsell and Gunnhildur Magnudottir edited a collective volume dedicated to political and administrative climate institutions in Industrialised States, meant as the set of: climate policymakers; norms, rules and practices of the governing climate bodies at different levels. The authors consider them as 'authoritative key actors in climate policymaking', developing strategies as well as producing power relations.¹⁴⁸ However, climate institutions in the Global North mainly focus on technical innovations and economic incentives and lack proper attention to the social dimension of the climate crisis: on the one hand, institutions would need to acquire more knowledge about equity, justice and equality; on the other hand, research should focus on understanding 'about how social differences are relevant to the policy fields that are most significant for realising climate objectives, going beyond the environmental sector to include transport, energy, industry, building, land use and waste'.¹⁴⁹ Almost all climate institutions relate to the UNFCCC regime, which will be explored in Chapter 3. Indeed, according to Kronsell and Magnudottir, 'the regime has become normative at national, as well as local levels, and in different sectors in many industrialised states'.¹⁵⁰ Including the social dimension in climate policies may enhance their transformative potential. Susan Buckingham investigated the conditions for transformative gender mainstreaming in climate policy: the commitment to gender equality should be explicit and at the earliest stages of policymaking; women and

¹⁴⁶ Mary Picard, 'CSW66 Background Paper: Empowering Women in Climate, Environment and Disaster Risk Governance: from National Policy to Local Action' (UN Women 2021).

¹⁴⁷ *ibid.*

¹⁴⁸ Annica Kronsell and Gunnhildur L Magnudottir, 'Gender, Intersectionality and Institutions' in Gunnhildur L Magnudottir and Annica Kronsell, *Gender, Intersectionality and Climate Institutions in Industrialised States* (Routledge 2021) 1-14.

¹⁴⁹ *ibid.*

¹⁵⁰ *ibid.*

gender diverse people should be involved as decision-makers so they can contribute with their own sensitivities; measures should be taken to deal with what studies of institutions name as *path dependency*, that is institutional structures resisting change with respect to their initial settings and choices.¹⁵¹ Buckingham warned that simply adding gender mainstreaming on top of a workload may have negative results as ‘people feel ill-equipped and poorly resourced to manage’ it. Gender mainstreaming should be conceived since the first steps as an opportunity to re-think how the institution works.¹⁵² Karen Morrow depicted climate institutions as *gatekeepers*, including or excluding interests from their processes. As they reproduce societal trends, climate institutions ‘exhibit strongly gendered structural characteristics’.¹⁵³ Morrow pointed to the UNFCCC regime as ‘a novel manifestation of a historically gendered international legal system’, in continuity with tendential gender disparity within UN institutions. Moreover, climate change in the Convention was characterised since the beginning as a technical issue, ‘suitable for traditional state-centric international law coverage and dominated by the search for scientific and economic “fixes” (themselves reliant on male-dominated disciplines)’, lacking almost any social concerns.¹⁵⁴ The engagement of stakeholders other than the Parties brought some social elements in the process, but women were excluded for many years. Interestingly, the other UN Conventions adopted or developed at the Earth Summit in Rio de Janeiro in 1992, namely, the UN Convention on Biological Diversity (UNCBD) and the UN Convention to Combat Desertification (UNCCD), and the associated processes saw greater engagement with gender concerns.¹⁵⁵ This also emerged from the analysis of National Gender and Climate Change planning in Paragraph 3.3.3.

¹⁵¹ Susan Buckingham, ‘Wasting Resources. Challenges to Implementing Existing Policies and Tools for Gender Equality and Sensitivity in Climate Change-related Policy’ in Gunnhildur L Magnúsdóttir and Annica Kronsell, *Gender, Intersectionality and Climate Institutions in Industrialised States* (Routledge 2021) 125-142.

¹⁵² *ibid.*

¹⁵³ Karen Morrow, ‘Gender in the Global Climate Governance Regime. A Day Late and a Dollar Short?’ in Gunnhildur L Magnúsdóttir and Annica Kronsell, *Gender, Intersectionality and Climate Institutions in Industrialised States* (Routledge 2021) 19-35.

¹⁵⁴ *ibid.*

¹⁵⁵ *ibid.*

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CHAPTER 3



The Gender and Climate Change Nexus in Law and Policy

3 THE GENDER AND CLIMATE CHANGE NEXUS IN LAW AND POLICY

3.1 INTRODUCTION

To address the first working hypothesis in this research process – if there are few cases of climate change litigation in the databases dealing with the gender and climate change nexus, then the gender and climate change nexus is not a good ground for legal action – on the one hand, relevant law sources and related policies were analysed under the lenses of the gender and climate change nexus (see Section 1.4 for the methodology). On the other hand, relevant cases of climate change litigation were outlined, and a case study was elaborated (Chapter 4). The amount of law sources which could have been the object of the analysis is extremely vast: '[l]egal regimes have struggled to account fully for the totality of and multiplicity of women's gendered experience of climate change'.¹ Moreover, as Cathi Albertyn and others registered, '[f]or too long, the fields of environmental and climate change, on the one hand, and women's rights and feminist legal studies, on the other, have failed to explore fully points of overlap and areas of mutual reinforcement'.² The analysis is therefore shaped as a vertical process, looking at the international level first, then the national one, while only brief considerations were dedicated to the regional solutions.

3.1.1 The International Level

If it is undisputed that the international level is the most appropriate to deal with climate change as a planetary phenomenon, some scholars argue that women's inequality is similarly underpinned by global forces, and therefore International Law would have the potential, not yet achieved, to address the gender and climate nexus.³ Looking at International Law, after a broad overview of the UN Agenda and Treaty Bodies' activities (Section 3.2.1), the Convention for the Elimination of All Forms of Discrimination Against Women

¹ Meghan Campbell, 'A Greener CEDAW: Adopting a Women's Substantive Equality Approach to Climate Change' in Cathi Albertyn and others, *Feminist Frontiers in Climate Justice* (Edward Elgar Publishing 2023) 91.

² Cathi Albertyn and others, 'Introduction – Feminist Frontiers in Climate Justice: Gender Equality, Climate Change and Rights' in Cathi Albertyn and others, *Feminist Frontiers in Climate Justice* (Edward Elgar Publishing 2023) 1-16.

³ *ibid* 13.

and Girls (1979) and the United Nations Framework Convention on Climate Change (1992) appear as the most relevant to this analysis, even though the interpretation of gender equality in these legal tools is judged by Albertyn and others 'at best superficial, with little real attention to patriarchal power or structural inequalities'.⁴ In the last fifteen years, both the CEDAW and the UNFCCC saw the influence of gender and climate change scholarship and mobilisation, with concrete reflections in their respective processes and evolutions, as illustrated in Sections 3.2.2 and 3.2.3. Considering the *gate-keeper role* of climate institutions, including or excluding interests from their processes – as emerged in the literature review, Paragraph 2.1.5.6 – a special focus was devoted to the policymaking efforts of the Women and Gender Constituency and of the organisations that mobilised before its establishment to push for the integration of gender concerns in the UNFCCC process.

3.1.2 The Regional Level

Although some regional legal instruments emerged from the research process as relevant to address the gender and climate change nexus, the choice was to prioritise the international and national levels in the analysis. This reflects the overarching choice for an exploratory approach to research, aimed at differently navigating available knowledge, and allowed to devote more space to experiences out of the European Union and region. The European Convention on Human Rights appears as part of the case study in Chapter 4. Moreover, the UNFCCC dynamics were followed: the international multilateral process directly influences the national laws and policies, while negotiating groups outweigh traditional regional subdivisions. For reference, the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs stated in 2015 that, notwithstanding gender equality being among the EU values and objectives – Articles 2 and 3 of the Treaty of the European Union and Article 8 Treaty on the Functioning of the European Union – 'in most EU documents concerning climate change policy there are *no references to gender or gender equality*'.⁵ The climate change policy of the European Union has been focused on the EU's international climate leadership and on solutions orientated towards the market and technology; a human-centred approach including the gender dimension was

⁴ Albertyn and others (n 2) 13.

⁵ Anne Bonewit and Rosamund Shreeves, 'The Gender Dimension of Climate Justice. In-depth Analysis' (EU DG Internal Policies, 2015).

adopted only in some documents of the EU Council and the EU Parliament, among which the 2012 Resolution on Women and Climate Change.⁶ Considering the more recent developments of the EU Green Deal, interesting insights about the adoption of an intersectional approach to inequality were elaborated by Federica Piras,⁷ while Rose Heffernan and others criticised the missed opportunity to adopt a feminist perspective.⁸ In 2024 at the 29th Conference of the Parties to the UNFCCC (COP) in Baku, Azerbaijan, the EU and its Member States issued a joint statement reaffirming their commitment to strengthening gender integration in global climate action, later supported by seventeen other Parties including Switzerland.⁹ Moving to the African Union, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) shall be mentioned. Also called 'Maputo Protocol', it differs from treaties in other regional human rights systems dedicated to women – as the Istanbul Convention for the Council of Europe and the Convention of Belém do Pará for the Inter-American Convention on Human Rights system – as its focus is broader than the sole violence issue and covers environmental rights (Article 18).¹⁰ Considering how participation is relevant in addressing gender inequality in the climate crisis, the regional agreements tackling environmental participation may be of interest too: the 1998 United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, known as the Aarhus Convention, for the European Region and the more recent and innovative 2021 Regional Agreement on Access to Information, Public

⁶ Bonevit and Shreeves (n 5).

⁷ Federica Piras, 'Ecological Transition Through the Lens of Intersectionality: A Critical Review of European Policies' (2023) 4/VI *Professionalità Studi* 50-76.

⁸ Rose Heffernan and others, 'A Feminist European Green Deal. Towards an Ecological and Gender Just Transition' (Friedrich-Ebert-Stiftung 2021).

⁹ DG for Climate Action, 'Statement at COP29 on the Importance of an Ambitious Outcome on Gender and Climate Change, 2024'.

¹⁰ Elsabé Boshoff, 'Women's Environmental Human Rights in Africa with Reflections on Key Provisions of the Maputo Protocol' in Micheal Addaney and Ademola Oluborode Jegede, (eds), *Human Rights and the Environment under African Union Law* (Palgrave Macmillan 2020); Micheal Addaney and Chantelle Gloria Moyo, 'Women's Rights, Gender and Climate Change Law in Africa: Advancing an Equity Agenda' (2018) 5/1 *Journal of Law, Society and Development*.

Participation and Justice in Environmental Matters in Latin America and the Caribbean, known as the Escazú Agreement.¹¹

3.1.3 The National Level

Analysing international law and policymaking, inequalities between and within Countries may not be sufficiently appreciated: ‘attention needs to be paid to effective national and local avenues of legal remedy and redress for the effects of climate crisis’.¹² As Seema Arora-Jonsson pointed out, the concerns about gender in environmental and climate policymaking gained new momentum recently, but the broader environmental and climate debate is increasingly high-level and techno-oriented, far from the experiences and the participation of ‘ordinary people’.¹³ To bear with the quantity of relevant national sources of law and policies related to the gender and climate change nexus, the UNFCCC national fulfilments were considered (see Section 1.4 for the methodology), and in particular the NDCs (Paragraph 3.3.1) and the NAPs (Paragraph 3.3.2). In some Countries, National Gender and Climate Change Plans are available: these were analysed and compared (Paragraph 3.3.3).

3.2 GENDER AND CLIMATE CHANGE IN INTERNATIONAL LAW AND POLICY

3.2.1 Gender and Climate Change in the UN Agenda

3.2.1.1 The OHCHR’s engagement with climate change

In recent years, the gender and climate change nexus entered several important UN documents and initiatives. The Office of the UN High Commissioner for Human Rights (OHCHR) is the United Nations agency for the promotion and protection of Human Rights, provided for in the 1948 Universal Declaration of Human Rights, and it was established in 1993. The Office is chaired by the Commissioner for Human Rights, coordinating related activities in the UN system and overseeing the Human Rights

¹¹ Lorena Aguilar Revelo, ‘Gender Equality in the Midst of Climate Change: What Can the Region’s Machineries for the Advancement of Women Do?’ (ECLAC 2021).

¹² Albertyn and others (n 2).

¹³ Seema Arora-Jonsson, ‘Forty Years of Gender Research and Environmental Policy: Where Do We Stand?’ (2014) 47 *Women's Studies International Forum* 295-298.

Council.¹⁴ The OHCHR stood out among international Human Rights bodies for its engagement with climate change as it explored how this affected the enjoyment of Human Rights before others. However, at first, it rejected legal relevance to the issue, considering problematic causality and jurisdiction attributions.¹⁵ According to Shreya Atrey, the breakthrough for the OHCHR was its 2016 Report on climate change and the human right to physical and mental health¹⁶ in which the Body, ‘based directly on evidence relating to gender inequality’, recognised the link between human rights and climate change: gender inequality contributes to human rights violations together with climate change, but it is also compounded by it.¹⁷ In the following years, the OHCHR produced three relevant studies and reports: the ‘Analytical Study on Gender-responsive Climate Action for the Full and Effective Enjoyment of the Rights of Women’ in 2019; the ‘Analytical Study on the Promotion and Protection of the Rights of Older Persons in the Context of Climate Change’ in 2021; and the report on ‘The Impacts of Climate Change on the Human Rights of People in Vulnerable Situations’ in 2022. The first of these, in particular, focused on the impacts of climate change on women – namely in terms of food security, health, SRHR, GBV and discrimination, livelihoods and decent work, cultural impacts, human mobility, WEHRD, agency – and identified human rights obligations and responsibilities of States and other actors to implement gender-responsive approaches.¹⁸ As ‘Key legal and policy instruments’, the study mentions: the CEDAW, the UNFCCC, the 2030 Agenda for Sustainable Development, the Addis Ababa Action Agenda, the Beijing Declaration and Platform for Action, the Conclusions of the Commission on the Status of Women, and the Sendai Framework for Disaster Risk Reduction 2015–2030.¹⁹ According to the

¹⁴ UN Human Rights, ‘UN Human Rights’

<https://www.ohchr.org/en/ohchr_homepage> accessed 2 December 2024.

¹⁵ Shreya Atrey, ‘The Inequality of Climate Change and the Difference It Makes’ in Cathi Albertyn and others, *Feminist Frontiers in Climate Justice* (Edward Elgar Publishing 2023) 24-28.

¹⁶ A/HRC/32/23, Analytical Study on The Relationship Between Climate Change and the Human Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health: Report of the Office of the United Nations High Commissioner for Human Rights.

¹⁷ Atrey (n 15).

¹⁸ A/HRC/41/26, Analytical Study on Gender-Responsive Climate Action for the Full and Effective Enjoyment of the Rights of Women: Report of the Office of The United Nations High Commissioner for Human Rights.

¹⁹ *ibid* 10-13.

OHCHR, States should take urgent, rights-based and gender-responsive climate action. Among many recommendations, it is worth noticing that the Office urged the States to ‘Ensure the full, equal and meaningful participation of women with diverse backgrounds in climate change mitigation and adaptation at all levels’ and to ‘Empower women, as economic and climate actors, and workers and employers, to help shape the just transition to a low-carbon economy’, therefore emphasising women’s agency rather than their vulnerability.²⁰

3.2.1.2 *UN Women and the Commission on the Status of Women*

UN Women is the is the UN entity dedicated to gender equality and the empowerment of women, established in 2010 to accelerate progress on meeting their needs worldwide. UN Women, among many mandates, supports the Commission on the Status of Women (CSW), which is a functional commission of the UN Economic and Social Council (ECOSOC) established in 1946 and become the main global intergovernmental body exclusively dedicated to the promotion of gender equality, the rights and the empowerment of women. During the Commission’s annual session, representatives of UN Member States, civil society organizations and UN entities discuss progress and gaps in the implementation of the 1995 Beijing Declaration and Platform for Action, which is the key global policy document on gender equality.²¹ The Sixty-sixth session of the CSW in 2022 was devoted to ‘Achieving Gender Equality and the Empowerment of All Women and Girls in the Context of Climate Change, Environmental and Disaster Risk Reduction Policies and Programmes’. The event was preceded by a virtual Expert Group Meeting and the related preparation of Background, Expert and Observer Papers, many of which were fit into this research. The Agreed Conclusions of the Sixty-sixth session of the CSW recalled that the Member States of the Paris Agreement when taking action to address climate change should respect, promote and consider their respective obligations on human rights and gender equality and encouraged ‘the full, meaningful and equal participation of women in climate action and to ensure gender-responsive

²⁰ A/HRC/41/26 (n 18) 18-19.

²¹ UN Women, ‘Commission on the Status of Women’ <<https://www.unwomen.org/en/how-we-work/commission-on-the-status-of-women>> accessed 2 December 2024.

implementation and means of implementation'.²² Notably, the CSW adopted an intersectional approach and mentioned not only the intersecting forms of discrimination but also the urgency to eliminate 'persistent historical and structural inequalities, racism, stigmatization and xenophobia'.²³ The CSW recommended relevant stakeholders to: 'Strengthen normative, legal and regulatory frameworks', 'Integrate gender perspectives into climate change, environmental and disaster risk reduction policies and programmes', 'Expand gender-responsive finance', and 'Enhance gender statistics and data disaggregated by sex'.²⁴

3.2.2 Gender and Climate Change in the CEDAW

3.2.2.1 Brief introduction to the CEDAW

The CSW's work for the advancement of women took shape in declarations and conventions. The most comprehensive of these is the CEDAW, adopted by the UN General Assembly on 18 December 1979 and entered into force in 1981. Nowadays, the CEDAW counts 99 Signatories and 189 State Parties, and is integral part of the international Human Rights treaties. Discrimination against women is defined by Article as:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.²⁵

The Convention not only lists women's rights but imposes on the Parties an agenda for their fulfilment, covering three dimension of gender equality: civil rights and the legal status of women; reproductive rights; cultural factors and gender relations. In summary, Parties are legally obliged to: eliminate all

²² E/CN.6/2022/L.7, Achieving Gender Equality and the Empowerment of All Women and Girls in the Context of Climate Change, Environmental and Disaster Risk Reduction Policies and Programmes: Agreed Conclusions 11.

²³ E/CN.6/2022/L.7 (n 23) 23.

²⁴ *ibid* 62.

²⁵ The CEDAW Committee interpreted 'on the basis of sex' as including discrimination on the basis of gender. See Meghan Campbell, 'CEDAW and Women's Intersecting Identities: A Pioneering Approach to Intersectional Discrimination' (2015) 11/2 *Revista Direito GV* 459.

forms of discrimination against women in all areas of life; ensure women's full development and advancement so they can exercise and enjoy their human rights and fundamental freedoms in the same way as men; and allow the CEDAW Committee to scrutinize their efforts for implementation by regularly reporting to the body.²⁶ The Committee on the Elimination of Discrimination Against Women (CEDAW Committee) monitors the implementation of the Convention, its mandate being defined by Articles 17 to 30. The Committee is composed of 23 independent experts nominated by Governments and elected by the States parties. States parties are expected to submit a national report to the Committee at least every four years illustrating the respective efforts for the accomplishment of the Convention. During its annual session, the Committee examines these reports and may address general recommendations to the Parties on relevant matters. According to the Optional Protocol to the Convention, the Committee is also mandated to receive communications from individuals or groups of individuals submitting claims of violations of rights protected under the Convention and initiate inquiries into situations of grave or systematic violations of women's rights.

3.2.2.2 Climate Change and the CEDAW

The environment and climate change are not mentioned in the original text of the CEDAW, as at the time of its drafting these concerns had not emerged yet nor were linked to gender inequality and discrimination. However, the 'CEDAW is a dynamic and living instrument' as the CEDAW Committee applies an evolutionary approach.²⁷ In 2009, during its forty-fourth session, the CEDAW Committee issued the first 'Statement of the CEDAW Committee on Gender and Climate Change', expressing concern about 'the absence of a gender perspective in the UNFCCC and other global and national policies and initiatives on climate change'.²⁸ The brief statement summarised the gender and climate change nexus, also referring to the IPCC findings on differential climate vulnerability, and invited UNFCCC States Parties to include gender equality as 'an overarching guiding principle' in COP 15 final agreement, in alignment with the CEDAW, the the Beijing Platform for Action,

²⁶ UN Human Rights, 'Introduction to the Committee' < <https://www.ohchr.org/en/treaty-bodies/cedaw/introduction-committee> > accessed 3 December 2024.

²⁷ Campbell (n 1) 94.

²⁸ CEDAW Committee, 44th session, Statement of the CEDAW Committee on Gender and Climate Change, New York 20 July – 7 August 2009.

and ECOSOC Resolution 2005/31.²⁹ Almost ten year later, in 2018, the CEDAW Committee delivered the General Recommendation No. 37 'on the gender-related dimensions of disaster risk reduction in the context of climate change' aimed to provide guidance to States Parties on the implementation of their obligations under the Convention in relation to disaster risk reduction (DRR) and climate change, as well as to inform the work of civil society organizations.³⁰ General Recommendations are 'authoritative, definitive and influential statements',³¹ even though the Committee acknowledged that the recommendation did not 'exhaustively cover the gender-related dimensions of climate change mitigation and adaptation measures'.³² The General Recommendation No. 37 indicated as relevant international frameworks other than the CEDAW: the Rio Declaration on Environment and Development; the Sendai Framework; the UNFCCC and, under it, Decision 18/CP.20 on the 'Lima Work Programme on Gender' followed by Decision 3/CP.23 on the 'Establishment of a Gender Action Plan' (see Paragraph 3.2.3); the Paris Agreement; the SDGs. Looking at the CEDAW, the Committee highlighted how some general principles of the Convention shall be applied to DRR and climate change, namely: substantive equality and non-discrimination; participation and empowerment; accountability and access to justice. Moreover, specific principles were denoted as relevant, such as data collection, policy coherence, international cooperation, capacity development and access to technology. Among the concerned rights, the Committee listed: the right to live free from GBV; the rights to education and to information; the rights to work and to social protection; the right to health; the right to an adequate standard of living; the right to freedom of movement. Notwithstanding this clear positioning of the Committee, no explicit climate- or environment-related communications or inquiries have been submitted to or initiated by the body so far.³³ Atrey argues that State obligations arose from the 2009 Statement and the 2018 General Recommendation, but they should not be overstated:

²⁹ *ibid.*

³⁰ CEDAW/C/GC/37, General Recommendation No. 37 (2018) on the Gender-related Dimensions of Disaster Risk Reduction in the Context of Climate Change.

³¹ Campbell (n 1) 92.

³² CEDAW/C/GC/37 (n 30) 13.

³³ OHCHR Juris Jurisprudence Database <<https://juris.ohchr.org/>> accessed 3 December 2024.

[T]hey are neither broad-based [...] nor themselves binding [...]. These are *expansive* and *evolutionary* interpretations of existing human rights obligations. They are also recent and need to be adopted and implemented across international and national contexts to be cemented in fact'.³⁴

Atrey outlined the obligations as follows: eliminate pre-existing inequalities and protect people from their worsening; prioritise the interests of those most marginalised when dealing with climate change impacts; ensure participation of disadvantaged groups; provide remedies for the violations of rights of disadvantaged groups due to climate change; collect relevant disaggregated data. The 2009 Statement, the General Recommendation No. 37 and the broader jurisprudence of the CEDAW Committee marked crucial progress but also revealed some gaps. On the one hand, the CEDAW Committee did a 'field-defining work' and first provided an authoritative interpretation for States to integrate Human Rights obligations, especially those related to discrimination against women, into climate action.³⁵ On the other hand, the CEDAW Committee 'is just in the beginning phases of creating a "greener CEDAW"'.³⁶ Among the advancement, it is worth noting in this research work how the CEDAW Committee framed the access to justice in General Recommendation No. 37, in terms of both 'mainstream measures like free legal aid and access to informal mechanisms like mediation, but also [...] gender impact analysis of existing laws [...] in the context of disasters and climate change'.³⁷ Atrey further argued that the right to information 'is read into this context as building women's legal literacy', and this interestingly resonates with the aims and objective of this research.³⁸ Meghan Campbell noted how centring the General Recommendation on the impacts of disasters and climate change, only vaguely recalled, and not on their triggers was strategic: States Parties 'cannot avoid addressing women's inequalities by arguing that a disaster or climate event is natural or a force majeure', and besides this shields obligations by climate denialism.³⁹ Moreover, Campbell positively evaluated the adoption of an intersectional lens to the gendered

³⁴ Atrey (n 15) 32 emphasis added.

³⁵ *ibid*, quoting Olivia Bonner, 'Tackling Gender Disparity at the Intersection of Human Rights and Climate Change' (Center for International Environmental Law, 13 March 2018).

³⁶ Campbell (n 1) 98.

³⁷ Atrey (n 15) N.

³⁸ *ibid*.

