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**DISSERTATION TITLE**

**What are Pacific Small Island Developing States' Obligations toward Women's Human Right to Health in the Context of Climate Change?**

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## List of Acronyms

CBDRRC = Common but Differentiated Responsibilities and Respective Capabilities

CESCR: International Covenant on Economic, Social and Cultural Rights

CEDAW: Convention on the Elimination of all Discrimination Against Women

COP: Conference of the Parties

ECHR: European Convention on Human Rights

FAO: Food and Agriculture Organisation

GHG: Green House Gas

HRBA: Human Rights-Based Approach

IHRL: International Human Rights Law

NAPA: National Adaptation Programme of Action

NDC: Nationally Determined Contribution

OECD: Organisation for Economic Co-operation and Development

OHCHR: Office of the High Commissioner of Human Rights

(P)SIDS: (Pacific) Small Island Developing States

SAMOA: SIDS Accelerated Modalities of Action

SDG: Sustainable Development Goal

SGBV: Sexual and Gender-Based Violence

STI: Sexually Transmitted Infection

STD: Sexually Transmitted Disease

STEM: Science, Technology, Engineering and Mathematics

UN: United Nations

UNFCCC: United Nations Framework Convention on Climate Change

UNHRC: UN Human Rights Council

UDHR: Universal Declaration of Human Rights

UPR: Universal Periodic Review

WHO: World Health Organisation

## 1. Introduction

Within the last decade, climate change has moved to the forefront of our minds. More and more, international leaders are calling attention to the imminent threat and activists around the world have taken to the streets to call for more awareness on the issue. While for some States – or their head of State –, the consequences of climate change seem to be less noticeable,<sup>1</sup> other States' simple existence depends on whether or not the international community manages to limit their greenhouse gas (GHG) emissions, as agreed upon in international treaties. Especially affected in this regard are Small Island Developing States (SIDS). Already acknowledged by the UN as one of the most vulnerable to climate change, their unique exposure to weather events, rising sea-levels and their dependence on imports have significantly increased the hardship of these islands. Among SIDS, Pacific SIDS (PSIDS) are characterised not only by the above-mentioned factors, but also by their general isolation and remoteness, making them a particularly interesting case study.

People living in poverty suffer disproportionately from climate change, as their possibilities to adapt to the changing circumstances are increasingly limited.<sup>2</sup> Women are recognised to make up the majority of the world's poor.<sup>3</sup> Combined, therefore, with inherent gender inequalities, many women are disproportionately affected by climate change.

In a human rights context, climate change has been described as “one of the greatest threats to human rights.”<sup>4</sup> Economic, social and cultural rights are more affected than civil and political rights. Elements of the former rights are linked to climate change far more closely, such as the right to health, for example.<sup>5</sup> The impacts of climate change on health conditions creates new challenges for PSIDS to fulfil the right to health to their islanders. Furthermore, it is uncertain how far States' obligations under the human rights framework overlap with the climate change framework and whether the latter creates any new obligations for States under the former. Within this confusion, there remains, thus, a space to ask the question: What are PSIDS' human rights obligations towards women's right to health in the context of climate change?

In order to answer this question, this dissertation will have a closer look into the impact of climate change on women's right to health in PSIDS, by looking at the relation between climate

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<sup>1</sup> See for example David Volodzko, 'Trump's Climate Denial is a National Security Threat' (Forbes, 23 February 2019) <<https://www.forbes.com/sites/davidvolodzko/2019/02/23/manufacturing-climate-denial-is-a-threat-to-manufacturing/#6922163721b9>> accessed 7 September 2019

<sup>2</sup> Paul Hunt and Rajat Khosla, Climate Change and the Right to the highest attainable Standard of Health, in Stephen Humphreys (ed.), Human Rights and Climate Change (Cambridge University Press, 2009), p. 250

<sup>3</sup> Oxfam, An Economy that works for Women (Oxfam, 2017), p. 2

<sup>4</sup> OHCHR, Joint Statement of the United Nations Special Procedures Mandate Holders on the Occasion of the 24th Conference of the Parties to the UNFCCC (OHCHR, 6 December 2018),

<<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23982&LangID=E>> accessed 15 August 2019

<sup>5</sup> Stephen Humphreys, Competing Claims: Human Rights and Climate Harms, in Stephen Humphreys (ed.), Human Rights and Climate Change (Cambridge University Press, 2010), p. 38



change and PSIDS, climate change and women, and PSIDS and women. It will then progress to a legal analysis of women's right to health under the International Covenant on Economic, Social and Cultural Rights (CESCR) and the Convention on the Elimination of all Discrimination against Women (CEDAW), before moving to the climate change framework, especially the Paris Agreement. The previous impact assessment will then inform how the legal framework applies to the new situation caused by climate change and what kind of obligations arise from it. In the conclusion, the dissertation will draw on the greater debate on climate justice to explain why neither frameworks are currently fit to guarantee women's right to health.

## 1.1 Limitation

First, even though intersectionality is at the core of any feminist analysis, the scope of this thesis does not allow to enter into greater detail of different types of discrimination that women face. However, it should be kept in mind that it can generally be assumed that women suffering from several grounds of discrimination, such as sexual orientation, ethnicity, disability, or age, will disproportionately struggle to adapt to the challenges of climate change.

Second, by talking about PSIDS in general, it is an unfortunate reality that the nuances of the States and their national struggles will largely remain untouched. While the situation of women's right to health can strongly vary between States, discrimination against women remains a struggle for all island States analysed in this paper, as the analysis further below shows.

Third, this paper is limited to PSIDS, recognised by United Nations Development Program (UNDP) as such. This means island States situated in the Pacific. Non-UN members, however, have not been taken into consideration in this piece. Nevertheless, 13 PSIDS should give enough groundwork for some general assumptions on the region.

## 1.2 Definitions

Adaptation: "Actions that countries will need to take to respond to the impacts of climate change that are already happening, while at the same time preparing for future impacts"<sup>6</sup>

Climate Change: "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"<sup>7</sup>

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<sup>6</sup> UNFCCC, 'Climate: Get the Big Picture' (UNFCCC, 2019) <<https://unfccc.int/resource/bigpicture/>> accessed 24 July 2019

<sup>7</sup> UNFCCC, art. 1.2

Pacific Small Island Developing States: Fiji, Kiribati, Marshall Islands, Micronesia (Federated States of), Nauru, Palau, Papua New Guinea, Samoa, Solomon Islands, Timor-Lest, Tonga, Tuvalu and Vanuatu<sup>8</sup>

(Climate) vulnerability: “degree to which a community experiences danger and harm from the negative effects of climate change”<sup>9</sup>

Mitigation: “Efforts to reduce [GHG] emissions and enhance [GHG] sinks”<sup>10</sup>

Resilience: The ability of a social or ecological system to absorb disturbances while retaining the same basic structure and ways of functioning, the capacity for self-organisation, and the capacity to adapt to stress and change.<sup>11</sup>

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<sup>8</sup> UNDP, 'Small Island Developing States' (Sustainable Development Goals Knowledge Platform, 2019) <<https://sustainabledevelopment.un.org/topics/sids/list>> accessed 15 August 2019

<sup>9</sup> DARA, Climate Vulnerability Monitor 2010 (DARA, 2010), p. 21

<sup>10</sup> UNFCCC, supra 6

<sup>11</sup> Lenny Bernstein et al., Climate Change 2007: Synthesis Report (IPCC, 2007), p. 86

## 2. The Impact of Climate Change on Women’s Right to Health in Pacific Small Island Developing States

### 2.1 The Specific PSIDS context

PSIDS are recognised to be one of the most vulnerable group of States to the impact of climate change. This was reaffirmed in the Rio +20 Conference in 2012 in the outcome document *The Future We Want*, which states:

We reaffirm that small island developing States remain a special case for sustainable development in view of their unique and particular vulnerabilities, including their small size, remoteness, narrow resource and export base, and exposure to global environmental challenges and external economic shocks, including to a large range of impacts from climate change and potentially more frequent and intense natural disasters.<sup>12</sup>

While one has to acknowledge the diversity of PSIDS, they share some commonalities. First, the lack of a diverse economy has driven PSIDS into a dependence on agricultural production, fisheries and tourism, all of which are nature related.<sup>13</sup> Second, communities, agriculture, tourism and the necessary infrastructure thereto, are mainly concentrated on the coast and thus more vulnerable to climate change induced events such as sea-level rise and storm surges.<sup>14</sup> States which consist mainly of atoll islands, whose elevation is thus particularly low – such as in Kiribati and Tuvalu – will suffer considerably from these events.<sup>15</sup> As the name already gives away, PSIDS are developing countries; five PSIDS have also been classified as belonging to the least developed countries. This impacts their capacity to take action against climate change.<sup>16</sup> In addition, the tourism sector puts an additional strain on the already limited resources of the islands - especially fresh water in times of increasingly heavy droughts.<sup>17</sup> Taking all of this into consideration, PSIDS are reliant on international aid and continuously call for its provision.<sup>18</sup>

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<sup>12</sup> UN, *The Future We Want: Outcome Document of the United Nations Conference on Sustainable Development* (2012), §178

<sup>13</sup> UNGA, *SIDS Accelerated Modalities of Action (SAMOA) Pathway* (2014), UN Doc A/RES/69/15, §53

<sup>14</sup> Hannah Reid, *Climate Change and Human Development* (Zed Books Ltd, 2010), p. 72

<sup>15</sup> International Panel on Climate Change, *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part B: Regional Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, (Cambridge University Press, 2014), pp. 1619-1620

<sup>16</sup> Kiribati, Solomon Islands, Timor-Leste, Tuvalu and Vanuatu; see UNCTAD, *UN List of Least Developed Countries* (UNCTAD, 2019), <<https://unctad.org/en/pages/aldc/Least%20Developed%20Countries/UN-list-of-Least-Developed-Countries.aspx>> accessed 17 June 2019

<sup>17</sup> International Panel on Climate Change, *supra* 15, p. 1623

<sup>18</sup> UN Human Rights Council (UNHRC), *Report of the Special Rapporteur on the Human Right to safe Drinking Water and Sanitation, Catarina de Albuquerque* (2013), UN Doc A/HRC/24/44/Add.1, §43

This vulnerability to external factors combined with the dependence on the natural environment and international support demonstrates the exposure of PSIDS to climate change. The following section discusses some of the main impacts of climate change on PSIDS.

## 2.2 The Impact of Climate Change on PSIDS

### Rising Sea-Levels

While there are differing estimations to how much sea levels will rise within the next years, it is generally agreed upon that the Pacific will experience one of the greatest increases and the strongest short-term variations.<sup>19</sup> It is currently estimated that without appropriate adaptation, between 25 and 80 per cent of some islands of Kiribati could be inundated by 2050.<sup>20</sup>

Rising sea-levels create several challenges to PSIDS. First, it enhances the vulnerability of States to floods and storm surges which can cause vital damage to infrastructure. The World Health Organisation (WHO) is especially concerned that health care facilities located on the coasts may be destroyed by such events.<sup>21</sup> Such damage to vital facilities and settlements could threaten the livelihood of island communities.<sup>22</sup> Moreover, an increase in sea levels and the resulting inundation and floods will increase water- and vector-borne diseases such as Malaria, Tsetse and Dengue fever, since the carriers have adapted to salt water.<sup>23</sup> Floods extend the range of such vectors and wash agricultural pollutants into the already limited drinking water supplies of the islanders.<sup>24</sup>

The resulting inundation of land also damages agriculture either because the rising sea levels take the land permanently<sup>25</sup> or because of the soil and ground water salinization caused by it. This has an influence on food production, water supplies and health. Salt water intrusion into fertile soil destroys crops, diminishes food diversity as a result and therefore increases the reliance of PSIDS on imported foods.<sup>26</sup> This often forces people with limited financial capacities to change their diet which could increase non-communicable diseases such as diabetes and high blood pressure as islanders turn to cheaper and unhealthier food choices such

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<sup>19</sup> International Panel on Climate Change, *supra* 15, p. 1619

<sup>20</sup> World Bank, *Cities, Seas and Storms: Managing Change in Pacific Island Economies* (World Bank, 2000), p. 3

<sup>21</sup> WHO, *Health, Environment and Climate Change: Draft Plan of Action on Climate Change and Health in Small Island Developing States* (2019), UN Doc A/71/16, §2

<sup>22</sup> Marshall Islands, *National Communication regarding the Relationship between Human Rights & the Impacts of Climate Change* (2011), p. 4

<sup>23</sup> Mayesha Alam et al., *Women and Climate Change: Impact and Agency in Human Rights, Security and Economic Development* (Georgetown Institute for Women, Peace and Security, 2015), p. 21

<sup>24</sup> Paul Hunt and Rajat Khosla, *supra* 2, p. 244

<sup>25</sup> Simon Caney, *Climate Change, Human Rights and Moral Thresholds*, Stephen Humphreys (ed.), *Human Rights and Climate Change* (Cambridge University Press, 2009), p. 82

<sup>26</sup> Ruth Lane and Rebecca McNaught, *Building gendered Approaches to Adaptation in the Pacific*, in Geraldine Terry (ed.) *Climate Change and Gender Justice* (Oxfam, 2009), p. 89

as fast food.<sup>27</sup> Moreover, salt water intrusion into underground fresh water lenses impact the quality and availability of water.<sup>28</sup> Many islanders are dependent on a single water source and the salinization of these sources could have a negative impact on the health of the community, as it can cause hypertension which increases maternal mortality.<sup>29</sup>

### **Increasing Sea-Surface Temperature**

Increasing sea-surface temperatures also have a severe impact on PSIDS as it directly impacts the reefs of the island on which many communities depend.<sup>30</sup> Coral bleaching is a direct consequence of such temperature rise and unprecedented bleaching has been found on the atolls of Kiribati, where there was a 100 per cent coral mortality in some areas of the reef.<sup>31</sup> Coral bleaching has a negative impact on the biodiversity within a reef, which threatens the local fisheries which rely on regular catches. Moreover, temperature change is significant for migratory fish such as Tuna, which are crucial for the fish industry on the islands.<sup>32</sup>

The disappearance of fishing grounds does not only burden communities economically, but also impacts their diet, as fish and seafood is the primary source of protein for many populations. The replacement of this resource will add on to the economic burden of islanders.<sup>33</sup> Reefs additionally work as natural breakwater, protect from coastal erosion and absorb wave energy. The slow destruction of the reef thus causes new vulnerabilities to weather events.<sup>34</sup>

The tourism industry also benefits from coral reefs as it attracts tourists and divers. Coral bleaching reduces the attractiveness of the holiday destination and creates new insecurities of income for the local population engaged in the tourism sector for PSIDS.<sup>35</sup> The increase of water temperatures also adds to the facilitation of the spread and increase of water and vector-borne diseases discussed above.<sup>36</sup>

### **Changes in Weather Patterns**

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<sup>27</sup> Marshall Islands, supra 22, p. 11

<sup>28</sup> Kiribati, National Water Resources Policy: Water for Healthy Communities, Environments and Sustainable Development (2008), p. 6

<sup>29</sup> Aneire Ehmar Khan et al., 'Drinking Water Salinity and Maternal Health in Coastal Bangladesh: Implications of Climate Change' [2011] 119(9) Environmental Health Perspectives, pp. 1328–1332.

