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**Human Rights, Environmental Sustainability, Post-2015
Development, and the Future Climate Regime**

**Gender Equality, Human Rights and Environmental Integrity in the
New Climate Agreement and Post-2015 Development Agenda**

**Written by Yeniva Massaquoi
Contributions and Editing, Bridget Burns and Eleanor Blomstrom**

Women's Environment and Development Organization (WEDO), 355 Lexington Avenue, 3rd Floor, New York, NY, 10017, USA, Phone: (212)973-0325, E-mail: yeniva@wedo.org

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Abstract

As the post-2015 development process evolves in parallel to a new global climate agreement, supporting a comprehensive version of sustainable ecologically-sound development that reaffirms the interconnections between its three major dimensions – social development, environmental protection, and economic development – is critical to moving forward. A major challenge for this, however, is the fragmented way that women's human rights have been mainstreamed and implemented. Women's human rights and gender equality are intrinsic to comprehensive human rights and social development. However, gender is not consistently meaningfully integrated either in sustainable development agreements or in human rights mainstreaming efforts. To uphold rather than violate women's human rights and gender equality and to promote sustainable rather than degenerative forms of development, States must give up business as usual. Instead they must adopt an integrative approach that overcomes the current discriminatory status quo and supports transformational change by building on existing efforts to recognize gender as a fundamental component of human rights and sustainable development frameworks.

1. Introduction

As the post-2015 development process evolves in parallel to a new global climate agreement, supporting a comprehensive version of sustainable ecologically-sound development that reaffirms the interconnections between its three major dimensions – social development, environmental protection, and economic development – is critical to moving forward. A major challenge for this, however, is the fragmented way that women’s human rights have been mainstreamed and implemented.

Despite continued global efforts to develop and implement policies aimed at achieving sustainable development, men continue to outpace women in terms of wealth, literacy and health. Ostensibly, UN Member States have committed to the principle of gender equality and the advancement of women’s rights through international treaties and policies including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Beijing Platform for Action, the outcome of the United Nations Conference on Sustainable Development 2012 (Rio + 20). Despite these commitments, current policy processes failure to uphold rights frameworks highlights a gap in the meaningful integration of women’s human rights into sustainable development agreements.

This paper contends that the historical tension between the notions of gender, human rights and development must be revisited to devise integrative solutions that promote sustainable rather than degenerative forms of development. As such, Part 2 of this paper evaluates the basis for a women’s human rights approach to (sustainable) development. Part 3 of this paper then situates the case for women’s human rights in the post-2015 sustainable development process. Through case study assessments, this paper will further contextualize the role women’s human rights in sustainable development. Finally, in Part 4 presents the case for a human rights, gender-responsive approach to climate change policy.

2. Women, Human Rights & Development

Amartya Sen has advocated that development be viewed through a capabilities approach, “in terms of expanding substantive freedoms”.¹ As such, development acts as both the means and the main objective of removing major sources of “unfreedom”² including: poverty, tyranny, poor economic opportunities, systematic social deprivation and intolerance.³ Certainly, as Sen’s definition underscores, moving beyond an economic characterization of development as only a response to lack of income produces new realities. For example, in considering the different measures for gender equity, some approaches measure women’s “poverty” by the income gaps between female-headed and male-headed households.⁴ Women’s “poverty” under Sen’s approach goes beyond the lack of income and instead looks at deeper issues relating to deprivation in capabilities, such as lack of education, health, and the channels to participate in economic life and in decision-making.⁵

In the context of gender, Martha Nussbaum has provided illuminating treatment of Sen’s capabilities approach. In particular, Nussbaum notes that Sen’s approach can help construct a normative conception of justice with critical potential for gender issues.⁶ Central to Nussbaum’s argument for gender justice are the twin questions: how well have women been enabled to perform human functions?; and, have they been put in a position of mere human subsistence with respect to the functions, or have they been enabled to live well?”.⁷ For Nussbaum, these questions call for an answer resulting in women viewed as agents who are (equally) the makers of choices in society. As such, the emphasis when linking development and gender is on identifying the obstacles to

¹ Amartya Sen, *Development as Freedom*, (New York : Knopf, 1999) at 3.