³⁹ Campbell (n 1) 96.

drawbacks of climate change, especially focusing on poverty, rurality and Indigenoussness.⁴⁰ Conversely, looking at the shortcomings in the recent jurisprudence of the CEDAW Committee dedicated to climate change, Atrey highlighted how gender responsiveness to climate change appeared as strictly tied to disaster management preventing a more transformative approach, while Campbell remarked how the Committee occasionally slipped into depicting women as a vulnerable group or, on the contrary, as those bearing the responsibility to sort out the climate issue.⁴¹ In its scrutinising work, the CEDAW Committee demonstrated a critical position to non-climate-smart energy policies and extractive industries, even though its stance with respect to corporate actors is unclear.⁴²

3.2.3 Gender and Climate Change in the UNFCCC

3.2.3.1 *The Evolution Over Time*

‘The UNFCCC began as a male-dominated, masculinist-oriented regime’.⁴³ The UNFCCC Decision 36/CP.7 first advocated for the improvement of women's participation in Parties' representation in the UNFCCC bodies or under the Kyoto Protocol in 2001. However, dedicated scholars and policymakers consider Decision 23/CP.18 in 2012 as the starting point of the path to integrating gender concerns in the UNFCCC process. Entitled ‘Promoting gender balance and improving the participation of Women in UNFCCC negotiations and in the representation of Parties in bodies established pursuant to the Convention or the Kyoto Protocol’, the Decision was ‘hugely important in both principle and evolving regime practice’.⁴⁴ Karen Morrow considered this Decision as the ‘factual foundation upon which to ground regime actions on gender, by regularising and enhancing monitoring, and reporting on gender representation in state delegations and constituted bodies’.⁴⁵ In a slow evolution from the merely quantitative dimension of women's participation to the qualitative dimension of gender integration in

⁴⁰ *ibid* 102.

⁴¹ Campbell (n 1) 106.

⁴² *ibid* 108-110.

⁴³ Karen Morrow, ‘Gender in the Global Climate Governance Regime. A Day Late and a Dollar Short?’ in Gunnhildur L Magnusdottir and Annica Kronsell, *Gender, Intersectionality and Climate Institutions in Industrialised States* (Routledge 2021) 30.

⁴⁴ *ibid* 20.

⁴⁵ *ibid*.

the UNFCCC process, Decision 18/CP.20 in 2014 was a milestone as it issued the Lima Work Programme on Gender (LWPG). The LWPG aimed to achieve gender balance but also to develop a gender-responsive climate policy, considering training and capacity building. In 2017, Decision 3/CP.23, with the contribution of the Subsidiary Body for Implementation (SBI), established a Gender Action Plan (GAP) as a step further in the LWPG with the horizon of 2019. The GAP identified five priority areas, equipped with deliverables and responsible actors: knowledge-sharing; gender balance; coherence; implementation and monitoring; and reporting. One of the objectives of the LWPG and the GAP was the integration of gender into the work of the UNFCCC's constituted bodies, but the 2019 report of the UNFCCC Secretariat showed limited progress.⁴⁶ With Decision 3/CP.25 the Enhanced version of the LWPG was adopted (ELWPG) together with the correlated GAP, focusing more on implementation and encouraging the Parties to appoint a National Gender and Climate Change Focal Point, both expiring in 2024. COP 29 in 2024 saw the adoption of a new ELWPG with a ten-year horizon, and the related GAP will be elaborated towards COP 30. These programmes and plans, notwithstanding their partial success, were considered crucial for their effect on the 'regime's institutional culture', as well as for offering a platform to the stakeholders.⁴⁷ In 2020, Morrow made an assessment of almost ten years of efforts: on the one hand, gender entered the UNFCCC agenda and gained greater visibility, notwithstanding global backlash on women's and minorities' rights; on the other hand, remarkable progress couldn't be achieved due to States' inaction and missed financial support.⁴⁸

3.2.3.2 *Participation and Representation*

The main available tool to access data and information about participation and representation in the UNFCCC process is currently the annual Gender Composition Report by Secretariat, presenting since 2013 a breakdown of the gender composition of constituted bodies – under the Framework Convention, the Kyoto Protocol and the Paris Agreement – and the gender and age composition of the Party Delegations. The most recent at the time of writing is the 2024 Report, made available during the twenty-ninth session

⁴⁶ FCCC/CP/2019/8, Progress in Integrating a Gender Perspective in Constituted Body Processes. Synthesis Report by the Secretariat.

⁴⁷ Morrow (n 43) 22-25.

⁴⁸ *ibid* 26-31.

of the COP) and including data until the previous session.⁴⁹ Looking at the constituted bodies, gender composition varied from year to year and in 2024 the representation of women ranged between 18% and 71%. Compared to 2023, the representation of women increased in seven constituted bodies, decreased in three and remained unchanged in six; seven constituted bodies, two more than the previous year, reported having achieved the goal of gender balance. On average, women occupied 39% of constituted body positions in 2024 compared with 38% in 2023. Representation of women increased in 10 constituted bodies between 2013 and 2024.⁵⁰ Looking at Party Delegations, since 2023 the number of female delegates elected to the position of Chair or Co-Chair of a constituted body increased of five units. The representation of women in Party Delegations decreased from COP 27 to COP 28 by 1%. Gender and age intersect in relation to Party Delegates and heads and deputy heads of delegation: as highlighted in previous reports, representation of women drops steeply as age increases and female Party Delegates accounted for the majority of the under 26 Delegates at the most recent sessions. Adopting the Decision 20/CP.26 in 2021, Parties requested the Secretariat to explore automation for capturing sex-disaggregate speaking times at UNFCCC meetings in order to strengthen the annual report. The first analysis in this sense was presented as a case study in 2022 annual report showing that ‘male delegates were overrepresented in terms of both presence and speaking time. Even in meetings where male speakers were in the minority, they still, on average, spoke for longer than their female counterparts’ and that ‘the ratio of male to female delegates in thematic meetings covering topics that are traditionally associated more strongly with one gender, such as finance or gender, reflects persistent gender bias’.⁵¹ Further innovation was brought at COP 27 by the possibility to register with a non-binary title, chosen by two Delegates from Canada, therefore opening new challenges for reporting.⁵² The Gender Climate Tracker (GCT), launched by WEDO as mobile app and website in 2016, seeks to track gender-responsive climate action globally. The GCT ‘provides easy, on-the-go access to key statistics, policies, and research related to gender and climate for the community of advocates, practitioners,

⁴⁹ FCCC/CP/2024/4, Gender Composition. Report by the Secretariat.

⁵⁰ FCCC/CP/2024/4 (n 49).

⁵¹ FCCC/CP/2022/3, Gender Composition. Report by the Secretariat.

⁵² Gender Climate Tracker, Women’s Participation Statistics in Climate Diplomacy, Introduction < <https://genderclimatetracker.org/participation-stats/introduction> > accessed 11 December 2024.

and decision-makers' and tracks implementation of gender-related climate action under the UNFCCC, expanding thanks to grassroots participation.⁵³ The GCT includes a section dedicated to Women's Participation Statistics in Climate Diplomacy, based on UNFCCC final list of participants for each meeting and annual Gender Composition Reports during the years 2008-2023. The following chart is extracted from the platform (Figure 3.1).

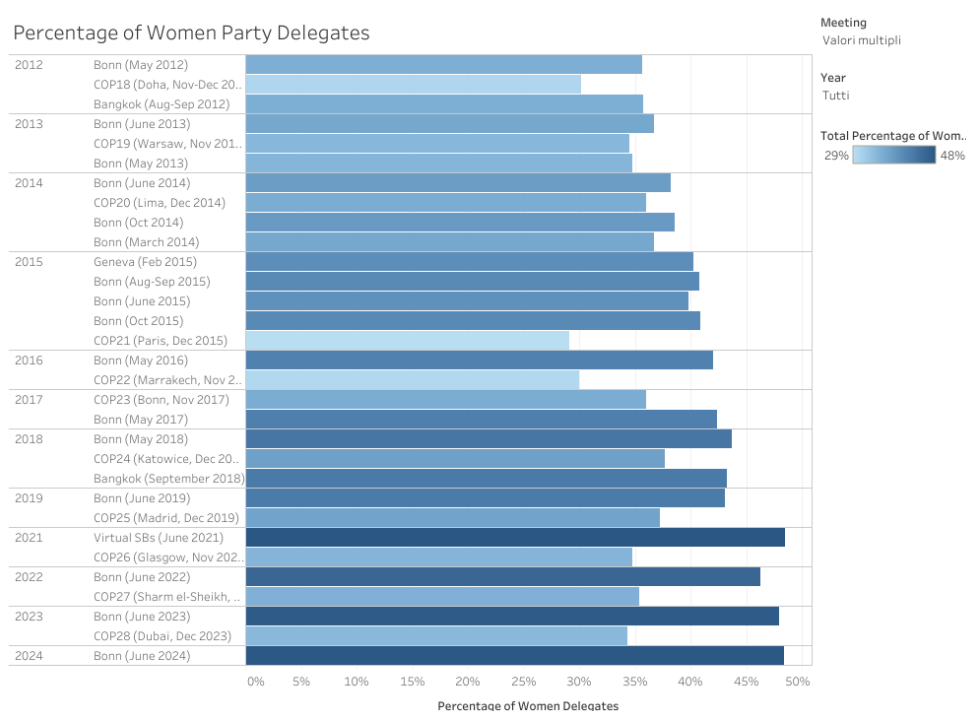


Figure 3.1 Women Party Delegates in the UNFCCC process meetings from 2012 until 2024. Downloaded from the Gender Climate Tracker website on December 9, 2024.

On the basis of the GCT data, WEDO presented in 2023 a detailed analysis of women's participation in the UNFCCC process.⁵⁴ According to WEDO's analysis, women's participation in the climate negotiations 'continues to fall short of gender balance', which would be achieved in 2042 remaining on the

⁵³ Gender Climate Tracker, <<https://genderclimatetracker.org/>> accessed 11 December 2024.

⁵⁴ WEDO, 'Who Decides: Women's Participation in the UN Climate Change Convention' (WEDO 2023).

current trajectory.⁵⁵ Lack of commitment by the States Parties also emerged from the fact that the overall number of Delegates at the COP impressively increased in 2022 and 2023, but the gender ratio is not improving. Moreover, WEDO suggested that women's participation in the constituted bodies reflects 'narrative assumptions of women and gender issues as related solely to livelihoods and resilience, making gender issues more widely prevalent in policymaking around adaptation and capacity building'. Indeed, while the Adaptation Committee counted the highest women's representation and has shown a consistent increase throughout the years, the bodies with the lowest results were the Technology Executive Committee and the Executive Board of the Clean Development Mechanism. Similarly, trends suggest that women tend to 'gain power in spaces where decision-making is deemed less pivotal and/or where countries prioritise the participation of Ministerial level delegates'.⁵⁶ Considering regional distribution, Africa and Asia scored the lower women's participation at COP 27 – with 30% and 31%, respectively –, and this was confirmed in negotiating groups: Countries joining the African Group, Least Developed Countries (LDCs), and the Organisation of the Petroleum Exporting Countries (OPEC) had among the lowest representation rate of women on Delegations.⁵⁷

3.2.3.3 *Integration of Gender in Documents and Decisions*

Morrow registered that since 2012 'the coverage of gender in regime documents has broadly increased over time' and that the UNFCCC process showed each year at least a minimum level of engagement with gender concerns and activities.⁵⁸ Bridget Burns and Tara Daniels elaborated a complete timeline of key decisions on gender in the UNFCCC regime,⁵⁹ also based on the technical paper on gender mandates prepared by the Secretariat in 2017.⁶⁰ The Gender Climate Tracker too includes a section dedicated to the gender mandates in climate policy, meant as all official UNFCCC decisions that contain a reference to gender which could be of use

⁵⁵ *ibid.*

⁵⁶ WEDO (n 54).

⁵⁷ *ibid.*

⁵⁸ Morrow (n 43) 26.

⁵⁹ Bridget Burns and Tara Daniels, '*Pocket Guide to Gender Equality Under the UNFCCC*' (ECBI, Oxford Climate Policy 2020).

⁶⁰ FCCC/CP/2017/6, Gender Composition. Report by the Secretariat.

to support decision-makers, negotiators, and advocates.⁶¹ Among the most relevant, it is worth mentioning the two 'stand-alone' decisions on gender. The first was adopted by COP 7, with the aim to enhance gender balance and women's participation and to integrate gender equality as a guiding principle for National Adaptation Programmes of Action (NAPA). The second was adopted by the 18 and made gender a standing agenda item. Moreover, Decision 1/CP.16 on a 'shared vision' for climate action recognised gender equality and the effective participation of women as crucially important for climate action. A paramount endorsement of the gender and climate change nexus was included by COP 21 in the Paris Agreement of 2015. Gender equality is mentioned in the Preamble of the Paris Agreement together with Human Rights as opportune guidance for climate action:

Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity[.]

However, the purpose of the Preamble in the UNFCCC regime is circumscribed to the interpretation of the text. Gender is further mentioned in the text of the Agreement: climate adaptation action (Article 7 Paragraph 5) and capacity-building for mitigation and adaptation (Article 11 Paragraph 2) should be *gender-responsive*, even though this expression is not defined. Morrow criticised the limited space for gender in the Paris Agreement: the language of the Preamble diluted State obligations, while gender in the text was 'siloed' notwithstanding it had played a relevant role in the negotiating process.⁶² The COP 24 adopted the Paris Implementation Guidelines, including numerous references to *gender responsiveness*, also correlated to the NDCs (see Paragraph 3.3.1). Burns and Daniels remarked how 'gender references have also been included in all of the thematic issues of the negotiations'.⁶³ Gender has been most well integrated and for too long in

⁶¹ Gender Climate Tracker, Gender Mandates in Climate Policy <<https://genderclimatetracker.org/gender-mandates/introduction>> accessed 11 December 2024.

⁶² Morrow (n 43) 27-28.

⁶³ Burns and Daniels (n 59) 15.

adaptation and capacity-building, while progress was made in loss and damage and climate finance. On the contrary, mitigation and technology transfer and development have seen the least integration, confirming underlying assumptions associating gender inequality with vulnerability.⁶⁴ Overall, according to WEDO estimates, 120 UNFCCC decisions mentioned gender, 51 of which being dedicated to gender balance in decision-making processes.⁶⁵ Looking at Parties' reporting, the Secretariat reported a positive trend: 'gender integration into climate policy and action continued to increase across all document types' and with greater detail of references, even though these continue to be centred on women and vulnerability.⁶⁶ Some of these documents are more deeply investigated in Section 3.3, here it is worth remarking that the Secretariat registered a noticeable trend: '[d]eveloping and the least developed countries continue to systematically integrate gender into their regular reporting [...], whereas developed countries often make limited or no mention of gender'.⁶⁷ Only few reports adopted an intersectional approach.⁶⁸

3.2.3.4 The Women and Gender Constituency and Other Resources for Gender Integration

The UNFCCC Constituencies are stakeholder groups: shared platforms for civil society and non-governmental organizations which observe the annual conferences, currently more than 1400, aimed to simplify the interaction with Secretariat and governments. The Constituencies are nine at present and represent different types of organisations: businesses and industry non-governmental organisations (BINGO); environmental non-governmental organisations (ENGO); local government and municipal authorities (LMGA); trade union non-governmental organisations (TUNGO); research and independent non-governmental organisations (RINGO); indigenous people organisations (IPO); youth non-governmental organisations (YOUNGO); farmers and agricultural non-governmental organisations. The Women and Gender Constituency (WGC), established in 2009 and composed of 54 women's and environmental civil society organizations, is 'the voice of the

⁶⁴ Burns and Daniels (n 59) 15-36.

⁶⁵ WEDO (n 54).

⁶⁶ FCCC/CP/2024/5, Implementation of Gender-responsive Climate Policies, Plans, Strategies and Action as Reported by Parties in Regular Reports and Communications Under the UNFCCC. Synthesis Report by the Secretariat.

⁶⁷ *ibid* §52.

⁶⁸ *ibid* §54.

women's rights, feminist and gender equality-focused civil society organizations present and regularly active in UNFCCC processes'.⁶⁹ The WGC presented key demands for Feminist Climate Justice at recent Conferences of the Parties, ranging from a gender-just transition to water and land rights, from education to health promotion, from climate finance to loss and damage.⁷⁰ The focus at COP 29 was on Gender Just Climate Solutions. From 2012, the Conferences regularly included a 'Gender Day' event, as well as gender-based workshops. Support to the negotiations on the themes of gender and climate change is provided by the UNFCCC Gender Team, also guiding and implementing activities mandated under the ELWPG and the GAP. Other available resources for gender integration are the Gender Climate Tracker (presented in Paragraph 3.2.3.2) and the NAP Network (presented in Paragraph 3.3.2).



Figure 3.2 Image from the W&G Constituency's communication campaign on the occasion of COP 29. Downloaded from the W&G Constituency's website on December 9, 2024.

⁶⁹ Women and Gender Constituency, <<https://womensgenderclimate.org/about-us/>> accessed 5 December 2024.

⁷⁰ Women and Gender Constituency, 'Key Demands for COP26' (2021); Women and Gender Constituency, 'COP27: Demands for a Gender and Climate Just World. Collective Demands from the Women and Gender Constituency (WGC) to the UNFCCC' (2022).

3.3 GENDER AND CLIMATE CHANGE IN NATIONAL LAW AND PLANNING

3.3.1 Gender and Climate Change in Nationally Determined Contributions

3.3.1.1 Brief Introduction to Nationally Determined Contributions

Nationally Determined Contributions (NDCs) are the building blocks of the Paris Agreement's implementation. Each State Party was requested to submit to the UNFCCC Secretariat their medium to long-term commitments towards the achievement Agreement's objectives, primarily in terms of climate change mitigation. NDCs are submitted every five years starting from 2020, and successive NDCs shall represent a progression compared to the previous NDC and reflect the highest possible ambition; Parties may adjust their existing NDC to enhance its level of ambition.⁷¹ 2023 saw the first quinquennial Global Stocktake, the process to assess the collective progress of the Parties. The outcome of the first Global Stocktake recognised progress has been made towards the Paris Agreement goals to a certain extent, but the efforts were insufficient and the window of opportunity to get back on track is closing soon.⁷² The latest UNFCCC Secretariat's Report on the implementation of gender-responsive climate policies registered that '81.5 per cent of Parties mentioned gender in their latest available NDCs'.⁷³ Relevant analyses of gender integration in NDCs can be found on the Gender Climate Tracker and in the reports under the International Union for the Conservation of Nature's (IUCN) initiative named 'Environment and Gender Information', aimed to deal with the lack of data on the gender and environment or climate change nexus and to inform more robust gender-responsive environmental policymaking and programming.

3.3.1.2 Gender and Climate Change in NDCs: WEDO GCT Analyses

The section 'Country Profiles' of the Gender Climate Tracker, also including an interactive map of the world's Countries, is dedicated to the analysis of NDCs commitment with women's human rights and the gender and climate

⁷¹ FCCC/CP/2015/10/Add.1, 1/CP.21, Paris Agreement, Articles 3, 4, 6, 13, 14.

⁷² FCCC/PA/CMA/2023/16/Add.1, 1/CMA.5, Outcome of the First Global Stocktake.

⁷³ FCCC/CP/2024/5 (n 66).

change nexus.⁷⁴ Two important limitations shall be noted. Firstly, the gender analysis mainly relies on what the Parties are invited but not mandated to include, such as the optional adaptation component or additional information on national circumstances, scope and coverage, planning processes, assumptions and methodological approaches. In the second place, commitments included in the NDCs – as well as in the planning tools object of Paragraphs 3.3.2 and 3.3.3 – may not materialise at the national level, so their gender analysis may be telling of the Party’s awareness about the gender and climate change nexus but not of remarkable advancements in the Country. Before reporting the main outcomes of GCT’s gender analysis of the submitted and revised NDCs, it is relevant to mention the methodology that the researchers of the WEDO’s platform employed, as it inspired and informed the methodological choices for the study of the National Gender and Climate Change Plans conducted in this research process and illustrated in Paragraph 3.3.3. The GCT analysis of gender integration in NDCs not only investigated whether gender was mentioned, but also the nature of the reference, including the context for the reference – mitigation, adaptation, etc. –, women’s positioning – as vulnerable group, or as beneficiaries of projects, or as agents of change, or as stakeholders. Moreover, the GCT analysis considered the inclusion of gender-responsive budgeting, the choice of a participatory planning process for the NDC, and the provision of a mechanism for monitoring or implementing the NDC. The key observations with regard to the NDCs submitted in 2016 were:

- 64 of the 190 analysed NDCs included a reference to women or gender, and all these belonged to UNFCCC non-Annex I Countries;
- looking at the context, women or gender were most commonly mentioned in relation to adaptation or as cross-cutting;
- looking at women’s positioning, 34 NDCs refer to women as a vulnerable group;
- looking at gender-responsive budgeting, only Ghana and Jordan included it;

⁷⁴ Gender Climate Tracker, Country Profiles
<<https://genderclimatetracker.org/gender-ndc/introduction>> accessed 11 December 2024.

- Liberia and Peru identified legislation specifically developed to address the gender and climate change nexus.⁷⁵

The key observations with regard to the NDCs submitted, newly or updated, in 2020 were:

- 7 of the 14 updated analysed NDCs included a reference to women or gender;
- 4 of the 4 new NDCs, the second for their respective Parties, included a reference to women or gender;
- Norway was the first Annex I country to include a reference to women or gender.⁷⁶

The key observations with regard to the NDCs submitted, newly or updated, in 2021 were:

- Parties increasingly recognised the role of gender equality in their NDCs and references continued to vary from brief to substantive and principled;
- Several countries only mentioned their gender commitments in response to prompts outlined by COP24, also thanks to the advocacy work of the Women & Gender Constituency;
- the majority of the new or updated NDCs described a design process including inputs from stakeholders such as youth, Indigenous People, and civil society;
- over three-quarters detailed an implementation and monitoring process.

WEDO, in the attempt to investigate deeper whether and how the commitment in the NDCs transformed into national advancements, elaborated an analysis of Parties' instruments, plans and actions supporting

⁷⁵ Gender Climate Tracker, Quick Analysis
<<https://genderclimatetracker.org/gender-ndc/quick-analysis>> accessed 11 December 2024.

⁷⁶ WEDO, 'Brief: Gender Equality and Women's Empowerment in Updated and New Nationally Determined Contributions (NDCs)' (WEDO 2020).

the integration of gender equality principles and practices.⁷⁷ This study assessed whether and to which extent State Parties integrated gender in national climate and sustainable development initiatives since the submission of the first Intended NDC, until 2020.⁷⁸ The study divided the States into three clusters: active engagement where evidence was available and accessible about gender integration in the NDC and in national climate measures; initiating engagement where evidence was available and accessible about the first steps taken towards gender integration; limited engagement if insufficient information was available or accessible. 168 of 196 Countries provided accessible documentation and 56% of these were considered as engaged, either actively (51 Countries) or initiating (44 Countries). Interestingly, little correlation was found between Countries with appointed National Gender and Climate Change Focal Points and the availability of information.⁷⁹

3.3.1.3 Gender and Climate Change in NDCs: IUCN EGI Analysis

IUCN analysis considered the updated NDCs in 2021, similarly to the GCT mentioned in Paragraph 3.3.1.2. It is worth remarking some different insights. Even the trend of gender integration in NDCs was deemed as positive, IUCN highlighted how 'roughly a quarter of the NDCs are entirely gender-blind'.⁸⁰ Looking at regional distribution, the analysis found that 'all the updated NDCs from Latin America and the Caribbean and nearly all from sub-Saharan Africa include mentions of gender and/or women, followed by Asia and the Pacific'.⁸¹ The authors also investigated deeper into the different responsibilities for GHG emissions of the State Parties, outlining how, at the time of the analysis, 'Parties without gender inclusion emitted, on average, more than three times the amount of GHGs as the 69 Parties that included gender' and that 'some of the world's highest emitters – the United States, Russia, Japan, South Korea, Australia – do not include gender in their

⁷⁷ WEDO, 'Spotlight on Gender in NDCs: an Analysis of Parties' Instruments, Plans and Actions Supporting Integration of Gender Equality Principles and Practices' (WEDO 2020).

⁷⁸ Intended Nationally Determined Contributions (INDCs) were requested to the UNFCCC Parties in the process towards the adoption of the Paris Agreement.

⁷⁹ For reference, Italy was classified in the cluster of limited engagement. Since the study, a National Gender and Climate Change Focal Point has been nominated.

⁸⁰ IUCN, 'Gender and National Climate Planning. Gender Integration in the Revised Nationally Determined Contributions' (IUCN 2021).

⁸¹ *ibid* 9.

NDCs'.⁸² The authors noted an increase in the number of NDCs characterizing women as stakeholders and as agents of change, suggesting 'progress in shifting the dominant narrative of women being a homogenised vulnerable group toward being considered active participants in climate action and solutions'.⁸³ The Latin America and Caribbean region counted the highest percentage of NDCs characterising women as vulnerable (44%), as well as agents of change (33%). Some Countries mentioned different characterisations, such as 'natural resource managers', 'holders of traditional ecological knowledge', and 'participants in non-traditional labor opportunities'.⁸⁴ Some elements in the NDCs were considered as 'gender-responsive components' and inspired the analysis in Paragraph 3.3.3: gender analysis, sex-disaggregated data, gender stakeholders in the elaboration or implementation of the NDC, gender objectives, gender actions and activities, gender-responsive budgeting, gender indicators. The NDCs of Cambodia and Moldova met all these criteria.⁸⁵ Only 6 NDCs out of 89 included GBV considerations related to national legislation and policies, natural resource management and climate change impacts: Argentina, the Dominican Republic, Guinea, Seychelles, Sierra Leone and Somalia.⁸⁶ Looking at gender considerations across sectors, inclusion is relatively low and agriculture is one of the main priority sectors followed by energy, health, water and forestry – a comparable outcome emerged from the analysis in Paragraph 3.3.3.