<sup>30</sup> International Panel on Climate Change, supra 15, p. 1621

<sup>31</sup> Abigail Alling et al., 'Catastrophic Coral Mortality in the remote central Pacific Ocean: Kirabati Phoenix islands' [2007] 551(10) Atoll Research Bulletin, pp. 1-19

<sup>32</sup> Marshall Islands, supra 22, p. 4

<sup>33</sup> Matthew Huelsenbeck, Ocean-based Food Security threatened in a high CO2 World (OCEANA, 2012), p. 2

<sup>34</sup> UNGA, Report of the Special Rapporteur on the Human Right to safe Drinking Water and Sanitation, Catarina de Albuquerque (2013), UN Doc A/HRC/24/44/Add.2, §28

<sup>35</sup> International Panel on Climate Change, supra 15, p. 1622

<sup>36</sup> Marshall Islands, supra 22, p. 11

Finally, climate change contributes to the greater frequency, unpredictability and intensity of extreme weather events such as El Niño, floods, cyclones, heat waves and droughts. El Niño strongly influences the rainfall in the Pacific. Its delay and change in rainfall strength have an important impact on food production and security. El Niño events also lead to drought and water shortages in Pacific island nations and increase the risk of tropical cyclones.<sup>37</sup> Floods and cyclones would reinforce the elements mentioned above, including the spread of diseases, salinization of fresh water and agricultural land, the destruction of the reefs, and thus increase the burden of the population significantly. Hotter temperatures and heat waves can contribute to heat-related deaths, especially among the elderly<sup>38</sup> and to respiratory and cardiovascular diseases. There is also an elevated risk for heat-related illnesses for people working outdoors, such as heatstroke and death, making poorer communities particularly vulnerable.<sup>39</sup> Moreover, disease carriers thrive in warming climate, which has already had impact on the geographical spread of diseases and will increase the threat of diseases such as Malaria, Tsetse and Dengue.<sup>40</sup> The increase in number and length of droughts increase the pressure on fresh water in PSIDS as the fresh groundwater lenses decrease due to evapotranspiration and reduced rain.<sup>41</sup> Combined with the increased salinization of fresh water, access to clean water sources becomes difficult and potentially pricey. This puts additional pressure on poor communities who may be forced to use unclean water sources as their usual sources become unavailable.<sup>42</sup> Moreover, droughts reduce crop productivity and can lead to crop failure.<sup>43</sup> This can again enhance the burden on communities that depend on agriculture and create food scarcity and malnutrition, thus increasing the prevalence of diseases related to malnutrition.<sup>44</sup>

## **Mental Health**

Climate change also influences mental health. First, it is said that there is a correlation between temperature rise and an increase in aggression. This is also based on the fact that food and economic insecurity creates a higher level of dissatisfaction and a proneness to violence.<sup>45</sup> Second, climate change induced disasters can lead to severe post-traumatic stress disorder<sup>46</sup>

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<sup>37</sup> WHO, *El Niño and Health* (1999), UN Doc WHO/SDE/PHE/99.4, pp. 1-7

<sup>38</sup> WHO, *Quantitative Risk Assessment of the Effects of Climate Change on selected Causes of Death, 2030s and 2050s* (2014), pp. 17-27

<sup>39</sup> UNHRC, *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* (2016), UN Doc A/HRC/32/23, §13

<sup>40</sup> *Ibid.*, §18

<sup>41</sup> UNHRC, *supra* 34, §14

<sup>42</sup> Anwarul Abedin, 'Climate Change, Water Scarcity, and Health Adaptation in Southwestern Coastal Bangladesh' [2019] 10(1) *International Journal of Disaster Risk Science*, p. 30

<sup>43</sup> Mayesha Alam et al., *supra* 23, pp. 18-27

<sup>44</sup> UNHRC, *supra* 39, §130

<sup>45</sup> Courtney Plante and Craig Anderson, 'Global Warming and Violent Behavior' (*Association for Psychological Science*, February 2017) <<https://www.psychologicalscience.org/observer/global-warming-and-violent-behavior>> accessed 17 July 2019

<sup>46</sup> Curtis McMillen et al., 'Untangling the psychiatric comorbidity of posttraumatic stress disorder in a sample of flood survivors' [2002] 43(478) *Comprehensive Psychiatry*, pp. 478-485

and depression.<sup>47</sup> Additionally, the increased economic hardship of agricultural communities caused by climate change triggers depression and a feeling of helplessness and has been associated with an increase in suicide amongst farmers.<sup>48</sup>

Taking all of the above into consideration, climate change reinforces the impact on the health of PSIDS' populations. This escalation of health issues increases the burden on already under-resourced health systems on the islands,<sup>49</sup> caused by financial restrictions or the remoteness of some islands.<sup>50</sup> Moreover, since climate change disproportionately affects the poor, a rise in health issues and health expenditures increases the burden of those "who can least afford it, contributing further to the vicious cycle of poverty."<sup>51</sup>

### 2.3 Impact of Climate Change on Women's Health in PSIDS

While these above-mentioned impacts can be generalised for the majority of the populations in PSIDS, women face additional hardship due to climate change. Women and girls are often framed as one of the most vulnerable demographics affected by climate change.<sup>52</sup> While climate change reinforces pre-existing discrimination and inequality, such as sexual violence or preferred boy schooling, women and girls also face new challenges arising from climate change, such as new vulnerabilities due to male out-migration and new economic struggles due to the negative impact climate change has on female employment.<sup>53</sup> This has a disproportionate impact on women's health, as their economic, social and cultural situation deteriorates and their ability to adapt is restricted.

#### Household Responsibilities

First, in most PSIDS, there is a strong perception that women are responsible for the household and related chores.<sup>54</sup> Most household chores require water, rendering women more prone to

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<sup>47</sup> Susanta Kumar Padhy et al., 'Mental Health Effects of Climate Change' [2015] 19(1) Indian Journal of occupational and environmental Medicine, pp. 3-7

<sup>48</sup> Ibid.

<sup>49</sup> Ruth Lane and Rebecca McNaught, *supra* 26, p. 94

<sup>50</sup> See for example CEDAW Committee, Concluding Observations on the Combined Initial to Third Periodic Reports of Solomon Islands (2014), UN Doc CEDAW/C/SLB/CO/1-3, §36a; CEDAW Committee, Concluding Observations on the Combined Initial to Third Periodic Reports of the Federated States of Micronesia (2017), UN Doc CEDAW/C/FSM/CO/1-3, §36; CEDAW Committee, Concluding Observations on the Fifth Periodic Report of Fiji (2018), UN Doc CEDAW/C/FJI/CO/5, §43;

<sup>51</sup> UNHRC, *supra* 39, §24

<sup>52</sup> See UNHRC, Resolution adopted by the Human Rights Council on 5 July 2018: Human Rights and Climate Change (2018), UN Doc A/HRC/RES/38/4, preambular paragraph 19; UNHRC, Analytical Study on gender-responsive Climate Action for the full and effective Enjoyment of the Rights of Women (2019), UN Doc A/HRC/41/26, §15

<sup>53</sup> Irene Dankelman and Willy Jansen, Gender, Environment and Climate Change: Understanding Linkages, in Irene Dankelman (ed) Gender and Climate Change: An Introduction (Earthscan Routledge, 2010), pp. 22-29

<sup>54</sup> See for example: CEDAW Concluding Observations of Fiji, *supra* 50, §25; CEDAW Committee, Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Vanuatu, UN Doc CEDAW/C/VUT/CO/4-5, §18

vector- and water-borne diseases increased by climate change.<sup>55</sup> This also means that women's work load increases when water becomes less accessible, such as during droughts or increased salinization of water sources.<sup>56</sup> Moreover, food insecurity caused by climate change will have a disproportionate impact on women. In many communities, men are given priority when it comes to access to food.<sup>57</sup> This in return causes a disproportionate malnutrition amongst women which has led to an increase in anaemia.<sup>58</sup> Since women also have distinctive nutritional needs during pregnancy, lactation and childbirth, food insecurity has an important impact on their health.<sup>59</sup> Moreover, women are often responsible for food preparation. In times of food insecurity, this creates an additional burden on women to find new food sources.<sup>60</sup> In PSIDS, this often means turning to imports, which increases household spending.<sup>61</sup>

## **Economic Empowerment**

Women make up an average of 43 per cent of the agricultural workforce worldwide.<sup>62</sup> Therefore, a decrease in agriculture threatens an important source of income for women. On a similar note, the livelihood of women working in the fishing industry could decrease due to changes in fish population caused by climate change.<sup>63</sup> Since both of these sectors are reliant on nature, changes in climate affect women's economic independence, human capital and maintenance of health and well-being.<sup>64</sup> Additionally, the depletion of economic opportunities in rural areas could increase the outmigration of men into the cities and suburban areas.<sup>65</sup> Consequently, the number of female-headed households increases<sup>66</sup> and women are often forced to take up additional responsibilities to keep the household running.<sup>67</sup> However, socio-cultural norms, stereotypes and customary law can keep women from gaining ownership over

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<sup>55</sup> Irene Dankelman and Willy Jansen, *supra* 53, p. 39

<sup>56</sup> UNHRC, *supra* 39, §25

<sup>57</sup> See for example CEDAW Concluding Observations of Fiji, *supra* 50, §49c

<sup>58</sup> FAO et al., *The State of Food Security and Nutrition in the World: Building Food Resilience for Food Security and Nutrition* (FAO, 2018), pp. xiii-xv

<sup>59</sup> Charlotta Rylander et al., 'Climate Change and the potential Effects on Maternal and Pregnancy Outcomes: an Assessment of the most Vulnerable – the Mother, Fetus, and newborn Child' [2013] 6(1) *Global Health Action*, pp. 1-9

<sup>60</sup> Mayesha Alam et al., *supra* 23, p. 23

<sup>61</sup> *Ibid.*, p. 26

<sup>62</sup> FAO, *The State of Food and Agriculture* (FAO, 2014), p. 35

<sup>63</sup> Sam Sellers, *Gender and Climate Change: A Closer Look at Existing Evidence* (Global Gender and Climate Alliance, 2016), pp. 5-16

<sup>64</sup> Joshua Eastin, 'Climate Change and Gender Equality in Developing States' [2018] 107 *World Development*, p. 290

<sup>65</sup> Irene Dankelman, *Climate Change, Human Security and Gender*, in Irene Dankelman (ed.), *Gender and Climate: An Introduction* (Earthscan Routledge, 2010), p. 60

<sup>66</sup> Justina Demetriades and Emily Esplen, *the Gender Dimension of Poverty and Climate Change Adaptation*, in Robin Mearns and Andrew Norton (eds.) *Social Dimensions of Climate Change: Equity, and Vulnerability in a warming World* (The World Bank, 2010), pp. 134-135

<sup>67</sup> Joshua Eastin, *supra* 64, p. 290



land, technology and financial assets, severely impacting their possibilities to adapt to the consequences of climate change and contributing to the decision-making processes in place.<sup>68</sup>

### **Time Poverty**

Climate change thus causes an increased burden of unpaid domestic responsibilities for women. This means that women can be at heightened risk of time poverty. Because of all the additional tasks and their increasing time constraints, women have generally less time to adapt to climate change through participation in decision-making or additional investments in livelihoods,<sup>69</sup> such as personal health care.<sup>70</sup> Time poverty combined with patriarchal norms and stereotypes reinforce the cycle of poverty for women.

