



Submission from INTLawyers

Submission responding to the Gender Action Plan (GAP) adopted at COP23*

KEY MESSAGES

This submission responds to Decision 3/CP.23, activity E.1 of the Gender Action Plan. Activity E.1 invites submissions on the following: (a) Information on the differentiated impacts of climate change on women and men, with special attention paid to local communities and indigenous peoples; (b) Integration of gender considerations into adaptation, mitigation, capacity-building, Action for Climate Empowerment, technology and finance policies, plans and actions; (c) Policies and plans for and progress made in enhancing gender balance in national climate delegations. This submission focuses its response on the former two categories; (a) and (b) to the United Nations Framework Convention on Climate Change (UNFCCC).

(a) Information on the differentiated impacts of climate change on women and men, with special attention paid to local communities and indigenous peoples

Introduction

‘Indigenous peoples’ refers to groups of individuals who are generally viewed as the ‘first people’ to inhabit a particular territory.¹ Indigenous peoples are generally more vulnerable to climatic changes, due to their dependency on both land and sea for subsistence requirements²; lower socioeconomic status; usual inhabiting of areas impacted most severely including coastal areas; and limited access to quality health care services.³ Indigenous peoples are considered to be among the world’s most marginalized, impoverished and vulnerable peoples, and often have minimal

* Authored by Nikita Sinha, Elena Evangelidis, Kathryn Gooding and Sarah Mead.

¹ Minority Rights Group International, ‘The Impact of Climate Change on Minorities and Indigenous Peoples’ (2008). Retrieved from <<https://minorityrights.org/wp-content/uploads/old-site-downloads/download-524-The-Impact-of-Climate-Change-on-Minorities-and-Indigenous-Peoples.pdf>>

² Kovats et al., *Methods of assessing human health vulnerability and public health adaptation to climate change*. In: Health and Global Environmental Change, Series no 1 (World Health Organization).

³ Christopher Furgal and Jacinthe Seguin, ‘Climate Change, Health, and Vulnerability in Canadian Northern Aboriginal Communities’ (2006) 114 *Environmental Health Perspectives* 1964, 1968.

access to resources enabling them to cope with the consequences of climate change.⁴ Indigenous women are particularly vulnerable to the adverse effects of climate change due to the intersection of race and gender, which exacerbates these disproportionate impacts. Climate change compounds the existing inequalities experienced by indigenous women. An intersectional approach to climate justice is needed to address these disproportionate impacts. Such an approach is consistent with both the principles of the climate treaty regime, in particular the principles of equity⁵ and sustainable development,⁶ and international human rights law.

Local Communities, Indigenous Peoples and Human Rights

It is important to transcend the perspective of viewing indigenous peoples as mere victims of climate change⁷, and acknowledge the vital contribution they can make to address climate change, based on their close relationship with their environment; their role in the conservation of biological diversity and the protection of several natural resources; and their traditional knowledge on climate variability enabling the furtherance of adaptation of others.⁸ There is a particular imperative in ensuring that indigenous women participate meaningfully in processes that address climate change, as indigenous women are the primary keepers of traditional knowledge in their communities.⁹

The main international legal instrument for indigenous populations is the United Nations Declaration on the Rights of Indigenous Peoples.¹⁰ This instrument is central when it comes to the protection of the human rights of these peoples in the context of climate change within the UNFCCC. Nevertheless, despite being among the social groups most affected by climate change, indigenous peoples' rights and concerns have not been a priority at climate change negotiations at the national, regional and international levels.¹¹ So far, the most successful use of human rights law in this context has been the petition submitted to the Inter-American Commission on Human Rights on behalf of the Inuit populations in Alaska and Canada.¹² The petition included claims to violations of rights to enjoy traditional lands, personal property, preservation of health, the right to life, etc.¹³ This case is an early illustration of the added value of a human rights approach when

⁴ Conference on Indigenous Peoples and Climate Change (10 March 2008). Meeting Report; Submitted by the International Work Group for Indigenous Affairs (IWGIA). E/C.19/2008/CRP. 3.

⁵ UNFCCC, Art 3(1); Paris Agreement, Arts 2(2), 4(1), 14(1).

⁶ UNFCCC, Art 3(4); Paris Agreement, in particular Art 2(1).

⁷ Ameyali Ramos-Castillo et al, 'Indigenous peoples, local communities and climate change mitigation' (2017) 140 *Climatic Change*, 2.