² *Ibid.*

³ *Ibid.*

⁴ Sakiko Fukuda-Parr at 31 Sakiko Fukuda-Parr, “The Human Development Paradigm: Operationalizing Sen’s Ideas on Capabilities” (2003) *Feminist Economics*, Vol. 9, No. 2-3, 2003 at 314 [Fukuda-Parr]. Available at SSRN: <http://ssrn.com/abstract=2221381>.

⁵ *Ibid.*

⁶ Martha Nussbaum, “Capabilities as Fundamental Entitlements: Sen and Social Justice” (2003) *Feminist Economics*, Vol. 9, No. 2-3, 2003 at 1.

⁷ Martha Nussbaum, *Sex and Social Justice*, (New York: Oxford University Press, 1998) at 42.

self-realization of goals – obstacles that are often imposed by traditional norms and values.⁸ This basis thus informs the need for special political action to remedy unequal situations.⁹

The foregoing analysis outlines a basis for a transition from women’s custom-political arrangements in society to their legal-political arrangements. Custom and political arrangements decree whether a woman gets access to economically beneficial resources (such as education, food or labour).¹⁰ Custom and political arrangements are rooted more in cultural norms than legal norms. Therefore, if transformative change toward gender equality is to occur, women’s freedoms ought to be expanded through a meaningful transition to a legal-political arrangement. Fundamentally, the essential distinction between the custom-political arrangement and the legal-political arrangement is a form of agency that endows the individual with choice. This is crucial because as noted in *The Report of the United Nations Secretary-General’s High-Level Panel on Global Sustainability*, “the problem [with development] is not unsustainable choices, but a lack of choices in the first place. Real choice is only possible once human rights, basic needs, human security and human resilience”¹¹ are realized. As such, real choice is the cornerstone of sustainable development and for women to access the freedoms of sustainable development there must be meaningful transition to a legal-political arrangement. To bring women’s legal-political arrangements into focus, women’s human rights must therefore be meaningfully integrated into the discourse on development. For climate change purposes, as will be outlined below, this means a grounding of the climate change framework in human rights language.

To date, gender equality policies have amounted to lip service and have not resulted in meaningful gains for women because of a history of emphasizing gender mainstreaming at later implementation stages. For example, an emphasis on the involvement of women decision-makers on a policy matter is not significant if the underlying laws and customs relating to the policy further entrench gender inequality. This bandage approach to resolving deep discrepancies in gender equality is not sustainable. Mainstreaming must address the structural foundations of gender

⁸ *Ibid* at 46.

⁹ *Ibid*.

¹⁰ *Ibid* at 32.

¹¹ United Nations Secretary-General’s High-level Panel on Global Sustainability (2012). *Resilient People, Resilient Planet: A future worth choosing*. New York: United Nations at 6 [UN Report *A future worth choosing*] [emphasis added].

inequality if the world (in every community) is are to succeed in transitioning to a legal-political structure in which women's capabilities to access resources are equal to men.

In sum, although there have been significant strides in gender equality and empowerment policies, including CEDAW, the Beijing Platform for Action, and Rio+20, implementation and enforcement have suffered setbacks and globally, women still make up the majority of people living in poverty which leads to inequitable development outcomes. As such, despite the well-meant aspirational policies embodied in documents like CEDAW, women's human rights and resulting gender equality have suffered from structural impediments. That is, the policy frameworks including the MDGs adopted by UN Member States, have failed to adequately address the structural causes of gender inequality.¹² If structural impediments are to be removed, integrating gender requires a focused expansion of the capabilities of women to access resources to the same degree as men.¹³ The capabilities necessary for women to access resources include literacy, health, control over assets, protected land rights and decent work. Further, an integrative approach emphasizes women decision-makers in public and private governance institutions. Consequently, gender integration requires a more integrated and comprehensive gendered approach to every development goal. Such a mainstreaming effort results in a more robust focus on achieving gender equality.

3. Women's Human Rights in the Post-2015 Development Process

Although the capabilities approach provides a useful framework for infusing human rights into development discourse, Martha Nussbaum does acknowledge the theory's limits. Indeed, Nussbaum has noted that the capabilities approach represents and results in the basic minimum justice requires.¹⁴ In addition to this limitation of the capabilities approach, Sandra Fredman identifies a second concern when instrumentalizing the capabilities approach to informing the development process with human rights. In short, Fredman questions the capabilities approach

¹² UN Women (2013). *A Transformative Stand-Alone Goal on Achieving Gender Equality, Women's Rights and Women's Empowerment: Imperatives and Key Components*, United States: UN Women at 2.