### **Education**

The drop-out rate of girls from school, which is already high in PSIDS, could increase due to climate change. Households have to relocate financial resources and the preference of boy schooling in PSIDS often pushes girls out of education.<sup>71</sup> Moreover, girls are taken out of school in order to help their mothers perform the additional household chores.<sup>72</sup> The lack of education that girls experience influences their ability to live a healthy lifestyle and take informed decisions in regard to their health.<sup>73</sup> Girls are also more likely to be kept out of Science Technology Engineering and Maths (STEM) studies. This greatly impacts their capacity to contribute to decision-making about climate change adaptation, since this discourse is largely framed around STEM, traditionally perceived male studies.<sup>74</sup>

### **Child Marriage**

Child marriage is a well-established practice in many PSIDS.<sup>75</sup> Climate change can push girls into such marriages in order to relieve the financial burden of their families. In return, this puts

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<sup>68</sup> Justina Demetriades and Emily Esplen, *supra* 66, pp. 134-138; see for example: CEDAW Committee, Concluding Observations of the Committee on the Elimination of Discrimination against Women: Papua New Guinea (2010), UN Doc CEDAW/C/PNG/CO/3, §45

<sup>69</sup> UNDP, 'Impact Gender: Time Poverty' (UNDP Climate Change Adaptation, 2019) <<https://www.adaptation-undp.org/Impact2/topics/time.html>> accessed 19 July 2019

<sup>70</sup> Asian Development Bank, *Balancing the Burden? Desk Review of Women's Time Poverty and Infrastructure in Asia and the Pacific* (Asian Development Bank, 2015), pp. 11-12

<sup>71</sup> CEDAW Concluding Observations of Solomon Islands, *supra* 50, §32b

<sup>72</sup> UNHRC, Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights (2009), UN Doc A/HRC/10/61, §48

<sup>73</sup> Right to Education, 'Women and Girls' (Right to Education, 2018) <<https://www.right-to-education.org/girlswomen>> accessed 22 July 2019

<sup>74</sup> Saffron O'Neill et al., 'Disciplines, Geography, and Gender in the Framing of Climate Change' [2010] 91(8) *Bulletin of the American Meteorological Society*, p. 1001

<sup>75</sup> See for example: CEDAW Committee, Concluding Observations on the combined Second and Third Periodic Reports of Timor-Leste (2015), UN Doc CEDAW/C/TLS/CO/2-3, §14; CEDAW Concluding Observations of Micronesia, *supra* 50, §47c

girls in danger of Sexual and Gender-based Violence (SGBV) and early pregnancies.<sup>76</sup> This then further reinforces already existing stereotypes and discrimination against married and pregnant girls in school.<sup>77</sup>

## Disasters and Sexual and Reproductive Health

Women face an increased amount of challenges in disaster settings. First, statistically, more women than men die during disasters. Several factors can contribute to such statistics, for example that women often are not informed, were not taught how to swim, or do not leave the house alone.<sup>78</sup> Moreover, women are usually responsible for taking care of children and the elderly during disasters, limiting their possibilities to escape and further increasing their time poverty.<sup>79</sup> Pregnant and lactating women are more at risk due to their limited mobility.<sup>80</sup>

Second, PSIDS already have high rates of SGBV in non-disaster settings.<sup>81</sup> There is global evidence that SGBV increases during and after disasters, *inter alia* due to absence of state mechanisms, unsafe living conditions and prevailing discrimination and gender inequality.<sup>82</sup> This was for example reported in Fiji after two cyclones hit parts of the country.<sup>83</sup> Given the stereotypes that victims of SGBV face within PSIDS, women often do not seek out health centres after or do not get sufficient treatment from these centres.<sup>84</sup> This can lead to a spread of Sexually Transmitted Diseases (STDs) such as HIV<sup>85</sup> which already constitute a challenge for PSIDS' health systems.<sup>86</sup> There is a general lack of sexual and reproductive health and rights education within PSIDS, which also contributes to the high prevalence of STDs in the countries.<sup>87</sup> Finally, PSIDS have very strict abortion policy or a ban thereof.<sup>88</sup> This increases

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<sup>76</sup> Human Rights Watch, "'Marry Before Your House is Swept Away": Child Marriage in Bangladesh' (Human Rights Watch, 6 January 2016) <<https://www.hrw.org/video-photos/photo-essay/2016/01/06/marry-your-house-swept-away-child-marriage-bangladesh>> accessed 22 July 2019

<sup>77</sup> See for example: CEDAW Concluding Observations of Papua New Guinea, *supra* 68, §37; CEDAW Committee, Concluding Observations on the combined Third and Fourth Periodic Reports of Tuvalu (2015), UN Doc CEDAW/C/TUV/CO/3-4, §25b

<sup>78</sup> Irene Dankelman, *supra* 65, p. 61

<sup>79</sup> Ruth Lane and Rebecca McNaught, *supra* 26, pp. 92-94

<sup>80</sup> Gender CC, 'Disaster, Gender and Climate Change' (Gender CC, 2012) <<https://gendercc.net/gender-climate/disaster.html>> accessed 22 July 2019

<sup>81</sup> UNFPA, Population and Development Profiles: Pacific Island Countries (UNFPD Pacific Sub-regional Office, 2014), p. 8

<sup>82</sup> UN Women, Climate Change, Disasters and Gender-Based Violence in the Pacific (UN Women Fiji, 2014), p. 2

<sup>83</sup> *Ibid.*, p. 3

<sup>84</sup> See for example CEDAW Concluding Observations of Fiji, *supra* 50, §27f

<sup>85</sup> Marshall Burke et al., 'Income Shocks and HIV in Africa' [2015] 125(585) *The Economic Journal*, p. 1185

<sup>86</sup> UNFPA, *supra* 81, pp. 106-107

<sup>87</sup> See for example: CEDAW Concluding Observations of Tuvalu, *supra* 77, §29c

<sup>88</sup> See for example: CEDAW Committee, Concluding Observations on the combined Initial and Second Periodic Reports of Nauru (2017), UN Doc CEDAW/C/NRU/CO/1-2, §32c; CEDAW Concluding Observations of Timor-Leste, *supra* 75, §30a

the health risk for women who undergo unsafe abortions, especially in disaster settings.<sup>89</sup> Combined with the lack of family planning and contraceptives in most SIDS,<sup>90</sup> women's bodily autonomy is not guaranteed. The trauma resulting from SGBV and the insufficient mental health care institutions in PSIDS has also been connected to high suicide rates among these women.<sup>91</sup> Recent studies have shown that women are also prone to mental health issues after disasters, especially stress-related disorders, anxiety and depression.

## **Women as Climate Agents**

It is thus evident that women will continue to suffer disproportionately from the consequences of climate change. However, many feminists have recently tried to change the discourse around women's role in climate change. While women were previously seen as vulnerable, several UN bodies and NGOs have pushed for a more empowering discourse which talks about women being agents of change rather than helpless and vulnerable. There has been a push to take into consideration women's unique experiences with and knowledge of nature and their ability to adapt to climate change.<sup>92</sup> There is therefore clearly a need to consider gender and women within the climate change framework.

All of the above shows that the situation in PSIDS has drastically transformed because of climate change. The question remains, however, whether the current legal framework provides enough protection to guarantee the human right to health for women in PSIDS.

## **3. Legal Framework**

### **3.1 The Human Rights and Development Framework**

Women's right to the highest attainable standard of physical and mental health (short: right to health) has its origin in art. 25 of the Universal Declaration of Human Rights. From there, the right to health has made its way into several legally binding human rights treaties, the most significant being CESC. CEDAW then specified States' obligations toward women's right to health. Moreover, the right to health has been subject of different soft law, including the Alma Ata Declaration and various other WHO documents, general comments and recommendations as well as UN mandates and resolutions. In order to gain a deeper understanding of the right to health, one needs to look at CESC and CEDAW.

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<sup>89</sup> UNFPA, *Shelter from the Storm: A transformative Agenda for Women and Girls in a Crisis-prone World* (UNFPA, 2015), p. 107

<sup>90</sup> See for example: CEDAW Concluding Observations of Nauru, *supra* 88, §32a

<sup>91</sup> CEDAW Concluding Observations of Micronesia, *supra* 50, §36c

<sup>92</sup> This can be seen in the development of the UNHRC resolutions on climate change, as well as in the reports of special rapporteurs and treaty bodies.

## CESCR

In its art. 2.1, CESCR states:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.<sup>93</sup>

In its general comment, the CESCR Committee elaborates on the terms in this article and specifies the obligations of States toward the Covenant rights. First, most obligations under the Covenant are subject to progressive realisation, which means that States have an obligation to take deliberate, concrete and targeted steps towards the fulfilment of the Covenant rights.<sup>94</sup> Such steps should be measured with indicators and benchmarks. Second, States are obliged to use their maximum available resources to achieve their fulfilment, which includes to seek international assistance and cooperation. Third, States are not allowed to take retrogressive measures that would impede the fulfilment of any Covenant rights, unless it can be proven by the State that the measures were justified “by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.”<sup>95</sup> The Committee also establishes that each right has minimum core obligations which are not subject to progressive realisation, but must be guaranteed immediately. This includes the general obligations to take steps and to non-discrimination.<sup>96</sup>

The Limburg Principles are soft law and serve as interpretation guidelines to the Covenant. They further flesh out the meaning of art. 2.1, stating that “all appropriate means” is not limited to only legislative means, but also “administrative, judicial, economic, social and educational measures.”<sup>97</sup> Moreover, the principles clarify that parties need to provide effective remedies.<sup>98</sup> This has also been confirmed by the CESCR Committee who specifies that such remedies can be, but are not limited to, legal remedies.<sup>99</sup>

Art. 2.2 then specifies the obligation of non-discrimination:

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<sup>93</sup> CESCR, art. 2.1

<sup>94</sup> CESCR Committee, General Comment No. 3: The Nature of States Parties’ Obligations (art. 2, para. 1, of the Covenant) (1990), §2, 8

<sup>95</sup> *Ibid.*, §9

<sup>96</sup> *Ibid.*, §§1-2

<sup>97</sup> Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, §17

<sup>98</sup> *Ibid.*, §19

<sup>99</sup> CESCR Committee, General Comment No. 9: The Domestic Application of the Covenant (1998), UN Doc E/C.12/1998/24, §§2-3, 9

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>100</sup>

Followed by art. 3:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

These mutually reinforcing articles create a State obligation to remove all forms of discrimination, including formal, substantive, direct and indirect discrimination against women's rights covered by the Covenant.<sup>101</sup> The CESCR Committee adopted CEDAW's definition of discrimination, which reads:

Discrimination against women is "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"<sup>102</sup>

The Committee further affirms that all legislation, policies and action plans must take into consideration and/or must be amended in order to guarantee non-discrimination.<sup>103</sup> It also clarifies that the failure to remove discriminatory practices because of a lack of available resources was not a justifiable ground, "unless every effort has been made to use all resources that are at the State party's disposition in an effort to address and eliminate the discrimination, as a matter of priority."<sup>104</sup> However, discrimination can be justified if the differentiation is reasonable and objective according to the Covenant. This means that the aims and effects of the measures must be legitimate, compatible with the nature of the Covenant rights, for the promotion of the general welfare in a democratic society and there must be a clear and reasonable proportionality between the aim and the measures.<sup>105</sup>

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<sup>100</sup> CESCR, art. 2.2

<sup>101</sup> CESCR Committee, General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights) (2009), UN Doc E/C.12/GC/20, §§8-10b

<sup>102</sup> CESCR Committee, General Comment No. 16: The equal Right of Men and Women to the Enjoyment of all economic, social and cultural Rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights) (2005), UN Doc E/C.12/2005/4, §11

<sup>103</sup> CESCR Committee, supra 101, §§37-38

<sup>104</sup> Ibid., §13

<sup>105</sup> Eibe Riedel et al., *The Development of Economic, Social and Cultural Rights in International Law* (Oxford University Press, 2014), pp. 3-48

Finally, art. 12 establishes the right to health in the Covenant:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
  - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
  - (b) The improvement of all aspects of environmental and industrial hygiene;
  - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
  - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.<sup>106</sup>

First off, the right to health does not include a ‘right to be healthy’.<sup>107</sup> In its general comments 14 on the general right to health and 22 on sexual and reproductive health respectively, the CESCR Committee elaborates on the obligations. It specifies that States must respect, protect and fulfil (facilitate, provide and promote) the right to health.<sup>108</sup> This contains not only the rights and obligations specified in art. 12, but also the underlying determinants of health, such as food, water, housing, safe working conditions and a healthy environment.<sup>109</sup> The right to health is further divided into the components of availability, accessibility, acceptability and quality, all of which must be respected, protected and fulfilled by the state. This means *inter alia* that:<sup>110</sup>

- Public health(-care) facilities, goods and services must be sufficiently available in the state party
- People must have equal physical and economic access to health facilities, goods and services, as well as access to information on health issues.
- Health(-care) facilities, goods and services must be culturally appropriate and sensitive to gender and life-cycle requirements
- Health facilities, goods and services must also be scientifically and medically appropriate and of good quality

Furthermore, the Committee specified that in order to reduce infant mortality, States are required to improve maternal health and sexual and reproductive health services.<sup>111</sup> In order to prevent, treat and control diseases, States are required to provide education and programmes

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<sup>106</sup> CESCR, art. 14

<sup>107</sup> CESCR Committee, General Comment No. 14: The Right to the highest attainable Standard of Health (article 12 of the International Covenant on Economic, Social and Cultural Rights) (2000), UN Doc E/C.12/2000/4, §8

<sup>108</sup> Ibid., §33

<sup>109</sup> Ibid., §11

<sup>110</sup> Ibid., §12

<sup>111</sup> Ibid., §14

on sexual and reproductive health as well as create a urgent medical care system and provide disaster relief and humanitarian assistance in emergencies.<sup>112</sup> Finally, the provision of medical services includes mental and physical health and basic preventive, curative and rehabilitative health services and education.<sup>113</sup>

Specifically, regarding women's right to health, "the Committee recommends that States integrate a gender perspective in their health-related policies, planning, programmes and research in order to promote better health for both women and men."<sup>114</sup> It also expressed the "need to develop and implement a comprehensive national strategy for promoting women's right to health throughout their life span."<sup>115</sup> However, the wording of this provision softens its binding force, as the Committee only "recommends" and expresses a "need".