⁸ Christina Nilsson, 'Climate Change from an Indigenous Perspective: Key Issues and Challenges' (2008) *Indigenous Affairs*, 14.

⁹ Minority Rights Group International, 'Minority and Indigenous Women's Right to Culture: Identity, Gender and Opportunities for Empowerment' (2016). Retrieved from <<https://minorityrights.org/wp-content/uploads/2016/07/Minority-and-indigenous-womens-right-to-culture.pdf>>

¹⁰ UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*. Adopted by the General Assembly, 2 October 2007, A/RES/61/29.

¹¹ Conference on Indigenous Peoples and Climate Change (10 March 2008). Meeting Report; Submitted by the International Work Group for Indigenous Affairs (IWGIA). E/C.19/2008/CRP. 3.

¹² Hari M. Osofsky, 'Complexities of addressing the impacts of climate change on indigenous peoples through international law petitions: a case study of the Inuit petition to the Inter-American Commission on Human Rights' (2007) 31 *Am. Indian L. Rev.* 675.

¹³ Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States, at 75-95 (submitted 7 December 2005).

it comes to the impact of climate change on the livelihoods of indigenous peoples, including indigenous women.

International human rights law requires that more attention is given to the intersectional dimensions of climate change. We know that climate change is not gender neutral, because it affects women and men differently.¹⁴ For instance, several studies have demonstrated that women's historic disadvantages, specifically those from rural communities and indigenous populations which may also have limited access to (natural) resources and information, restricted rights and a muted voice in shaping and negotiating decisions, result in them being categorically more vulnerable to the impacts of climate change.¹⁵ This shows the increasing importance of an approach to climate change within the UNFCCC based on human rights with a focus on gender and intersectionality; specifically the multi-faceted principles of equity and non-discrimination.¹⁶

Non-Discrimination and Equality: Core of the Human Rights Framework

All human rights must be respected, protected and fulfilled in a non-discriminatory manner. Affirmative measures may be needed to achieve this objective. The right to water, for example, has been widely recognized within international legal instruments and is also part of customary international law.¹⁷ All States have an obligation to eliminate all kinds of discrimination against women in rural areas, and promote equality, in relation to adequate provision of sanitation and water supply.¹⁸ This obligation is to be fulfilled in a manner that reduces rather than exacerbates existing inequalities, with special attention paid to groups of individuals who have traditionally experienced hardship in exercising this right, including indigenous peoples.¹⁹

A qualitative study carried out in the Chitwan district, which is considered to be one of the most vulnerable to the effects of climate change in Nepal, demonstrated that indigenous women in this area are one of the most severely marginalized groups.²⁰ In the Chitwan district, Chepang women are most variably and severely affected by the impacts of climate change due to their predetermined association with nature; such that they are often the main providers of water and food to their families.²¹ Accordingly, a shortage of vital natural resources such as fuel, firewood, food and water increases the workload of indigenous women significantly, because more time is needed to obtain these resources.²² If adequate resources are not found, then the effects of climate

¹⁴ Urmilla Bob & Agnes Babugura, 'Contextualising and Conceptualising Gender and Climate Change in Africa (2014) 28 Agenda 3, 6.

¹⁵ Ibid, 4; United Nations Development Programme (UNDP) (2007) 'Human Development Report 2007/2008 – Fighting climate change: Human solidarity in a divided world', New York.

¹⁶ United Nations Economic and Social Council, 'Impact of Climate Change Mitigation Measures on Indigenous Peoples and on Their Territories and Lands' (2008) E/C.19/2008/10.

¹⁷ United Nations Economic and Social Council, General Comment No. 15 (2002), para. 4.

¹⁸ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, Article 14(2)(h).

¹⁹ General Comment No. 15 (2002), para. 13.

²⁰ Jyoti Acharya, 'Climate Change Adaptation Among Chepang Women: The Light Hidden in the Dark' (2014) 94 *Women and Environments* 28.

²¹ Ibid, 29.