3.3.2 Gender and Climate Change in National Adaptation Plans

3.3.2.1 *Brief Introduction to the NAP Process*

While an adaptation component can be added to the NDC, and any UNFCCC State Party may submit to the Secretariat their National Adaptation Plan, with Decision 1/CP.16 the COP established a dedicated process for LDCs and invited other developing Countries to refer to it.⁸⁷ The NAP process is aimed to reduce vulnerability to the impacts of climate change by building adaptive capacity and resilience and to facilitate the integration of climate change

⁸² IUCN (n 80) 10.

⁸³ *ibid* 13.

⁸⁴ *ibid* 23.

⁸⁵ *ibid* 27.

⁸⁶ *ibid* 42.

⁸⁷ FCCC/CP/2010/7/Add.1, 1/CP.16, §§15-18.

adaptation into relevant new and existing policies, programmes and activities.⁸⁸ Among the guiding principles of the process, Decision 5/CP.17 included gender-sensitive approaches and the consideration of vulnerable groups, communities, and ecosystems. Support for formulation and implementation is provided through the Green Climate Fund, the LDCs Fund, and the Special Climate Change Fund, while technical support is provided by relevant UNFCCC constituted bodies and UN organisations.⁸⁹ The National Adaptation Plan Global Network was established in 2014 at COP 20 in Lima, initiated by a group of adaptation practitioners, and supports developing countries to advance their NAP processes. At present the NAP Global Network connects over 2700 participants from more than 170 Countries working on national adaptation planning and action and has directly supported more than 60 Countries.⁹⁰

3.3.2.2 *Gender and Climate Change in NAPs*

The latest UNFCCC Secretariat's Report on the implementation of gender-responsive climate policies registered that 'gender was referenced in 95.0 per cent of NAPs'.⁹¹ The NAP Global Network regularly elaborates reports on gender-responsive NAP processes, to track process and provide supported Countries with best practices. In the latest report, the network systematically reviewed NAP documents submitted to the UNFCCC and observed some progress:

- more Countries referred to gender equality and gender-responsive approaches, along with inclusion and Human Rights;
- the potential of women as agents of change in adaptation is increasingly recognised;
- gender analysis is increasingly employed to inform adaptation planning;
- gender is increasingly considered in institutional arrangements for adaptation, with competent ministries taking part in coordination mechanisms or in the implementation of specific actions;

⁸⁸ FCCC/CP/2011/9/Add.1, 5/CP.17, §1.

⁸⁹ LDC Expert Group, 'The National Adaptation Plan Process. A Brief Overview' (UNFCCC 2012).

⁹⁰ NAP Global Network <<https://napglobalnetwork.org/>> accessed 11 December 2024.

⁹¹ FCCC/CP/2024/5 (n 66) §48.

- the need for capacity-building on gender and adaptation is increasingly recognised, focusing both on governmental and non-governmental actors;
- gender considerations are increasingly integrated into monitoring and evaluation, with dedicated indicators and the collection of disaggregated data.⁹²

According to the Global Network, this data would demonstrate that the NAP process is an appropriate mechanism for ensuring that climate action addresses gender and social inequalities and that this potential ‘comes from their participatory, cross-sectoral, and iterative nature, as well as the fact that they are focused on medium- and longer-term planning’.⁹³

3.3.3 National Gender and Climate Change Plans

3.3.3.1 Comparative Analysis: Methodology

The Gender Climate Tracker platform by WEDO also includes a section hosting a collection of National Gender and Climate Change Plans (the Plans), defined as ‘various approaches to efforts to plan at the nexus of gender and climate change’.⁹⁴ The planning acts, currently from 23 Countries (see Figure 3.3), were adopted from 2010 until 2024, and represent a wealth of insights on how the gender and climate change nexus is framed, operationalised and anchored in the different national contexts and legal systems. A comparative analysis was therefore considered crucially important in addressing the first working hypothesis in this research work. Planning documents from Costa Rica and Uruguay which are part of the collection on the GCT platform were considered as non-homogenous to the others and therefore excluded from the analysis: respectively, the first is merely functional to the national REDD+ initiatives, while the second appeared as only including the groundwork towards the elaboration of a National Gender and Climate Change Plan. Table 3.1 shows how the 21 Plans were adopted in UNFCCC Non-Annex I Countries, 8 of which are classified as LDCs and 4 of which are classified as Small Island Developing

⁹² NAP Global Network, ‘Gender-Responsive National Adaptation Plan (NAP) Processes: Progress and Promising Examples. Synthesis Report 2021–2022’ (NAP Global Network 2022).

⁹³ *ibid.*

⁹⁴ Gender Climate Tracker, Country Profiles, National Gender and Climate Change Plans <<https://genderclimatetracker.org/national-plan>> accessed 9 December 2024.

Table 3.1 National Gender and Climate Change Plans, Countries' list and information. Author's elaboration.

Country	UN Regional Group	UNFCCC Party	Paris Agreement Ratification year	National G&CC Plan year
Jordan	Asia Pacific	Non-Annex I	2016	2010
Egypt	Africa	Non-Annex I	2017	2011
Haiti	LAC	Non-Annex I, LDCs and SIDS	2017	2011
Liberia	Africa	Non-Annex Im LDCs	2018	2012
Nepal	Asia Pacific	Non-Annex I	2016	2012
Bangladesh	Asia Pacific	Non-Annex I, LDCs	2016	2013
Tanzania	Africa	Non-Annex I, LDCs	2018	2013
Cuba	LAC	Non-Annex I, SIDS	2016	2014
Mozambique	Africa	Non-Annex I, LDCs	2018	2014
Peru	LAC	Non-Annex I	2016	2015
Zambia	Africa	Non-Annex I, LDCs	2016	2016
Dominican Republic	LAC	Non-Annex I, SIDS	2017	2018
Nigeria	Africa	Non-Annex I	2017	2020
Panama	LAC	Non-Annex I	2016	2021
Benin	Africa	Non-Annex I, LDCs	2016	2022
Jamaica	LAC	Non-Annex I, SIDS	2017	2022
Pakistan	Asia Pacific	Non-Annex I	2017	2022
Zimbabwe	Africa	Non-Annex I	2017	2022
Central African Republic	Africa	Non-Annex I, LDCs	2016	2023
Ecuador	LAC	Non-Annex I	2017	2024
Guatemala	LAC	Non-Annex I	2017	2024

Table 3.2 Information on the National Gender and Climate Change Plans by Country. Author's elaboration.

Country	Time Period	Title
Jordan	2011-2016	Programme for Mainstreaming Gender in Climate Change Efforts in Jordan
Egypt	2011-2016	National Strategy for Mainstreaming Gender in Climate Change in Egypt
Haiti	NS	Programme pour la Généralisation de l'Analyse selon le Genre dans les Efforts de Lutte Contre Les Changements Climatiques en Haiti
Liberia	NS	Climate Change Gender Action Plan for the Government of Liberia
Nepal	2012-2017	Climate Change Gender Action Plan for the Government of Nepal
Bangladesh	2013-2019	Climate Change and Gender Action Plan
Tanzania	NS	National Strategy on Gender and Climate Change
Cuba	NS	Lineamientos para la Transversalización del Tema de Género en los Esfuerzos por Mitigar y Adaptarse al Cambio Climático en Cuba
Mozambique	NS	Climate Change and Gender Action Plan (phase II) for the Republic of Mozambique
Peru	2016-2021	Plan de Acción en Género y Cambio Climático
Zambia	NS	Climate Change Gender Action Plan of the Republic of Zambia
Dominican Republic	2018-2030	Plan de Acción en Género y Cambio Climático
Nigeria	2020-2025	National Action Plan on Gender and Climate Change for Nigeria
Panama	2021-2025	Plan Nacional de Género y Cambio Climático de Panamá
Benin	2023-2025	Plan d'Actions Genres et Changements Climatiques du Benin 2023-2025
Jamaica	2022-2025	Jamaica Gender and Climate Change Strategy and Action Plan 2022-2025
Pakistan	NS	Climate Change Gender Action Plan of the Government and People of Pakistan

Country	Time Period	Title
Zimbabwe	2022-2027	Zimbabwe Climate Change Gender Action Plan
Central African Republic	2023-2030	Stratégie Nationale Genre et Changements Climatiques de La République Centrafricaine 2023-2030
Ecuador	2024-2030	Plan de Acción de Género y Cambio Climático Ecuador
Guatemala	NS	Plan de Acción de Género y Cambio Climático de Guatemala

The Plans were compared in light of the literature review (Chapter 2) and of the recognition of whether and how the gender and climate change nexus entered in, and informed International Law and policymaking (Sections 3.1 and 3.2) and other national planning acts more strictly related to the UNFCCC process (Paragraphs 3.3.1 and 3.3.2). The documents were read directly by the author without the use of any software. The analysis was simplified by the fact that the majority of the plans share the same structure, due to the pivotal contribution of the same international organisations in their development. The elements which were object of the comparison were:

- the general objective of the plan;
- how the gender and climate change nexus was framed, according to the four dimensions explored in Chapter 2, namely disadvantage, lack of participation, stereotyping and violence, differences and structural change;
- the use of an intersectional approach with respect to inequality and discrimination;
- the priority areas of the plan;
- the leading institution;
- the provision of technical support from international organisations;
- the availability and source of funding for the development of the plan;
- the legal framework the plan refers to.

3.3.3.2 Comparative Analysis: Outcomes and Discussion

The texts of the respective Plans' general objectives were collected and transformed into a word cloud (Figure 3.4) by means of an online software – WordClouds.com. In the word cloud, words appearing more times appear as

The framing of the gender and climate change nexus was evaluated based on a screening of the entire text of the documents. Particularly relevant parts of the plans were the introduction to the national context in terms both of climate change impacts and of gender equality, as well as the parts dedicated to the priority areas, and the planned actions listed. Figure 3.5 shows how the dimension of the lack of participation was the predominant one, appearing in all the documents (21), followed by disadvantage (18) and stereotyping and violence (18). The contrast is stark for the dimension of differences to accommodate and structural change, appearing in 2 plans only. This shows how in the majority of the cases, the elaboration and implementation of a National Gender and Climate Change Plan was not considered as a transformative opportunity.

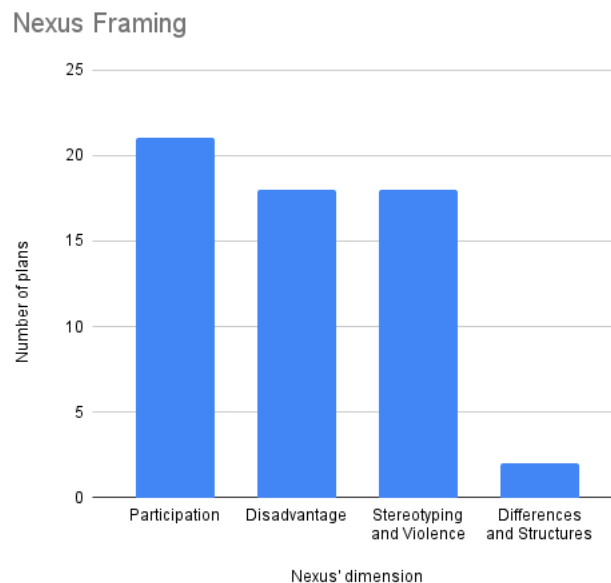


Figure 3.5 The framing of the Gender and Climate Change Nexus in the National Gender and Climate Change plans. Author's elaboration on Google Sheets.

The intersectional approach to inequalities and discrimination is adopted only in a few plans, distributed in the timeframe. In the National Strategy for Mainstreaming Gender in Climate Change in Egypt, the intersectional approach is adopted under the priority area of energy and transport:

[w]ithin that group “women” there are highly important distinctions which depend - for example - upon income, age, household, elder- and child-care responsibilities, ethnicity, employment status, degree of disability, location, class and education.⁹⁵

The Climate Change Gender Action Plan for the Government of Nepal highlights how:

[a]lthough the depth gender of discrimination varies between social groups in Nepal, all women are excluded. However, women from excluded communities face caste, ethnicity and local-based constraints in addition to the constraints imposed by their gender.⁹⁶

The Gender and Climate Change Strategy and Action Plan of Jamaica links gender-responsiveness to intersectionality, stating that ‘Gender-responsive climate action requires an intersectional approach’,⁹⁷ while the National Gender and Climate Change Strategy of Central African Republic (*Stratégie Nationale Genre et Changements Climatiques de La République Centrafricaine*) bridges gender equality to social inclusion: the Strategy

promotes an approach that links gender and social inclusion. Indeed, vulnerabilities to climate change as well as the level of adaptation capacities and access to mitigation and adaptation solutions are exacerbated by gender-related inequalities and marginalisation processes, but also other factors such as poverty level, age, ethnicity, disability or religion.⁹⁸

Guatemala’s Action Plan on Gender and Climate Change (*Plan de Acción de Género y Cambio Climático de Guatemala*) is the most advanced as far as the intersectional approach is concerned, including it, as well as social inclusion, in its general objective:

[e]nsure that national climate change commitments are implemented in an intersectional and socially inclusive manner, with a gender perspective, ensuring that women, men and indigenous peoples,

⁹⁵ National Strategy for Mainstreaming Gender in Climate Change in Egypt (2011) §139.

⁹⁶ Climate Change Gender Action Plan for the Government of Nepal (2012) §78.

⁹⁷ Gender and Climate Change Strategy and Action Plan of Jamaica (2022) 7.

⁹⁸ *Stratégie Nationale Genre et Changements Climatiques de La République Centrafricaine* (2023) §par. 2 translated from French.

local communities and young people, can access, shape and benefit from climate adaptation, mitigation and resilience-building interventions.⁹⁹

Looking at Indigenusness among the elements of identity interacting with gender and climate change impacts, few of the Plans, all in the LAC region, mention it. In Peru's Action Plan on Gender and Climate Change (Plan de Acción en Género y Cambio Climático) Indigenous women are considered as crucial actors for climate adaptation as they preserve traditional knowledge, and interculturality is listed among the guiding approaches.¹⁰⁰ Interculturality and Indigenous knowledge are mentioned in Panama's and Ecuador's Plans too.¹⁰¹ This latter and Guatemala's one refer to the UN Declaration on the Rights of Indigenous Peoples of 2007 among other sources of law in the legal framework of the plan.

⁹⁹ Plan de Acción de Género y Cambio Climático de Guatemala (2024) 49.

¹⁰⁰ Plan de Acción en Género y Cambio Climático Peru (2015) 10.

¹⁰¹ Plan de Acción de Género y Cambio Climático Ecuador (2023); Plan de Acción en Género y Cambio Climático Panama (2022).

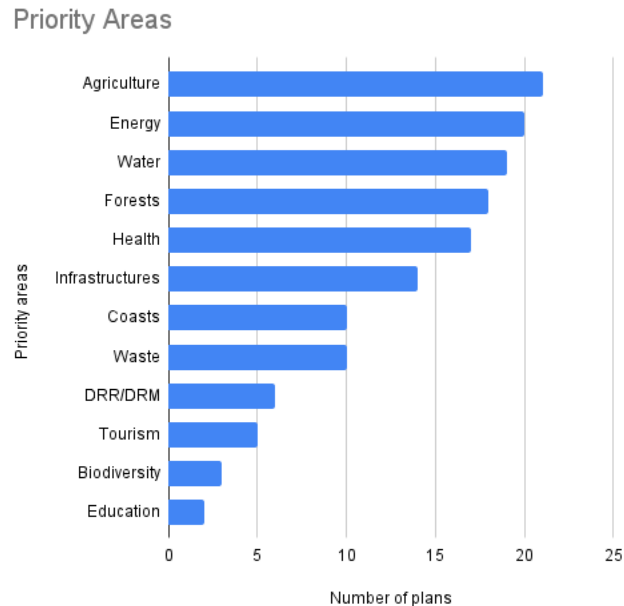


Figure 3.6 The priority areas of the National Gender and Climate Change Plans. Author's elaboration on Google Sheets.

The main priority area in the Plans (Figure 3.6) is agriculture, appearing in all the documents (21), followed by energy (20), water management (19), forestry (18) and health (17). Infrastructures, coastal and waste management appear as relevant areas too. Interestingly, notwithstanding the importance of education in addressing the gender and climate change nexus, as illustrated in Paragraph 2.1.4.2, this area is the least prioritised in the analysed Plans.

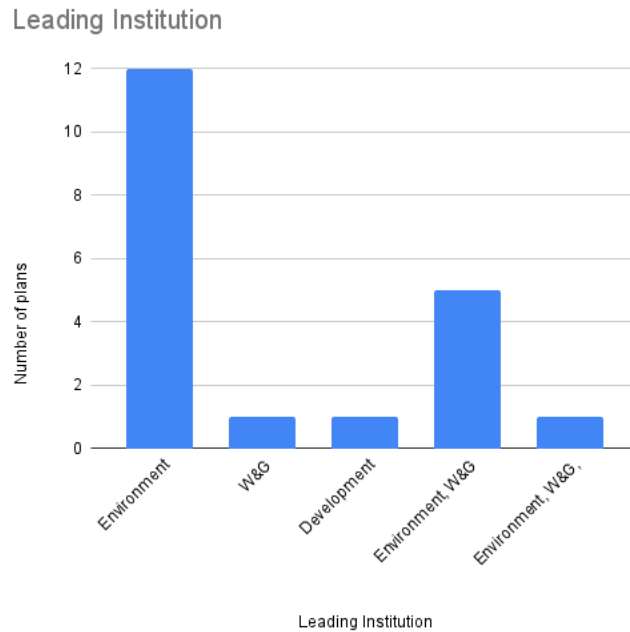


Figure 3.7 The leading institutions of the National Gender and Climate Change plans. Author's elaboration on Google Sheets.

The leading institution is most commonly the competent Ministry for the environment or climate change, or the national environmental agency (12). In a few cases (5) the leadership is shared among the Ministry of the Environment or Climate and the competent Ministry or women and gender equality. The elaboration of the Plans in many cases was supported by international organisations providing technical advice and funded by highly industrialised countries through international cooperation.

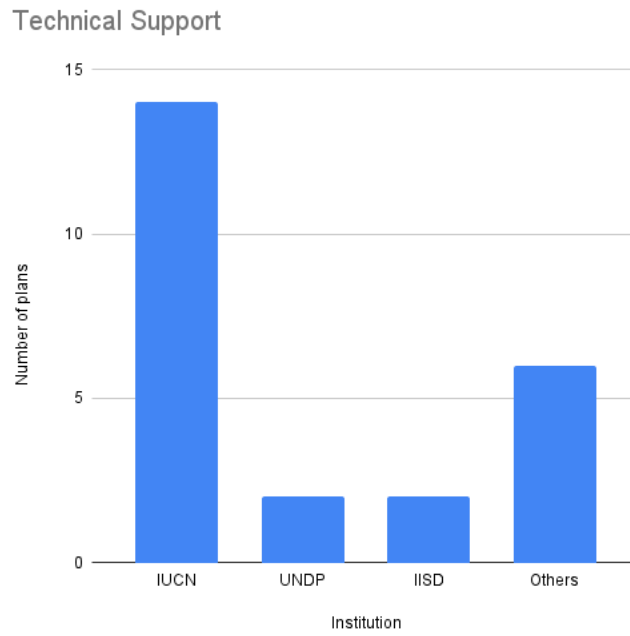


Figure 3.8 The institutions providing technical support for the elaboration of the National Gender and Climate Change Plans. Author's elaboration on Google Sheets.

The International Union for the Conservation of Nature (IUCN) provided technical support to 14 of the Plans, adjusting a standardised process (ccGAP) to the different national contexts and obtaining documents with similar structures.¹⁰² IUCN's process for developing the National Gender and Climate Change Plan, as well as the procedure followed by other supporting institutions, encompass a participatory approach involving the stakeholders since the beginning, and therefore having a first impact in terms of engagement and awareness-raising.

¹⁰² IUCN, 'The Art of Implementation. Gender Strategies Transforming National and Regional Climate Change Decision Making' (IUCN 2012).

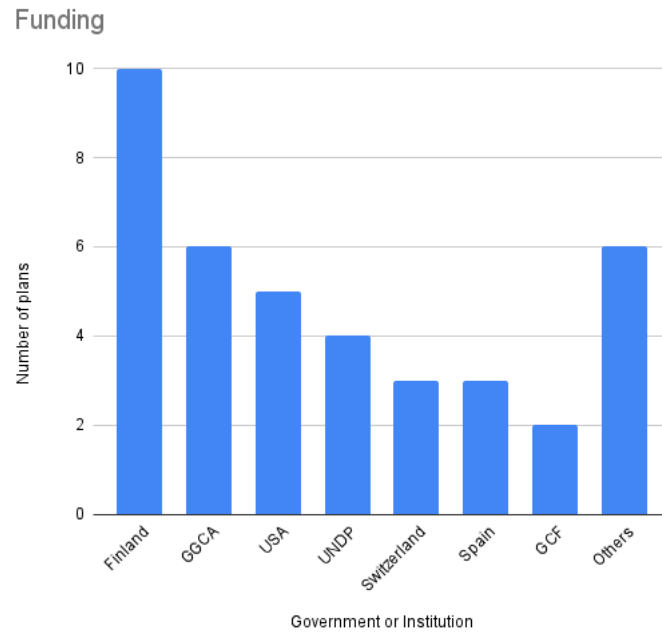


Figure 3.9 The governments and other institutions providing funding for the elaboration of the National Gender and Climate Change Plans. Author's elaboration on Google Sheets.

Looking at the sources of funding, as declared in the documents, for the elaboration of the Plans (Figure 3.9) – not covering the implementation of these – the protagonism of the Government of Finland is noticeable, supporting 10 Countries in different regions until 2016, followed by the U.S.A. mainly through the USAID agency. The Global Gender and Climate Alliance (GGCA) was launched in 2007 as a network of non-governmental and intergovernmental organisations and UN agencies and worked for the gender-responsiveness of climate change policies, decision-making, and initiatives at the global, regional and national levels. Other relevant actors are the UN Development Program (UNDP), the Governments and international cooperation agencies of Switzerland and Spain, and the Green Climate Fund (GCF), the world's largest climate fund aimed at accelerating transformative climate action in developing countries since 2010.

Legal Framework

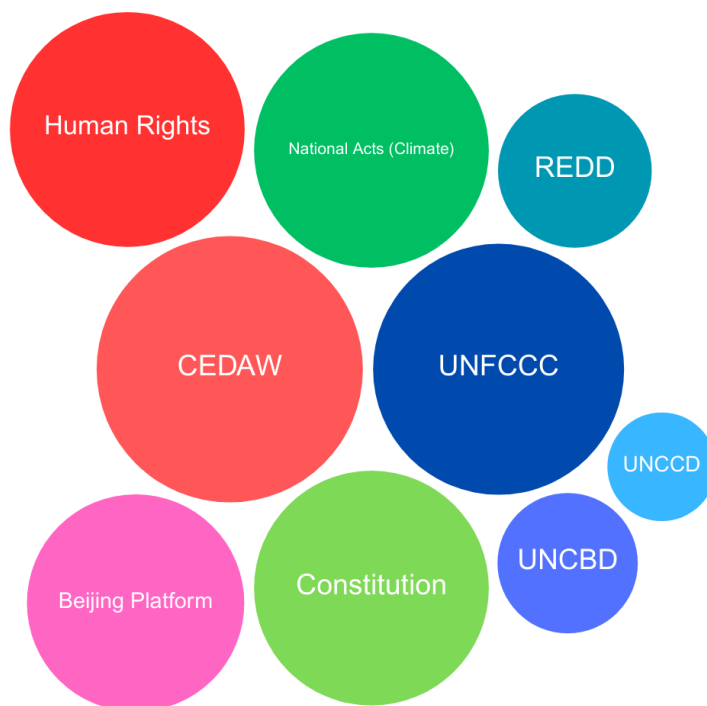


Figure 3.10 The legal framework of the National Gender and Climate Change Plans. Author's elaboration on Canva.

The analysis of the Plans' respective legal framework, as declared in the documents, revealed some shared references and a common structure. In the absence of sources of law explicitly dedicated to addressing the gender and climate change nexus, the legal framework is obtained by combining, on the one hand, International Law and national legislation and policies, and, on the other hand, on the different levels, Environmental and Climate Law with gender equality policies and Fundamental Rights. As shown in Figure 3.10, the majority of the Plans refer to the CEDAW (18) and to the UNFCCC (16) – 6 Plans out of the 11 adopted after 2015 mention the Paris Agreement. The importance of the Beijing Platform for Action, considered 'the most comprehensive and transformative global agenda for the achievement of gender equality and the empowerment of women and girls' and adopted by

189 Countries, is noticeable, too.¹⁰³ The UN Convention on Biological Diversity (UNCBD) and the UN Convention to Combat Desertification (UNCCD) appear as remarkable common references, too, as these international agreements integrated gender considerations earlier than the UNFCCC regime, notwithstanding their shared point of departure in 1992. Parties to the UNCBD agreed on gender text since 1996, at the third Conference of Parties in Argentina, and committed to gender mainstreaming in 2010.¹⁰⁴ REDD+ policies appear in many Plans as Countries are required to issue a dedicated gender strategy in the readiness phase of the programme, which is a climate change mitigation solution developed under the UNFCCC and mainly encompassing sustainable management of forests and enhancement of forest carbon stocks.¹⁰⁵ All the Plans refer to national legal tools and policies for the achievement of gender equality, such as national gender equality policies and plans, laws to contrast and prevent gender-based violence, and crucial advancements in Family Law – offering a wealth of inputs for further comparative analyses in the area of Private Law. Almost equal is the weight of national climate change acts and policies, including NDCs, NAPs, NAPAs. Interestingly, the reference to national Constitutions, and namely the provisions dedicated to equality and non-discrimination, and to regional or international Human Rights bodies of law is common to most of the Plans. The reference to national legislation and Human and Fundamental Rights is relevant, not only because ‘routine areas of law can and should be infused with climate justice and gender equality concerns’,¹⁰⁶ but also to the aim of building possible legal mobilisations. It is worth mentioning that in the Plans of Liberia, Mozambique, and Zambia, criticalities in the dynamics of legal pluralism in each Country are explicitly manifested: Customary (patriarchal) Law prevails on Statutory Law in rural areas and courts, and even Statutory Law is not sufficient in protecting women from GBV and in recognising their rights,¹⁰⁷ and ‘[c]ustomary law very often trumps legislation, especially when it comes to land ownership and

¹⁰³ Pascale Allotey and Fatima Denton, ‘Challenges and Priorities for Delivering on the Beijing Declaration and Platform for Action 25 Years On’ (2020) 396/10257 *The Lancet*.