The Committee finally enumerates the core obligations based on the Alma-Ata Declaration and obligations of comparable priority, which can be found in General Comment no. 14.<sup>116</sup>

## **CEDAW**

CEDAW establishes the general States' obligation under art. 2:

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

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<sup>112</sup> Ibid., §16

<sup>113</sup> Ibid., §17

<sup>114</sup> Ibid., §20

<sup>115</sup> Ibid., §21

<sup>116</sup> Ibid., §§43-44

- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.<sup>117</sup>

Just as CESCR, CEDAW creates an obligation for States to respect, protect and fulfil women's right to non-discrimination and to guarantee appropriate remedies in case of a violation. CEDAW also emphasises the concept of intersectionality, stating that women experience different levels of discrimination depending on other factors such as race, age, sexuality and location.<sup>118</sup> In order to combat discrimination against women, States should address underlying causes of such discrimination, including patriarchal attitudes and gender stereotypes, and promote the "empowerment, agency and voices of women", and their participation in decision-making.<sup>119</sup>

CEDAW defines women's right to health in art. 12:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.<sup>120</sup>

The article specifically creates an obligation for States to remove all discrimination against women in regard to their access to health-care services and a reporting duty on the measures taken to remove such discrimination.<sup>121</sup> It also calls for the placement of a gender-perspective in all policies and programmes, the removal of barriers to access of health services, education and information, the promotion of family planning and sex education, the consistency of health services with human rights of women, and gender-sensitive training curricula for health workers.<sup>122</sup>

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<sup>117</sup> CEDAW, art. 2

<sup>118</sup> CEDAW Committee, General Recommendation No. 28 on the Core Obligations of States Parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (2010), UN Doc CEDAW/C/GC/28, §9, 18, 32

<sup>119</sup> CEDAW Committee, General Recommendation No. 35 on Gender-Based Violence against Women, updating General Recommendation No. 19 (2017), UN Doc CEDAW/C/GC/35, §30, 65; CEDAW, art. 7-8

<sup>120</sup> CEDAW, art. 12

<sup>121</sup> CEDAW Committee, General Recommendation No. 24: Article 12 of the Convention (Women and Health) (1999), §2, §§21-25

<sup>122</sup> *Ibid.*, §31



The CEDAW Committee further clarifies that SGBV forms part of women’s right to health and recommends that States take measures of prevention, protection, prosecution and punishment to eliminate SGBV. It further notes that the elimination of SGBV requires the removal of all discriminatory laws and the prohibition of harmful practices such as child and forced marriage.<sup>123</sup> The CEDAW Committee also affirms that SGBV increases during and following disasters and that disaster risk reduction action and legislation should have a gender perspective and be non-discriminatory.<sup>124</sup> Moreover, during its 44<sup>th</sup> session, the Committee specified that “women’s right to participate at all levels of decision-making must be guaranteed in climate change policies and programmes.”<sup>125</sup>

### **Right to a healthy environment**

The right to a healthy environment was already mentioned by the CESCR Committee and stands closely in relation with several economic, social and cultural rights and the right to development. The Special Rapporteur on the Environment wrote a report on the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment which was leading in fleshing out the obligations of States with regard to the environment. Even though there is no explicit right to a healthy development, the 1972 Declaration of the United Nations Conference on the Human Environment has explicit references to such a right. Two categories of rights can be established: First, rights whose enjoyment is particularly vulnerable to environmental degradation; and second, rights whose exercise supports better environmental policymaking. The right to health belongs to the former category.<sup>126</sup> Moreover, the jurisprudence around the right to a healthy environment is growing, as seen for example in the Ogoniland Case in which Nigeria was found guilty for unsustainable oil practices by Shell in the Ogoni region, according to art. 24 on the right of peoples to a satisfactory environment of the African Convention on Human and Peoples Rights.<sup>127</sup> The relationship between a healthy environment and the right to health was also established by the Special Rapporteur on the right to health.<sup>128</sup> It is thus clear that the maintenance of a healthy environment is crucial to guarantee the right to health.

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<sup>123</sup> CEDAW General Recommendation No. 35, supra 119, §15, 27, 29

<sup>124</sup> CEDAW Committee, General Recommendation No. 37 on the Gender-Related Dimensions of Disaster Risk Reduction in the Context of Climate Change (2018), UN Doc CEDAW/C/GC/37, §5, 26

<sup>125</sup> Ibid., §6

<sup>126</sup> UNHRC, Report of the Independent Expert on the Issue of Human Rights Obligations relating to the Enjoyment of a safe, clean, healthy and sustainable Environment, John H. Knox (2012), UN Doc A/HRC/22/43, §17

<sup>127</sup> The Social and Economic Rights Action Center for Economic and Social Rights v. Nigeria, African Commission on Human and Peoples' Rights, Communication Number 155/96 (2001)

<sup>128</sup> UNGA, Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the highest attainable Standard of physical and mental Health (2007), UN Doc A/62/214, §104

## Right to development

The CESCR Committee confirms that the obligation to take steps must take into consideration the right to development.<sup>129</sup> The Special Rapporteur then added that women and girls face disproportionate challenges in fulfilling their right to development and would thus require specific attention during his mandate.<sup>130</sup>

The Declaration on the Right to Development, adopted in 1986, implies that equality, including equal access to health services and basic resources is important for the fulfilment of the right to development.<sup>131</sup>

The 1992 Rio Declaration on Environment and Development reaffirms this and states that basic health needs of all populations need to be met.<sup>132</sup> Health services should “include women-centred, women-managed, safe and effective reproductive health care and affordable, accessible services, as appropriate, for the responsible planning of family size,”<sup>133</sup> and that measures to eradicate poverty need to empower women.<sup>134</sup> Food requirements must be met through increased productivity and cooperation of all sectors, training, information-sharing and diversified agriculture.<sup>135</sup> States must also secure access to clean water resources, sanitation and waste disposal.<sup>136</sup>

In 2012, the UN Conference on Sustainable Development created a non-binding outcome document called “The Future We Want”, in which States expressed their commitment to sustainable development. In doing so, they continuously reaffirmed the principles of gender equality and women’s empowerment and participation in decision-making on all levels.<sup>137</sup> States Parties also reaffirmed that

the goals of sustainable development can only be achieved in the absence of a high prevalence of debilitating communicable and non-communicable diseases, and where populations can reach a state of physical, mental and social well-being.<sup>138</sup>

States commit to double efforts to fight against communicable diseases, especially HIV and tropical diseases.<sup>139</sup> Moreover, they emphasise the need to pay particular attention to women’s health, including universal access to sexual and reproductive health services and reduce

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<sup>129</sup> CESCR General Comment No. 3, supra 94, §8

<sup>130</sup> UNHRC, Report of the Special Rapporteur on the Right to Development (2017), UN Doc A/HRC/36/49, §31

<sup>131</sup> 1986 Declaration on the Right to Development, art. 8.1

<sup>132</sup> 1992 Rio Declaration on Environment and Development, art. 6

<sup>133</sup> *Ibid.*, art. 5

<sup>134</sup> *Ibid.*, art. 3

<sup>135</sup> *Ibid.*, art. 14

<sup>136</sup> *Ibid.*, art. 7 & 18

<sup>137</sup> The Future We Want, supra 12, §8, 31, 43, 45, 109

<sup>138</sup> *Ibid.*, §138

<sup>139</sup> *Ibid.*, §140

maternal mortality.<sup>140</sup> The outcome document also recognizes the importance of access to the underlying determinants of health as established by CESC. On food, it recognises the importance of female farmers and their access to finance and credit resources, as well as sustainable agriculture and aquaculture.<sup>141</sup> On water, States commit to the progressive realisation of access for all to safe and affordable drinking water and basic sanitation.<sup>142</sup> On energy, States affirm the close connection between energy and health, the importance to guarantee access to sustainable energy to everyone and to improve clean energy.<sup>143</sup>

The Sustainable Development Goals (SDGs) are closely linked and mentioned in “The Future We Want” and were established in the 2030 Agenda on Sustainable Development. While the SDGs are not legally binding, States are expected to establish a national framework to implement them. Goal 3 on good health and well-being targets ending epidemics of communicable diseases, universal access to sexual and reproductive health-care services, universal health coverage, an increase in health financing, especially in SIDS, and capacity-building for risk reduction management of health risks.<sup>144</sup> Goal 5 on gender equality targets the end of all discrimination against women, violence against women, harmful practices, as well as the promotion of shared responsibilities within the household, women’s participation and universal access to sexual and reproductive health and rights.<sup>145</sup> Finally, goal 13 on climate action targets more broadly the integration of climate change measures into national policies, strategies and planning and the strengthening of resilience and adaptation to climate-related hazards and natural disasters.<sup>146</sup>

The PSIDS have taken up the SDGs and created the “Pacific Roadmap on Sustainable Development” in reaction to them. It highlights the importance of improving the livelihoods of the people, leaving no one behind and gender equality, an inclusive participation process, and the empowerment of women.<sup>147</sup>

SIDS have also established an action plan called the SAMOA Pathway. This outcome document establishes the commitments of SIDS towards sustainable development and has thus a purely political significance. States are expected to take domestic legally binding action upon the provisions within. The SAMOA Pathway is a broad action plan, touching upon subjects reaching from sustainable energy resources to ocean health. Broadly speaking, it commits to the increase of resilience of SIDS to climate change and improve capacity building. It recognizes the importance of women, their empowerment and fulfilment of their human rights and “supports the efforts” of SIDS in eliminating discrimination, gender mainstreaming,

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<sup>140</sup> Ibid., §§145-146, 241

<sup>141</sup> Ibid., §§108-111

<sup>142</sup> Ibid., §§119-121

<sup>143</sup> Ibid., §§125-129

<sup>144</sup> UNGA, Transforming our World: the 2030 Agenda for Sustainable Development (2015), UN Doc A/RES/70/1, Goal 3

<sup>145</sup> Ibid., Goal 5

<sup>146</sup> Ibid., Goal 13

<sup>147</sup> 2018 Pacific Roadmap for Sustainable Development, p. 3, 4, 6

female economic empowerment, equal access to health care and education, to tackle social and structural inequalities, and to give women access to the same economic resources.<sup>148</sup> On health, SIDS are “committed to supporting the efforts” to reduce maternal mortality and the access to HIV treatment, prevention and care, as well as the fight against tropical communicable diseases.<sup>149</sup> With regard to water, SIDS “are committed to supporting the efforts” in regard to the provision and operation of facilities and infrastructure for safe drinking water, sanitation, hygiene and waste management systems.<sup>150</sup> SIDS also commit to the support of sustainable agriculture and to focus on the empowerment of small-scale farmers, especially women.<sup>151</sup>

The Addis Ababa Action Agenda is a political document without any binding power and creates a framework for development financing, committing itself to the respect of human rights and the promotion of gender equality.<sup>152</sup> The agenda also recognises that climate change poses a challenge for development, since it threatens past and future successes. Therefore, States must strengthen resilience to climate change.<sup>153</sup> Women contribute essentially to sustainable development and States thus reiterate the need of women’s participation and empowerment, and that a gender perspective is mainstreamed into all policies and actions.<sup>154</sup> It also reaffirms that the elimination of SGBV and all forms of discrimination is quintessential.<sup>155</sup> Moreover, it recognises that health services create an enormous financial burden for SIDS and that international cooperation and capacity building is crucial for the promotion of health, disaster risk management and early warning systems.<sup>156</sup> Finally, the Agenda suggests the establishment of national spending targets for essential public services, including health and its underlying determinants.<sup>157</sup>

The 2015-2030 Sendai Framework for Disaster Risk Reduction also recognises the right to development, mentioning international cooperation, all-society participation and empowerment among its guiding principles.<sup>158</sup> It, too, sets the framework for further legally binding national initiatives but does in itself not contain any legally binding elements. In order to reduce disaster risk, States must *inter alia* implement health measures “that prevent and reduce hazard exposure and vulnerability to disaster, increase preparedness for response and recovery, and thus strengthen resilience,” and enhance the capacity and capability of SIDS.<sup>159</sup> In its targets, it mentions the reduction of disaster damage to vital health and water infrastructure and the resilience to such damage, as well as the increase in early warning

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<sup>148</sup> SAMOA Pathway, supra 13, §§76-77

<sup>149</sup> Ibid., §75

<sup>150</sup> Ibid., §65

<sup>151</sup> Ibid., §63

<sup>152</sup> 2015 Addis Ababa Action Agenda of the Third International Conference on Financing for Development, §1

<sup>153</sup> Ibid., §4

<sup>154</sup> Ibid., §6

<sup>155</sup> Ibid., §6

<sup>156</sup> Ibid., §12, 32

<sup>157</sup> Ibid., §77

<sup>158</sup> 2015 Sendai Framework for Disaster Risk Reduction, §19

<sup>159</sup> Ibid., §17

systems.<sup>160</sup> Furthermore, the resilience of national health services must be improved by integrating disaster risk management plans into the system and strengthen the access to basic health-care services, including sexual and reproductive health, for example through stockpiling. Disproportionately affected groups must be empowered.<sup>161</sup> Finally, it calls for gender-mainstreaming of all policies and practices and the effective participation of women in decision-making.<sup>162</sup>

### 3.2 The Climate Change Framework

#### UNFCCC

The climate change framework of the UN found its momentum with the establishment of the United Nations Framework Convention on Climate Change (UNFCCC) in 1992. It sets the key principles, concepts and language for the climate change regime and therefore requires some consideration. Since it is a framework convention, it leaves room open to evolve to new decisions taken on climate change. Therefore, Member States meet once a year at the Conference of the Parties (COP) to take further decisions on how to address climate change. There is a debate about the extent to which those decisions are legally binding. Generally speaking, it can be said that the binding force of the decisions depends on the legal precision of such decision. Moreover, decisions bind the institution and “create new processes and mechanisms for the implementation of the governing treaty.”<sup>163</sup>

First, the Convention acknowledges the disproportionate burden of climate change suffered by developing countries and therefore SIDS. This has contributed to the development of the principle of Common but Differentiated Responsibilities and Respective Capabilities (CBDRRC) requires developed States, included in Annex 1 of the Convention, to take the lead in climate change action and provide support for actions taken by developing States.<sup>164</sup> There is thus an apparent difference in the obligation of international cooperation between UNFCCC and CESCR, as the latter “exhorts rather than obliges states to protect and fulfil rights of citizens in poorer countries, whereas UNFCCC creates an obligation to international assistance.”<sup>165</sup> Second, the Convention takes into consideration climate change mitigation as well as adaptation, even though it focuses primarily on the former.<sup>166</sup> Third, it reaffirms that “parties have a right to, and should, promote sustainable development.”<sup>167</sup> In line with the principle of CBDRRC, the UNFCCC establishes a financial mechanism to support the

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<sup>160</sup> Ibid., §18

<sup>161</sup> Ibid., §30h-j

<sup>162</sup> Ibid., §19d, 32, 36a(i)

<sup>163</sup> Legal Response Initiative, 'Legal Status of Paris Rulebook' (Legal Response Initiative, 30 October 2017) <<https://legalresponse.org/legaladvice/legal-status-of-paris-rulebook/>> accessed 7 September 2019

<sup>164</sup> See UNFCCC, art. 4.2(a), 4.3, 4.4

<sup>165</sup> Stephen Humphreys, *supra* 5, p. 64

<sup>166</sup> Joana Depledge, Foundations for the Paris Agreement, in Daniel Klein et al. (eds.), *The Paris Agreement on Climate Change: Analysis and Commentary* (Oxford University Press, 2017), p. 29

<sup>167</sup> UNFCCC, art. 3.4

implementation of climate change action in developing States<sup>168</sup> and COP later created an additional Green Climate Fund under the Cancún Agreement.