¹³ *Ibid.* at 34.

¹⁴ M Nussbaum, Foreword: Constitutions and Capabilities: "Perception" Against Lofty Formalism" (2007) 121 Harv LR 5, 12.

emphasis on creating choices for individuals.¹⁵ As such, the approach's normative framework ostensibly prioritizes the individual's ability to do and to be.¹⁶ The risk of solely emphasizing this framework for women's human rights mainstreaming purposes is that it fails to encompass other human rights values not based on choice but instead based on collective, interpersonal relationships and interdependence.¹⁷ This therefore accounts for values of caring for people, communities and nature in the context of sustainable development. Fredman contextualizes this point as follows:

Central among these [non-choice values] is the value of caring, which comes not as a matter of choice but of responsibility. In fact, the needs of the person who is cared for might limit, inevitably and appropriately, the capabilities of the person doing the caring. In the context of gender, it is of great significance that value is attached, not just to choices, but to relationships for themselves. Thus engendering socio-economic rights does not merely require that women looking after children have more childcare options, enabling them to undertake paid work. It also requires that caring activities in themselves are valued and protected, for example through appropriate social security benefits, health services, housing and protection against vulnerability to violence. Giving greater social recognition to caring work might also encourage a fairer division of caring work among men and women.¹⁸

As such, in advocating for meaningful integration of women's human rights into the post-2015 development process, it is important to instrumentalize the capabilities approach as a tool for expanding women's freedoms and their ability to make choices. However, to fully mainstream women's human rights into the post-2015 development goals, it is crucial to expand the advocacy toolkit to account for interpersonal relationships and interdependence (as between the woman and her society, her community, her ecosystem and her family).¹⁹

Given the foregoing analysis, this paper postulates an approach to mainstreaming women's human rights that tackles structural causes of gender equality. The call for mainstreaming women's human

¹⁵ Sandra Fredman, "Engendering Socio-Economic Rights", South African Journal of Human Rights, Vol. 25, Part 3, 2009; Oxford Legal Studies Research Paper No. 54/2010 [Fredman]. Available at SSRN:

<http://ssrn.com/abstract=1631765>.

¹⁶ *Ibid.* at 20.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

rights requires substantive equality. Practically speaking, substantive equality calls for: (i) an assessment of existing power structures and the role of women within them; (ii) a call for transformative change within social institutions instead of expecting individuals to conform; and (iii) in efforts for transformative change, it is possible that equal treatment may result in a disadvantage for women and as such, it is important to distinguish the aim of substantive equality from the fact that women may have to receive unequal treatment in order to achieve equitable outcomes.

3.1 The Post 2015 Development Agenda

Although a standalone goal²⁰ in support of the achievement of gender equality and the empowerment of all women and girls is welcome, to give teeth to the achievement of gender equality, women's human rights must be integrated into the larger framework for sustainable development. In short, States must give up business as usual. Instead they must adopt an integrative approach that overcomes the current discriminatory status quo and supports transformational change at the structural level. Further, the fact that women's human rights are addressed in the context of other goals including the goals concerning poverty, hunger, education and employment, is not sufficient for a framework aimed at substantive equality. To tackle the structural issues preventing women from achieving gender equality, the post-2015 development process must, for one, personalize women as rights holders and personalize women as decision makers.

²⁰ **Proposed goal 5. Attain gender equality, empower women and girls everywhere**

5.1 end all forms of discrimination against all women and girls

5.2 eliminate all forms of violence against all women and girls in public and private spaces and end their trafficking and sexual exploitation

5.3 eliminate all harmful practices, such as child, early and forced marriage and female genital mutilations

5.4 recognize and redistribute unpaid care and domestic work through shared responsibility within the family and the provision of appropriate public services

5.5 ensure full and effective participation and leadership of women at all levels of decision-making in the public and private sectors

5.6 ensure universal access to sexual and reproductive health and reproductive rights in accordance with the Programme of Action of the ICPD and the Beijing Platform for Action

5.a ensure women's equal right to own and control assets and productive resources