¹⁰⁴ WEDO, *Gender Equality and the Convention on Biological Diversity: A Compilation of Decision Text* (WEDO 2012).

¹⁰⁵ Some scholars highlighted the criticalities of the REDD+ programme, see Leo Townsend and Dina Lupin, ‘Representation and Epistemic Violence’ in Melanie Altanian and Maria Baghramian (eds), *Testimonial Injustice and Trust* (Routledge 2023) 198-215.

¹⁰⁶ Albertyn and others (n 2) 14.

¹⁰⁷ *Climate Change Gender Action Plan for the Government of Liberia* (2012) §§102-110.

tenure concerns'.¹⁰⁸ This is consistent with Comparative Law scholars considerations on the legal systems of the area, where in many national contexts opposing models overlap and their way to coexist may vary: if the State denies traditional models, these may preserve their strength and be observed anyway.¹⁰⁹

¹⁰⁸ Climate Change Gender Action Plan of the Republic of Zambia (2016) §8.2.

¹⁰⁹ Antonio Gambaro and Rodolfo Sacco, *Sistemi Giuridici Comparati* (Utet 2018) 392; Werner F Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (Cambridge University Press 2006).

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CHAPTER 4



The Gender and Climate Change Nexus in Climate Change Litigation

4 THE GENDER AND CLIMATE CHANGE NEXUS IN CLIMATE CHANGE LITIGATION

4.1 THE RESULTS OF THE SEARCH THROUGH CLIMATE CHANGE LITIGATION DATABASES

To address the first working hypothesis in this research process – if there are few cases of climate change litigation in the databases dealing with the gender and climate change nexus, then the gender and climate change nexus is not a good ground for legal action – on the one hand, relevant law sources and related policies were analyzed under the lenses of the gender and climate change nexus (Chapter 3). On the other hand, relevant cases of climate change litigation were outlined, and a case study was elaborated (see Section 1.4 for the methodology).

[W]omen have resorted to various legal and political mobilization strategies, in formal and informal arenas, in national and international fora, and in their own communities to shape their own responses.¹

This research work focused on a peculiar form of legal mobilisation: climate change litigation, as defined among the Key Concepts (Section 1.1). As anticipated in the Introduction (Section 1.3), relevant keyword search in the Sabin Center's Climate Change Litigation databases resulted in a relatively small number of cases (see Table 1.2). While the research process behind this Chapter was carried out without challenging the functioning of the available climate change litigation databases, advantages and limits of these tools are explored in Chapter 5. Table 4.1 shows which cases appeared with respect to each keyword, after redundancies, as well as cases also appearing in the search related to the youth category, were eliminated (the full list of results is available as appendix).

¹ Cathi Albertyn and others, 'Introduction – Feminist Frontiers in Climate Justice: Gender Equality, Climate Change and Rights' in Cathi Albertyn and others, *Feminist Frontiers in Climate Justice* (Edward Elgar Publishing 2023) 11.

Table 4.1 Selection of cases searched by keywords in the Climate Change Litigation Databases, as of August 28, 2024. Author's elaboration.

Entry	U.S. Database	Global Database
<i>Gender</i>	-	Communication to Pakistan concerning the ongoing forced evictions and home demolitions along Karachi's waterways (nullahs)
<i>Girl/s</i>	-	-
<i>Woman</i>	-	-
<i>Women</i>	Adorers of the Blood of Christ v. FERC	Verein KlimaSeniorinnen v. DETEC and Others + Verein KlimaSeniorinnen v. Switzerland (ECtHR)
	Adorers of the Blood of Christ v. Transcontinental Gas Pipe Line Co.	Maria Khan and Others v. Federation of Pakistan and Others
		Women from Huasco and Others v. the Government of Chile, Ministry of Energy, Environment and Health
		Divest Invest Protect, Indigenous Peoples Law and Policy Program, and Women's Earth and Climate Action Network v. Credit Suisse Group
		R(Transport Action Network) v. Secretary of State for Transport (Cycling and Walking Investment Strategy)

The cases were distinguished according to two non-exclusive criteria. A case was defined as *women-led* if the applicant or claimant is one or more persons identifying – based on the available information – as women, and/or one or more legal persons representing them in court. Alternatively, or in combination, a case was defined as *gender-based* if standing and/or the merits are based, even partially, on one or more expressions of the nexus between climate change and gender inequality. Table 4.2 shows how the cases were divided into the two categories, or in the third one combining them.

**Table 4.2 Distinction of the cases according to the established criteria.
Author's elaboration.**

Women-led	Gender-based	Both
Adorers of the Blood of Christ v. FERC	Communication to Pakistan concerning the ongoing forced evictions and home demolitions along Karachi's waterways (nullahs)	Verein KlimaSeniorinnen Schweiz and Others v. DETEC and Others + Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (ECtHR)
Adorers of the Blood of Christ v. Transcontinental Gas Pipe Line Co.	R(Transport Action Network) v. Secretary of State for Transport (Cycling and Walking Investment Strategy)	Maria Khan and Others v. Federation of Pakistan and Others
Women from Huasco and Others v. the Government of Chile, Ministry of Energy, Environment and Health		
Divest Invest Protect, Indigenous Peoples Law and Policy Program, and Women's Earth and Climate Action Network v. Credit Suisse Group		

To bring clarity to how the criteria were applied, it is worth going briefly through the cases and their classification. Starting with the women-led cases, in *Adorers of the Blood of Christ v. FERC* and in *Adorers of the Blood of Christ v. Transcontinental Gas Pipe Line Co.*, the Adorers of the Blood of Christ is a religious order of Roman Catholic women. Both of the legal actions brought by the order and its individual members tried to oppose the construction of a pipeline across the property they own in Pennsylvania, U.S., at first by challenging the federal authorisation to the infrastructure and then seeking damages, interestingly for the burden to the 'exercise of their deeply-held religious beliefs to use and protect their land as part of God's creation'.² In *Women from Huasco and Others v. the Government of Chile, Ministry of Energy, Environment and Health*, Women from Huasco is a group of women from the city of Huasco in Chile, leading the constitutional action of the city's

² *Adorers of the Blood of Christ v. Transcontinental Gas Pipe Line Co.* [2020] U.S. District Court Eastern Pennsylvania, complaint 2.

residents against the State of Chile, aimed at the shutdown of two units of the thermoelectric power plant. The functioning of the units allegedly affected their health and went in the opposite direction with respect to the State's commitment to decarbonisation under the Paris Agreement. In *Divest Invest Protect, Indigenous Peoples Law and Policy Program, and Women's Earth and Climate Action Network vs. Credit Suisse Group*, Women's Earth and Climate Action Network (WECAN) is a climate justice organisation created to engage and unite women worldwide in policy, advocacy, projects, trainings, and movement building. WECAN took part in the instance against Credit Suisse Group brought by different groups at the OECD U.S. National Contact Point, alleging that Credit Suisse failed to exercise leverage in its financing of an energy company based in the U.S. to prevent or reduce potential adverse impacts of its oil pipeline activities and therefore breached the OECD Guidelines for Multinational Enterprises. Under the gender-based cases, the *Communication to Pakistan concerning the ongoing forced evictions and home demolitions along Karachi's waterways (nullahs)* was issued by five UN Special Rapporteurs, among which the Working Group on discrimination against women and girls, concerning forced evictions and home demolitions in flood prone areas along Karachi's waterways. These evictions and demolitions were a measure of Pakistan's strategy for climate change adaptation, but were carried out without consultation, compensation and a rehabilitation plan, causing gendered impacts as described in the Communication.³ In *R(Transport Action Network) v Secretary of State for Transport (Cycling and Walking Investment Strategy)*, Transport Action Network (TAN) is a non-governmental organisation in the United Kingdom supporting local authorities in the transition towards sustainable mobility. TAN challenged a statement of the U.K. Government to the Parliament of March 2023 suggesting it had cut funding for active travel, inconsistently with the objectives set and not considering, among others, the duty to make cycling more inclusive for children, older people and women. Two cases were classified under both categories, women-led and gender-based: *Verein KlimaSeniorinnen v. DETEC and Others* and its development in front of the European Court of Human Rights (ECtHR) *Verein KlimaSeniorinnen v. Switzerland*, and *Maria Khan and Others v. Pakistan and Others*. The choice of the case study fell on the *Verein KlimaSeniorinnen* actions, as the proceedings were completely developed, the amount of information available

³ *Communication to Pakistan concerning the ongoing forced evictions and home demolitions along Karachi's waterways (nullahs)* [2022] AL PAK 7/2022 4-5.

was remarkable, and the mobilisation was grounded in a close geographic location allowing for field investigation. The case study is composed of a detailed illustration of the proceedings (Paragraphs 4.2.1 and 4.2.2), of a comparative analysis, including brief considerations about the legal mobilisation based on the academic literature on Legal Opportunity Structures (Paragraph 4.2.3). All these inquiries paid special attention to the gendered dimension of the case and focused less on its features of *government framework case*,⁴ being this dimension most frequently under the scholars' and the media's spotlights. The case *Maria Khan and Others v. Pakistan and Others*, still pending and concerning which a small amount of information was available online, was included in the comparative analysis with respect to the integration of the gender and climate change nexus in the legal strategy. However, it is worth pointing out that cases excluded from deeper investigation in this research process may be the object of further research. Cases appearing in the databases under both the youth-related labels the women and gender ones may be of interest for research on the interaction between these categories of identity, either in terms of legal strategy or of the broader mobilisation. Similarly, cases classified as women-led only may be of interest for research on the gender and climate change nexus in terms of agency and participation.

⁴ Joanna Setzer and Catherin Higham, 'Global Trends in Climate Change Litigation: 2024 Snapshot' (Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science 2024) 26.

4.2 THE CASE STUDY: VEREIN KLIMASENIORINNEN V. SWITZERLAND

4.2.1 National Proceedings

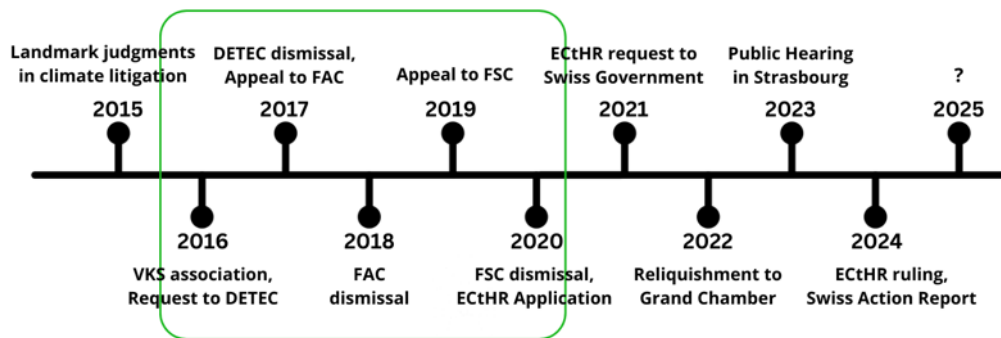


Figure 4.1 Timeline of the Verein KlimaSeniorinnen v. Switzerland climate case, highlight of the national proceedings. Author's elaboration on Canva.

4.2.1.1 The Association, the application, and the dismissal

The Association of Senior Women for Climate Protection Switzerland (Verein KlimaSeniorinnen Schweiz, in German, the Association from here on in the text) was created in 2016, composed of over-64-year-old women living in Switzerland and counting 40 members on the inaugural meeting on August 23 that year. According to its Statute,

The association aims to promote and implement effective climate protection in the interest of its members, all of whom are older women who represent a population group that is particularly affected in terms of their health by global warming. The association is devoted to ensure that greenhouse gas emissions in Switzerland are at least reduced enough to prevent dangerous, human-induced climate change on the part of Switzerland. [...] The association thus commits itself to effective climate protection in the interest of older women, but also in the interest of the general public and of future generations. The association pursues neither earnings nor self-help purposes.⁵

On November 25, 2016, the Association, counting at that time 539 members, together with four individual applicants – who were members too – submitted

⁵ Verein KlimaSeniorinnen Schweiz, Statute, Article 2.

a request to the Federal Council, the Federal Department of Environment, Transport, Energy and Communication (DETEC), the Federal Office of Environment (FOEN) and the Federal Office of Energy (SFOE). The Applicants claimed that the Federal Respondents did not fulfill their obligations under the Federal Constitution – Articles 10, 73 e 74 –⁶ and the European Convention on Human Rights (ECHR) – Articles 2 and 8 –⁷ as the national objectives for GHG emissions reduction were not in line with the achievement of the Paris Agreement goal of keeping global warming well below 2°C above pre-industrial levels. The applicants alleged being ‘members of a “most vulnerable group” to the effects of climate change’⁸ and in particular to heat waves, which are becoming more frequent and intense in the European continent due to climate change, because of their age and gender – and specific health conditions in the case of the individual applicants. This was supported by scientific evidence ‘of substantially increased health risk for older women whose life and health are more severely impacted by periods of heatwaves than the health of the rest of the population’,⁹ along with medical certification and notes on the Applicants’ personal experiences. The particular exposition to the risks exacerbated or induced by climate change, and therefore allegedly caused by the unlawful omissions of the Respondents, would have grounded their legitimate interest in the legal action. Among the ‘[p]articuliarised effect of failure in emission reductions on the lives and health of the Applicants’, the latter listed, during hot spells, premature death, adverse health conditions – such as as heart and circulatory problems, high blood pressure, increased heart and respiratory rates, dehydration, hyperthermia, exhaustion, fainting, heat cramps and heat stroke –, and restrictions to their mobility and social interactions.¹⁰ The Applicants argued that global warming created a ‘new vulnerable population group of older women’, and that ‘[i]n such a case, the state is subject to a special obligation to protect’: ‘[s]hould the climate sector be an area in which state protection duties apply, like everywhere else, then

⁶ Right to Life and Personal Freedom, Right to Freedom of Movement, Prohibition of Torture and Death Penalty (Article 10 Swiss Constitution); Principle of Sustainable Development (Article 73 Swiss Constitution); Protection of the Environment (Article 74 Swiss Constitution).

⁷ Right to Life (Article 2 ECHR); Right to Private and Family Life (Article 8 ECHR).

⁸ *Verein KlimaSeniorinnen Schweiz and Others v. DETEC and Others* [2017] DETEC, request.

⁹ *Ibid* § 1.

¹⁰ *Ibid* §§ 90-91.

this applies at the least for older women'.¹¹ More attention to the strategic formulation of the application was paid in the comparative analysis (Paragraph 4.2.3), while here is worth mentioning that the Applicants requested for a ruling pursuant to Article 25a of the Swiss Administrative Procedure Act and Articles 6 and 13 ECHR,¹² asking the authority of first instance several legal remedies all revolving around the adoption of appropriate climate mitigation measures by the Respondents: the correction of the insufficient 2020 20% climate target, the end of the omission of mitigation measures necessary to achieve the suggested 25% target, the correction of the draft climate target by 2030, and the adjustment of insufficient mitigation measures to achieve the 2020 20% target. Alternatively, the Applicants asked the confirmation of the unlawfulness of the omissions. On April 26, 2017, DETEC, as first instance authority, dismissed the KlimaSeniorinnen's request, on mere procedural grounds. The authority did not recognise any affected individual legal position, and opposed to an attempt of *actio popularis* in the general interest, which the Swiss legal system, as many others in Europe,¹³ does not admit:

The general purpose of the applicants' request is a reduction of the atmospheric CO₂ concentration. Thus, their goal is to reduce CO₂ emissions not only in the applicants' immediate surroundings, but worldwide. [...] For this reason, their requests cannot be the object of a ruling in accordance with Article 25a APA. Lawmaking procedures are not determined by the APA.¹⁴

4.2.1.2 *The appeal to the Federal Administrative Court*

The Association and the individual applicants filed an appeal against DETEC's decision to the Federal Administrative Court on May 26, 2017, when the Association counted 772 members. On December 7, 2018, the Federal Administrative Court (FAC) dismissed the appeal on mere procedural grounds, considering that the impact of climate change on the appellants cannot be distinguished from the impact on all the citizens. The

¹¹ Request to DETEC (8) § 130.

¹² Right to a Fair Trial (Article 6 ECHR); Right to an Effective Remedy (Article 13 ECHR).

¹³ Ex multis: MILIEU Environmental Law and Policy, *Summary Report on the Inventory of EU Member States' Measures on Access to Justice in Environmental Matters* (2007).

¹⁴ *Verein KlimaSeniorinnen Schweiz and Others v. DETEC and Others* [2017] DETEC, order.

FAC examined whether the appellants were particularly affected, considering this as the 'boundary to inadmissible *actio popularis*' to be 'determined separately for each area of law'.¹⁵ In the jurisprudence dedicated to environmental cases, the FAC outlined some relevant case-law and in particular it referred to the Federal Supreme Court decision regarding the supervision of the Mühleberg nuclear power plant: the Court stated, in that case, that the criterion of being particularly and personally affected was fulfilled because of a specific spatial proximity to the power plant. This requirement particular proximity was upheld as the CO₂ Act, the most recent piece of legislation in Switzerland dedicated to climate change at that time, did not introduce a special right to appeal. The FAC briefly reported possible impacts of climate change on 'people, animals and plants' in Switzerland, and established this scientific evidence demonstrated the group of over-75 women was not particularly affected and therefore the appellants had not sufficient interest worth protecting under Article 25a APA:

it cannot be said from the perspective of the administration of justice, with a view to case law as described above, that the proximity of the appellants to the matter in dispute – climate protection on the part of the Confederation – was particular, compared with the general public.¹⁶

The FAC also excluded the applicability of Art. 6 (1) ECHR – and consequently of Article 13 ECHR – as this requires a genuine dispute of a serious nature, with decisive outcomes for the claim, while 'a reduction of the general risk of danger cannot be achieved directly through the actions demanded'.¹⁷

4.2.1.3 *The appeal to the Federal Supreme Court*

On January 21, 2019, the Association and the individual appellants filed an appeal against the decision of the Federal Administrative Court at the Federal Supreme Court (FSC). The main claim was that the court of previous instance did not sufficiently determine the facts of the case, and in particular the FAC would have failed in the review of the crucial question: '*whether and how the appellants, as older women, are affected by climate change-induced*

¹⁵ *Verein KlimaSeniorinnen Schweiz and Others v. DETEC and Others* [2018] FAC A-2992/2017 § 7.

¹⁶ *Ibid* § 7.3.

¹⁷ *Ibid* § 8.

heat waves in their health and their lives, also in comparison with the general public.¹⁸ The appellants clarified the legally relevant facts of the case, and presented updated scientific evidence to support them: that Switzerland must reduce its GHG emissions to the aims of climate protection, that the measures in place were insufficient, and that heat waves result in excessive deaths and illnesses among older women especially. The appeal to the FSC was limited to procedural aspects: on the one hand, the fulfilling of the requirements for the case to fall under Article 25a APA and Articles 6 and 13 ECHR, with respect to Article 10 of the Swiss Constitution and Articles 2 and 8 ECHR; on the other hand, the refusal of the right to be heard as enshrined in Article 29 of the Swiss Constitution. According to the appellants, the FAC violated Article 25a APA as it incorrectly and arbitrarily decided they were affected by climate change as the general public is,

without determining the facts of the case, without hearing the appellants' pleadings, without reviewing the potential infringements in positions concerning their fundamental rights and contrary to case law.¹⁹

According to the appellants, the FAC should have conducted an assessment specifically tailored to climate change issues, based on epidemiological evidence and not on spatial proximity as in the mentioned case-law. Concerning the invoked Convention law, FAC violated Article 6 ECHR as it reviewed the connection between the appellants' legal requests and GHG emissions instead of the connection between the GHG emissions and the state's obligation to protect as stated by Article 10 of the Swiss Constitution. Moreover, Article 13 ECHR was violated as FAC could have examined its applicability also in the case Article 6 ECHR was rejected. On May 5, 2020, the Federal Supreme Court dismissed the appeal, confirming the decisions of the inferior courts. The FSC refused the appellants' main argument, stating that an authority can limit its reasoning to the party's points which are essential for the decision, to the extent that the reasons are comprehensible and thus the matter can be appealed. DETEC's and FAC's statements of reasons satisfied these requirements.²⁰ Concerning the application of Article 25a APA, the measures demanded by the appellants 'have the character of

¹⁸ *Verein KlimaSeniorinnen Schweiz and Others v. DETEC and Others* [2020] FSC 1C_37/2019, appeal § 15.

¹⁹ *Ibid.*

²⁰ *Verein KlimaSeniorinnen Schweiz and Others v. DETEC and Others* [2020] FSC 1C_37/2019.

preparatory work for legal provisions at the level of laws or ordinances’, while such proposals can be submitted ‘by way of democratic participation’, being political and fundamental rights available at the constitutional level.²¹ The Supreme Court established the absence of an exclusive causal effect between the alleged omissions and the violation of the claimed rights, at least not with the intensity required by the provisions invoked. Indeed, according to the IPCC Special Report of 2018, global warming will reach 1.5°C around the year 2040, not threatening at the time of the dispute the life (Article 10 of the Swiss Constitution and Article 2 ECHR) and private and family life (Article 8 ECHR) of the appellants. Consequently, Articles 6 and 13 ECHR did not apply as the appellants were not affected in a legally relevant way in their right. Overall, the FSC excluded the possibility to use the tools for individual legal protection invoked by the appellants in the field of climate protection: ‘even though their concern is readily comprehensible given the possible consequences of insufficient implementation of the Paris Climate Agreement for older women which they highlighted, their appeal must be rejected’.²²

4.2.2 European Court of Human Rights Proceeding

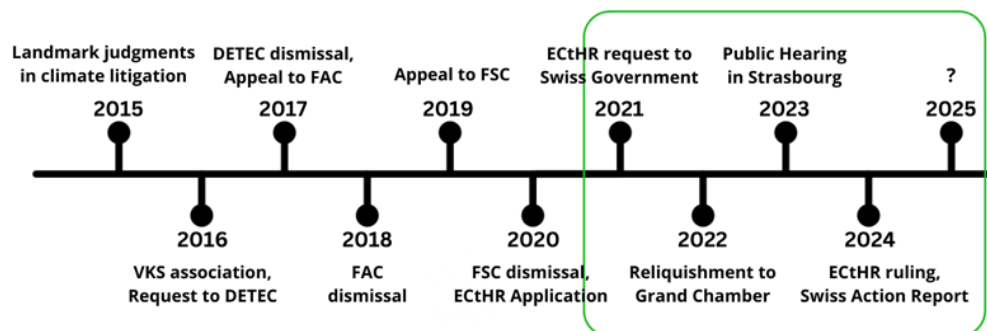


Figure 4.2 Timeline of the Verein Klima Seniorinnen v. Switzerland climate case, highlight of the ECtHR proceeding. Author's elaboration on Canva.

The proceeding of the Verein KlimaSeniorinnen's case in front of the European Court of Human Rights saw several steps from 2020 until late 2024, being first assigned to a Chamber and then relinquished to the Grand Chamber, and including a – not so usual – public hearing. This analysis will focus on the most remarkable steps and related documents submitted by the

²¹ Ibid § 4.3.

²² Ibid § 8.

parties or released by the Court, and namely: the application, the relinquishment to the Grand Chamber, the most relevant questions the Court posed to the parties, the public hearing, the judgment, and how the Swiss Parliament welcomed it.

4.2.2.1 *The Application to the ECtHR*

On December 1, 2020, the Association and the four individual applicants filed an application to the European Court of Human Rights in Strasbourg, concerning the violation of their human rights to life (Article 10 Swiss Constitution, Article 2 ECHR) and to private and family life (Article 8 ECHR) which are directly affected by climate change while the Respondent, though aware, did not take all the necessary measures to protect them: 'Respondent failed to do its share to prevent a dangerous global temperature increase and to establish a corresponding legislative and administrative framework in line with international climate law and best available science'.²³ Furthermore, the Applicants were denied the protection owed under Articles 6 and 13 ECHR. The Applicants clearly stated that they are 'part of a vulnerable group due to their age and gender', this being supported by scientific evidence to which the Respondent too referred to in the national proceedings; the denial of victim status to members of such a vulnerable group would entail that almost nobody would be entitled to it in front of the climate crisis and its impacts on human rights. The Applicants claimed the assessment of the FAC on their peculiar vulnerability was contrary to the best available scientific evidence, while the conclusion of the FSC was similarly arbitrary, being both 'scientifically and legally wrong'.²⁴ Instead, the available scientific data and International Climate Law suggested that a similar case could not be dealt with employing the same legal tools as for environmental harm cases, but Articles 2 and 8 ECHR, which are 'the vehicles by which environmental damage that adversely affects life and health can be brought before the Court' could be interpreted to avoid a vacuum in protection.²⁵ In conjunction with Articles 2 and 8 ECHR, Article 13 ECHR, the right to an effective remedy, was violated 'since no national authority examined the substance of their complaint'.²⁶ It is noteworthy that the Applicants mentioned a recommendation of the CEDAW Committee, dedicated to the protection of

²³ *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [2024] ECtHR 53600/20, application AS section 1.3.