Amongst its commitments, the UNFCCC calls for cooperation in

preparing for adaptation to the impacts of climate change; develop and elaborate appropriate and integrated plans for coastal zone management, water resources and agriculture, and for the protection and rehabilitation of areas [...] affected by drought and desertification, as well as floods.”<sup>169</sup> Climate Change also needs to be taken into consideration in all “economic, social and environmental policies and action and employ appropriate methods [...] with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, of projects or measures undertaken by them to mitigate or adapt to climate change.”<sup>170</sup>

Moreover, in art. 6 the Convention outlines the obligation to facilitate public participation in addressing climate change.<sup>171</sup>

However, feminist scholars have continuously criticised the UNFCCC. The criticism can be divided into two essential elements. First, women have been largely underrepresented in the framework. It did not grant women full constituency status until 2010<sup>172</sup> and women’s participation number remain low among the UNFCCC bodies and mechanisms, including COP and national delegations. Decisions are thus largely taken by men who set the agenda, aligning with their concerns.<sup>173</sup> This opens the arena for the second criticism. The content of the Convention itself has been criticised for focussing largely on traditionally perceived as male subjects such as STEM, which in itself is gender-inequitable.<sup>174</sup> This focus on STEM disciplines could be proof of a misconception of the social implications of climate change which would leave women largely behind.<sup>175</sup>

States have tried to address this issue by creating the Lima Work Programme on Gender which was established in 2016 through a decision at COP. The Programme highlights the lack of gender-responsive climate policy and underrepresentation of women.<sup>176</sup> It invites and

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<sup>168</sup> Ibid., art. 11

<sup>169</sup> Ibid., art. 4.1(e)

<sup>170</sup> Ibid., art. 4.1(f)

<sup>171</sup> Ibid., art. 6a(iii)

<sup>172</sup> Karen Morrow, *Changing the Climate of Participation: The Gender Constituency in the global Climate Change Regime*, in Sherilyn MacGregor (ed), *Routledge Handbook of Gender and Environment* (Routledge, 2017), p. 399

<sup>173</sup> Joanne Nagel, *Gender and Climate Change: Impacts, Science and Policy* (Routledge, 2016), pp. 197-198

<sup>174</sup> Saffron O’Neill et al., *supra* 74, pp. 997-1002

<sup>175</sup> Sherilyn MacGregor, *Moving Beyond Impacts: More Answers to the “Gender and Climate Change” Question*, in Susan Buckingham & Virginie Le Masson (eds), *Understanding Climate Change through Gender Relations* (Routledge, 2017), pp. 22-24

<sup>176</sup> UNFCCC, *Decision 21/CP.22 Gender and Climate Change* (2016), UN Doc FCCC/CP/2016/10/Add.2, preambular paragraphs

encourages States to engage in gender-mainstreaming and increase female participation, and calls for the creation of a Gender Action Plan which was adopted in 2017.<sup>177</sup> The plan focuses on these established issues through promoting capacity-building of states to integrate gender-responsive policies and actions, implementing trainings and workshop on climate change for women to enhance their participation, sharing best practices on these areas and include gender in State reporting.<sup>178</sup> The question of how legally binding the Lima Programme actually is remains ambiguous. While it creates new obligations for the institutions to guarantee female representation and participation, it exclusively uses soft language to establish obligations on States, as the decision “encourages” and “invites” State Parties to increase their efforts on women’s rights. UNFCCC has also introduced the “Gender Day” during each COP. However, feminists have for a long time criticized such isolation of topics, as it would create a “ghettoization” of women’s concerns within international law.<sup>179</sup> Implementing a Gender Day could thus have negative effects on women’s rights within the climate change framework.

## Paris Agreement

The Paris Agreement was signed in 2015 and is the first climate change treaty to acknowledge a gender and human rights dimension in climate change.<sup>180</sup> It also attributes a larger section on adaptation obligations which have been largely ignored under previous treaties<sup>181</sup> and thus attempts to establish a political parity between mitigation and adaptation.<sup>182</sup> Since it is an international treaty, it has legally binding force.

The preamble specifies that States should take into consideration their human rights obligation when addressing climate change, specifically the right to health, gender equality and the empowerment of women.<sup>183</sup> It also elaborates on the intrinsic relationship between climate change and sustainable development and the eradication of poverty.<sup>184</sup> Even though preambles do not possess any legally binding force, they can guide the interpretation and implementation of a treaty.<sup>185</sup> Taken together with IHRL, States seem to be obliged to take their human rights

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<sup>177</sup> Ibid., §17, 18, 27

<sup>178</sup> UNFCCC, Decision 3/CP.23: Establishment of a Gender Action Plan (2017), UN Doc FCCC/CP/2017/11/Add.1

<sup>179</sup> Christine Chinkin and Hilary Charlesworth, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press 2000), p. 219

<sup>180</sup> OHCHR, *Concept Note for the General Discussion on Gender-Related Dimensions of Disaster Risk Reduction and Climate Change* (2016), §15

<sup>181</sup> Nina Hall and Åsa Persson, 'Global Climate Adaptation Governance: Why is it not legally binding?' [2018] 24(3) *European Journal of International Relations*, p. 541

<sup>182</sup> Lavanya Rajamani and Emmanuel Guérin, *Central Concepts in the Paris Agreement and how they evolved*, in Daniel Klein et al. (eds.), *The Paris Agreement on Climate Change: Analysis and Commentary* (Oxford University Press, 2017), p. 75

<sup>183</sup> Paris Agreement, preambular paragraph 11

<sup>184</sup> Ibid., preambular paragraph 8

<sup>185</sup> María Pía Carazo, *Contextual Provisions (Preamble and Article 1)*, in Daniel Klein et al. (eds.), *The Paris Agreement on Climate Change: Analysis and Commentary* (Oxford University Press, 2017), p. 107

obligation into consideration when deciding on their ambitions which should thus truly reflect their highest possible ambition.<sup>186</sup>

Art. 2 outlines the objectives of the Agreement and again mentions the link between sustainable development, poverty eradication and climate change. This shows a close link between the Agreement and the SDGs - a connection also recognised within the 2030 Agenda.<sup>187</sup> The repetition of the link also affirms its importance within the Agreement and could hint to a stronger legal obligation. The article mentions mitigation as well as adaptation and links adaptation to climate resilience, low GHG emissions, development and food security.<sup>188</sup>

Art. 3 on general obligations “extends to all parties the obligation to undertake and communicate ambitious efforts in mitigation, adaptation, finance, technology, capacity-building, and transparency to achieve the purpose of the Paris Agreement. It sets an expectation that efforts of all parties will represent a progression across all these areas.”<sup>189</sup>

Art. 6 on mitigation establishes obligations of progressive Nationally Determined Contributions (NDCs) reflecting their highest ambition and to provide information on the implementation of their NDCs. However, the highest ambition is a relative term and is linked to CBDRRC.<sup>190</sup> This can be seen in art. 4.6 which allows for certain flexibility in mitigation for SIDS, though not alleviating them from a general mitigation obligation under art. 4.2.<sup>191</sup> Within the NDCs, PSIDS specifically commit themselves to transforming the energy sector to 100% renewable energies<sup>192</sup> and to become increasingly or completely independent from fuel and energy imports.<sup>193</sup> Many States also commit to adaptation goals within their NDCs. Commitments include the improvement of building standards,<sup>194</sup> the protection of water resources<sup>195</sup> and access to information and education on climate change.<sup>196</sup> Health-specific commitments include strengthening health service delivery to address climate change

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<sup>186</sup> Ibid., p. 116

<sup>187</sup> Halldór Thorgeirsson, Objective (Article 2.1), in Daniel Klein et al. (eds.), *The Paris Agreement on Climate Change: Analysis and Commentary* (Oxford University Press, 2017), p. 130

<sup>188</sup> Ibid., p. 128

<sup>189</sup> Lavanya Rajamani, Guiding Principles and General Obligation (Article 2.2 and Article 3), in Daniel Klein et al. (eds.), *The Paris Agreement on Climate Change: Analysis and Commentary* (Oxford University Press, 2017), p. 136

<sup>190</sup> Harald Winkler, Mitigation (Article 4), in Daniel Klein et al. (eds.), *The Paris Agreement on Climate Change: Analysis and Commentary* (Oxford University Press, 2017), p. 141-148

<sup>191</sup> Ibid., p. 152

<sup>192</sup> See for example: Vanuatu, *Intended Nationally Determined Contribution (2015)*, p. 1; Tuvalu, *Intended Nationally Determined Contribution (2015)*, p. 1; Samoa, *Intended Nationally Determined Contribution (2015)*, p. 2

<sup>193</sup> See for example: Marshall Islands, *Intended Nationally Determined Contribution (2015)*, p. 6; Nauru, *Intended Nationally Determined Contribution (2015)*, p. 3

<sup>194</sup> See for example: Fiji, *Intended Nationally Determined Contribution (2016)*, p. 9; Timor-Leste, *Nationally Determined Contribution (2017)*, pp. 19-20

<sup>195</sup> See for example the NDC of Timor-Leste, *ibid.*, p. 18

<sup>196</sup> See for example the NDCs of Kiribati, p. 20 and Nauru, p. 4



impacts,<sup>197</sup> mainstreaming climate change issues into health systems and the establishment of early warning systems.<sup>198</sup>

Art. 7 on adaptation establishes the global goal of “enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, with a view to contributing to sustainable development.”<sup>199</sup> Such a process must be gender-responsive, participatory and take into account vulnerable groups as well as traditional knowledge. Adaptation must be integrated into socioeconomic policies and actions.<sup>200</sup> The article then refers to the Cancún Adaptation Framework with regard to cooperation between States<sup>201</sup> and that States should include adaptation action and create national adaptation plans. Moreover, they should assess climate change impacts and vulnerability, monitor and evaluate these plans and actions and build resilience of socioeconomic systems.<sup>202</sup> Finally, States should submit a communication specifying the actions and policies undertaken.<sup>203</sup>

The language in art. 7, however, is vague. While art. 6 uses strong language such as “States shall”, art. 7 remains soft by using expressions such as “should” and “may” and includes many provisions that only recognise or acknowledge a certain element; the few prescriptive and precise provisions are either procedural or financial. This shows that while the Paris Agreement acknowledges the importance of adaptation measures, it does not create equally strong obligations on States as art. 6 on mitigation does.<sup>204</sup>

The national adaptation plans and programmes developed under the Paris Agreement are political documents without any legally binding force. They are setting up the framework under which further action can be taken. So far, only Tuvalu, Vanuatu, Samoa, Kiribati and the Solomon Islands have submitted their National Adaptation Programmes of Action (NAPAs). Within, focus areas are food and water security, sustainable tourism and health. Health commitments are mainly centred around the prevention and treatment of vector-borne diseases and early warning systems. A common element in the NAPAs is the importance of community participation<sup>205</sup> and the need to increase the capacity of institutions and communities to implement any kind of adaptation action.<sup>206</sup> Especially on health, there is a focus on stronger research, monitoring and evaluation efforts on the impact of climate change on general population health.<sup>207</sup> Moreover, the establishment of action plans, such as outbreak control and

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<sup>197</sup> NDC of Kiribati, p. 20

<sup>198</sup> NDC of Timor-Leste, pp. 18-19

<sup>199</sup> Paris Agreement, art. 7.1

<sup>200</sup> *Ibid.*, art. 7.5

<sup>201</sup> *Ibid.*, 7.7

<sup>202</sup> *Ibid.*, 7.9

<sup>203</sup> *Ibid.*, 7.10

<sup>204</sup> Nina Hall and Åsa Persson, *supra* 181, p. 554

<sup>205</sup> See for example Tuvalu, National Adaptation Programme of Action (2007), p. 10

<sup>206</sup> See for example Samoa, National Adaptation Programme of Action (2005), p. 20

<sup>207</sup> See for example Solomon Islands, National Adaptation Programme of Action (2008), pp. 37-39; Samoa, National Adaptation Programme of Action (2005), p. 33

water treatment plans, are at the forefront of NAPAs,<sup>208</sup> as well as awareness raising to communities, health workers and schools through different activities and trainings.<sup>209</sup>

Art. 12 on education and training creates an obligation for States to take measures to “enhance climate change education, training, public awareness, public participation and public access to information.”<sup>210</sup> However, this provision is also qualified by “as appropriate”.

### 3.3 National Climate Change Policies

National climate policies are political documents which in themselves do not hold any legally binding force. Generally speaking, States commit to mainstreaming climate change into national legislations, policies and actions<sup>211</sup> and to raise awareness of the impact of climate change.<sup>212</sup> Moreover, they also commit to collect, monitor and evaluate data and information on the impact of climate change and corresponding action thereto.<sup>213</sup>

In regard to gender equality, women are recognized as disproportionately affected by climate change, but also as important stakeholders and crucial participants in decision-making and planning. It is also recognized that there is a need for more research on the consequences of climate change on gender equality.<sup>214</sup>

In relation to health, States commit to increase health infrastructure, the health system’s capacity to respond to disasters and climate sensitive diseases as well as capacity-building and training for health workers.<sup>215</sup> There is also commitment to making health services more accessible, especially in remote areas, and adequate for the population size.<sup>216</sup>

Finally, there seems to be a commitment to the establishment of a financial mechanism or insurance program for emergency events and recovery efforts which would allow rapid responses.<sup>217</sup>

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<sup>208</sup> See for example NAPA of Tuvalu

<sup>209</sup> See for example Vanuatu, National Adaptation Programme of Action (2007); NAPA of Samoa

<sup>210</sup> Paris Agreement, art. 12

<sup>211</sup> See for example: Tonga, Climate Change Policy (2016), p. 16; Solomon Islands, National Climate Change Policy 2012-2017 (2012), p. 19

<sup>212</sup> See for example: Fiji, National Climate Change Policy (2012), p. 22; Tuvalu, National Strategic Action Plan for Climate Change and Disaster Risk Management 2012-2016 (2012), p. 29

<sup>213</sup> See for example: Tonga, supra 211, p. 17; Tuvalu, *ibid.*, p. 29

<sup>214</sup> See for example: Fiji, supra 212, p. 20; Tonga, *ibid.*, p. 13

<sup>215</sup> See for example: Fiji, *ibid.*, p. 24; Nauru, Framework for Climate Change Adaptation and Disaster Risk (2015), pp. 39-40; Palau, Climate Change Policy for Climate and Disaster Resilient Low Emissions Development (2015), pp. 34-35

<sup>216</sup> See for example: Samoa, Strategy for the Development of Samoa 2016/17-2019/20 (2016), p. 8; Kiribati, National Framework for Climate Change and Climate Change Adaptation (2013), p. 22

<sup>217</sup> Marshall Islands, 2050 Climate Strategy (2018), p. 45; Palau, supra 215, p. 39

## 4. A Human Rights-based Approach to Climate Change

It is through the right to development and the Paris Agreement that the link between the human rights framework and the climate change framework establishes itself, as there is a clear interdependence between the fulfilment of human rights and the mitigation and adaptation obligations established through the climate change framework which is necessary to drive development. It thus shows a need for a human rights-based approach (HRBA) to climate change. This is also emphasised by the OHCHR, according to which

human rights obligations apply to the goals and commitments of States in the area of climate change and require that climate actions should focus on protecting the rights of those most vulnerable to climate change. [...] Since climate change mitigation and adaptation measures can have human rights impacts; all climate change-related actions must also respect, protect, promote and fulfil human rights standards.<sup>218</sup>

The link between climate change and human rights has also been recognised by States latest since 2008, when the first climate change and human rights resolution passed in the UNHRC. Since then, States have agreed each year on a new resolution whose language around the intersectional gender-dimension of climate change has become stronger.<sup>219</sup> In its 2019 resolution, the Council called upon States to adopt a comprehensive, integrated, gender-responsive and disability-inclusive approach to climate change adaptation and mitigation policies.”<sup>220</sup> The intrinsic link between the right to health and climate change is recognized, too.<sup>221</sup> During the UPRs, States have also recommended to take a HRBA to climate change.<sup>222</sup> Other frequent recommendations are on the importance to increase awareness-raising amongst the population<sup>223</sup> and to pay specific attention to the disproportionate effects of climate change on women.<sup>224</sup> Finally, States have committed to a closer collaboration and interaction between IHRL and climate change actors in the Geneva Pledge for Human Rights in Climate Action. It appears thus obvious that States have agreed to integrate a human rights perspective in their actions against climate change.