5.b by 2030 achieve universal access to ICT for women and men to promote women's empowerment

5.c promote sound, enforceable and monitorable legislation and policies for the promotion of gender equality at all levels

Personalizing Women as Rights Holders

In order to mainstream women’s human rights, gender issues must be comprehensively integrated into all goals. As such, if women’s rights are to be meaningfully integrated into the post-2015 development process then women, themselves, must be personalized as rights holders. That is to say, women must be characterized within the diverse roles that they occupy in society – e.g. as farmers, indigenous people, and natural resource users. In this sense, the foundation for substantive equality – that a woman’s interpersonal relationships and interdependence in society be accounted for – is well positioned. It is only through this ensuring of rights to women that the power imbalance between men and women in society can be addressed. Indeed policies resulting from the post-2015 development process will be most successful in tackling gender justice issues if they remove structural impediments by recognizing the multiplicity of rights linked to a woman’s various interpersonal relationships and interdependence in society.

Case Study: Women and Land Rights

Take for example the case of women as rights holders in agriculture. To date, 43 percent of those in the agriculture workforce in developing countries are women.²¹ Yet they are more likely than men to hold low wage, part-time and seasonal employment.²² Disparities also persist in access to productive resources for women farmers.²³ A meaningful integration of women’s rights as relates to ownership and control over productive assets in the agricultural industry would therefore require, as a baseline assessment, measuring women’s role in this sector. The report on Rural Gender Asset and Wealth Gaps underscored the importance of this issue as follows:

“Ownership of, access to, and control over land and productive assets are important to the well-being of individuals. Ownership of assets can provide vital sources of income for those in rural areas and can facilitate access to credit, enabling investments into other productive physical assets or education. As a store of wealth,

²¹ UN Report *A future worth choosing*, *supra* note 11 at 19.

²² *Ibid.*

²³ *Ibid.*

assets also strengthen a household's ability to cope with and respond to economic shocks.²⁴

The current language in the proposed Sustainable Development Goals supporting women's rights in the agricultural sector is:

1.4 by 2030 secure equal access for all men and women, particularly those most in need, to basic services, the right to own land and property, productive resources and financial services, including microfinance

2.3 by 2030 double the agricultural productivity and the incomes of small-scale food producers, particularly women, indigenous peoples, family farmers, pastoralists and fishers, including through secure and equal access to land, other productive resources and inputs, knowledge, financial services, markets, and opportunities for value addition and non-farm employment.²⁵

5.a ensure women's equal right to own and control assets and productive resources

The provisions as listed here fail to fully account for the underlying systemic limitations to women's ability to reach gender equality. Despite the fact that, as noted above, women contribute significantly to this sector, they continue to occupy a precarious position. As noted in the FAO report on Gender and Land Rights, women have lower access to land than men and are often restricted to so-called secondary land rights, meaning that they hold these rights through male family members.²⁶ Women are therefore at risk of losing their property entitlements in case of divorce, widowhood or their husband's migration.²⁷ Further, evidence also shows that women's parcels are generally of smaller size and lower quality.²⁸ Global agricultural census data indicates that women make up less than 20% of the world's landholders.²⁹

²⁴ Cheryl Doss, Carmen Diana Deere, Abena D. Oduro, and Suchitra J. Y., *The Rural Gender Asset and Wealth Gaps: Evidence from Ghana, Ecuador, Uganda and Karnataka, India*, Bangalore: Indian Institute of Management Bangalore. 2012 at 1. Available at: <http://www.genderassestgap.org/sites/default/files/RuralGapsReportFINAL.pdf>.

²⁵ Food and Agriculture Organization of the United Nations, *Gender and Land Rights*, 2010 [FAO]. Available at: <http://www.fao.org/docrep/012/al059e/al059e00.pdf>.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

The systemic bases for the continued subjugation of women's land rights are manifold. However, of primary concern is the interplay between socio-cultural traditions, customary law and statutory law which often results in the contradictory application of gender rights enshrined in international treaties. Socio-cultural traditions impact how existing statutory laws protecting women's land rights are interpreted and therefore enforced.³⁰ Conversely, the tension between customary law and statutory law often results in the carving out of exceptions to protect existing customs relating to land rights and ownership.³¹ In light of these structural impediments to the meaningful implementation of women's human rights in the context of land use, it is crucial that the post-2015 development process give robust treatment to the links between women, men, land, and the community.