²⁴ *Ibid* AS §§ 46-47.

²⁵ *Ibid* AS § 37.

²⁶ ECtHR application (23) AS section 3.3.

older women's human rights, urging the States parties to 'facilitate the participation of older women in decision-making for climate change mitigation and adaptation'.²⁷

4.2.2.2 *Priority Status and Relinquishment to the Grand Chamber*

On March 26, 2021, the ECtHR communicated the application was accepted and the Government of Switzerland was requested to submit a statement of facts together with their observations. Furthermore, the case was given the priority status by the President of the Section to which the case had been allocated, based on Rule 41 of the Rules of the Court, according to which the Court is to have regard to the importance and urgency of the issues raised in deciding the order in which cases are to be dealt with. Almost one year later, on April 29, 2022, the Chamber of the ECtHR to which the case had been allocated had relinquished jurisdiction in favour of the Grand Chamber of the Court, based on Article 30 ECHR.²⁸ At that time, several climate cases were pending in front of the ECtHR: three of them were assigned to the Grand Chamber in the same composition, while the examination of the other six was adjourned until the rulings on the first ones, which were therefore expected to clarify the ECHR obligations around climate change for the first time in its jurisprudence. The three cases were the Verein KlimaSeniorinnen one, *Carême v. France*, and *Duarte Agostinho and Others v. Austria and Others* – also known as the Portuguese Children's Case.

4.2.2.3 *The Court's Questions to the Parties*

On September 12, 2022, the judges of the Grand Chamber decided that the due parties' submissions and observations, to be handed in on December 5, 2022, should have answered some specific questions. Among these, it is noticeable that the Court asked whether the Applicants, both the Association and the individual applicants, could be regarded as existing or potential victims according to Article 34 ECHR and the related jurisprudence. In particular, the judges asked whether the individual applicants belonged to 'a

²⁷ CEDAW/C/GC/27, General Recommendation No. 27 on Older Women and Protection of Their Human Rights § 35.

²⁸ Article 30 ECHR: 'Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber.'

specific segment of the population that is particularly affected by climate change' due to their *age*, without mentioning the intersection of this latter with *gender*.²⁹ Moreover, the Grand Chamber asked the parties to illustrate 'what is the relevance of the concept of harmonious interpretation of the Convention and other instruments of international law', considered that the ECHR and its protocol do not include any specific provision concerning the protection of the environment. The relevant International Law instruments explicitly mentioned were: the UNFCCC, the Paris Agreement, the International Law Commission's Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 – the so-called the 'European Climate Law', and the UN General Assembly Resolution A/76/L.75 of 26 July 2022 on 'The human right to a clean, healthy and sustainable environment'.³⁰ Among these, the Paris Agreement (see Paragraph 3.2.3), the European Climate Law, and the UNGA Resolution integrate, though with a limited scope, gender concerns. Further questions were posed to the parties to be addressed in their oral submissions at the hearing before the Grand Chamber (Paragraph 4.2.2.4), mainly revolving around climate mitigation measures, such as the adoption of an overall national carbon budget, the assessment of the State's fair share, and the consequences of the negative outcome of the federal public referendum on a crucial amendment to the Swiss CO₂ Act in June 2021.³¹ The amendment was drafted to implement the Paris Agreement and integrate the 2030 NDC target in Swiss legislation as binding. On this point, it is worth noting that on June 18, 2023, the public referendum on the Federal Act on Climate Protection Objectives, Innovation and Enhancement of Energy Security, also known as the Climate Protection Act, had a positive outcome, setting a framework for net-zero emissions by 2050. In the judgment, the ECtHR declared its assessment was limited to examining the domestic legislation as it stood on the date of the decision, and namely February 14, 2024, and on which the parties had provided their submissions.³² The first CO₂ Act at the Federal level was adopted in 2011 to implement the Cancun COP decision

²⁹ *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [2024] ECtHR 53600/20, questions to the Parties (2022) n. 3.

³⁰ *Ibid* n. 5.

³¹ *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [2024] ECtHR 53600/20, questions to the Parties (2023).

³² *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [2024] ECtHR 53600/20 § 556.

in 2010. The Act recognised the 2°C global warming target and the consequent need to curb GHG emissions by 25–40% below 1990 levels by 2020, though it did not include implementation measures. The more ambitious target of the Paris Agreement was approved in June 2017, but the following climate legislation only set a target ‘below 2°C’ and allowed for 20% of GHG emissions reduction to be fulfilled by purchasing carbon credits from other Countries.³³

4.2.2.4 *Third Parties Interveners*

Along with the parties’ observations, several persons and organisations were granted leave to intervene in the written proceedings as third parties. Among these, eight Governments in the Council of Europe – including the Government of Italy –, UN High Commissioners and Special Rapporteurs, Human Rights commissions, NGOs, universities and scholars.³⁴ Among the 23 admitted third-party interveners, only few mentioned the intersectional vulnerability to climate change of elderly women – the UN High Commissioner for Human Rights; the UN Special Rapporteurs on toxics and human rights, on human rights and the environment, and the Independent Expert on the enjoyment of all human rights by older persons; the European Network of National Human Rights Institutions; the Group of academics from the University of Bern. The International Commission of Jurists and its Swiss Section referred to older persons and women separately, while the majority mentioned the age only as the trigger of the alleged peculiar vulnerability of the Applicants, neglecting gender. Interestingly, the Government of Slovakia suggested that it would be inappropriate for the Court to deduce from statistical data the existence of a particular risk to a group, and this issue emerged during the public hearing too (Paragraph 4.2.2.3).

4.2.2.5 *The Public Hearing*

On March 29, 2023, the ECtHR held a Grand Chamber public hearing of the case in Strasbourg. The Court held the hearing of *Carême v. France* on that same day, and the hearing of *Duarte Agostinho and Others v. Austria and Others* in September 2023. Oral hearings can be held based on Rule 59(3)

³³ Ursula Brunner and Cordelia C. Bähr, ‘Climate Change and Individuals’ Rights in Switzerland’ in Francesco Sindico and Makane Moïse Mbengue (eds), *Comparative Climate Change Litigation: Beyond the Usual Suspects* (Springer International Publishing 2021) 120.

³⁴ The full list is available at <<https://www.klimasenioren.ch/drittparteien-interventionen/>> accessed 31 December 2024.

of the Rules of the Court – when further clarification is needed on the facts or on relevant domestic law or practice, or when a case has a particular importance for the development of the ECHR system or under a political perspective – but are rarely scheduled.³⁵ Two of the numerous third parties were granted leave to intervene orally in the proceedings: the Government of Ireland and the European Network of National Human Rights Institutions. The hearing first saw the address of the Government of Switzerland, represented by Mr. Alain Chablais and Mr. Franz Perrez, Ambassador. The Respondent, sticking to the attempt of *actio popularis* argument, highlighted how the applicants failed in demonstrating a ‘sufficiently direct causal link between the omissions [of the State] and the harm they claim or fear from to be subjected in the future’: personal statements and medical certificates were not sufficient to prove the health damages were the result of the Government’s omissions.³⁶ Belonging to an *age* category, even if this category proved more vulnerable to climate change impacts, would not imply the status of victims. The real and imminent risk to lives was not recognised and therefore the application of Article 2 ECHR was excluded, while Article 8 ECHR could apply as climate change could impact the quality of life of individuals. However, simple protection measures against heat waves’ effects were already available to the individuals, and broader adaptation measures were under implementation in the context of the 2020-2025 adaptation plan. The Applicants, represented by Ms. Cordelia Bähr, Ms. Jessica Simor KC, Mr. Marc Willers KC, and Mr. Martin Looser, remarked scientific evidence on specific heat-related risks for the health of elderly women, due to bodily features, fulfilling the requirements for the victim status and allowing the application of Articles 2, 8, 6 and 13 ECHR. The Applicants also brought the most up-to-date scientific data from the IPCC, stating 1.5°C global warming will be reached by the first half of the 2030s or possibly late in the 2020s. This dismantled the FSC’s reasoning on the availability of time before the harm suffered by the Applicants was sufficiently serious. On the point of climate adaptation, the Applicants underlined how this did not substitute mitigation measures: on the one hand, adaptation cannot completely avoid heat-related mortality; on the other hand, adaptive limits of ecosystems and human systems may be exceeded if global warming is not

³⁵ Philip Leach, *Taking a Case to the European Court of Human Rights* (OUP 2017).

³⁶ The videorecording of the hearing is available on the ECtHR website. The Association and Greenpeace Schweiz commissioned a transcript dated May 2023, available at <<https://en.klimaseniorinnen.ch/>> accessed 31 December 2024.

slowed down. It is worth noting that the Applicants referred several times to landmark judgment in climate change litigation built on ECHR provisions and the Court's jurisprudence, and namely: the Dutch Supreme Court ruling in *Urgenda Foundation v. the Netherlands* (2019), and the German Federal Constitutional Court ruling on *Neubauer v. Germany* (2019). 'Based on ECHR case-law, apex courts in Germany and the Netherlands have applied the right to life and physical integrity to require States to cut emissions'.³⁷ A reference to the U.S. Supreme Court was made too, about too strict standing requirements. The 'international scientific consensus on the risk to life and harm of climate change, as well as the international legal consensus that these harms fall within the corpus of human rights protection' were invoked too.³⁸ Among the several questions posed by the judges of the Grand Chamber, it is noticeable that Judge Seibert-Fohr – sitting for Germany – and Judge Ravarani – sitting for Luxembourg – focused on possible concrete protection measures during heatwaves. Judge Seibert-Fohr also asked for clarification on the relationship between the plurality of peculiar vulnerabilities to climate change and standing. In this sense, Judge Zünd – sitting for Switzerland – explicitly asked whether and why *female* elders are more impacted than men. In their answer to the judges, the Applicants argued that different specific vulnerabilities to climate change might be examined separately by the Court in possible upcoming requests. An explanation was not given about the gendered differentiation of heat waves' effects, as the Applicants merely referred to the available epidemiological data brought to the Court in the written proceedings.

³⁷ Transcript (36).

³⁸ Ibid.



Figure 4.3 Photograph of the KlimaSeniorinnen members on the day of the ECtHR public hearing in Strasbourg. Taken by the author.

The oral hearing received significant media attention and had a remarkable importance in terms of recognitional justice: the members of the Association (see Figure 4.3) and their supporters eventually had a space for their claims to be heard. The KlimaSeniorinnen mobilisation to the ECtHR shares some connotations with the case *Guerra and Others v. Italy*, at the end of which, on February 19, 1998, the Court delivered a landmark judgment in its case law on environmental protection. The forty applicants were all Italian women living in Manfredonia, Foggia, close to Enichem Agricoltura company's chemical factory, classified as *high risk* under the criteria of the Seveso Directive. The applicants, members of the Movimento Cittadino Donne (Women Citizen Movement), claimed that during its production cycle the factory released dangerous substances into the atmosphere, and accidents due to malfunctioning had happened in the past. The Grand Chamber held that Article 8 ECHR was applicable and awarded each of the applicants 10 million ITL for non-pecuniary damage. The case is recalled in the *Verein KlimaSeniorinnen v. Switzerland* judgment, concerning the State's positive obligation to provide access to essential information enabling individuals to assess risks to their health and lives.

4.2.2.6 The Judgment

On 9 April 2024, the Court issued in a hearing the judgment on the *Verein KlimaSeniorinnen v. Switzerland* application, together with the rulings of

Carême v. France and *Duarte Agostinho and Others v. Austria and Others*. These latter were both declared inadmissible, the first *ratione personae* and the second due to a lack of exhaustion of domestic remedies. The *Verein KlimaSeniorinnen* judgment was therefore the leading and landmark one, composed of more than 250 pages and including a recognition of relevant materials. The judgment cannot be examined in its entirety in this space, as it would exceed the aim of the research process. A summary of the main outcomes and innovations is presented – brief considerations are dedicated to the partly concurring, partly dissenting opinion of Judge Tim Eicke too – followed by the analysis of excerpts related to the gender and climate nexus. On the outcome of the recognition of relevant international and comparative materials and of facts about climate change, mainly relying on the IPCC reports, the Court described the latter as a ‘polycentric issue’, addressed with policies which ‘inevitably involve issues of social accommodation and intergenerational burden-sharing’.³⁹ The Court declared it sought to develop a tailored approach to the Convention issues arising in the context of climate change, not merely transposing its environmental case-law, and that it took some information as *matter of fact*: ‘anthropogenic climate change exists’ and ‘poses a serious current and future threat to the enjoyment of human rights’; States are ‘aware of it and capable of taking measures to effectively address it’; ‘relevant risks are projected to be lower if the rise in temperature is limited to 1.5°C above pre-industrial levels and if action is taken urgently’ but ‘current global mitigation efforts are not sufficient to meet the latter target’.⁴⁰ The Court established that ‘the essence of the relevant State duties in the context of climate change relates to the reduction of the risks of harm for individuals’ and did not exclude its competence in climate change litigation because ‘the question is no longer whether, but how, human rights courts should address the impacts of environmental harms on the enjoyment of human rights’.⁴¹ The Court summarised the core question of the case as

how and to what extent allegations of harm linked to State actions and/or omissions in the context of climate change, affecting individuals’ Convention rights [...] can be examined without undermining the exclusion of *actio popularis* from the Convention

³⁹ ECtHR judgment (32) § 419.

⁴⁰ Ibid § 436.

⁴¹ Ibid § 379.

system and without ignoring the nature of the Court's judicial function.⁴²

Concerning Article 34 ECHR, the Court clarified separate key criteria for establishing victim status of the individual applicants and the *locus standi* of the Association, considering the peculiar context of climate change and the exclusion of the *actio popularis* from the Convention system. Victim status, a concept interpreted by the Court autonomously and irrespective of domestic concepts, was examined together with the assessment of the applicability of Articles 2 and 8 ECHR. Victims can be directly, indirectly, and potentially affected by the alleged violation of the Convention, which can be related to by a particular general legislative measure. In the environmental field and therefore in the Court's environmental case-law, applicants need to demonstrate being impacted by the environmental damage or risk and fulfill criteria such as the level of severity and the duration of the harm, or its link with the applicant. On the one hand, in the context of climate change 'everyone may be directly affected or at a real risk of being directly affected by the adverse effects of climate change'.⁴³ On the other hand, 'it would not sit well with the exclusion of *actio popularis* from the Convention mechanism [...] to accept the existence of victim status [...] without sufficient and careful qualification'.⁴⁴ The Court thus set out the criteria for establishing victim status with an especially high threshold for fulfilling them and found that, in order to claim victim status in the context of complaints concerning harm or risk of harm resulting from alleged failures by the State to combat climate change,

an applicant needs to show that he or she was personally and directly affected by the impugned failures. This would require the Court to establish some circumstances concerning the applicant's situation:

(a) the applicant must be subject to a high intensity of exposure to the adverse effects of climate change, that is, the level and severity of (the risk of) adverse consequences of governmental action or inaction affecting the applicant must be significant; and

⁴² ECtHR judgment (32) § 481.

⁴³ Ibid § 483.

⁴⁴ Ibid.

(b) there must be a pressing need to ensure the applicant's individual protection, owing to the absence or inadequacy of any reasonable measures to reduce harm.⁴⁵

The Court underlined how the threshold for fulfilling these criteria is 'especially high' and prevailing local conditions and individual specificities and vulnerabilities will be examined. In the circumstances of the case, the individual applicants did not meet the threshold *ratione personae*. The Court confirmed that 'the adverse effects of climate change on older women, and the need to protect them from the adverse effects of climate change, have been stressed in many international documents',⁴⁶ and that evidence, of which the relevance and reliability was not called into question by the Respondent, 'undoubtedly suggest that the applicants belong to a group which is particularly susceptible to the effects of climate change'.⁴⁷ However,

it is not apparent that they were exposed to the adverse effects of climate change or were at risk of being exposed at any relevant point in the future, with a degree of intensity giving rise to a pressing need to ensure their individual protection, not least given the high threshold.⁴⁸

Adaptation measures available in Switzerland or reasonable measures of personal adaptation appear to be sufficient to deal with the effects of heatwaves, even though the Court did not ascertain whether these measures are gender-responsive or not. Differently, the Association fulfilled the separate *locus standi* criteria, not reported in this space, and was recognized standing to act on behalf of the members.⁴⁹ The Court considered how collective action and intergenerational burden-sharing are crucial in the context of climate change, and that 'members of society who stand to be most affected by the impact of climate change can be considered to be at a distinct representational disadvantage'.⁵⁰ The standing of an association 'will not be subject to a separate requirement of showing that those on whose behalf the case has been brought would themselves have met the victim-

⁴⁵ ECtHR judgment (32) § 487.

⁴⁶ *Ibid* § 530.

⁴⁷ *Ibid* § 531.

⁴⁸ *Ibid* § 533.

⁴⁹ *Ibid* § 526.

⁵⁰ *Ibid* § 484.

status requirements for individuals in the climate-change context'.⁵¹ Concerning Article 8 ECHR, the Court confirmed its applicability as the Respondent State failed to comply with the positive obligation to implement sufficient measures to combat climate change: the Swiss Government failed to quantify the limitations to national GHG emissions and did not act in good time for the implementation of the relevant legislative and administrative framework, thus exceeding its margin of appreciation. Notably, the Court innovatively interpreted Article 8 ECHR as encompassing

a right for individuals to effective protection by the State authorities from the serious adverse effects of climate change on their lives, health, well-being and quality of life arising from the harmful effects and risks caused by climate change.⁵²

The State's obligation is, accordingly, to ensure that protection, by adopting and applying effectively regulations and measures of climate mitigation and adaptation. More in detail, based on scientific evidence, each Contracting State shall undertake measures for GHG emissions reduction 'with a view to reaching net neutrality within, in principle, the next three decades', 'incorporated in a binding regulatory framework', and avoiding 'a disproportionate burden on future generations' by immediately taking action.⁵³ Concerning Article 6 ECHR, §1 on its civil limb, the Court confirmed its applicability, as the Respondent State failed to engage seriously or at all with the Association's action, lacked of convincing reasons for excluding the examination of the merits of the complaints, and failed to consider compelling scientific evidence concerning climate change. The Association's right of access to court was therefore 'impaired in its very essence', while domestic courts should play a key role in climate change litigation.⁵⁴ The execution of the judgment (Article 46 ECHR) would consist in the assessment of specific measures to be taken with the support and under the supervision of the Committee of Ministers, as the Court declared to be 'unable to be detailed or prescriptive as regards any measures to be implemented in order to effectively comply with the present judgment'.⁵⁵

⁵¹ Ibid § 502.

⁵² ECtHR judgment (32) § 519.

⁵³ Ibid § 549.

⁵⁴ Ibid § 638.

⁵⁵ Ibid § 657.

The first part of the judgment included international and comparative materials the Court considered as relevant in the examination of the climate case, first of its kind. The comparative materials comprised comparative studies on standing tests in States which ratified the Aarhus Convention, and an overview of domestic case-law about regarding climate change. The cases analysed under the latter point were: the *Grande-Synthe* and the *Affair du Siècle* cases in France; *Neubauer and Others v. Federal Republic of Germany* in Germany; *Friends of the Irish Environment CLG v. the Government of Ireland and the Attorney General* in Ireland; *State of the Netherlands v. Stichting Urgenda* in the Netherlands; *Nature and Youth Norway and Greenpeace Nordic v. the Ministry of Petroleum and Energy* in Norway; *Greenpeace Spain and Others v. Spain* in Spain; *Plan B Earth and four other citizens v. Prime Minister* in the United Kingdom; *VZW Klimaatzaak v. the Kingdom of Belgium and Others* in Belgium. Comparative considerations on the influence of other climate cases on the *Verein KlimaSeniorinnen* legal mobilisation are presented further (Paragraph 4.2.3). Among the relevant international materials, norms, recommendations and studies related to the gender and climate change nexus appear, some of which were reported in Chapter 3: the Preamble of the Paris Agreement, General Recommendation No. 37 on the gender-related dimensions of disaster risk reduction in the context of climate change issued by the CEDAW Committee, and the OHCHR 'Analytical study on gender-responsive climate action for the full and effective enjoyment of the rights of women'. Moreover, the Court mentioned the Sharm el-Sheikh Implementation Plan encouraging UNFCCC Parties to increase 'the full, meaningful and equal participation of women in climate action and to ensure gender-responsive implementation and means of implementation', also by the full implementation of the Lima Work Programme on gender and its Gender Action Plan. Among the relevant resolutions adopted by the Human Rights Council, the Court highlighted Resolution 50/9 on Human Rights and climate change of 7 July 2022, calling upon all States to adopt 'a comprehensive, integrated, gender-responsive, age-inclusive and disability-inclusive approach to climate change adaptation and mitigation policies'. States also have procedural obligations according to the 2019 report to the General Assembly of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd. Among these, recalled by the Court, the obligations to:

(b) Ensure an inclusive, equitable and gender-based approach to public participation in all climate-related actions, with a particular emphasis on empowering the most affected populations, namely women, children, young people, indigenous peoples and local communities, persons living in poverty, persons with disabilities, older persons, migrants, displaced people, and other potentially at-risk communities;

(e) Integrate gender equality into all climate actions, enabling women to play leadership roles.⁵⁶

The Court also added to the relevant materials excerpts from the 2021 report of the Independent Expert on the enjoyment of all human rights by older persons, entitled 'Human rights of older women: the intersection between ageing and gender' warning about how 'in emergencies brought on by climate change impacts, older women might be viewed as a burden and therefore be vulnerable to abuse and neglect'.⁵⁷ SRHR were mentioned too by quoting General Comment No. 14 on the Right to Health of the Committee on Economic, Social and Cultural Rights. The description of intersectional forms of discrimination in relation to climate change was borrowed from the OHCHR 'Analytical study on the promotion and protection of the rights of older persons in the context of climate change', illustrating how

[p]hysiological and physical differences, social norms and roles and gender discrimination and inequities in access to resources and power all play a role in making older women face particular risk of vulnerability to climate impacts.⁵⁸

The UN Treaty Bodies⁵⁹ issued in 2019 a Joint Statement on Human Rights and climate change, reported by the Court, warning how '[t]he risk of harm is

⁵⁶ A/74/161, Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, Note by the Secretary-General, 2019.

⁵⁷ A/76/157, Human Rights of Older Women: The Intersection Between Ageing and Gender, Report of the Independent Expert on the Enjoyment of All Human Rights by Older Persons, 2021.

⁵⁸ A/HRC/47/46, Analytical Study on the Promotion and Protection of the Rights of Older Persons in the Context of Climate Change, 2021.

⁵⁹ The Committee on the Elimination of Discrimination against Women; the Committee on Economic, Social and Cultural Rights; the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families; the Committee on the Rights of the Child; and the Committee on the Rights of Persons with Disabilities.

particularly high for those segments of the population already marginalized or in vulnerable situations or that [...] have limited access to decision-making or resources, such as women'. The Joint Statement called the States to address 'all forms of discrimination and inequality, including advancing substantive gender equality' in climate mitigation and adaptation, while the Committees shall review the impacts of climate change on the rights holders under the Treaties.⁶⁰ Judge Tim Eicke – sitting for the United Kingdom – issued a partly concurring, partly dissenting opinion, which is worth noting because it illustrated how the claims of the individual applicants could have been partially admitted. In Judge Eicke's view it would have been 'more obvious and more appropriate to address the complaint about the denial of access to court first', before, if necessary, consider the complaints under Articles 2 and 8 ECHR.⁶¹ Approaching these first

once they came to consider Article 6, [the other judges] were inevitably compelled to join the question of "victim" status under Article 6 § 1 to the question of the admissibility of that provision (§ 593) and to conclude, ultimately, that only the association has "victim" status (§ 623).⁶²

Differently, the Court could have declared the application inadmissible as far as Articles 2 and 8 were concerned, 'leaving the issues raised in relation to the alleged failure to take the necessary and/or appropriate mitigation measures in relation to the risks created by climate change for an appropriate future case'.⁶³ In this sense, Judge Eicke suggested the Court created a basis for *actio popularis* complaints unnecessarily expanding the scope of Article 8 ECHR and that it 'tried to run before it could walk' in relation to climate change.

4.2.2.7 The Execution

On June 14, 2024, the Committee of the Ministers of the Council of Europe decided to monitor the implementation, being this of peculiar complexity, of the *Verein KlimaSeniorinnen v. Switzerland* judgment as part of an enhanced procedure. No later than six months after a judgment becomes legally

⁶⁰ HRI/2019/1, OHCHR Joint Statement on Human Rights and Climate Change, 2019.

⁶¹ *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [2024] ECtHR 53600/20, Partly Concurring Partly Dissenting Opinion of Judge Eicke § 26.

⁶² *Ibid* § 27.