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<sup>218</sup> OHCHR, 'Human Rights and Climate Change' (OHCHR, 2019)

<<https://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HRClimateChangeIndex.aspx>> accessed 15 August 2019

<sup>219</sup> As a comparison, the 2008 resolution does not mention women at all, whereas the 2019 resolution mentions the gender impact in its preambular as well as operational paragraphs.

<sup>220</sup> UNHRC, Human Rights and Climate Change (2019), UN Doc A/HRC/41/L.24, §5

<sup>221</sup> Ibid., preambular paragraph 7

<sup>222</sup> See for example UNHRC, Universal Periodic Review of Samoa (2016), §95.84

<sup>223</sup> See for example UPR Samoa, Ibid., §95.83; UNHRC, Universal Periodic Review of Vanuatu (2014), UN Doc A/HRC/26/9, §99.108

<sup>224</sup> See for example UNHRC, Universal Periodic Review of Tonga (2018), UN Doc A/HRC/38/5, §93.25; UPR Vanuatu, *ibid.*, §99.107

## 5. Discussion/Analysis

Having taken all of the above into consideration, it remains to apply the set legal standards to the right to health of women in PSIDS. One of the challenges of doing so is that many of the obligations within the climate change framework that could establish obligations for States under the human rights framework are either vague or remain isolated in preambles, declarations and other soft law. This means that while they can contribute to the interpretation of legally binding documents and articles, they, in themselves, do not create new legally binding obligations for States. Moreover, as mentioned, the mitigation framework tends to be more legally binding than the adaptation framework. PSIDS, however, face greater challenges in adaptation than mitigation, as their contribution to GHG are considered insignificant. The lion's share of work is thus to establish how those policies, recommendations and action plans influence the hard law of CESC, CEDAW, UNFCCC and the Paris Agreement. In general, it can be said that climate change creates new or modified obligations for States, but also reinforces the importance of already existing ones.

The climate change framework also largely focusses on finance, technology, capacity-building and increasing resilience. The obligations established under the climate change framework are largely obligations of conduct. The Paris Agreement especially barely has any results-based obligations, making it difficult to find an entry for an obligation to comply.<sup>225</sup>

### 5.1 Obligation to Take Steps

The obligation to take steps is anchored in CESC art. 2.1 and the Paris Agreement's art. 3. The combination of taking steps and undertaking ambitious efforts also reaffirms the CESC principle of the maximum available resources, thus creating a strong obligation to take deliberate, concrete and targeted, as well as ambitious steps towards the fulfilment of women's right to health, *inter alia* through the adaptation to climate change. When looking at art. 7 of the Paris Agreement and national policies and action plans, there seems to be room for an obligation to monitor such steps and the progress made, as also suggested in the general comment of CESC. States would thus need to have indicators and benchmarks in place to measure such progress and intervention, while ensuring that these indicators and benchmarks are gender segregated. States also need to collect data and information on the impact of climate change on the right to health of women, as steps can only be concrete and targeted if there is certainty as to what exactly has to be addressed.

The obligation to use the maximum of available resources raises the question as to what constitutes the maximum and how priorities are set. The SDGs and soft law based on the SDGs follow the principle of leaving no one behind. This means that States must prioritise disadvantages and vulnerable groups that suffer disproportionately from climate change. As discussed above, this clearly includes women, who thus should be accorded a priority standard

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<sup>225</sup> Legal Response Initiative, supra 163

in measures taken by States. The same would account for spending on improving health, as it is mentioned as a key area of improvement in both frameworks.

The obligation to use the maximum of available resources also falls conveniently within the principle of CBDRRC which already obliges Annex I States to offer their support in fulfilling adaptation needs in developing States. Moreover, implicitly, through establishing several climate funds, such as the Green Climate Fund, the international community agreed to provide international cooperation and technical assistance for those in need. The establishment of different climate change funds available for such purposes makes it increasingly easier for PSIDS to access additional technical assistance. Therefore, assuring international support for climate change should be at the forefront of climate change action. When looking at international cooperation, there is a need to also search support within the PSIDS network, since they tend to have close links to each other, for example through AOSIS. The SAMOA Pathway also mentions the importance of collaboration and solidarity amongst SIDS.<sup>226</sup> PSIDS should thus share best practices amongst themselves and to be vocal in their advocacy and promotion of climate change in the international arena. The latter is especially important when trying to mobilise donors to agree to additional funding. Moreover, it is not enough to just share such best practices, but to also implement them, while guaranteeing that such measures do, also, benefit women's health.

Taking soft law in combination with the interdiction of retrogressive measures, it appears obvious that steps and measures taken to adapt to climate change cannot impede on the right to health for women and their development. However, climate change does create an additional heavy burden on the protection and fulfilment of women's right to health, since retrogressive steps happen through the omissions of the State. It is therefore a question of whether in the context of the whole Covenant and the maximum available resources, PSIDS could justify the retrogression of women's right to health due to climate change. The importance of women and health was already mentioned above and CEDAW in its general recommendations additionally states the importance of special measures to guarantee women's equality. Therefore, it seems that States could justify the retrogression of women's right to health if they had accorded women's equality and their health a priority in their agenda setting and if this was represented in the distribution of technical assistance received.

There is no doubt that the minimum core obligations of the right to health must be guaranteed immediately. The interesting question is whether the UNFCCC creates any core obligations on States, too. Even though not explicitly named as such, certain obligations are repeatedly mentioned throughout the framework which demonstrates the importance of these provisions for the climate change regime and should therefore be set as a priority. These obligations are mainly procedural and financial. First, one can consider the principles of the UNFCCC. This includes the CBDRRC, international assistance, the respect of the right to development and non-discrimination.

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<sup>226</sup> SAMOA Pathway, supra 13, §109i

Outside of the treaty principles, the recurrent mentioning of monitoring, evaluation and reporting obligations to the treaty bodies could also imply a core obligation. This is in line with the reporting duties set out under CESCER and CEDAW. If monitoring, evaluation and reporting are core obligations under the UNFCCC and the Paris Agreement, and given the fact that such monitoring also includes the impact of climate change on women's right to health, as established above, States would have a core obligation to include the status of women's right to health in their reports and continue to conduct research and monitoring on the consequences of climate change on women's health and actions taken to improve it. This is especially important since climate change not only reinforces inequalities, but also creates new inequalities, for example the sudden increase in female-headed households or time poverty; two elements that were of minor importance before the impact of climate change. This thus requires more specific and new actions from States to counteract these new inequalities which are identified through the monitoring and research obligations.

Gender mainstreaming and climate change mainstreaming both are also very prevalent in treaties and soft law. Therefore, both gender and climate change need to be mainstreamed into all actions, policies and legislations of PSIDS.

## **Implementation**

The progress made by PSIDS will be reviewed during the SAMOA Pathway Midterm Review which takes place in the end of September 2019. Within the draft Pacific regional report, it has been admitted that even though progress has been made in the areas of gender and health, the “implementation of the social pillar of the SAMOA Pathway lags behind the Environmental and Economic pillars and is exacerbated by the limited or non-availability of data for measurement.”<sup>227</sup> Therefore, PSIDS seem to fail to take sufficient steps to respect, protect and fulfil women's right to health, as well as conduct any monitoring and research on the impact of climate change on women's health.

### **5.2 Non-Discrimination**

The principle of non-discrimination is confirmed in CESCER, CEDAW and UNFCCC as well as many soft law provisions. There is no doubt thus that discrimination of any kind, including gender and health status, is not permitted. Moreover, non-discrimination as defined by CESCER is an immediate obligation and does not fall within progressive realization. States can thus not justify women's discrimination. Therefore, States must end discrimination and take all possible concrete, deliberate and targeted measures to end discriminatory practices which are reinforced by climate change. This includes direct and indirect, as well as formal and informal discrimination. Together with the obligation to mainstream, there is an obligation to ensure that climate change legislation, actions and policies do not discriminate against women and that legislation prohibiting such discrimination is in place.

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<sup>227</sup> UNDESA, Pacific Regional Preparatory Meeting on the Mid-Term Review of the SIDS Accelerated Modalities of Action (SAMOA) Pathway in the Pacific, Draft Pacific Regional Report (2018), §11

More generally, climate change will require islanders to adapt in order to survive. Because of discrimination, women are already in a worse-off position and will face more challenges in adaptation than men. The State must thus not only ensure that women will have the same opportunities and possibilities to adapt as men, but make sure that women and men start off from the same position when needing to adapt. Special measures offer themselves to ensure that women stand a greater chance at catching up with men.

### **On Health Services**

In regard to women's right to health, States have an obligation to ensure that the access, availability, acceptability and quality of health services offered to women is not impeded by any kind of stereotypes or other forms of discrimination. This counts especially during times of climate-induced emergencies, as women could find themselves in greater hardship. However, it is well-known that the humanitarian field is a male-dominated field that struggles to take into consideration female needs and demands. This includes sexual and reproductive health.<sup>228</sup> Therefore, it is quintessential for States to ensure that humanitarian organizations, whether national or international, have a gender perspective in their action plans and thus do not indirectly ignore and discriminate against female health concerns. This includes that such organization must be comprehensive about the gendered impact that climate emergencies have on women.

Moreover, States need to acknowledge that women have different health concerns than men which are enforced by climate change, such as their disproportionate exposure to waterborne diseases. Moreover, women's sexual and reproductive health their freedom to make free and responsible decisions in regard to their sexual and reproductive health is quintessential for non-discrimination and must be upheld. Therefore, the State needs to ensure that women's choices related to their sexual and reproductive health do not get impeded by underlying discrimination against women and such underlying discrimination needs to be addressed by the State. States must ensure that climate change does not limit women's capacity in taking decisions on their health, for example because of child marriage or forced prostitution. Such factors must thus be combatted through awareness-raising and the combatting of negative stereotypes that impede women's decision-making.

### **On Underlying Determinants**

As the right to health also includes the underlying health determinants such as food, water, education and employment, it is essential to make sure that women do not have less access to such resources as their male counterparts, including during emergencies. Women must be

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<sup>228</sup> Actionaid, 'Protecting Women's Rights in Emergencies' (ActionAid, 15 May 2019) <<https://www.actionaid.org.uk/about-us/policy-and-research/womens-rights-in-emergencies>> accessed 21 August 2019

guaranteed enough food in emergency situations to fulfil their dietary needs and the difference in such needs must be recognized in the provision of such during food distributions.

With regard to water, women must be able to have the same access to clean water sources as men to fulfil their dietary and hygienic needs. In both cases, this does not mean that food and water provision have to quantitatively be the same but must be sufficient to each gender to uphold a healthy lifestyle according to their individual needs, in line with the accessibility, availability, acceptability and quality of food and water.

When it comes to employment, women's sources of income are disproportionately threatened by climate change. It is therefore crucial that women are fully empowered by the State, to adapt to such changing circumstances and receive adequate training to be able to adapt or find new sources of revenue in order to sustain their health, as mentioned in the SAMOA Pathway. The same opportunities and possibilities must be available to women as to men, this should include access to credits and other financing resources for female farmers, as acknowledged by CEDAW<sup>229</sup> and the Addis Ababa Agenda.<sup>230</sup>

CESCR calls for measures to be in place to combat discriminatory practices. Such measures are for example public leadership and programmes to raise awareness. Merging the obligation to take such measures and the Paris Agreement art. 12 on education and awareness-raising shows that States have to include climate change and its gendered impacts in the curriculum and raise awareness about its discriminatory impact across the islands, including rural areas.

Moreover, female participation in decision-making is key to ensure that laws, policies and actions on climate change do not directly or indirectly discriminate against women. The importance of such participation has been taken up by UNFCCC's greater framework as well as national policies of PSIDS. It is thus clear that, in order to fulfil the obligation of non-discrimination, States are required to guarantee women's full and effective participation in decision-making positions at all levels. In order to do so, CEDAW as well as CESCR encourage special measures which could include the setting of quotas of female participants within decision-making bodies. Yet, participation in itself does not suffice. The opinions and visions of women must be reflected in the law, policies and actions taken on the ground.

When talking about non-discrimination and equality, there is a larger debate as to what equality actually means. For example, women's and men's health cannot be treated in the exact same way in order to guarantee the right to health, as the women's needs to live a healthy life are different. Therefore, differentiated treatment is a requirement to fulfil the right to health. However, this does not mean that States can arbitrarily interfere with women's right to health. The ultimate goal is the "state of complete physical, mental and social well-being and not merely the absence of disease or infirmity" as defined by the WHO.<sup>231</sup> That the complete physical, mental and social well-being is different for each individual and that such well-being

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<sup>229</sup> CEDAW General Recommendation 37, supra 124, §64d

<sup>230</sup> Addis Ababa, §41

<sup>231</sup> 1946 Constitution of the WHO, preambular paragraph 1



becomes more difficult to achieve because of climate change is self-explanatory. Therefore, instead of taking a generalized approach as to what equality in treatment means, States must need to acknowledge and guarantee women's different health needs, including sexual and reproductive health, and ensure that such health is not neglected, even though other health concerns, such as vector- and waterborne diseases, increase during climate change.