²² Luni Piya et al., 'Perceptions and Realities of Climate Change among the Chepang Communities in Rural Mid-Hills of Nepal' (2012) 2 *Journal of Contemporary India Studies: Space and Society*, Hiroshima University 35, 36.

change heavily impacts these women's inherent right to food and water.²³ In a similar vein, climate change has resulted in limited availability of traditional country food for Inuit communities, often gathered by women, thereby deepening the already high rates of food insecurity in the North.²⁴ Consequently, Inuit women experience significantly greater food insecurity as compared to men, and this difference is especially pertinent in single parent households headed by women who have the least access to traditional foods.²⁵ These women also have greater difficulty than men when accessing paid employment, which is increasingly relied upon to supplement traditional economies.²⁶

In sum, the impacts of climate change are not gender-neutral,²⁷ due to significantly limited access to resources for women; restrictive rights; as well as the lack of a voice in decision making at the household level and outside.²⁸ Climate change exacerbates already pernicious gender inequalities, and discriminatory practices against minority groups and indigenous peoples. These culminate in a particularly devastating impact on indigenous women, compounding the existing inequalities they face. These case studies exemplify how climate change creates different human rights impacts on indigenous women than women generally. Accordingly, it is vital for the human rights approach within the UNFCCC to mainstream intersectional concerns and that relevant mitigation and adaptation strategies for climate change are adopted, which focus on more vulnerable populations such as indigenous peoples.²⁹ The forthcoming section explains these issues further.

(b) Integration of gender considerations into adaptation, mitigation, capacity-building, Action for Climate Empowerment, technology and finance policies, plans and actions

Where adaptation and mitigation policies overlook the different social expectations resting on men and women and the traditional roles associated with them, they have the potential to either directly harm women or exclusively benefit men, thereby exacerbating existing inequalities.³⁰ To achieve climate justice, States must ensure that laws and regulations governing climate change at the national and regional levels directly address gender-based discrimination and gender equality,³¹ taking into particular account the different intersectional harms experienced by minority women, such as indigenous women and women of colour, and taking account of their specific needs. For

²³ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, Adopted 16 December 1966, art. 11.

²⁴ Maude C. Beaumier et al., 'The food security of Inuit women in Arviat, Nunavut: the role of socio-economic factors and climate change' (2015) 51 *Polar Record* 550, 552.

²⁵ Lewis Williams et al., 'Women and Climate Change Impacts and Action in Canada: Feminist, Indigenous, and Intersectional Perspectives' (2018) 2 *Women and Climate Change*.

²⁶ *Ibid.*

²⁷ Ashbindu Singh et al., 'The state of sex-disaggregated data for assessing the impact of climate change' (2010) 1 *Procedia Environmental Sciences* 395.

²⁸ United Nations Development Programme, 'Gender and climate change: impact and adaptation' (2008) UNDP Asia-Pacific Gender Community of Practice Annual Learning Workshop, Negombo, Sri Lanka, pp. 24–26.

²⁹ Senay Habtezion, 'Overview of linkages between gender and climate change' (2013). UNDP Gender and Climate Change: Asia and The Pacific.

³⁰ See, for example, OHCHR, *Climate Change and the Human Rights to Water and Sanitation – Position Paper*, 28, available at https://www.ohchr.org/Documents/Issues/Water/Climate_Change_Right_Water_Sanitation.pdf

³¹ Anne Barre et al, *From Marrakesh to Marrakesh - The rise of gender equality in the global climate governance and climate action*, in Sebastien Duyck et al (eds) *Routledge Handbook of Human Rights and Climate Governance* (Routledge, 2018) 239, 244

example, States must remove the legal barriers women face in benefiting from adaptation and mitigation strategies and adopting policies that take account of the social realities that prevent women from the enjoyment of such benefits and actively ensure access, for example in the finance sector.³²

Integrating gender considerations into action for adaptation

States should integrate measures targeted explicitly at women into their adaptation responses and in the case of Least Developed Countries into their National Action Programmes for Adaptation (NAPAs). In general, adaptation responses should be based on respect for human rights, in particular the explicit recognition of the rights to water, food, and health and States should align their national goals, targets and indicators for adaptation with existing human rights standards.³³ The human rights framework is underpinned by the principles of equality, equity and non-discrimination.³⁴ Where states base their adaptation strategies on human rights considerations, the integration of gender considerations into national adaptation policies becomes an inevitable result.

Rights-based approaches are effective in achieving climate justice, as many inequalities result from legal barriers traditionally faced by women. For example, rights-based approaches have successfully been used in Maradi, Niger, to improve women's access and control over land as well as their access to information and credit, enhancing food security in their communities.³⁵ Such approaches may be particularly beneficial for minority and indigenous women, whose lack of access to right to land, health and education is even more severe than that of non-indigenous women.³⁶ By incorporating an intersectional element into rights-based approaches, it is possible to ensure that these specific human rights violations that affect minority and indigenous women differently are not overlooked.