Further, gender equality, if it is to be successful, must be understood in terms of more than economic growth. To meet this standard, it is necessary to deconstruct language linking equality between men and women, in order to evaluate and understand that the mainstreaming of women's human rights results in the expansion of her freedoms. As relates to this case study on land use, deconstructing notions of equality to expand freedoms unveils the need for restructuring of legal systems to accommodate women landowners, education measures on land ownership and gender rights, and justice considerations to improve the woman's well-being.

As such, the Women's Major Group for Sustainable Development³² has advocated for the following changes to the above provisions, also incorporating the notion of tenure arrangements in addition to ownership:

1.4 by 2030 ~~secure equal access for all men and women,~~ **reduce by x% the number of women and the number of men,** particularly those most in need, **who lack access to** basic services;; the **secure** rights to own land, and property, **and** productive resources; and **access to** financial services, including **but not limited** to microfinance

2.3 by 2030 ~~double agricultural~~ **substantially increase small-scale food producers'** productivity and their incomes ~~of small-scale food producers,~~

³⁰ *Ibid.*

³¹ *Ibid.*

³² Available at: <http://www.womenmajorgroup.org/>. The role of the Women's Major Group is to assure effective public participation of women's non-governmental groups in the UN policy processes on Sustainable Development, Post-2015 and Environmental matters.

particularly women, indigenous peoples, family farmers, pastoralists and fishers, including through secure **land tenure, territory and** equal access to land **and** other productive resources, ~~and inputs~~, **supplies**, knowledge, **information**, financial services, **local and national** markets, and opportunities for value addition and non-farm employment **while respecting the right to live a healthy environment.**

5.a **by 2030** ensure women's **realize, on an equal basis with men, secure** rights to ~~own and control~~ **land, property, natural and other** assets and productive resources

In sum, the discourse on land rights, control and access provides a useful template for an analysis of the personalization of women as rights holders in an attempt to comprehensively mainstream women's human rights. Further, the case study unveils the multidimensional nature of 'women's issues'. Women's human rights permeate all goals outlined in the post-2015 development process and as such, to treat these issues in silo is essentially a mark of failure for transformational change.

Personalizing Women as Decision Makers

As noted above, gendering decision making, by itself, is not sufficient to comprehensively mainstream women's human rights unless the underlying structural constraints to gender equality are also addressed. The above example on land use is illustrative of this. The involvement of women at later decision-making stages on the management of land in their community is not sufficient or meaningful if the laws governing the inheritance, ownership and control of land are skewed towards men. That said, gendered decision-making is a necessary twin pillar to accompany the comprehensive characterization of women as rights holders.

Case study: Women Decision-makers and Environmental Sustainability

An individual's vulnerability to climate change often turns on their gender roles.³³ Take for example energy. Twenty percent of the world's population lacks access to reliable electricity while

³³ Geraldine Terry Ed., *Climate Change and Gender Justice*, (Oxford : Practical Action Publishing in association with Oxfam GB, 2009) [Terry] at 2.

a staggering 2.7 billion people still rely on traditional sources of biomass to cook their food and heat their homes.³⁴ As underscored by UN Secretary General Ban Ki-moon:

“The implications of energy poverty are enormous. Parents cannot grow enough food or adequately support their families without motorized equipment, irrigation pumps, and power for business activities. Women spend hours each day on routine daily subsistence activities—pounding grain, hauling water and gathering firewood. They have little or no time for earning income. And when they cook over open fires, they and their children are exposed to harmful pollutants from inhaled smoke”³⁵

Linkages between energy poverty, gender and climate change are strongest in places where there is a high reliance on biomass fuels.³⁶ In such instances, cultural norms contribute to women and girls taking on a primary role in biomass fuel collection resulting in an increased likelihood for environmental degradation.