## **Implementation**

PSIDS performance in regard to non-discrimination already now leaves a lot to wish for. The right to non-discrimination is violated throughout all PSIDS, as women still face negative stereotypes and discriminatory practices in all areas of their lives, including the access to health services, availability of sexual and reproductive health services and education, as well as quality of such services.<sup>232</sup> Given the fact that climate change will enhance these inequalities and create additional ones, PSIDS need to prioritise the goal of equality in their decision-making.

### **5.3 The Right to Health**

As discussed above, the right to health consist of the right itself and the underlying determinants. Moreover, the framework underlies the obligations of States to respect, protect and fulfil. Finally, these three obligations apply to the availability, accessibility, acceptability and quality (AAAQ) of the right to health.

#### **Obligation to Respect**

First, States must respect the right to health and its underlying factors according to CESC. This means that the State cannot interfere in the fulfilment of the right, it is an obligation to abstain. Considering the HRBA to climate change, measures taken to combat climate change must ensure the respect of women's right to health and cannot increase the burden of women to fulfil their human rights even further. Climate action taken can thus not have any adverse effect on women's right to health. This applies to the totality of the AAAQ framework. This also means that measures taken cannot further limit the AAAQ of the underlying determinants, either, such as food, water, education and employment. For example, revolutionizing the energy sector through increasing energy taxes to incentivize islanders to switch to renewable energy could have negative impacts on women as it would increase household spending.<sup>233</sup> Many PSIDS have committed to a 100% renewable energy policy in their NDCs. Therefore, PSIDS must make sure that such policies do not additionally burden households, especially female-headed households. While the example mentioned here is one of mitigation, the same applies for adaptation measures taken by the State.

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<sup>232</sup> See for example the CEDAW Committee's reports on Fiji and the Marshall Islands

<sup>233</sup> Lena Bendlin, 'Highlighting the distributive Effects of Climate Policies' [2014] 27(4) Cambridge Review of International Affairs, p. 686

Taking into account the right to a healthy environment, PSIDS have an obligation to respect the environment and not interfere with it in any way that could create damage to the ecosystem which islanders are so dependent on. Such a commitment is also given within the Addis Ababa Agenda, the preamble of the Paris Agreement, and the Sendai Framework.<sup>234</sup> This would mean that PSIDS should ensure an eco-friendly tourism sector and eco-friendly waste management<sup>235</sup> that does not interfere with women's access to underlying determinants and their availability, acceptability and quality.

### **Obligation to Protect**

States must protect the right to health and its underlying factors. Such protection is directed against third parties interfering with the right to health.<sup>236</sup> The question remains thus whether or not climate change constitutes a third party. The CESCR Committee itself does not elaborate on what third parties are, but it is generally understood that third parties are non-state actors. Since climate change is created by other State Parties, companies and individuals, all of which emit GHG. There is no doubt that the State would need to protect the population from such an intervention, as States, companies and individuals clearly account as third parties. Moreover, the right to a healthy environment obliges States to protect human rights against environmental harm, which would include the impacts of climate change. There is thus a clear obligation to protect women's right to health against the negative impacts of climate change.

#### *On Legislation*

First, States must guarantee that sufficient legislation is in place to guarantee women's right to health, taking into consideration the impact of climate change and the additional challenges that women face because of it. In line with the Paris Agreement, the legal provisions must also call for increased resilience, enhanced capacity-building in the area of health, and create obligations for health institutions to monitor, evaluate and report on the measures taken to increase resilience of women's health.

#### *On Health Services*

This includes the resilience of health services and the protection of women's access to such services, including family planning. The universal access to health services was also set as a goal in The Future We Want. Especially during emergencies, such access can be impeded. States must thus take steps to guarantee health services' disaster preparedness according to the Sendai Framework in order for them to remain open, functional and accessible even in times of emergencies. This includes an obligation to ensure that health centres receive sufficient electricity to continue to function and for them to stay available. States must thus give priority

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<sup>234</sup> Addis Ababa Agenda, supra 152, §17, Sendai Framework, supra 158, §28d, Paris Agreement Preambular Paragraph 13

<sup>235</sup> Samoa NAPA, p. 87-90, SAMOA Pathway, supra 13, §64b

<sup>236</sup> CESCR Committee, General Comment No. 14, §33

to health institutions when it comes to the NDC goal of renewable energies and energy independence to guarantee the flawless functioning of hospitals and sexual and reproductive health centres in case of power outages caused by natural catastrophes. This is also reaffirmed by the Palau Action Plan.<sup>237</sup>

The importance of enhancing health infrastructure and buildings related to health has been emphasized by several national policies. This could include a guarantee that hospitals and other vital health institutions for women would be moved to less climate change prone areas, thus further away from the coast. Nevertheless, it has to be reassured that such a move would not endanger the accessibility of these institutions to women, especially women living in remote areas, as established by national policies. States have also committed to the establishment of an early warning system under the Addis Ababa Agenda and the Sendai Framework. This is essential to guarantee that health institutions can stock up on essential goods, including medication against diseases disproportionately affecting women, as well as evacuate patients to safe areas if necessary.

Accessibility also includes economic accessibility. As discussed, PSIDS are heavily import reliant. This also applies to medical goods. In case of a climate emergency, such goods could possibly become scarce and create a price inflation. Within CESCR, States have an obligation to ensure that health services remain affordable to all, on the basis of equity. This means that poorer households should not be disproportionately burdened.<sup>238</sup> This could also be achieved by stock-piling such resources, as suggested by the Sendai Framework.<sup>239</sup> Taking into account climate financing, financial resources should be acquired in order to substitute the increased costs of health services. Since food prices will increase because of climate change, States have an obligation to ensure that women are not forced to compromise for unhealthy food options and guarantee that a healthy diet does not disproportionately burden female households.

Finally, information accessibility has to be guaranteed. This means that women must be able to seek, receive and impart information on health issues, including their own health, and the impact of climate change on their health.<sup>240</sup> In line with the climate change framework, there is a need to continuously research, monitor and evaluate the influence of climate change on women's right to health and to ensure that State Parties conduct awareness raising on all levels, including community-based awareness. Moreover, art. 7 of the Paris Agreement as well as CEDAW emphasise the importance and contribution of women with traditional knowledge which can be important to facilitate adaptation of women. Such traditional knowledge should also be available for women and taken seriously by government institutions and incorporated into law, policies and actions. Women must also be protected against the impact of time poverty that would limit their capacity to access health facilities, especially sexual and reproductive health services, as well as the increasing numbers of child marriage and forced

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<sup>237</sup> Palau, Climate Change Policy for Climate and Disaster Resilient Low Emissions Development (2015), p. 34

<sup>238</sup> CESCR General Comment 14, §12b.iii

<sup>239</sup> Sendai Framework, supra 158, §33d

<sup>240</sup> CESCR General Comment 14, §12.b.iv

prostitution during emergencies. Islander populations must thus have access to information in regard to the impact that time poverty has on the health of women and girls and measures must be taken to combat stereotypes that enforce time poverty for women.

On availability, medicine and medical equipment also have to remain available at all times, including emergencies, as established by CESC. <sup>241</sup> This includes especially any medicine for the treatment and prevention of vector-borne and water-borne diseases likely to spread further and affect women disproportionately. Taking into account the obligation to gender mainstream, States must stock up on medical supplies essential for women's sexual and reproductive health. Moreover, health services must be sufficient and guaranteed also to remote areas in order to protect the right to health to women living on islands further away from the capital. This is also an element of the core obligation of the right to health. <sup>242</sup> Additionally, States must ensure the protection of reproductive and sexual health services in order to avoid the spread of STDs during times of emergencies and ensure women's bodily autonomy. Sexual and reproductive medical equipment and drugs must thus be sufficiently available, inside and outside emergency settings.

The climate change framework does not add anything substantial to the requirement of acceptability of health services. The Rio Declaration on Environment and Development reaffirms that health services should include women-centred health care, which is in line with the obligation from CESC and CEDAW that health services must be sensitive to gender. <sup>243</sup>

The quality of health services has to remain the same high standard in all areas, especially remote areas, even in case of climate emergencies. Outside emergency settings, States must ensure that medical staff are adequately trained to provide women with a high quality of safe medical care that does not increase their vulnerability further and that takes into account health areas that disproportionately affect women affected by climate change.

Since women are more prone to SGBV during emergencies, States are responsible to ensure protection of women from such violence. This should include an obligation to ensure women shelters rest accessible during catastrophes <sup>244</sup> and an obligation to make sure that protection institutions, such as the police, remain intact during emergencies, according to several NDCs <sup>245</sup> and receive gender-sensitive training. <sup>246</sup> In line with the NDC goal of energy independence, police stations should also be prioritised in order to function efficiently even in times of emergencies.

### *On Underlying Determinants*

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<sup>241</sup> Ibid., §14, 12.a

<sup>242</sup> Ibid., §43e

<sup>243</sup> CESC General Comment 14, §12.c

<sup>244</sup> See for example CEDAW Committee, Concluding Observations Vanuatu, §21

<sup>245</sup> See for example: NDC Kiribati, p. 10

<sup>246</sup> 2009 Beijing Agenda for Global Action on Gender-Sensitive Disaster Risk Reduction, §8

In relation to food and water, States must ensure that steps are taken to prevent saltwater intrusion that would threaten agriculture and water sources. According to the Addis Ababa Agenda and the Sendai Framework, an early warning system should be established which could help take preventative measures to lower the impact of intrusion. For example, women would have time to collect sufficient water and food for the next few days during which access to and availability of such resources could be limited. Additionally, States must increase the resilience of agriculture by diversifying and using more resilient crops and guaranteeing access to such agricultural techniques to women. This would not only increase the availability of foods during increased hardship, but also assure women's employment in agriculture.

Moreover, the UNFCCC art. 4 calls for the development and elaboration of appropriate and integrated plans for coastal zone management and the SAMOA Pathway covers taking measures to preserve healthy oceans. It is crucial for PSIDS to take actions on the coast to protect the biodiversity of the reefs which is crucial to sustain a healthy diet in PSIDS and to ensure that women in the fishery industry stay employed. To implement such steps, PSIDS should, in accordance with the UNFCCC and the SAMOA Pathway, ensure that the best technology is used to create resilient coast lines through the creation of research and monitor centres and through sustainable fisheries.<sup>247</sup> By guaranteeing the continuance of the agricultural and fisheries sector in PSIDS, there would be less incentives of men to migrate into cities which could alleviate female time poverty. Another vital sector for PSIDS' employment is the tourism industry. However, if not well managed, tourism can create additional hardship for the local population, for example if waste disposal and water pollution are not sustainably managed and damage the health of the local population. Different NAPAs emphasise the need to adapt the tourism industry to climate change by introducing climate change adaptation into tourism planning and rendering the tourism industry more sustainable.<sup>248</sup> Moreover, in line with CESCR obligations, States must ensure safe and healthy working conditions for employees.<sup>249</sup> With the increased number of heat strokes, it is crucial that States make sure that companies enforce adequate safeguards to protect workers, especially agricultural workers, from such heat induced illnesses, for example through the provision of shade, sufficient break times and access to water.

On education, States have an obligation to protect girls from dropping out of school to alleviate the time poverty of their mothers or to engage in their child marriages. This flows into the obligation to protect girls from the impact of harmful stereotypes and practices at school that could limit their possibilities to adapt to climate change. Taking into consideration the obligation to raise awareness about climate change, States must include climate change and the impact on women and girls into the school curriculum. Given the impact of climate change on sexual and reproductive health, this must include adequate, scientifically correct and qualitatively high sexual reproductive health education for girls and boys.

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<sup>247</sup> SAMOA Pathway, *supra* 13, §58

<sup>248</sup> NAPA Samoa, p. 55, NAPA Solomon Islands, p. 56

<sup>249</sup> CESCR General Comment 14, §4

## **Obligation to Fulfil**

The obligation to fulfil includes the obligation to facilitate, provide and promote, taken from IHRL, and the obligation to build capacity and strengthen resilience, taken from the climate change regime. Taken together, the obligation to fulfil seems to set the strongest precedent around legally binding obligations as building resilience and capacity belong to the cornerstones of the UNFCCC.

### *On Health Services*

States have an obligation to build and improve the capacity and resilience of health services, taking into account the increasing burden on the health system caused by climate change. To facilitate such initiatives, States should allocate sufficient funding to the health sector. This was also recommended during the UPRs.<sup>250</sup> Capacity building needs to include the provision of sufficient drugs against diseases likely to increase because of climate change. According to the Special Rapporteur on Health, this should include vaccines against such diseases, for example Cholera and Typhoid.<sup>251</sup> Generally, CESCR obliges States to take measures to prevent, treat and control epidemic and endemic diseases.<sup>252</sup> Since climate change will largely increase the spread of vector-borne diseases, States must give priority to such diseases and set up awareness raising programmes for disease prevention, for example for Malaria, Dengue, and Typhoid, as specified by Samoa's NAPA.<sup>253</sup> Women must be guaranteed the same access to such State-led initiatives. More importantly, capacity-building includes an obligation of States to provide medical staff with the necessary training and knowledge to guarantee women's right to health during climate change.

According to CESCR and including the obligation to mainstream, States have an obligation to implement a national health strategy that mainstreams gender and climate change. Such a strategy must be based on scientific evidence and knowledge collected from continuous monitoring and research. Moreover, it must take into consideration traditional knowledge and must be established with the active and meaningful participation of women. The strategy must also be continuously updated to reflect the current state of science and available technology.