Additionally, actions that address climate adaptation must take into account the societal expectations placed on women and men, the associated traditional role models and differentiated knowledge and skills of women and men in local communities to avoid unintended adverse impacts.³⁷ For example, Burkina Faso integrated a strategy to create income-generating activities for women to make up for losses resulting from climate-change induced damage to their harvests.³⁸ This was implemented through local programmes which trained women in poultry-farming.³⁹

³² *Ibid.*

³³ See for example, OHCHR, *Climate Change and the Human Rights to Water and Sanitation – Position Paper*, available at https://www.ohchr.org/Documents/Issues/Water/Climate_Change_Right_Water_Sanitation.pdf

³⁴ See for example, OHCHR, *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies*, para 21, HR/PUB/06/12 <<https://www.ohchr.org/Documents/Publications/PovertyStrategiesen.pdf>>

³⁵ UNGA, *Interim Report of Special Rapporteur Hilal Elver*, UN Doc GA/A/70/287 (5 August 2015) <https://www.ohchr.org/Documents/Issues/Food/A-70-287.pdf> para 37

³⁶ UNGA, *Report of the Special Rapporteur Hilal Elver*, UN Doc A/HRC/31/51 (14 December 2015)

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/293/26/PDF/G1529326.pdf?OpenElement> para 11

³⁷ Women & Gender Constituency, *Position Paper on the 2015 New Climate Agreement* (1 June 2015), 4, available at <http://womensgenderclimate.org/women-and-gender-constituency-position-paper-on-the-2015-new-climate-agreement/>

³⁸ S. Saulière, *Climate Change and Women Farmers in Burkina Faso – Impact and Adaptation Policies and Practices* (Oxford Research Report, July 2011), 5, available at <https://www-cdn.oxfam.org/s3fs-public/file_attachments/tr-climate-change-women-farmers-burkina-130711-en_4.pdf>

³⁹ *Ibid.*

While women controlled the livestock, both men and women were involved in the sales. In turn, the income was controlled by both women and men, ultimately increasing the burden of labour placed on women disproportionately in relation to the income generated for them.⁴⁰

Integrating gender into action for mitigation

The integration of gender considerations into mitigation strategies can have negative and positive dimensions. States and other actors implementing mitigation projects must ensure that such projects do not cause unintended harm to women. Mitigation investments must not take funds away from programs with well-established benefits for women – a concern that has surfaced over the past years.⁴¹ Equally, States should carefully assess the potential stress mitigation strategies may put on women and local communities. States should specifically focus on the intersectional impact of mitigation strategies, which may have different effects on women from different backgrounds, including those from indigenous backgrounds. For example, it has been shown that biofuel projects tend to interfere with the resources available to women, while hydropower plants have negatively affected indigenous communities.⁴² Moreover, positive action is required in ensuring that benefits generated by mitigation projects are enjoyed equally by women and men. Where funds are made available for locally-led mitigation projects, or employment opportunities arise, for example in the renewable energy sector,⁴³ States must ensure that men and women have equal access to these benefits.⁴⁴

States and actors should ensure that mitigation analysis and recommendations, which tend to be framed in scientific terms, are translated into generally accessible language to enhance transparency. Only then can local women be actively and meaningfully encouraged to participate in the design of mitigation measures.⁴⁵ The majority of the world's rural poor are smallholder farmers,⁴⁶ at least 80% of which are women.⁴⁷ As such, women hold much of the agricultural knowledge necessary for mitigation measures applicable to the agricultural sector and have much to contribute to local innovation, for example in the form of new farming techniques.⁴⁸ International commitments should be translated into national action in a bottom-up fashion, and value women's approach to managing natural resources.⁴⁹ By encouraging bottom-up planning in

⁴⁰ *Ibid.*

⁴¹ David Edmunds *et al.*, 'CGIAR Research Program on Climate Change, Agriculture and Food Security (CCAFS) – A gender Strategy for Pro-Poor Climate Change Mitigation', 35, available at <<https://ccafs.cgiar.org/publications/gender-strategy-pro-poor-climate-change-mitigation#.XJzw15hKhEY>> accessed 26/03/2019