Despite women’s precarious position, they still make up a minority of decision-makers on energy matters. Generally, women are significantly under-represented in decision-making positions around the world, holding fewer than 20 percent of all seats in national parliaments and 16 percent of ministerial posts.³⁷ However, for women in government, statistics indicate that representation is unevenly distributed among sectors. As such, globally, women make up 35 percent of social affairs and welfare ministers, 19 percent of finance and trade ministers, *7 percent of environment, natural resources and energy ministers*, and only 3 percent of science and technology ministers.³⁸ Given the substantial role that women play in energy matters, failure to include female decision-makers undermines the human rights capabilities approach. This is because gender mainstreaming requires a focused expansion of the capabilities of women to access resources to the same degree as men. If women’s perspectives on the transition from unsustainable cycles of energy consumption to a renewable energy economy are not part of decision-making, women will continue to be disproportionately affected by climate change.

A recent study by Bina Agarwal on gender inclusive governance in community forest groups in India and Nepal provides useful context for the impact generated by involvement of women in

³⁴ UN Report *A future worth choosing*, *supra* note 11 at 18.

³⁵ Gail Karlsson and Rose Mensah Kutin, “Links between Gender Equality, Access to Sustainable Energy and Climate Change Mitigation Measures” in *Powerful synergies Gender Equality, Economic Development and Environmental Sustainability*, UNDP 2012 [UNDP Report *Powerful Synergies*] at 105.

³⁶ Terry, *supra* note 33.

³⁷ UN Report *A future worth choosing*, *supra* note 11 at 29.

³⁸ *Ibid.*

decision-making.³⁹ The study examined the social and institutional outcomes of including female decision-makers in green governance. Among the results identified were the facts that:⁴⁰

- In mixed gender committees, women's attendance rate to meetings were significantly higher where women constituted 25-33 percent of decision-makers (than where women decision-makers formed less than 25 percent of decision-makers on committees);
- The likelihood of women attendees speaking up at a meeting was higher where women constituted 33 percent or more of decision-makers;
- Women's presence significantly improved conservation outcomes. Specifically, forests with all-women committees showed a 51 percent greater likelihood of improved forest condition than other groups, despite receiving much smaller and more degraded forest plots to protect.

As underscored by this study, gendered participation in decision-making can improve women's capacity building. It is critical to note that despite the notable successes of the all-women committees, male participation is just as critical the process of gender equality. However, as this study shows, the inclusion of women in decision-making creates a space for active participation from other women community members. This in turn generates the opportunities to devise solutions that account for the gendered vulnerabilities in the community.

4. Human Rights and Climate Change

Climate change is not gender neutral. Instead, it magnifies existing gender inequalities between men and women. This is especially true because, as mentioned above, women are at greater risk to climate change effects. Indeed, climate change illuminates the multiplicity of rights linked to a woman's various interpersonal relationships and interdependence in society. Women are often dependent on natural resources for their livelihoods, do most of the agricultural work and are responsible for collecting water and fuel.⁴¹ Climate change thus puts women at risk of slipping into deeper poverty and exacerbates existing inequalities. For example, climate change has made

³⁹ UNDP Report *Powerful Synergies*, *supra* note 35 at 94-95.

⁴⁰ *Ibid.*

⁴¹ Terry, *supra* note 33 at 3.

the agricultural sector more unpredictable and this has disproportionately affected women because they are on the front lines of this sector. Further exacerbating women's precarious position is the fact that women have fewer assets and less opportunities for addressing the problems resulting from climate change (e.g. income, education and training).⁴² As well, climate change increases conflicts over resources with women often getting the shorter end of the stick. Climate change therefore often marginalizes women and entrenches inequality. As such, climate change threatens a multiplicity of women's human rights.

Despite an evidentiary basis for its need, integrating gender into the climate change discourse has been slow and inconsistent, with the UNFCCC the only Convention of the three major environmental conventions established at the 1992 Rio Earth Summit which does not reference gender equality or women as key stakeholder. In line with the normative frameworks set out in CEDAW, the Beijing Platform for Action and Rio+20, global consensus has started in recent years to recognize the need for integration of women's rights into the climate change discourse. However, although climate change talks have made some progress in attempts to mainstream gender, it has been disconnected from the normative framework. A quick analysis of UNFCCC decisions indicates that out of 32 current decisions that reference gender, around 16% refer only to gender balance and enhancing women's participation on boards and bodies.⁴³ 53% of decisions mandate a gender-sensitive approach, which requests States to take into account the different needs, perspectives and capacities of women and men in policy planning and implementation. However, this approach again relies on States to interpret the scope of how gender is adequately account for, which can often result in simply including women and men in stakeholder processes without policy measures to address women's unequal access to rights and resources for example.