⁶³ *Ibid* § 43.

binding, the concerned State must submit an action plan to the Committee, including the planned measures for implementation and a timetable. Applicants and civil society can also contribute by communicating their views to the Committee. The Swiss Parliament voted on June 5 and 12 a declaration substantially contesting the ECtHR's decision. The collection of more than 22,000 signatures by Greenpeace and the KlimaSeniorinnen association, to reiterate to the Chambers the need to respect the ruling, had not the desired effect. The declaration adopted by a large majority was entitled 'For the effective protection of fundamental rights by international courts rather than judicial activism'.⁶⁴ According to the text of the declaration, the Chambers of the Swiss Parliament recognised the historical importance of the ECHR and the fundamental contribution of the ECHR to the development of the protection of fundamental rights in Europe and Switzerland. However, they criticised the Court for being excessively dynamic in the interpretation of the Convention and therefore exposing itself to the accusation of exercising inappropriate and inadmissible judicial activism. Faced with such an excess, the Court cannot but accept that its legitimacy is called into question by States and their political actors, and, therefore, the protection of human rights in Europe may be weakened. The Parliament therefore asked the Court to respect in its future interpretations the principle of subsidiarity, the text of the Convention and the historical circumstances of its drafting, the sovereignty of States, the principle of consensus and the democratic process. As for the Federal Council, the Chambers invited the executive body to defend Switzerland's interests within the Council of Europe and to underline in the action plan to be transmitted to the Committee of Ministers how the State is already in compliance with climate policies. In this regard, recent legislative acts on climate change were listed, such as the federal law that in 2022 set the goal of net zero emissions by 2050 and the amendment to the law that introduced mitigation objectives by 2030. These acts would position the Confederation in compliance with the Kyoto Protocol and the Paris Agreement, but they did not enter into the proceedings of the case until very late. The parliamentary debate was clearly polarised: the Swiss People's Party (UDC), the Radical Liberals (PLR) and the Alliance of the Centre promoted the declaration, against the opposition of the Swiss Socialist Party (SP), the Swiss Greens and the Green Liberal Party of Switzerland (PVL). The UDC called the ruling a 'coup d'état' because

⁶⁴ 'Effektiver Grundrechtsschutz durch internationale Gerichte statt gerichtlicher Aktivismus', Amtliches Bulletin, Nationalrat, Sommersession 2024, 12/06/24.

the Parliament alone is responsible for voting on laws, while the PLR recalled that the text of the Convention does not explicitly provide for a right to a healthy environment, to the preservation of a stable climate, or to health. The SP instead emphasized that since 1978 the Court has applied the Convention considering the 'living' law and not the mere text, and the PVL feared the risk that such a declaration could fuel dangerous resistance to the application of the ECHR in other States as well. The candidature of Alain Berset, a member of the Socialists and former federal councillor, as Secretary General of the Council of Europe appeared only incidental to this affair. Resistance to dialogue and contamination with the ECHR system was not new to Switzerland, whose citizens were called to vote by referendum in 2017 on a proposed constitutional reform as part of the popular initiative 'Swiss law instead of foreign judges'. On August 28, 2024, the Federal Council presented its position on the judgment, arguing that closing the process of the CO₂ Act and introducing the new Electricity Act will be sufficient implementation measures. However, the Federal Council did not mention a national carbon budget or other calculations to make sure the 1.5°C warming limit is not exceeded, neither it addressed the issue of its fair share. On October 4, 2024, the Government of Switzerland submitted its action plan to the Committee of the Ministers of the Council of Europe. The plan claimed that the Country can proceed in the implementation of its planned climate strategy. According to Greenpeace International, the content of the report is weak and 'woefully insufficient'.⁶⁵

4.2.3 Legal Strategy and Mobilisation: A Multifaceted Comparative Analysis

In the absence of two or more gender-based cases sharing a common degree of development of their proceedings and therefore being comparable in their entirety (see Section 4.1), the comparative analysis – the scope of which was illustrated in Section 1.4 – was conducted by separating different elements of the *Verein KlimaSeniorinnen* legal journey: the litigation approach; how the applicants tried to pass the standing test and its outcomes at the different stages of the proceedings; the reliance on Human Rights and which of these were recognised as effectively impacted; how the gender and climate change nexus entered the argumentations and how it informed the

⁶⁵ Greenpeace International, <<https://www.greenpeace.org/international/press-release/70105/greenpeace-slams-weak-swiss-action-report-after-landmark-klimaseniorinnen-judgement/>> accessed 31 December 2024.

decisions of the national authorities and of the ECtHR; the Legal Opportunity Structures and the eventual outcome. Moreover, insights on other climate cases in the same legal system, the Helvetic Confederation, were collected and confronted with expectations expressed in literature in the recent past. It is worth clarifying that the choice of some of the climate cases mentioned in the comparison was guided by the information provided by the legal counsels of the Association in a few academic papers. These latter were precious insights in the making of the legal strategy of the *KlimaSeniorinnen*'s mobilisation, also demonstrating how climate change litigation flourishes thanks to the osmotic exchange of information and advice among the different actors involved. Critical profiles in knowledge production and exchange around climate change litigation were considered too (see Chapter 5). As stated in a 2018 paper by Cordelia C. Bähr and Ursula Brunner, legal counsels of the Association, and Kristin Casper, at that time Litigation Counsel for the Global Climate Justice and Liability Campaign at Greenpeace Canada, four climate cases in the world provided 'important context for the *KlimaSeniorinnen* case': *Urgenda Foundation v. the Netherlands*; *Ashgar Leghari v. Federation of Pakistan*; *Juliana v. United States of America*; *Greenpeace Nordic Association and Others v. Norway Ministry of Petroleum and Energy*.⁶⁶ These legal mobilisations are not illustrated in detail in this space as they are not central in this research process, but some of their peculiar elements are integrated in the following paragraphs to the aims of the comparative analysis. Interestingly, on the one hand the *Verein KlimaSeniorinnen* mobilisation integrated or transformed elements of cases in different jurisdictions and legal systems sharing an analogue goal; on the other hand, the *KlimaSeniorinnen*'s legal counsels explicitly committed to the dissemination of their experience and lessons learnt in the development of the case as 'issues and arguments [...] might travel and inform future climate litigation'.⁶⁷ This reveals how climate change litigation accelerated experiments of legal transplants in Environmental and Climate Law and jurisprudence.

4.2.3.1 *The Litigation Approach*

The first steps of the *KlimaSeniorinnen*'s mobilisation were taken by Greenpeace Switzerland, following some landmark results in climate change

⁶⁶ Cordelia C Bähr and Others, '*KlimaSeniorinnen*: Lessons from the Swiss Senior Women's Case for Future Climate Litigation' (2018) 9/2 *Journal of Human Rights and the Environment* 196.

⁶⁷ *Ibid* 214 emphasis added.

litigation in 2015, and in particular the success of *Urgenda Foundation v. The Netherlands*. The Hague District Court derived from Book 6, Section 162 of the Dutch Civil Code, interpreted in the light of established principles of Environmental Law and available climate science, the State's duty of care in terms of climate change mitigation, and ordered the Government to limit the Country's GHG emissions by 2020 to 25% below 1990 levels:

In the opinion of the court, the possibility of damages for those whose interests Urgenda represents, including current and future generations of Dutch nationals, is so great and concrete that given its duty of care, the State must make an adequate contribution, greater than its current contribution, to prevent hazardous climate change.⁶⁸

Greenpeace Switzerland commissioned a study to Bähr and Brunner: was it be possible to have a Swiss *Urgenda*-like climate case challenging the Federation's insufficient climate policy and legislation?⁶⁹ The mentioned provision of the Dutch Civil Code had no correspondent in the Swiss legal system. The chosen approach to litigation was based on Article 25 (a) of the Administrative Procedure Act (APA), and therefore the legal action took the form of a request to issue a ruling on *real acts*. In the Swiss federal legal system, 'real acts' are the actions or inactions of the public administrations which can compromise individuals' rights and obligations, such as the State's allegedly insufficient climate mitigation measures. Article 25 (a) APA allows a person *having standing* to challenge real acts and request a court to examine them. The court's ruling on real acts may order to refrain from, to revoke or to discontinue unlawful acts or to redress their negative consequences, as well as to implement measures in case of unlawful inaction. In the KlimaSeniorinnen's case, the legal action was formulated as a request for a ruling on real acts 'for discontinuation of failures in climate protection'. A violation of human rights was outlined and claimed as a strong argument to pass the standing test (more on this point in Paragraphs 4.2.3.2 and 4.2.3.3). Overall, the main argument was that Swiss climate policy and legislation, and their implementation were insufficient if compared to the standards that could be set on the basis of the Federal Constitution and the ECHR. The litigation approach took into consideration from the beginning the possibility to bring

⁶⁸ *Urgenda Foundation v. The Netherlands* [2015] C/09/456689 § 4.89. On October 9, 2018, the Hague Court of Appeal upheld the District Court's ruling, and the decisions were confirmed by the Supreme Court of the Netherlands on December 20, 2019.

⁶⁹ Bähr and Others (66) 201.

the case to the ECtHR, as the request based on Article 25 (a) APA starts a process which can arrive to the Federal Supreme Court.⁷⁰

4.2.3.2 *Standing*

Claimants under the APA, according to Article 48 (1)(b) APA must be 'affected more strongly than the general public' and with 'a special, noteworthy, close connection to the matter in dispute'. Moreover, Article 48(1)(c) APA requires the claimants' interest to be 'worthy of protection', and this request was further detailed in case-law further as including the demonstration of a current and practical legal or factual interest. To pass this test and to reduce the risk of rejection of the legal action because judged as an attempt of *actio popularis*, the abovementioned legal counsels searched for scientific evidence on a most vulnerable group to with respect to the impacts of anthropogenic climate change. Based on the epidemiological profile described by some studies on heatwaves' effects on elderly women, and reproducing the model of the *Urgenda Foundation* – the standing of the Foundation was recognised on the basis of its statutory purpose – the KlimaSeniorinnen's Association was created *ad hoc* for the strategic mobilisation.⁷¹ The Association was presented as having standing both in its own name and as the representative of its members, under the 'egoistical right of associations' recognised by Article 48 APA – different from the 'idealistic' right organisations protecting a public interest. On the point of standing, the legal counsels also declared a 'a close alignment' with the case *Juliana v. United States of America*,⁷² interestingly among the most well-known youth-led climate cases. The 21 individual plaintiffs of the case were all aged 19 or younger when they filed a lawsuit, together with the NGO Earth Guardian and a climate scientist representing future generations, in 2015 in the federal court for the District of Oregon, against the State, some of its apical institutions, and federal agencies. The request to the court was to impose climate mitigation action to reach a specific goal (350 ppm atmospheric CO₂ by 2100) on the defendants, as this was critical to their rights – to life, liberty, and property. Moreover, they alleged the violation of their substantive due process rights as the defendants allowed, though aware of the danger, dangerous levels of fossil fuel production and

⁷⁰ Bähr and Others (66) 205.

⁷¹ Seline Keller and Basil Bornemann, 'New Climate Activism Between Politics and Law: Analyzing the Strategy of the KlimaSeniorinnen Schweiz' (2021) 9/2 Politics and Governance 126, 131.

⁷² Ibid 215.

consumption, and the violation of the Ninth Amendment as they interpreted it as including a 'right to be sustained by our country's vital natural systems, including our climate system'.⁷³ The plaintiffs also raised the issue of intergenerational equity, claiming the government did not make sure to equally protect their fundamental rights as it did for previous generations. These obligations would burden the defendants based on the Public Trust Doctrine.⁷⁴ On October 2016 the court denied the defendants' motions to dismiss the claims. The court established the plaintiffs adequately alleged standing to sue, in its three prongs: concrete, particularised, and actual or imminent injury in fact; a causation link between the defendant's conduct and the injury; redressability of the injury by the court's decision. The government's argument about climate change being a generalised grievance was not welcomed by the court, as case-law required the party bringing suit being injured regardless of the number of others affected. The court recognised the injuries alleged by the plaintiffs – such as 'harm to their personal, economic and aesthetic interests' – were concrete, particularised, and imminent as they alleged global warming at that time was already in a danger zone, with present and future consequences which could become unbearable if the defendants did not take action. Plaintiffs' causation allegations, pointing to both actions and inactions of the defendants, were deemed not vague, and the redressability standard was met as certainty is not needed, but a substantial likelihood the remedy would slow or reduce the harm.⁷⁵ As stated by Bähr and others, the Association 'argue along the same lines as the standing test in *Juliana*': studies supported the concrete and particularised harm they suffered or could suffer, as well as the causal link and the, at least partial, redressability. Having at present the possibility to consider the entire development of the KlimaSeniorinnen's legal mobilisation, some critical profiles in the strategy can be outlined. Firstly, the strategy only partially worked. The national proceedings saw the request rejected on procedural grounds, judging it as an attempt of inadmissible *actio popularis*, notwithstanding the arguments were set to avoid it. In front of the ECtHR the *Urgenda Foundation* model worked out positively, as the

⁷³ *Juliana v. United States of America* [2016] complaint § 303.

⁷⁴ Ex multis: Stefano Fanetti, 'La Public Trust Doctrine: dalle Origini alla Climate Change Litigation' (2022) 28 *The Cardozo Electronic Law Bulletin*.

⁷⁵ *Juliana v. United States of America* [2016] order. The case saw complex further proceedings until 2024, illustrated here: <<https://climaterightsdatabase.com/2020/01/17/juliana-et-al-v-usa-et-al/>> accessed 31 December 2024.

Association was granted *locus standi* due to its statutory purpose, but the individual applicants were denied standing (see Paragraph 4.2.2.6). Secondly, the scientific evidence based on which the initiators of the KlimaSeniorinnen's legal mobilisation created a sample of a most vulnerable category to make sure standing was granted – and therefore they could bring their strategic claims to court – was not uncontroversial. The studies on the impacts of heatwaves quoted by the Association in the different phases of the proceedings were either referred to sex and/or to gender, but these categories are not interchangeable even though they can overlap. Some studies underlined – as those mentioned in Paragraph 2.1.2.5 – how more research is needed and how the impacts may also depend on specific health conditions or socio-economic profiles of those affected. The socio-economic profile of the Association's members was never considered along the proceedings. Moreover, many were descriptive epidemiologic studies, not investigating patterns that suggest causes.⁷⁶ This relevant degree of uncertainty is reflected in the counsels' declaration that the legal action was elaborated in such a way that if the gendered dimension was rejected, the applicants' could be considered as part of the broader vulnerable group of the elderly or for their specific health conditions.⁷⁷ However, with few exceptions along the ECtHR proceeding (see Paragraph 4.2.2), the gendered impact of heatwaves was not disputed, and, thus, the gender and climate change nexus was not central to the matter of the case.

4.2.3.3 *The Reliance on Human Rights (brief)*

The KlimaSeniorinnen's legal mobilisation is arguably a case in the so-called *rights turn* in climate change litigation.⁷⁸ If Human Rights Law is used, not only in climate change-related cases, 'as a gap-filler to provide remedies where other areas of the law do not',⁷⁹ in the analysed case the reliance on Human Rights tried to overcome a specific obstacle. The peculiarities of the

⁷⁶ Request to DETEC (8) §§ 89-95, Appeal to the FSC §§ 43-52, ECtHR Application (23) AS §§ 1-13, Observations on the Facts submitted to the ECtHR in 2022 §§ 24-32.

⁷⁷ Bähr and Others (66) 200.

⁷⁸ Ex multis: Jacqueline Peel and Hari Osofsky, 'A Rights Turn in Climate Change Litigation?' (2019) 7/1 *Transnational Environmental Law*; Annalisa Savaresi and Joana Setzer, 'Rights-Based Litigation in the Climate Emergency: Mapping the Landscape and New Knowledge Frontiers' (2022) 13/1 *Journal of Human Rights and the Environment*.

⁷⁹ Annalisa Savaresi and Juan Auz, 'Climate Change Litigation and Human Rights: Pushing the Boundaries' (2019) 9/3 *Climate Law* 244.

Swiss legal system considered – such as the participatory democracy –,⁸⁰ Article 190 of Constitution states that the legislation adopted by the Parliament is binding on the FSC, restricting the possibilities of judicial review to protection arising from International Law, such as civil disputes under Article 6 (1) ECHR. The Association and the individual applicants claimed since the first legal request, as illustrated in Paragraph 4.2.1, the violations of Articles 2 – the right to life – and 8 ECHR – the right to private and family life –, as well as of Article 13 ECHR – the right to a fair trial. Human rights obligations weighing on the State based on Articles 2 and 8 ECHR were considered by the Court of the Hague in its 2015 ruling on *Urgenda Foundation v. The Netherlands*, but the KlimaSeniorinnen’s legal counsels also took as a reference a case further in space: *Ashgar Leghari v. Federation of Pakistan*. The farmer Ashgar Leghari filed a lawsuit against the Government of Pakistan alleging it failed in implementing the 2012 National Climate Change Policy. In particular, the Government’s failure in meeting climate change adaptation targets impacted on his right to life including his right to a healthy environment – under Article 9 of the Constitution of Pakistan –, and his human dignity – under Article 14 of the Constitution of Pakistan. On September 4, 2015, the High Court of Lahore granted Leghari’s claim and ordered the creation of a Climate Change Commission to monitor the implementation of the national climate policy. The Court found that ‘the delay and lethargy of the State in implementing the Framework offend the fundamental rights of the citizens’.⁸¹ To the aim of this research work, it is noteworthy that no violation of Article 14 ECHR – the prohibition of discrimination, on grounds of the characteristics listed, such as sex, and of those outlined by the ECtHR’s case law, such as age – was claimed by the Applicants.

4.2.3.4 The Gender and Climate Change Nexus

The case *Maria Khan and Others v. Pakistan and Others* emerged from the search in the climate change litigation databases illustrated in Section 4.1 as both women-led and gender-based. The legal mobilisation was initiated in 2019, when a group of five women filed a complaint against the Government of the Federation of Pakistan, the Ministries of Energy and Climate Change,

⁸⁰ Sergio Gerotto, Mahon Pascal and Sanchez Ferriz Remedio, *Il Sistema Costituzionale Svizzero* (Wolters Kluwer CEDAM 2020).

⁸¹ *Ashgar Leghari v. Federation of Pakistan* [2015], <<https://climaterightsdatabase.com/2018/01/25/leghari-v-pakistan/>> accessed 31 December 2024.

and other energy authorities before the High Court of Lahore in the State of Punjab – the Court previously ruling on *Ashgar Leghari v. Federation of Pakistan*. According to the five women applicants, the respondents' insufficiently ambitious climate action on violated their fundamental rights. Building on *Ashgar Leghari v. Federation of Pakistan*, the applicants alleged the Government and the other authorities failed to fulfil their obligations to reduce, avoid, mitigate and remedy the adverse impacts of climate change. This violated their right to life, to a clean and healthy environment, and to human dignity, as well as the right to 'a climate that supports human life' the same Court elaborated in *Leghari*. In particular, the applicants invoked Articles 4, 9, 14, and 25 of the Constitution of Pakistan,⁸² and the Public Trust Doctrine. The applicants argued their position as women and mothers of future generations was particularly disadvantaged. The case is still pending, the last known hearing was held in 2021. Premised that no explicit correlation is knowable, in July 2022 the Government of Pakistan adopted a plan entitled Climate Change Gender Action Plan of the Government and People of Pakistan, the implementation of which could represent, in the medium-to-long term, a remedy to the alleged disadvantageous position (see Paragraph 3.3.3). The KlimaSeniorinnen's mobilisation and the initiative of the individual women applicants from Pakistan took place in regions of the world that are impacted by climate change in different ways, and in Countries with different responsibilities in terms of carbon emissions and under the UNFCCC. Women's rights find different levels of fulfilment and the recourse to litigation is not equally frequent. In Pakistan, the women's movement strategic resorting to the courts to the aims of rights-based empowerment was documented in the last forty years, producing landmark public interest litigation case law in areas such as SRHR, environmental and political rights.⁸³ As a consequence, the gender and climate change nexus is differently articulated in the two mobilisations. Since in *Maria Khan and Others v. Pakistan and Others* the proceeding is pending, the analysis was limited to the request before the first instance authority and to how the correlation between climate change and gender inequality is entwined into

⁸² Inalienable Individual Rights (Article 4 Constitution of Pakistan), Right to Life (Article 9 Constitution of Pakistan), Principle of Inviolability of Human Dignity, Right to Privacy and Prohibition of Torture (Article 14 Constitution of Pakistan), Principle of Equality of Citizens and Non-discrimination on the Basis of Gender (Article 25 Constitution of Pakistan).

⁸³ Ayesha Khan, Sara Malkani and Zonia Yousuf, 'Women Activists' Strategic Use of the Courts in Pakistan' (2019) 27/4 Contemporary South Africa.

the legal reasoning. In both cases, the applicants identify themselves as women, but in their claims diverse elements commonly associated with femininity or being a woman were evoked. While in *Verein KlimaSeniorinnen Schweiz and Others v. DETEC and Others* the focus is on the characteristics of the female body, in particular the greater vulnerability during heatwaves, in *Maria Khan and Others v. Pakistan and Others* the experience of motherhood in a broad sense is highlighted, with an original connection to intergenerational justice. Moreover, women are described as a class within society, echoing – though not explicitly, but according to the author’s interpretation – Marxist feminist thoughts. In both cases, the alleged discrimination would derive from an intersection of factors, in addition to the climate crisis: the female sex or gender with age; gender with socioeconomic condition. This is reflected in the different correlations between gender inequality and climate change strategically highlighted by the applicants: a health issue in the Swiss case; a social injustice issue in the Pakistani case. As for the reliance on scientific evidence, the KlimaSeniorinnen supported their claims with scientific studies allegedly proving the peculiar vulnerability of elderly women to heatwaves, while in the second mobilisation the gender and climate change nexus is described as a well-known fact, with sketchy references to UN agencies’ grey literature on the subject.⁸⁴ Seen how the gender and climate change nexus entered the initial argumentations, how it informed the outcomes of the mobilisation can be analysed only in the ECtHR judgment on *Verein KlimaSeniorinnen and Others v. Switzerland*. Dina Lupin, Maria Antonia Tigre, and Natalia Urzola Gutiérrez argued in a comment to the judgment that ‘despite the fact that *KlimaSeniorinnen* is a case about the impacts of climate change on elderly women, the Court fails to meaningfully engage with gender as a determinant of the harms suffered by individuals’.⁸⁵ Lupin and Others questioned the Court’s elaboration of a *high threshold* for individual standing, which apparently cannot be satisfied by the vulnerability due to intersecting social determinants. If their consideration that the court missed the opportunity to establish ‘the legal consequences of a violation of the rights of *women* in the context of climate change’ can be shared, it may be contested that the case offered ‘initial promises’.⁸⁶ Based on the analysis

⁸⁴ *Maria Khan and Others v. Pakistan and Others* [pending], Lahore High Court, Misc. Writ. 8960/19.

⁸⁵ Dina Lupin, Maria Antonia Tigre and Natalia Urzola Gutiérrez, ‘KlimaSeniorinnen and Gender’ (2024) Verfassungsblog, The Transformation of European Climate Litigation.

⁸⁶ *Ibid.*

conducted to this point, and further supported by the interviews reported in Paragraph 5.3.2, the legal mobilisation was not informed by awareness on the gender and climate change nexus nor it was aimed at advancing gender equality and women's rights in the climate crisis: this influenced the choice of the legal strategy, the request for remedies, and the outcomes of the proceeding.

4.2.3.5 *Legal Opportunity Structures*

Legal Opportunity Structures (LOS) were described as the 'features of the legal system which facilitate/hinder social movements' chances to have their grievances redressed through the judiciary'.⁸⁷ Lisa Vanhala also illustrated legal opportunities as the 'mechanics of the judicial process that shape access to the court, including what may be litigated, who can litigate and where and when such litigation can occur'.⁸⁸ Pedi Obani, with reference to the contexts of South Africa and Nigeria, registered that a lack of receptivity of the LOS to women's experience hindered their possibility to engage in climate change litigation.⁸⁹ According to Obani, underrepresentation of some categories shapes LOS: on the one hand, it 'erodes the legitimacy of the system and its robustness to appreciate and respond to the unique underrepresented interests'; on the other hand, it places an obstacle to marginalised group if they cannot count on legal aid and support. In her analysis of climate cases, building on LOS literature, Obani considered two dimensions of the LOS: the structural dimensions and the contingent dimension. The first included: standing, legal aid, representation in environmental governance, and justiciability. The second covered the courts' receptivity to climate cases. Applying these criteria to *Maria Khan and Others v. Pakistan and Others*, among other cases, Obani assessed the LOS as favourable under both dimensions. Applying an analogue reasoning to the KlimaSeniorinnen's mobilisation, the initial LOS could be assessed as only partially favourable and is reflected in the partially successful outcome of the

⁸⁷ Gianluca De Fazio, 'Legal Opportunity Structure and Social Movement Strategy in Northern Ireland and Southern United States' (2012) 53/1 *International Journal of Comparative Sociology*.

⁸⁸ Lisa Vanhala, 'Legal Opportunity Structures and the Paradox of Legal Mobilization by the Environmental Movement in the UK' (2012) 46/3 *Law & Society Review* 527.