### *On Underlying Determinants*

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<sup>250</sup> See for example UPR of Timor-Leste, § 89.142

<sup>251</sup> UNGA, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (2016), UN Doc A/71/304, §86

<sup>252</sup> CESCR Committee, General Comment 14, §44c

<sup>253</sup> NAPA Samoa, p. 18

According to the UNFCCC art. 4.1e, States have an obligation to develop and elaborate an adaptation plan for agriculture. Especially during emergencies, women face additional hardship to access food and water. Therefore, States should put food security as a priority<sup>254</sup> and must facilitate and provide women's access to food in times of emergencies, in line with CESC. Moreover, States should promote and facilitate the use of sustainable agriculture and aquaculture, including resilient crops and fish stock, especially to female farmers and fishers, to enhance their capacity to adapt to climate change and ensure their empowerment. This is established by SDG Goals 2 and 5, as well as the CEDAW Committee<sup>255</sup> and the SAMOA Pathway.<sup>256</sup>

On water, there is an established obligation for States to take steps to implement universal access to safe and potable drinking water, including remote areas, not only under CESC art. 11 on an adequate standard of living, but also in combinations with the UN resolutions on climate change, the Addis Ababa Agenda<sup>257</sup> as well as the Rio Declaration on Environment and Development.<sup>258</sup> Given the saltwater intrusion, States must provide each other with knowledge on best technologies used to ensure safe and potable drinking water, in line with art. 7 of the Paris Agreement and the SAMOA Pathway.

Because the women's right to health depends on their ability to participate in decision-making and because the climate change framework is largely built on technology, States must ensure and promote that women and girls have unhindered access to professions and education in the STEM area, in line with the obligation of non-discrimination, the Lima Plan of Action and art. 12 of the Paris Agreement.

## **Implementation**

The current CEDAW reports on PSIDS' performance would imply that PSIDS have not taken any action to prevent the impact of climate change on women's right to health. While the access, availability, acceptability and quality of health services for women remains restricted, the underlying determinants of health equally lack implementation.<sup>259</sup> PSIDS are thus in violation of their obligation to respect, protect and fulfil women's right to health.

### **5.4 Right to Remedy**

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<sup>254</sup> Sendai Framework, *supra* 158, §33h

<sup>255</sup> CEDAW General Recommendation No. 37, *supra* 124, §54d

<sup>256</sup> SAMOA Pathway, *supra* 13, §63

<sup>257</sup> *Ibid.*, §14

<sup>258</sup> *Ibid.*, §12

<sup>259</sup> See for example CEDAW Committee's reports on Timor-Leste and Solomon Islands

The right to remedy is enshrined in IHRL and forms an integral part of any human rights obligation. Therefore, if a State fails to take steps to respect, protect and fulfil women's right to health in the context of climate change, victims must have access to justice and substantive redress under the IHRL regime.

However, the climate change framework does not effectively establish a right to remedy in itself. It does, nevertheless, continuously refer to the importance of human rights. Moreover, when analysing the Cancún Adaptation Framework, the Warsaw International Mechanism for Loss and Damage and art. 8 of the Paris Agreement, there seems to be an obligation for States to take action on behalf of loss and damage. Yet, the mechanisms in place to support loss and damage are ambiguous. First, it is unclear how such mechanisms should be funded and by whom. Second, the scope of loss and damage remains undefined throughout the climate change framework. Finally, so far, such mechanisms have only addressed economic loss and damage, largely ignoring the social and cultural impact of climate change on island populations. However, a right to remedy in line with IHRL has to take into consideration all dimensions of harm caused, making the current mechanisms incapable of dealing with the full scope of remedies. Therefore, while there might be implications about remedies for harm caused by climate change, such remedies are not really in place yet.

The question remains, thus, whether domestically, there is a way to receive remedies for human rights violations resulting from climate change. In the case *Leghari v. Federation of Pakistan*, the plaintiff claimed that Pakistan violated their right to life, human dignity, property and information by not implementing their National Climate Change Adaptation Framework timely. The High Court stated that “the delay and lethargy of the State in implementing the Framework offends the fundamental rights of the citizens which need to be safeguarded” and directed the State to implement the Framework and establish a Climate Change Commission to supervise the implementation.<sup>260</sup> Moreover, in the case of *Urgenda Foundation v. State of the Netherlands*, the Constitutional Court upheld the State's violation of its duty to care in relation to the right to life and the right to privacy of the ECHR. It determined that the State had an obligation to protect its citizens from the threat of climate change and violated it by not hitting its target of a 25% GHG reduction. The 2015 decision was upheld in 2018 and forces the Netherlands to achieve a 25% reduction and the cost of the proceedings.<sup>261</sup> There is currently an appeal in process to this decision. Both these decisions reinforce the obligations of States that were already in place and do not provide any additional redress for the plaintiffs. It remains thus open to see how far courts will be willing to go in redressing the harm caused by climate change. Nevertheless, they show that citizens must have a legal way to receive redress for their harm suffered and that the omission of the State constitutes such a violation.

Having exhausted domestic remedies, the question remains whether islanders could claim a violation in front of an international human rights body. There have been petitions in front of

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<sup>260</sup> *Leghari v. Federation of Pakistan*, Lahore High Court, Communication Number 25501/201 (2015)

<sup>261</sup> *Urgenda Foundation v. State of the Netherlands*, Netherlands Supreme Court, Communication Number HAZA C/09/00456689 (2018)



the Inter-American Commission of Human Rights in regard to violations of the USA<sup>262</sup> on one hand and Canada<sup>263</sup> on the other against Inuit indigenous communities as the States' emissions damage the livelihoods of the communities. However, the Commission, in its case against the USA, discarded the petition as the link between the harm and the State action was not established clearly enough. The petition against Canada is still pending. Yet, the regional human rights mechanisms such as the Commission remain inaccessible to pacific islanders given the geographic constraints of these mechanisms. Nevertheless, these petitions highlight the fact that there is space for an access to international justice mechanisms. As an alternative to the regional mechanisms, pacific islanders could possibly bring a case in front of the UN treaty bodies, if their State had ratified the optional protocol belonging to the treaty. Currently, Torres Straight islanders are about to lodge a complaint to the UN Human Rights Committee against Australia, accusing the latter of failing to take action to reduce GHG emissions and pursue adaptation measures. The islanders claim a violation of their right to life, minority rights, as well as possibly their right to a healthy environment.<sup>264</sup> The case is still pending on admission. In regard to the right to health, pacific islanders would need to lodge a complaint to the CESCR Committee or the CEDAW Committee. Since the CEDAW Committee has already released a General Recommendation specifically dealing with the impact of climate change on SGBV, chances are that such a complaint brought to the Committee would be admissible, if other admission criteria, such as the exhaustion of domestic remedies, were fulfilled. However, so far only Timor-Leste, the Marshall Islands, the Solomon Islands and Vanuatu have ratified any optional protocol to the CESCR or CEDAW Committee.

## Implementation

PSIDS have already been criticized for their lack of providing access to justice for women, especially in SGBV cases and the lack of gender-specific knowledge of the judiciary.<sup>265</sup> There has so far been no successful case in front of any PSIDS high court on any claims of climate change.

## 6. Conclusion

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<sup>262</sup> 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 (7 December 2005)

<sup>263</sup> Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations of the Rights of Arctic Athabaskan Peoples Resulting from Rapid Arctic Warming and Melting Caused by Emissions of Black Carbon by Canada (23 April 2013)

<sup>264</sup> Miriam Cullen, 'Eaten by the Sea': Human Rights Claims for the Impacts of Climate Change upon remote subnational Communities' [2018] 9(2) *Journal of Human Rights and the Environment*, p. 173-184

<sup>265</sup> See for example: CEDAW Concluding Observations of Micronesia, *supra* 50, §17; CEDAW Concluding Observations of Fiji, *supra* 50, §15

This dissertation has looked at the different ways that climate change has impacted women's right to health in PSIDS. It has then explained the most important legal framework around climate change and women's right to health, before attempting to elaborate how PSIDS obligations towards women's right to health shift because of climate change.

Women suffer disproportionately from the impacts of climate change, as existing inequalities get reinforced and new inequalities emerge. Combining IHRL with climate change legislation creates a unique opportunity that can elaborate on the shifting obligations of PSIDS to guarantee women's right to health in PSIDS. Broadly speaking, when combining the languages of both frameworks, PSIDS have to take into consideration this disproportionate burden in their adaptation and mitigation action and take steps to guarantee that women's health is not disproportionately affected by climate change by raising awareness, including women in decision-making processes, female empowerment and resilience in regard to women's health and their underlying determinants. A key element to protect women from this disproportionate burden is to combat negative stereotypes and harmful practices. Nevertheless, the exact gendered impact of climate change on health is not fully established yet, which is why continuous monitoring, research and reporting is quintessential to guarantee women's right to health in the future. This also means that there is an uncertainty about States' obligations in the context of climate change, since this context continuously changes.

With regards to remedies, the strict compliance of the State with its obligations cannot be seen as a sufficient remedy in the context of climate change, as the caused damage will only become reinforced as climate change progresses. The problem with remedies also lies within the fact that actions taken by PSIDS to stop and adapt to climate change might be insufficient, as their contribution to GHG emissions is minimal compared to main GHG emitters such as the USA or China. This causes a problem as the damage caused to islanders might not be directly attributable to PSIDS.

This in turn raises the question if islanders could claim justice towards the wider international community as they fail to take action against climate change domestically. The question and definition of climate justice remain disputed. Even though mentioned and acknowledged as a concept within the preambles of UN resolutions and the Paris Agreement, it has not been defined what this concept actually means. OHCHR mentioned that climate justice should include a HRBA to climate change action and "founded on principles of equity, accountability, equality, inclusiveness and solidarity. These principles are essential in guiding support for developing countries, including financial and technological assistance."<sup>266</sup> This means that CBDRRC, access to justice, women's equality, female participation in decision-making and recognizing women's intersectionality must be part of climate justice. Moreover, the Mary Robinson Foundation has created a concept of climate justice based on human rights. This definition includes the right to development, the equitable share of benefits and burdens, participatory, transparent and accountable decision-making, education for climate stewardship

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<sup>266</sup> OHCHR, *supra* 39, p. 14

and efficient climate justice partnerships.<sup>267</sup> This falls largely within the points already established further above in regard to women's right to health.

The fact that climate change will disproportionately impact future generations creates a responsibility for current decision-making generations to prioritize the concerns of younger generations. The current political landscape, however, has turned more and more hostile towards social and climate justice. Bolsonaro's inaction towards stopping the fires in the Amazon, Trump's denial of the existence of climate change and China's refusal to take efficient steps towards a greener economy are just a few examples. The growing movement around climate justice, exemplified by the Belgium protests and Greta Thunberg, shows that younger generations are putting increased pressure on their governments to achieve more recognition around the urgency to take action now rather than later. Climate justice thus includes an element of guaranteeing that future generations will not inherit the damage that current generations cause.

Keeping all of the above in mind, it seems to be difficult to see how the current human rights framework and the climate change framework will be capable of taking up the challenge of climate change without enhanced interaction and collaboration between the two. The problem, however, is that most links made between human rights and climate change remain in the soft law domain and that the world's population is running out of time to wait and see how these soft law obligations could potentially influence hard law. There is a need for new obligations that remove any doubt that climate change and human rights are closely linked and that the two frameworks are not exclusive, but mutually complementary and enforceable.

Moreover, the States that would have most power to push States to take action, such as the USA and China, are currently the ones who have the least interest in pushing for such an action. Therefore, creating a neutral mechanism that could hold States accountable for their insufficient climate action could potentially be a solution. The UNFCCC could play a crucial role in setting up such a body. However, since the obligations under the UNFCCC are largely procedural, such a body would have very limited capacities. Another option would be to create a new UN human rights treaty on human rights and climate change that would then be equipped with a Committee for review, similar to the Committees under CEDAW and CESC. The challenge, however, would be to identify what such a treaty would look like, since the impact of climate change on human rights is detrimental. Moreover, such a treaty would first need to be ratified by States. While such a ratification might be achieved by climate action example countries such as Morocco and The Gambia, countries with bad climate action records have limited to no interest in ratifying such a treaty. This severely reduces the relevance of such a treaty.

The consequences and causes of climate change are still not clearly established. This means that the climate change framework is mostly reactive, which is mirrored in the current

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<sup>267</sup> Mary Robinson Foundation, 'Principles of Climate Justice' (Mary Robinson Foundation, 2019) <<https://www.mrfcj.org/principles-of-climate-justice/>> accessed 30 August 2019

obligations which focus on research, monitoring and reporting. While there are broad obligations on mitigation and adaptation, States have a great amount of freedom in deciding how and if such measures are taken. Given the fact that the language used within CESCER and CEDAW recommendations also remains vague, the actual obligations of States remain blurry. While such a freedom allows for measures to be culturally appropriate and within the capacities of the State, it also opens the door for inefficient and arbitrary measures. Even though States are required to communicate their actions and programs through NAPAs and NDCs, many States have not bothered yet to submit such reports and commitments. The same accounts to the CEDAW and CESCER Committee, where many States are severely delayed in their report submission. This makes it increasingly hard to track not only the performance of States considering their obligations, but also which practices are effective in limiting the impact of climate change on human rights.

Finally, if States continue to fail in their climate action, the consequences of climate change will continue to be exponential. This means that developing States' struggle to adapt to climate change will also increase exponentially. This will require more funding and assistance from developed States who, in the current hostile political environment, will struggle to justify such spending, disregarding the fact that States are already not fulfilling their obligation to spend 0.7% of their GDI on official development assistance.<sup>268</sup> Moreover, if climate change increases exponentially, States will struggle to keep up with mitigation and adaptation measures, in the end causing the climate change framework to collapse. Since the climate change framework does not have any sanctions in place for non-compliance, the only consequence of non-compliance would be the collapse of the framework. Therefore, if the climate change regime is to sustain, sanctions that force States to comply with their obligations need to be set in place.

Another question worth asking is whether the current distinction between slow on-set climate change and catastrophes is still justifiable. At what point does an event constitute an emergency? One could argue a catastrophe is an event causing great and sudden damage or suffering. If that were the case and taking into account the exponential increase of climate change, the line between the two becomes increasingly blurry. Moreover, with PSIDS slowly disappearing from the maps, there will be an increase in migration and climate refugees, a concept which in itself is still not really defined yet. This would mean that the humanitarian framework would become increasingly applicable to climate change, opening a new angle with which to interpret States' obligations on women's right to health in PSIDS.

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<sup>268</sup> See 2003 Monterey Consensus on Financing for Development, §42; OECD, 'Net ODA' (OECD Data, 2017) <<https://data.oecd.org/oda/net-oda.htm>> accessed 30 August 2019

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