Among the decisions, adaptation is so far the area in which the most robust gender-sensitive language has been integrated, with a total of 10 decisions integrating gender references.⁴⁴ Conversely, out of the main areas for negotiations (adaptation, mitigation, finance, technology and capacity building), mitigation has the lowest number of decisions that reference gender. In

⁴² Irene Dankelman, "Gender In Climate Change Adaptation", 2008, online: http://www.preventionweb.net/files/5442_GenderinClimateChangeAdaptation.pdf.

⁴³ Women's Environment and Development Organization, "Gender and Climate Change Technical Guide for COP20 Lima Peru – UNFCCC Decisions and Conclusions", (upcoming publication) [WEDO Technical Guide for COP20].

⁴⁴ *Ibid.*

mitigation negotiations, gender considerations are only included in relation to REDD+ and response measures, with the latter only referring to women as a “vulnerable group”.⁴⁵ As relates to decisions explicitly on gender, the original decisions focused solely on improving women’s participation and gender balance in UNFCCC decision making.⁴⁶ All of this signals progress. However, for gender equality purposes, climate change mitigation and adaption is only truly transformative if the policies are fully and appropriately applied. Implementation continues to lag behind, even in gender balance goals. For instance, the current composition of UNFCCC boards and bodies, which are explicitly mandated to target gender balance,⁴⁷ are notably inequitable.⁴⁸ Further, these statistics indicate that while women are viewed as a ‘vulnerable’ class, there is a failure link women with climate change technology or finance which in turn highlights weak gender mainstreaming efforts.

Certainly, Decision 23/CP.18 called for a workshop at COP 19 to address gender sensitive climate policy and mandated a standing item on gender at the COP. The conclusions under this agenda include proposals to monitor implementation of gender-sensitive climate policies and actions. Despite this, in attempting to draw solutions, the tension between gender mainstreaming and climate change can be problematized beyond a requirement for implementation monitoring. Conditions for successful integration of gender and human rights include:⁴⁹

- a) *An institutional culture that is open to gender perspectives and willing to take self-evaluative steps to ensure its goals are met.* This requirement touches, for example, on the above argument advocating for the need for gender balance in decision-making coupled with implementation monitoring.
- b) *Political commitment at the highest levels.* It is important to have both international and domestic/national/local policy spaces. For example, as discussed in section 3.1, the tension between customary law and statutory law often results in the carving out of exceptions to protect existing customs relating to land rights and ownership. As a result, governments practicing such an approach cannot maintain a consistent policy relating to gender mainstreaming and environmental sustainability.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ See Decision 23/ CP.18.

⁴⁸ WEDO Technical Guide for COP20, *supra* note 43.

⁴⁹ Irene Dankelman Ed., *Gender and Climate Change: An Introduction*, (London: Earthscan, 2010) at 13.

- c) *Gender mainstreaming must be understood as a fluid concept involving evolving responsibility.* The framing of gender as a single and finite target fails to properly measure progress by recognizing the evolving and continuous nature of gender mainstreaming.
- d) *Collection, analysis, and use of sex disaggregated data.* As women's relationships to the environment (relative to men's) vary across social constructs including socio-economically, the patterns in reliance, use, consumption and production of resources must be evaluated along gender lines. Such data analysis can speak to the unique vulnerabilities and needs of women and guide solutions designed to address their realities.
- e) *Deployment of adequate resources (human and financial).*
- f) *Characterization of women as active agents for change.* A final key obstacle to effective gender mainstreaming is that women are often seen as victims rather than as change agents or participants and stakeholders in deriving solutions.⁵⁰

5. Conclusion

Women's human rights are intrinsic to comprehensive human rights and social development. However, gender is not consistently meaningfully integrated either in sustainable development agreements or in climate change efforts. To uphold rather than violate women's human rights and gender equality and to promote sustainable rather than degenerative forms of development, States must give up business as usual. Instead they must adopt an integrative approach that overcomes the current discriminatory status quo and supports transformational change by ensuring human rights are central to States policy responses and by building on existing efforts to recognize gender as a fundamental component of human rights and sustainable development frameworks.

⁵⁰ Terry, *supra* note 33 at 3.