⁸⁹ Pedi Obani, 'Climate Litigation in South Africa and Nigeria: Legal Opportunities and Gender Perspectives' in Kim Bouwer and others (eds), *Climate Litigation and Justice in Africa* (Bristol University Press 2024).

judicial proceedings. More in detail, looking at the structural dimension, standing requirements posed a challenge as both at the national level and in the ECHR system no *actio popularis* or public interest legal action is allowed. The applicants had to demonstrate they are particularly affected by climate change, which has complex and diffused effects, while the Association tried to obtain a new interpretation of *locus standi* from the ECtHR. In terms of justiciability of rights, the procedural obstacles illustrated in Paragraphs 4.2.3.1 and 4.2.3.2 made the LOS less favourable. As far as legal aid and broader support are concerned, the role of Greenpeace Switzerland and Greenpeace International was remarkable. Moreover, the successful mobilisation out of the courtroom brought hundreds of new members and supporters to the Association, as well as media attention. Though the specific needs and interests of elderly women with respect to the climate crisis had no representation before, at least in the Swiss context, another group of women was already active on environmental and climate issue in the Country, especially in its French-speaking areas: La Marche Bleu.⁹⁰ Turning to the contingent dimension, and therefore to the receptivity of the courts, national authorities did not show relevant openness before. The ECtHR had not examined climate cases before but elaborated a case-law on environmental issues mainly built on the evolutive interpretation of Article 8 ECHR. It is noteworthy that the disinclination of the Strasbourg Court to consider intersectional discrimination could also weigh on the unfavourable LOS.⁹¹ Seline Keller and Basil Bornemann similarly assessed the legal opportunities as non-completely favourable, also adding that the political opportunity structure was, instead, 'comparatively open' considering the opportunities social movements have to bring their instances to the public debate in the Swiss direct democratic system.⁹² The suggestions of the KlimaSeniorinnen's legal counsels to 'future litigants' echo some of the considerations on the available LOS, though not explicitly recurring to this framework. Bähr and Others suggested to consider some elements before starting a climate legal mobilisation: the degree of ambition of national climate laws and policies with respect to the latest climate science and International Climate Law and commitments; the possibility in the specific legal system to build a government framework climate case on national or

⁹⁰ La Marche Bleu <<https://lamarchebleue.ch/>> accessed 31 December 2024.

⁹¹ Liv N. Henningsen, 'The Emerging Anti-Stereotyping Principle Under Article 14 ECHR: Towards a Multidimensional and Intersectional Approach to Equality' (2022) 3/2 European Convention on Human Rights Law Review.

⁹² Keller and Bornemann (71) 128.

international Human Rights grounds, involving a vulnerable group; if procedural hurdles exist.⁹³ Interestingly, the creation of a sample of a most vulnerable category as in the KlimaSeniorinnen's mobilisation, though posing some ethical concerns, could allow to take advantage from the available LOS. As noted by Keller and Bornemann, the strategic creation of the KlimaSeniorinnen Association was also aimed at a complementary political mobilisation, mainly targeted to the older generations, and its internal organisation was purposeful: the legal counsels worked at the legal action and strategy; the Association's members, and its board especially, have been active over the years in several ways and took all the relevant decisions about the development of the mobilisation through their general assembly; Greenpeace provided financial support in the earliest phases and then kept an organisational role, also caring for crucial international networking.⁹⁴

4.2.3.6 Other Climate Cases in Switzerland

Insights on other climate cases in the same legal system, the Helvetic Confederation, were collected and confronted with expectations expressed in literature in the recent past. The vertical analysis of climate change litigation by country was among the first approaches to the study of the legal phenomenon, allowing for comparison between different national reports. In their 2021 report for Switzerland, Ursula Brunner and Cordelia C. Bähr summarised possible basis for climate cases in the Country: the challenge to high emitting public or private projects, the challenge to public authorities for failures in climate change adaptation, the challenge to companies for their responsibilities for climate induced damage, the challenge to pension funds with GHG-intensive investments. Searching the Climate Change Litigation Databases by jurisdiction, the cases listed in Table 4.3 emerged. Applying the categorisation of the annual analysis of global trends in climate change litigation by Johanna Setzer and Others, the cases were classified under the following categories: climate-washing cases, corporate framework cases or polluter pays cases. Most of the cases could be labeled as activists' prosecution, a category the annual report did not explicitly included so far, if not included in the so-called Strategic Lawsuits Against Public Participation (SLAPPs). It is evident from the Table that the KlimaSeniorinnen's legal mobilisation remained unique for its features among the other climate cases developed in recent years in the Country.

⁹³ Bähr and Others (66) 219-220.

⁹⁴ Keller and Bornemann (71) 129-130.

Table 4.3 Climate cases in the jurisdiction of Switzerland in the Climate Change Litigation Databases. Author's elaboration.

Case	Category
Gluing IPCC report to public buildings	Climate activists' prosecution
ZAD de la Colline, Holcim, Switzerland	Climate activists' prosecution
UBS bank occupation in Lausanne, Switzerland	Climate activists' prosecution
XR Switzerland – No Going Back & Rebellion Against Extinction	Climate activists' prosecution
Collective Climate Justice block CS Bank in Zurich, Switzerland	Climate activists' prosecution
Renovate Switzerland	Climate activists' prosecution
XR road block in Neuchatel, Switzerland	Climate activists' prosecution
Breakfree action “End fossil finance build just transition” in Geneva, Switzerland	Climate activists' prosecution
#4m2 action during COVID-19 pandemic in Geneva, Switzerland	Climate activists' prosecution
Climate sit-in on the Promenade de la Treille, Geneva, Switzerland	Climate activists' prosecution
“Banks condemn us”, climate protest in front of Crédit Suisse in Geneva, Switzerland	Climate activists' prosecution
Red hands on the Façade of Credit Suisse in Geneva, Switzerland	Climate activists' prosecution
“Block Friday”: Climate activists block shopping center for Black Friday in Fribourg, Switzerland	Climate activists' prosecution
Bern Rise Up For Change 2020, Bundesplatz, Bern, Switzerland	Climate activists' prosecution
Collective Climate Justice block UBS Bank in Basel, Switzerland	Climate activists' prosecution
Stiftung fur Konsumentenschutz v. Hipp	Climate-washing
Stiftung fur Konsumentenschutz v. Kubler Heizol	Climate-washing
KlimaAllianz v. FIFA	Climate-washing
Asmania and Others vs Holcim	Corporate framework/polluter pays
Credit Suisse Protesters Trials	Climate activists' prosecution

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Obani P, 'Climate Litigation in South Africa and Nigeria: Legal Opportunities and Gender Perspectives' in Bouwer K and others (eds), Climate Litigation and Justice in Africa (Bristol University Press 2024)

Peel J and Osofsky H, 'A Rights Turn in Climate Change Litigation?' (2019) 7/1 Transnational Environmental Law

Savaresi A and Auz J, 'Climate Change Litigation and Human Rights: Pushing the Boundaries' (2019) 9/3 Climate Law

Savaresi A and Setzer J, 'Rights-Based Litigation in the Climate Emergency: Mapping the Landscape and New Knowledge Frontiers' (2022) 13/1 Journal of Human Rights and the Environment

Setzer J and Higham C, 'Global Trends in Climate Change Litigation: 2024 Snapshot' (Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science 2024)

CHAPTER 5



Climate Change Litigation Databases: Present and Future Challenges

5 CLIMATE CHANGE LITIGATION DATABASES: PRESENT AND FUTURE CHALLENGES

5.1 INTRODUCTION

To address the second working hypothesis (see Sections 1.3 and 1.4) – if there are few cases of climate change litigation in the databases dealing with the gender and climate change nexus, then the databases are not properly working to outline those cases – apparent limits of these tools were explored (Section 5.2) and then field research was conducted. Firstly, a dialogue was established with scholars working, in various roles, at the creation and development of climate change litigation databases, to unveil the process of entries' elaboration. Secondly, the introduction of a keyword signaling gender-based climate cases was proposed to the developers of a climate change litigation database (Section 5.3). Finally, exploratory interviews with two representatives of the KlimaSeniorinnen Association were carried out to test the labeling of their legal mobilisation (Section 5.4). Brief additional considerations were elaborated with respect to the use of artificial intelligence (AI) in the management of climate change litigation databases, benchmarking this tools' great potential with concerns on the absorption and reproduction of biases (Section 5.5).

5.2 ADVANTAGES AND LIMITS OF CLIMATE CHANGE LITIGATION DATABASES

5.2.1 Advantages of Climate Change Litigation Databases

The amount of information, data, and documents about climate change litigation has been growing, as the legal actions have been increasing in number and spreading to new jurisdictions, especially after the adoption of the Paris Agreement. The main available online databases, those employed in this research process, the ones created and managed by the Sabin Center for Climate Change Law of the Columbia Law School, count more than 2700 entries from all around the world at the time of writing. Climate cases may be

more than these if definitory issues are considered (see Paragraph 5.2.2.1). Thanks to the availability of the databases, quantitative and trend analysis have been conducted to monitor the development of climate change litigation, such as the annual report 'Global Trends in Climate Change Litigation: Snapshot' elaborated since 2019 by the Grantham Research Institute on Climate Change and the Environment, at the London School of Economics and Political Science (LSE). It is noteworthy that the databases and the reports are crucial not only to the study of climate change litigation, but also to the development of the same: the availability of information, data, and documents allows potential litigants to improve their strategies, and even the judges may resort to them for bridging gaps in their training. Interestingly, the information is available to potential defendants too, at once providing insights to prepare for possible actions and representing an incentive towards climate ambition and compliance. Specialised platforms have emerged too, such as the Climate Litigation Database of the Climate Rights and Remedies Project of the University of Zurich (see Section 5.3) collecting Human Rights-related climate cases. Another example is the Just Transition Litigation Database of the Business & Human Rights Resource Centre, collecting legal cases brought by rightsholders trying to favourably shape the transition to renewable energy.¹

5.2.2 Limits Due to the Definition of Climate Change Litigation

The limits of climate change litigation databases addressed in this paragraph are linked to the definition of climate change litigation. The search for a definition of climate change litigation represents a significant part of the international and interdisciplinary literature on the subject: according to some, there are as many notions as there are authors who write about it.² An authoritative definition proposal proceeds in concentric circles: at the centre are the cases in which climate change is the main issue or argument while moving outwards the connection between the issue raised, the supporting

¹ Business & Human Rights Resource Centre, Just Transition Litigation Tracking Tool <<https://www.business-humanrights.org/en/from-us/just-transition-litigation-tracking-tool/>> accessed 31 December 2024.

² Johanna Setzer and Lisa Vanhala, 'Climate Change Litigation: A Review of Research on Courts and Litigants in Climate Governance' (2019) 3 WIRE's Climate Change 4.

arguments and climate change becomes increasingly indirect.³ The database of the Sabin Center for Climate Change Law of the Columbia Law School, as well as the LSE annual report, is based on the basis of the following definition: ‘cases brought before judicial or para-judicial bodies that present material questions of climate change science, politics or law’.⁴ Other databases may employ different definitions of climate change litigation, focus on specific climate litigation trends or even include climate cases in a broader framework. The latter is the case of the EJ Atlas, built around the concept of Environmental Justice.⁵ Scholars and activists trace the birth of the Environmental Justice movement back to 1982, when the African-American community of Warren County, North Carolina, USA, protested against the disposal of soil contaminated by polychlorinated biphenyls – toxic persistent pollutants – in a new landfill.⁶ The Environmental Justice movement brought together civil rights activists, especially those fighting against racial discrimination, and environmentalists, and promoted a new understanding of the environment: as a space in which daily life takes place, on whose integrity human health and social justice depend. The movement mainly requested remedies to a distribution of environmental costs that weighed on already disadvantaged people, and for participatory and procedural justice. Environmental Justice later became a global theoretical framework, articulated in its three dimensions of distribution, recognition and participation. On these grounds, the EJ Atlas has been collecting socio-environmental conflicts, referring to the mobilisation of civil society actors against public or private, and even illicit, projects or economic activities. The entries in the EJ Atlas fulfil the following requirements: the activity or legislation has or may have potential negative environmental and social outcomes; this latter is claimed by one or more environmental justice organisations; the consequent conflict is reported in one or more published sources. The conflicts are labelled under one or more categories among: nuclear, mineral ores and building extractions; waste management; biomass

³ Jaqueline Peel and Hari M Osofsky, ‘Climate Change Litigation’ (2020) XVI Annual Review of Law and Social Science 23.

⁴ Johanna Setzer and Catherin Higham, ‘Global Trends in Climate Change Litigation: 2024 Snapshot’ (Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science 2024) 7.

⁵ EJ Atlas <<https://ejatlas.org/>> accessed 31 December 2024.

⁶ David Schlosberg and Lisette B Collins, ‘From Environmental to Climate Justice: Climate Change and the Discourse of Environmental Justice’ (2014) 5/3 WIREs Climate Change 359-374.

and land conflicts; fossil fuels, energy and climate justice; water management; infrastructure and built environment; tourism recreation; biodiversity conservation conflicts; industrial and utilities conflicts. Conflicts may be part of gender, class, caste and ethnic struggles, and materialise in different forms of mobilising. The EJ Atlas is built on a collaborative documenting effort and the data is homogenised.⁷ The search in the EJ Atlas filtered as shown in Table 5.1 returned 286 results, out of 4219 entries overall. This number signals how a broader definition and the possibility to filter the search by mobilising group enlarges the pool of cases to study in research on women-led mobilisations.

Table 5.1 Filters applied to the search in the EJ Atlas. Author’s elaboration.

Category		Mobilising Group		Mobilising Forms
Fossil Fuels and Climate Justice/Energy	AND	Women	AND	Lawsuits, court cases, judicial activism
AND/OR				
Mineral Ores and Building Materials Extraction				
AND/OR				
Biomass and Land Conflicts (Forests, Agriculture, Fisheries and Livestock Management)				

Interestingly, in the few scientific contributions specifically addressing gender inequality in climate change litigation cases other than those emerged from the research in Chapter 4 are mentioned. In her article dedicated to the area of Latin America, Natalia Urzola Gutiérrez referred to the climate litigation database of the Asociación Interamericana para la Defensa del Ambiente (AIDA), including several women-led cases. The author also considered relevant cases involving most marginalized groups in Latin America such as Indigenous communities and children and registered a ‘gender-obscurated reasoning’.⁸ Pedi Obani, concerning the Niger Delta region, noticed in her

⁷ Leah Temper, Daniela del Bene and Joan Martinez-Alier, ‘Mapping the Frontiers and Front Lines of Global Environmental Justice: the EJAtlas’ (2015) 22 Journal of Political Ecology 255-278.

⁸ Natalia Urzola Gutiérrez, ‘Gender in Climate Litigation in Latin America: Epistemic Justice Through a Feminist Lens’ (2024) 16/1 Journal of Human Rights Practice

contribution that only one climate case appears under Nigeria's jurisdiction in the mainstream climate litigation databases, out of an important number of legal mobilisations against the oil and gas industry.⁹ With respect to South Africa, Obani considered the cases linked to NGOs such as the Centre for Environmental Rights, and, similarly, Lisa Chamberlain analysed how the Women Affected by Mining United in Action (WAMUA) engaged in litigation as a tool in their struggle.¹⁰ This wealth of different insights signals how the limits of the databases, also due to definitory issues, may shape research on the same topic. On the other hand, the complexity and multi-dimensionality of the gender and climate change nexus considered, the approach to the issue may influence the choice of the cases to include in a study.

5.2.3 Limits Due to the Information's Availability

The limits of climate change litigation databases addressed in this paragraph are linked to the availability of information, and in particular: the lack of gender-disaggregated information; the underrepresentation of some geographical areas; the reliance on summaries. On the first point, Obani pointed out how the lack of gender-disaggregated information of the parties of the legal actions collected in the mainstream databases bar the way to 'a full picture at this stage of existing LOS affect women's legal mobilization in response to climate change'.¹¹ The collection of gender-disaggregated data and information would likely require those who create the entries of the databases a greater effort of direct engagement with the parties – if risky disaggregation based on implicit assumptions or AI is excluded (more on this in Section 5.4). On the second point, even though the mainstream climate litigation databases aim to be global, cases from the Global South are underrepresented or lack relevant information and documents if compared to cases from other areas. The enlargement of the international networks of national or regional rapporteurs providing information on the cases tried in recent years to overcome this limit, as well as the work of some scholars

208-226. AIDA, Casos de litigio climático en América Latina y el Caribe, <<https://litigioclimatico.com/es/fichas-de-litigio>> accessed 31 December 2024.

⁹ Pedi Obani, 'Climate Litigation in South Africa and Nigeria: Legal Opportunities and Gender Perspectives' in Kim Bouwer and others (eds), *Climate Litigation and Justice in Africa* (Bristol University Press 2024).

¹⁰ Lisa Chamberlain, 'The Value of Litigation to Women Environmental Human Rights Defenders in South Africa' in Cathi Albertyn and others, *Feminist Frontiers in Climate Justice* (Edward Elgar Publishing 2023) 213-245.

¹¹ Obani (9) 308.

focused on specific areas.¹² The creation of regional databases, as the AIDA's one abovementioned, goes in the same direction. On the third point, when the entry is created the mobilisation is summarised by the database' collaborator, according to guidelines – if any. The choice of what to include in the summary, and therefore of what is deemed most relevant of the case, is crucial because it also influences the results of the search by keywords. Analogue considerations apply to the attribution of categories and labels by the database's collaborator (more in Section 5.3).

5.3 LIMITS OF CATEGORIES AND TAGS

5.3.1 Introducing the “Gender / Women-led” Keyword in the CRRP Climate Litigation Database

5.3.1.1 *The Climate Rights and Remedies Project (UZH)*

In February 2023 a collaboration with the Climate Rights and Remedies Project at the University of Zurich (UZH), Chair of Prof. Dr. Helen Keller, was launched to the aims of this research work. The project, focusing on climate change as a 'systemic problem that will influence not only natural phenomena, biodiversity, and the planet's ecosystems, but also many aspects of human life, including the enjoyment of human rights', included the creation and development of a climate change litigation database with a focus on Human Rights.¹³ The collaboration implied the direct contribution to the database maintenance and growth, therefore the analysis of the related guidelines, and the tentative introduction of a new label to filter gender-based and women-led cases on the platform. The CRRP Climate Litigation Database (CRRP Database) has a specific and restricted scope: it collects legal actions related to anthropogenic climate change and Human Rights or constitutional rights. Its purpose is to provide accessible information about cases relevant to the so-called *rights turn* in climate change litigation, irrespective of the jurisdiction, adjudicatory body or status. *Non-aligned*, as meant in climate change litigation literature, and Just Transition Litigation cases are included too.

¹² Maria Antonia Tigre, *Climate Litigation in the Global South: Mapping Report* (Sabin Center for Climate Change Law, Columbia Law School 2024).

¹³ CRRP, *Climate Litigation Database*, <<https://climaterightsdatabase.com/about/>> accessed 31 December 2024.

5.3.1.2 *The Introduction of a New Keyword Tag for Gender-related Entries*

Cases in the CRRP Database are tagged with keywords and are also searchable by the rights at stake. According to the creators of the platform, filters are meant to assist the users in identifying cases which are relevant to a given topic, but are indicative.¹⁴ Before the collaboration started, there was no gender-related keyword, or a way to filter the cases by mobilising group, and women in particular. The introduction of a new keyword tag was discussed with the creators and developers of the platform. The discussion had two main outcomes. The first was the introduction of the keyword tag *Gender / women-led cases* meant as a ‘loose category’: this is meant to signal the gender dimension or the mobilisation of women is deemed relevant to the tagged case, without necessarily implying that all applicants identify as women or that gender issues are not at stake in cases which are not tagged. The second outcome was the emergence of the need and opportunity to revise the guidelines for the CRRP Database’s collaborators, as these were not sufficiently clear on the interpretation of the keyword tags. This revision did not take place during the time period of the collaboration – which formally ended in June 2023 – due to contingency reasons, but the hypothesised method was a meeting of the group of collaborators starting with a brainstorming on the use of categories and labels, to build a common understanding of them and foster further reflection. The results of the search on the CRRP Database filtered by the *Gender / women-led* keyword at the time of writing are reported in Table 5.2.

¹⁴ CRRP, Climate Litigation Database, Method and Scope <<https://climaterightsdatabase.com/database/method-and-scope/>> accessed 31 December 2024.

Table 5.2 Result of the search in the CRRP Climate Litigation Database filtered by the "Gender / women-led" keyword. Author's elaboration.

Keyword	Case
Gender / women-led	Women from Huasco and Others v. Government of Chile & Ministries of Energy, Environment and Health
	Verein KlimaSeniorinnen and Others v. Switzerland
	The 2023 Advisory Opinion Request to the IACtHR on the Climate Emergency
	Plan B Earth and Others v. the United Kingdom
	Maria Khan and Others v. Federation of Pakistan and Others
	Herrera Carrion and Others v. Ministry of the Environment and Others ("Caso Mecheros")
	Greenpeace Southeast Asia and Others v. the Carbon Majors
	Fridays for Future Estonia v. Environmental Board
	De Conto and Uricchio v. Italy and 32 other States
	African Climate Alliance and Others v. Minister of Mineral Resources & Energy and Others ("#cancelcoal case")

The cases in bold in the table did not emerge from the search under a similar keyword in the Climate Change Litigation Databases. It is worth noting that the introduction of a new tag in a database already launched and developed would imply a new assessment of all the entries contained at that time. It was not possible to conduct this operation in a systematic way for the CRRP Database, thus the new tag is added to the pre-existing cases once they are modified or updated.

5.3.2 Interviews with the Litigants

As the KlimaSeniorinnen Association, the protagonist of the case study in Chapter 4, is based in Switzerland, exploratory interviews with two of their representatives were organised concurrently to the collaboration with the Climate Rights and Remedies Project at the University of Zurich, mainly aimed at collecting their opinion on the attribution of the *Gender / women-led* keyword tag to the case in the CRRP Database. Remarkably, the case already appeared in the search by the keyword *women* in the Climate Change Litigation Databases, as this word is included in its summary. However, the case, either in its national or regional proceedings, is not categorised under the category *women* among Human Rights suits against

governments. The interview with Cordelia C. Bähr, one of the legal counsels of the KlimaSeniorinnen Association, took place in Zurich, on May 22, 2023. The interview with Rosmarie Wydler-Wälti, Co-president of the Association, took place in Basel, on June 6, 2023. Overall, the interviews let a disharmony emerge, similar to what Seline Keller and Basil Bornemann defined the ‘tension between [the] legal and [the] political orientation’ of the case.¹⁵ Mrs. Bähr disagreed with the possible attribution of a tag referring to the case as based on a gender inequality claim, as the legal strategy mainly revolved around the assumed violation of the right to life of the applicant elderly women – relying on studies based on sex stratification – and gender-based discrimination was never considered. Mrs. Wydler-Wälti, though aware of the legal setting of the case, affirmed she personally considered it about gender equality, if not even a feminist – as well as anti-ageist – struggle. Interestingly, Mrs. Wydler-Wälti defined herself in the interview, such as in previous published sources,¹⁶ as ‘ecofeminist’: she joined the Association and the legal mobilisation also motivated by her past experiences in the environmental and feminist movements. However, she clarified this interpretation of the case was not shared by all the members of the association and not even among those of the board. Keller and Bornemann registered a tension between two ‘clearly distinguishable but partially overlapping frames’ in the strategic orientations of the KlimaSeniorinnen’s mobilisation, and namely: the ‘injustice frame’ stressing how the applicants are peculiarly affected by climate change, consistent with the legal claim, and the ‘grandchildren frame’ stressing the responsibility of older generations with respect to future generations in the attempt to involve new supporters, though possibly conflicting with the *most vulnerable group* line in court.¹⁷ All of the above considered, it appeared as clear that a possible *feminist*, *ecofeminist*, or *feminist climate justice* framing of the mobilisation, even a part from the legal strategy, was not deemed as strategical by the initiators, and these dimensions remained confined to personal interpretations of some members of the Association. Going back to the attribution of the tag, the

¹⁵ Seline Keller and Basil Bornemann, ‘New Climate Activism Between Politics and Law: Analyzing the Strategy of the KlimaSeniorinnen Schweiz’ (2021) 9/2 Politics and Governance 124-134.

¹⁶ Rosmarie Wydler-Wälti appeared in numerous published sources in recent years, among these Anne Karpf, *How Women Can Save the Planet* (Perlego 2021). BBC named her as the only Swiss woman among the 100 most inspiring and influential women from around the world for 2024.

¹⁷ Keller and Bornemann (15).

outcome of the interviews was that on the one hand it is undisputed that the mobilisation was women-led, while on the other hand the gendered dimension of the case is not common ground even among the members of the Association. This left an open question: should categories – mainly – represent the database collaborator's interpretation or the applicants' one?

5.4 BRIEF CONSIDERATIONS ON THE USE OF AI

The use of AI for the management of climate change litigation information, data, and documents is great, given the increasing amount of these available online. An example of the use of AI to the aims of knowledge production about climate law and policy is the Climate Change Laws of the World platform, hosted by the Grantham Research Institute on Climate Change and the Environment at LSE and powered by Climate Policy Radar.¹⁸ This latter employs natural language search, which allows to find relevant entries in the database even without typing the exact keywords and is built on machine learning such as transformer models and self-supervised learning. The database is currently manually updated, and the data is manually labelled by experts. However, functions to collect data from other sources such as scraping are under development, as well as automatically labelling using machine learning models. The platform also employs AI for translation: at present non-English documents are assigned English titles, summaries and attributes. Moreover, the searches return results from all titles and summaries regardless of language as well as from the full text of all English documents, and soon they will return results from the full text of non-English documents. The methodology does not clarify about any special attention paid to the peculiarities of legal translation but is transparent about possible bias of the model employed, inherited from its base model and the search query dataset for its training. In case of queries that could trigger biases in the semantic search model, the process falls back to fuzzy string search relying on matching words.¹⁹ According to Emilio Ferrera, bias can be defined as

systematic misrepresentations, attribution errors, or factual distortions that result in favouring certain groups or ideas,

¹⁸ Climate Change Laws of the World <<https://climate-laws.org/>> accessed 31 December 2024.