⁴² Elver (n 35) para 65

⁴³ Elver (n 36) para 71

⁴⁴ Linda. Adams *et al.*, 'Gender & Climate Finance Policy Brief – Effective. Efficient. Equitable Making Climate Finance Work for Women', available at <<https://www.adb.org/sites/default/files/publication/42881/climate-finance-work-women.pdf>>

⁴⁵ Edmunds (n 41) 22

⁴⁶ David Molden (ed), 'Water for Food, Water for Life' (Earthscan Working Paper) 21, available at <http://www.iwmi.cgiar.org/assessment/files_new/synthesis/Summary_SynthesisBook.pdf> accessed 27/03/2019

⁴⁷ Action Aid International, 'What Women Farmers Need – A blueprint for action', p 3, available at <http://www.actionaid.org/sites/files/actionaid/the_blue_print_for_women_farmers.pdf> accessed 27/03/2019

⁴⁸ Edmunds (n 41) 31

⁴⁹ Eric Zusman *et al.*, 'Mainstreaming Gender into Climate Mitigation Activities', 3, available at <<https://www.adb.org/sites/default/files/publication/217771/gender-climate-mitigation.pdf>>

this manner, women are given the chance to employ their traditional knowledge to become active agents in combating climate change.⁵⁰ Involving women in this way has the added value of feeding back into societal systems and advancing intersectional gender equality.⁵¹ Human rights should be placed at the centre of mitigation strategies. Participation and inclusion, as well as non-discrimination and equality must therefore be understood as the principles which guide these measures.⁵²

An example of good practice can be found in Vanuatu's Rural Electrification Nationally Appropriate Mitigation Action (NAMA). The NAMA's twin objectives of reducing the island's dependency on imported diesel fuels to mitigate greenhouse gases and the achievement of sustainable development co-benefits resulted in the incorporation of an explicit effort to integrate gender into the action. It included commitments which ensured that part of the electricity would go to the women's handicraft association and that targets for at least two women-run enterprises would be created.⁵³

Conclusion

As highlighted in this submission, women are more vulnerable to the effects of climate change, including from natural disasters due to limited resources and lack of access to decision making processes. Indigenous women in particular depend on natural resources affected by climate change for their livelihoods. They are also the main providers of food for their families and are therefore more severely affected by water and crop shortages, which increase their workloads and cause food insecurity. In order to address these vulnerabilities, parties to the UNFCCC must put human rights at the centre of all climate change-related actions, while upholding the principles of the Convention. The importance of a human rights-based approach is recognised in the preamble of the Paris Agreement. The preamble expressly notes that parties should, when taking action to address climate change, 'respect, promote and consider their respective obligations on human rights', specifically 'the rights of indigenous peoples ... and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.'⁵⁴ Moreover, the UNFCCC requires that climate action is guided by the principle of 'equity and in accordance with common but differentiated responsibilities and respective capabilities',⁵⁵ which is further affirmed in the Paris Agreement.⁵⁶ Indeed, international human rights law requires compliance with the principle of common but differentiated responsibilities and respective capabilities at the global level, and affirmative measures to ensure that women's adaptation needs are met at the national level. International human rights law also requires that women are able to access the benefits of climate change mitigation financing, as well

⁵⁰ Women & Gender Constituency (n 37) 4

⁵¹ Edmunds (n 41) 13

⁵² See for example, 'Human Rights and Climate Change' (OHCHR), <https://www.ohchr.org/en/issues/hrandclimatechange/pages/hrclimatechangeindex.aspx> accessed 27/03/2019

⁵³ United Nations Development Programme, NAMA on Rural Electrification in Vanuatu (11 September 20115) <<https://www.undp.org/content/undp/en/home/librarypage/environment-energy/mdg-carbon/NAMAs/nama-on-rural-electrification-in-vanuatu.html>>

⁵⁴ Paris Agreement, preamble, para. 11.

⁵⁵ UNFCCC, Art. 3(1).

⁵⁶ Paris Agreement, Art 2(2).

as the creation of opportunities in the climate change mitigation sector. A crucial step in achieving women's equality in this respect is to ensure that actions are planned in a transparent and accessible manner, that women's participation is actively encouraged and that women's traditional knowledge and ways of managing natural resources are valued in the design of adaptation and mitigation measures. It is essential that intersectionality is mainstreamed in these efforts, to ensure that women of all backgrounds can meaningfully participate in processes that directly concern them.

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