¹⁹ Climate Policy Radar, Methodology <<https://github.com/climatepolicyradar/methodology/blob/main/METHODOLOGY.md>> accessed 31 December 2024.

perpetuating stereotypes, or making incorrect assumptions based on learned patterns.²⁰

The absorption, reproduction and amplification of biases, including gender biases, in AI technologies has been object of scholarship: as ‘biases are implicit in our society and culture, they become part of the “contextual factors” which influence the use of and understanding of AI technologies’.²¹ Either looking at Large Language Models (LLM) and generative AI, AI-based decision-making systems, or natural language processing, biases still represent a challenge and limitation.²² Nicole Gross argued that, on the one hand, gender biases are ‘imprinted’ in LLMs and emerge in locutionary, illocutionary, and perlocutionary acts of generative AI. On the other hand, AI technologies, if properly oriented and managed, could contribute to ‘undoing gender’ as meant by Butler.²³ In this sense, Rangita de Silva de Alwis critically analysed under gender lenses the new international norms on AI and emerging technologies.²⁴ ChatGPT 4, asked about the gender and climate change nexus – What do you know about the gender and climate change nexus? – returned a quite exhaustive answer, though only centered on women, mentioning the dimensions of differential and intersectional vulnerability, agency and participation.²⁵ The answer suggested policy implications consistent with what emerged from policy analysis in Chapter 3, while under relevant global initiatives only mentioned the GAP under the UNFCCC and the 5th and 13th SDGs. Interestingly, when asked about legal actions about gender and climate change – Is there any legal action (example: a lawsuit) about gender and climate change? – ChatGPT 4 listed as ‘significant cases’ *Verein KlimaSeniorinnen Schweiz v. Switzerland* in front of the European Court of Human Rights, and *Juliana v. United States* though

²⁰ Emilio Ferrera, ‘Fairness and Bias in Artificial Intelligence: A Brief Survey of Sources, Impacts, And Mitigation Strategies’ (2023).

²¹ Sinead O’Connor and Helen Liu, ‘Gender Bias Perpetuation and Mitigation in AI Technologies: Challenges and Opportunities’ (2023) 39 *AI & Society*.

²² Ayesha Nadeem, Olivera Marjanovic and Babak Abedin, ‘Gender Bias in AI-based Decision-making Systems: A Systematic Literature Review’ (2022) 26 *Australasian Journal of Information Systems*.

²³ Nicole Gross, ‘What ChatGPT Tells Us about Gender: A Cautionary Tale about Performativity and Gender Biases in AI’ (2023) 12/435 *Social Sciences*.

²⁴ Rangita de Silva de Alwis, ‘Gendering the New International Norms on Artificial Intelligence and Emerging Technologies’ (2024) University of Pennsylvania Public Law and Legal Theory Research Paper Series.

²⁵ The query dated 4 January 2025.

‘not exclusively focused on gender’. Moreover, it reported about a ‘growing trend in climate litigation that emphasizes the gendered impacts of climate change’ driven by ‘Studies indicating that women are more vulnerable to climate disasters’, even though this is not supported by scientific literature. All of the above considered, and facing the limits of climate change litigation databases outlined in the previous sections of this chapter, it is clear that the great potential of AI technologies for climate litigation knowledge production shall be developed paying particular attention to the possible reproduction and influence of – gender – biases, but also to the need of previous methodological clarification about the creation of summaries, the attribution of tags and the level of engagement of the parties.

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CHAPTER 6



Conclusions

6 CONCLUSIONS

6.1.1.1 Premises

In a summary, the research process started from the observation of climate change litigation trends and data. Despite an expanding body of multi- and interdisciplinary literature investigating the multiple correlations between gender and climate change, a renewed interest in ecofeminist theories and practices, and the increasing mobilisation and visibility of the feminist climate justice movement, climate change litigation appears as not influenced by these. If a specific vulnerability of women to climate change is described in literature, they may be considered to have a more specific interest in acting in court, but climate cases related to women and gender are notably few in the global climate change litigation landscape as resulting from the mainstream databases. Youth-related cases spreading and development appeared more successful. This may indicate that some factors of vulnerability to climate change are preferable as grounds of a legal strategy by litigators, and this may depend on the existence of specific norms to rely upon and the specific available LOS. Moreover, the research tool may be challenged: databases may not be efficient in outlining relevant cases, because of their structure or functioning. Based on these reflections, the research question emerged as: why are there a few cases of climate change litigation in the databases dealing with the gender and climate change nexus? Two working hypotheses were elaborated as follows:

1. if there are few cases of climate change litigation in the databases dealing with the gender and climate change nexus, then the gender and climate change nexus is not a good ground for legal action;
2. if there are few cases of climate change litigation in the databases dealing with the gender and climate change nexus, then the databases are not properly working to outline those cases.

Before addressing the working hypotheses, a deeper exploration of the gender and climate change nexus was necessary. Therefore, a multi- and interdisciplinary literature review was conducted on the gender and climate change nexus. The search returned an extremely heterogeneous body of scientific and grey literature, and the outcomes were organised under the four dimensions of the substantive equality framework as meant by Sandra Fredman, in the attempt to move a step further compared to the existing literature on gender and climate change and draw a more nuanced and

comprehensive picture of the nexus. The literature review resulted in a multifaceted illustration of the gender and climate change nexus in its complexity.

6.1.1.2 The First Working Hypothesis

The research process went further by trying to understand whether one or more dimensions of the nexus has become the object of law or policy at different levels. Gender equality in the UNFCCC process was considered, as well as the influence of the climate change discourse on the CEDAW. Moreover, national outcomes of the UNFCCC process, such as the Nationally Determined Contributions (NDCs) and the National Adaptation Plans (NAPs) were analysed and compared under gender lenses. As some Countries adopted National Gender and Climate Change Plans, their structure and key themes were compared considering the literature review. The comparison was then extended to the plans' anchoring in the respective legal system, to understand which sources are deemed as relevant to the gender and climate change nexus and might be mobilised. It is worth noticing that many expressions of the nexus may already be the object of law and policy, but these latter may miss a climate change perspective. That is the case, for instance, of gender equality policies, laws preventing gender-based violence, or measures promoting equal job opportunities. Indeed, climate change exacerbates unaddressed pre-existing inequalities, apart from creating new needs and disparities. Mainly thanks to the mobilisation of the civil society, the UNFCCC regime saw landmark achievements for gender equality, though more related to the functioning of its processes and less in terms of substantial integration of a gender perspective in texts and decisions. However, the advancements at the regime's level have the potential to influence the national level. In this sense, NDCs and NAPs saw an increasing quantity and quality of gender references. Looking at the second international agreement which emerged as crucial to the theme, the CEDAW saw relevant evolutions in the Committee's interpretation of the obligations arising from the Convention, though limited and not tested so far. Among the regional legal instruments, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003), also called 'Maputo Protocol', is the only treaty dedicated to women in regional human rights systems covering environmental rights. At the national level, the study of National Gender and Climate Change Plans confirmed the UNFCCC and the CEDAW as references. Further, the analysis demonstrated that Human Rights Law, fundamental rights enshrined in national

constitutions, and national climate measures are indicated as the main elements of the framework for addressing the gender and climate change nexus. Overall, these results suggest that building a strategy on this to initiate a climate case may prove as complex: the mentioned international legal tools are not directly actionable – with one exception for the CEDAW, such as the possibility to address the CEDAW Committee – and national climate measures are often shaped as planning acts, which may not be challengeable in court – even though they may be challenged along the procedure for their adoption, if public participation is foreseen. Claims based on gender equality laws and policies may be strengthened by scientific evidence on specific vulnerability to climate change, but the literature review showed how more research is needed. Seen from the opposite perspective, not all the multiple expressions of the gender and climate change nexus are suitable being addressed with legal mobilisation in the form of litigation, having a structural nature. The outcomes of the case study supported this conclusion. To outline relevant cases of climate change litigation research was conducted through the Climate Change Litigation Databases of the Sabin Center for Climate Change Law, Columbia Law School. The keyword search returned a few cases, which were then categorised as women-led and/or gender-based. Falling within both the introduced categories according to an initial analysis, *Verein KlimaSeniorinnen Schweiz v. Switzerland*, including both the national proceedings and that in front of the European Court of Human Rights, was considered the most appropriate case for the case study. If the case saw a landmark judgment of the Court in Strasbourg which will shape the development of further climate litigation in the area, a deep analysis to the aims of this research work ascertained that the Verein KlimaSeniorinnen's legal mobilisation may be only classified as women-led – even though initiated for its strategic purposes by an NGO, which then created the association of women – while its strategy was not based on gender equality considerations. Dedicated provisions of the ECHR and the Court's case law were not mobilised, and even the strategic orientation of the case, apart from juridical considerations, was differently framed. Intersectional gender- and age-specific vulnerability to climate change was included in the legal strategy, based on non-uncontroversial scientific evidence, as a key to access justice passing the standing test. However, the requested remedies were generically beneficial for the entire population – or even, though a cynical consideration, to the rest of the population and not to the applicants, as the positive effects of climate change mitigation measures are long-term ones while they suffer from heat stress in the present. Overall,

the studied case touched upon the gender and climate change nexus, but addressing it directly was apparently not deemed as strategic by the initiators and litigators, either in the legal or in the political mobilisation. The first working hypothesis was therefore confirmed. What further emerged in this phase of the research process is an apparent dichotomy between highly industrialised countries, or UNFCCC Annex I Parties, and the other Countries. Highly industrialised countries appeared as less explicitly committed with respect to addressing inequalities at the nexus of gender and climate change, if not in the form of funding the efforts in this sense of developing countries through international cooperation. For instance, Finland funded the elaboration – though not the implementation – of many among the studied National Gender and Climate Change Plans in Chapter 3. The dichotomy may be due to a limited understanding of the gender and climate change issues as linked to lower levels of economic development. However, this is currently challenged by the expansion of gender and climate research focused on industrialised countries and by the global spreading of the mobilisation for feminist climate justice. The first NDCs of UNFCCC Annex-I countries mentioning gender appeared in the most recent submissions. Interestingly, the Government of Switzerland, challenged in court – even if with different strategic purposes as illustrated – on a gender and climate change issue, appeared among the funding institutions of some of the National Gender and Climate Change Plans in Chapter 3.

6.1.1.3 The Second Working Hypothesis

Along the research process, perplexities emerged about a tool that is central to climate change litigation knowledge production such as the databases. These perplexities concern the limits due to definitory issues, those due to the availability of specific information, and to those linked to the reliance on the contribution of a plurality of domain experts. Moreover, the use of AI to enhance the potentialities of the databases is under consideration and development. This could address some of the mentioned limits but may also reproduce biases and the shortcomings due to the lack of methodological clarification. The second working hypothesis was therefore confirmed: the available databases are not, at present, the proper tool to investigate the gender and climate change nexus in climate change litigation, thus it is not possible to outline a trend or exclude it. This is relevant because, as illustrated, trends' analysis influences the development of litigation itself. What further emerged in this phase of the research process is the crucial role of what other scholars named the – activist – lawyers' formant, which also

enjoys the availability of digital technologies – soon including the AI – to overcome borders and quickly exchange information, thus accelerating the cross-fertilisation and the circulation of legal models, strategies and solutions. Possible suggestions for the developers of climate change litigation databases emerged, such as the necessity to clarify among the collaborators precise guidelines for the creation of summaries and the attribution of categories, tags, and keywords. This methodological clarification should be transparent to the users too, and homogenisation of the content should be considered. An increased engagement of the parties, and especially of the claimants and initiators of the legal mobilisations, in the creation of the entries, to check for correct interpretation or to signal ambiguities exist, should be considered. Gender-disaggregated data about the parties should be available, based on the parties' declaration and not limited to gender binarism. Accessible methodological clarification on this should be available to the users. Other relevant disaggregation may be made available depending on the specific features of the database.

6.1.1.4 Suggestions for Further Research

Further research on the legal solutions to gender inequality in the climate crisis might be developed, starting from the study of the National Gender and Climate Change Plans' implementation and impact, if any. Interviews to the national focal points for gender and climate change under the UNFCCC regime may be conducted to better understand the dynamics between the international and the lower levels. Concerning climate change litigation, studies may focus on women-led cases, to assess whether commonalities and peculiarities exist. Similarly, legal actions appearing both under the youth and the women/gender category may be analysed and compared to understand the relationship between the two categories. As emerged in Chapter 5, the choice of a specific database as research tool influences the outcomes: several studies based on different databases may be conducted and compared to obtain less more comprehensive results. Following the strand of the KlimaSeniorinnen's case, a survey may be proposed to the members of the Association to investigate to what extent their interpretation of the mobilisation overlaps with the framing developed by the legal counsels and the scholars, and how the results may be integrated in an improved representation of the cases in climate litigation knowledge production. The analysis of the abundant academic literature dedicated to the case, mainly appeared after the landmark judgment, could assess which framing prevailed. A speculative study could explore a legal action based on Article

14 ECHR, starting from the same facts. Moreover, it could be valuable for the development of further climate litigation to understand on which kind of scientific evidence the judicial assessment of a group's specific vulnerability to climate change should be properly based. For instance, are descriptive epidemiological studies sufficient? To the aid of media studies, press illustrating the mobilisation of the KlimaSeniorinnen may be analysed to assess how the members of the Association were portrayed, also given they have been the object of hate speech and misogynist actions and reactions in the public debate, especially on social networks.

Appendix I

Tables of the full results of the search by keywords in the Climate Change Litigation Databases on August 24, 2024

Entry	U.S. Database	Global Database
child/dren	Bonser-Lain v. Texas Commission on Environmental Quality	Petition to the Inter-American Commission on Human Rights Seeking to Redress Violations of the Rights of Children in Cité Soleil, Haiti
	Blades v. California	Children's Petition to the UN Secretary-General to Declare a Climate Emergency
	Funk v. Wolf	Sacchi et. al. v. Argentina et al.
	Our Children's Earth Foundation v. California Air Resources Board	Sharma and others v. Minister for the Environment
	Foster v. Washington Department of Ecology	La Rose v. Her Majesty the Queen
	Filippone v. Iowa Department of Natural Resources	Pandey v. India
	Svitak v. Washington	Herrera Carrion et. al. v. Ministry of the Environment et. al. (Caso Mecheros)
	Kanuk v. Alaska	Indonesian Youths and others v. Indonesia
	Sanders-Reed v. Martinez	Request for an advisory opinion on the scope of the state obligations for responding to the climate emergency
	Chernaik v. Brown	Communication to the OECD's Arrangement on efforts to expand the Coal-Fired Electricity Generation Sector
	Farb v. Kansas	Hearing on Climate Change Before the Inter-American Commission on Human Rights
	Aronow v. Minnesota	Nature Conservation Council v. New South Wales Minister for Water, Property and Housing
	Held v. State	Environmental Justice Australia (EJA) v. Australia

Clean Air Council v. US	Duarte Agostino and Others v. Portugal and 32 Other States
Barhaugh v. Montana	Otis Hoffman et al. v. State of Mecklenburg-Vorpommern
Genesis B. v. U.S. Environmental Protection Agency	Youth Verdict v. Waratah Coal
Juliana v. US	Torres Strait Islanders Petition
	ADPF 746 (Fires in the Pantanal and the Amazon Forest)
	Asociacion Civil por la Justicia Ambiental v. Province of Entre Rios et. al.
	Violations of human rights by the Federation of Bosnia Herzegovina and China due to coal fired plants in Bosnia Herzegovina
	Clara Leonel Ramos and others vs. State of São Paulo and others (Families for the Climate and Fridays for Future question IncentivAuto Program)
	Luca Salis, et al. v. State of Sachsen-Anhalt
	Tristan Runge, et al. v. State of Saxony
	Leonie Frank et. al. v. State of Saarland
	ENVironnement JEUnesse v. Procureur General du Canada
	Soubeste and Others v. Austria and 11 Other States
	Australian Parents for Climate Action v EnergyAustralia

		Armando Ferrao Carvalho and Others v. The European Parliament and the Council
		Ali v. Federation of Pakistan
		Future Generations v. Ministry of the Environment and Others
		Fridays for Future Estonia vs. Environmental Board
		A.S. & S.A. & E.N.B v. Presidency of Türkiye & The Ministry of Environment, Urbanization and Climate Change
		Children of Austria v. Austria
		Woodpecker et al. v. South Korea
		Africa Climate Alliance et. al., v. Minister of Mineral Resources & Energy et. al. (#CancelCoal case)
		Greenpeace Nordic and Nature & Youth v. Energy Ministry (The North Sea Fields Case)
		Plan B Earth and Others v. Prime Minister
		Alvarez et. al. v. Peru
student/s	Turning Point USA (TPUSA) v. Macomb Community College	
	Make UC a Good Neighbor v. Regents of University of California	Students for Climate Solutions Inc v. Minister of Energy and Resources
	Harvard Climate Justice Coalition v. President & Fellows of Harvard College	Henry v. EPA
	Roemer v. Williams	Patrick Pouyanné (CEO of TotalEnergies) v. Greenpeace France
		Thomson v. Minister for Climate Change Issues
		NZ Students for Climate Solutions and UK Youth Climate Coalition v. Board of BP

		Complaint to Ad Standards on HSBC's Great Barrier Reef ad
teen/ager/s		
young	Held v. State	Environmental Justice Australia (EJA) v. Australia
	Juliana v. US	Sharma and others v. Minister for the Environment
	Aji P. v. State of Washington	Soubeste and Other v. Austria and 11 Other States
	Navahine F. v. Hawai'i Department of Transportation	Steinmez et. al. v. Germany
		Steinmetz, et al. v. Germany II
		Fridays for Future Estonia vs. Environmental Board
	Sagoonick v. State	Fridays for Future Estonia v. Eesti Energia
	Funk v. Wolf	Uricchio v. Italy and 32 other States
	Reynolds v. Florida	De Conto v. Italy and 32 other States
	Bonser-Lain v. Texas Commission on Environmental Quality	ENVironnement JEUnesse v. Procureur General du Canada
	Martinez v. Colorado Oil & Gas Conservation Commission	Anton Foley and others v. Sweden (Aurora Case)
	Harvard Climate Justice Coalition v. President & Fellows of Harvard College	Duarte Agostino and Others v. Portugal and 32 Other States
	Blades v. California	Youth v. Government of Mexico
		Six Youths v. Minister of Environment and Others
		Julia Habana et. al. v Mexico
		Plan B Earth and Others v. UK
	Plan B Earth and Others v. Prime Minister	

		Greenpeace Nordic Ass'n v. Ministry of Petroleum and Energy (People v. Arctic Oil)
		Greenpeace Nordic and Others v. Norway
		Matteo Feind at. al. v. Niedersachsen
		Fliegenschnee et. al. v. Federal Ministry for Digitalisation and Business Location, Austria
		Ewan McGaughey et. al. v. Universities Superannuation Scheme Limited
		A.S. & S.A. & E.N.B v. Presidency of Türkiye & The Ministry of Environment, Urbanization and Climate Change
		Do-Hyun Kim et. al. v. South Korea
		Youth Climate Case Japan for Tomorrow
		Cosima Rade et. al. v. Baden-Wuttenberg
youth	Sagoonick v. State	Children's Petition to the UN Secretary-General to Declare a Climate Emergency
	Juliana v. US	Youth v. Government of Mexico
		Youth Climate Case Japan for Tomorrow
	Held v. State	Youth Verdict v. Waratah Coal
	Martinez v. Colorado Oil & Gas Conservation Commission	PUSH Sweden, Nature and Youth Sweden and Others v. Government of Sweden
	Aji P. v. State of Washington	Indonesian Youths and others v. Indonesia
	Foster v. Washington Department of Ecology	La Rose v. Her Majesty the Queen
	Navahine F. v. Hawai'i Department of Transportation	Future Generations v. Ministry of the Environment and Others

Chernaik v. Brown	Six Youths v. Minister of Environment and Others
Reynolds v. Florida	Mathur et. al. v. Her Majesty the Queen in Right of Ontario
Koch Industries, Inc v. John Does 1-25	Duarte Agostino and Others v. Portugal and 32 Other States
Layla H. Commonwealth	Alvarez et. al. v. Peru
Natalie R. v. State	De Conto v. Italy and 32 other States
Western New York Youth Climate Council v. New York State Department of Transportation	Do-Hyun Kim et. al. v. South Korea
Conservation Law Foundation v. Maine Department of Environmental Protection	Uricchio v. Italy and 32 other States
Atencio v. State	Neubauer et. al. v. Germany
Sagoonick v. State (II)	Matteo Feind at. al. v. Niedersachsen
	Communication to the OECD's Arrangement on efforts to expand the Coal-Fired Electricity Generation Sector
	Armando Ferrao Carvalho and Others v. The European Parliament and the Council
	Steinmez et. al. v. Germany
	Nuestros Derechos al Futuro y Medio Ambiente Sano et. al. v. Mexico
	Julia Habana et. al. v Mexico
	Environmental Justice Australia (EJA) v. Australia
	Children of Austria v. Austria
	Nature Conservation Council v. New South Wales Minister for Water, Property and Housing

	Cosima Rade et. al. v. Baden-Wuttenberg
	Greenpeace Nordic and Nature & Youth v. Energy Ministry (The North Sea Fields Case)
	Greenpeace Nordic and Others v. Norway
	Sacchi et. al. v. Argentina et al.
	ADPF 746 (Fires in the Pantanal and the Amazon Forest)
	Hearing on Climate Change Before the Inter-American Commission on Human Rights
	Plan B Earth and Others v. Prime Minister
	Soubeste and Other v. Austria and 11 Other States
	ENVironnement JEUnesse v. Procureur General du Canada
	Greenpeace Nordic Ass'n v. Ministry of Petroleum and Energy (People v. Arctic Oil)
	Otis Hoffman et al. v. State of Mecleknburg-Vorpommern
	Herrera Carrion et. al. v. Ministry of the Environment et. al. (Caso Mecheros)
	Petition to the Inter-American Commission on Human Rights Seeking to Redress Violations of the Rights of Children in Cité Soleil, Haiti
	Pandey v. India
	Request for an advisory opinion on the scope of the state obligations for responding to the climate emergency
	Luca Salis, et al. v. State of Sachsen-Anhalt

	Tristan Runge, et al. v. State of Saxony
	Leonie Frank et. al. v. State of Saarland
	Africa Climate Alliance et. al. v. Minister of Mineral Resources & Energy et. al.
	Tristan Runge et. al. v. State of Saxony
	Luca Salis et. al. v. State of Sachsen-Anhalt
	Clara Leonel Ramos and Bruno de Almeida de Lima vs. State of Sao Paulo
	Alena Hochstadt et. al. v. State of Hessen
	Ali v. Federation of Pakistan
	Thomas & De Freitas v. Guyana
	Marlene Lemme et. al. v. State of Bayern (one constitutional claim + one subsidiary claim)
	Emma Johanna Kiehm et. al. v. State of Brandenburg
	NZ Students for Climate Solutions and UK Youth Climate Coalition v. Board of BP
	Clara Leonel Ramos and others vs. State of São Paulo and others (Families for the Climate and Fridays for Future question IncentivAuto Program)
	Fridays for Future Estonia vs. Environmental Board

		Opinion of the National Human Rights Commission on the climate crisis and human rights
		SFOC et al. v. Minister of Health and Welfare
		Africa Climate Alliance et. al., v. Minister of Mineral Resources & Energy et. al. (#CancelCoal case)

Entry	U.S. Database	Global Database
gender		Request for an advisory opinion on the scope of the state obligations for responding to the climate emergency
		Communication to Pakistan concerning the ongoing forced evictions and home demolitions along Karachi's waterways (nullahs)
	-	Hearing on Climate Change Before the Inter-American Commission on Human Rights
girl/s	-	Ali v. Federation of Pakistan
		Communication to Pakistan concerning the ongoing forced evictions and home demolitions along Karachi's waterways (nullahs)
		Herrera Carrion et. al. v. Ministry of the Environment et. al. (Caso Mecheros)
woman	-	Petition to the Inter-American Commission on Human Rights Seeking to Redress Violations of the Rights of Children in Cité Soleil, Haiti
		Uricchio v. Italy and 32 other States
		De Conto v. Italy and 32 other States
women	Adorers of the Bloof of Christ v. FERC	KlimaSeniorinnen v. DETEC and Others + KlimaSeniorinnen v. Switzerland
	Adorers of the Bloof of Christ v. Transcontinental Gas Pipe Line Co.	Maria Khan et. al. v. Federation of Pakistan et. al.
		Women from Huasco and Others v. the Government of Chile, Ministry of Energy, Environment and Health

	Hearing on Climate Change Before the Inter-American Commission on Human Rights
	Ewan McGaughey et. al. v. Universities Superannuation Scheme Limited
	Divest Invest Protect, Indigenous Peoples Law and Policy Program, and Women's Earth and Climate Action Network vs. Credit Suisse Group
	Communication to Pakistan concerning the ongoing forced evictions and home demolitions along Karachi's waterways (nullahs)
	Herrera Carrion et. al. v. Ministry of the Environment et. al. (Caso Mecheros)
	Request for an advisory opinion on the scope of the state obligations for responding to the climate emergency
	R(Transport Action Network) v Secretary of State for Transport (Cycling and Walking Investment Strategy)