

## WOMEN IN PARIS

### — *The inclusion of gender considerations in the negotiation and text of the Paris Agreement*

**Taylor Mitchell\***

*The Paris Agreement represents a new era of climate change law. It aims to coordinate international and domestic efforts in managing climate change, the effects of which women are disproportionately vulnerable to. This article examines the extent to which women and gender-focused groups were included in the creation and text of the Paris Agreement. This article argues that gender-considerate approaches can provide opportunities for nuanced and targeted climate change law. This is better achieved when women and gender-focused groups are direct stakeholders in the negotiation and drafting process. Such representation was limited in the drafting of the Paris Agreement, especially for women from developing countries and in leadership positions. The text of the agreement includes gender considerations, however this is restricted to specific concerns about adaptation and vulnerability rather than focusing on the broader relationship between gender and climate change issues. This article argues that, while the Paris Agreement includes more gender considerations than prior law, it falls short of adequately including the interests of women and considering the relationship between gender and climate change issues.*

## I INTRODUCTION

Climate change is arguably the most significant threat facing states. Rising temperatures bring food and water scarcity, disease, displacement and conflict. These effects will most strongly be felt by more vulnerable communities. Meanwhile, the vast majority of states have made negligible efforts to mitigate and adapt to climate change. However, in December 2015, the international community moved into a new era of climate change law through the adoption of the Paris Agreement (the Agreement). The treaty aims to coordinate

---

\* LLB/BA student at the University of Auckland.

international and domestic efforts to manage the many elements of climate change, from reduction of emissions to adaptation to its effects.

In this article I address the extent to which women and gender-focused groups were included in drafting the Paris Agreement. Women, especially those in developing nations, are disproportionately vulnerable to the effects of climate change.<sup>1</sup> A gender-responsive approach to climate change provides opportunities for nuanced and targeted policy efforts.<sup>2</sup> Prior to the Paris Agreement, international law had failed to include gender, among other social considerations, in the plan to address climate change. I argue that this failure needs to be rectified for climate change law to adequately support communities across the globe.

Part I outlines the current state of international climate change law: the United Nations Framework Convention on Climate Change and Kyoto Protocol are explained; and the aims and mechanisms of the Paris Agreement are detailed.

Part II examines the connection between gender and climate change law. It is argued that both mitigation and adaptation policies are more efficient, and that a number of social costs can be avoided through adopting a gender-responsive approach. This, therefore, justifies the inclusion of gender in the Paris Agreement.

Part III canvasses the drafting of the Paris Agreement at the 21st Conference of the Parties (COP21), and the extent to which women and gender-focused groups were involved in drafting the Agreement. This part begins by outlining the benefits of including women within the negotiation process, and then examines these benefits with regard to women in national delegations, the role of gender-focused non-governmental organisations (NGOs) and the inclusion of events bringing attention to gender issues. I argue that, although the inclusion of women and gender interests improved on previous COPs, representation was still inadequate. In particular, women were heavily underrepresented in leadership positions and among the delegations of developing nations. Further, gender-specific NGOs were outnumbered by those representing interests such as business and industry.

---

1 Geraldine Terry “No climate justice without gender justice: an overview of the issues” (2009) 17 *Gender and Development* 5 at 14.

2 Margaret M Skutsch “Protocols, Treaties and Action: The ‘Climate Change Process’ Viewed through Gender Spectacles” (2002) 10 *Gender and Development* 30 at 32.

Finally, Part IV addresses the extent to which gender considerations were included in the final text of the Paris Agreement. The three articles that include gender considerations are examined and assessed for their drafting quality and significance. Then I consider what gender issues were not addressed in the Agreement and discuss how they might have been. I argue that the Agreement is restrictive in its approach to dealing with gender issues and that it fails to address the key problem-solving role that gender can play in the climate change debate.

Ultimately, while COP21 and the Paris Agreement were an improvement upon previous conferences and international law as it stood before the Agreement, I argue that both fell short of adequately including the interests of women and being truly gender-responsive. It is difficult to assess whether the efforts to include women in drafting the Paris Agreement will precipitate greater consideration of gender in domestic climate policy. For now, gender-focused NGOs will have to continue campaigning for and supporting the inclusion of these issues in domestic climate change law and policy.

## II CURRENT INTERNATIONAL CLIMATE CHANGE LAW

The Paris Agreement was drafted at the 21st Conference of the Parties of the United Nations Framework Convention on Climate Change (UNFCCC). The UNFCCC emerged from the 1992 Rio Earth Summit, which was the first significant United Nations conference addressing climate change. The UNFCCC was signed in 1994 and has since been ratified by 197 parties. As the name suggests, the UNFCCC provides a framework for future action on its objective to achieve “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”.<sup>3</sup> It does so, not by creating binding emissions limits itself, but by facilitating parties to negotiate future treaties that create such limits.<sup>4</sup>

The Kyoto Protocol was the first international agreement negotiated out of the UNFCCC and aimed to set binding emissions limits. It followed the UNFCCC system by allocating different obligations to states based on whether

---

3 United Nations Framework Convention on Climate Change 1771 UNTS 107 (opened for signature 4 June 1992, entered into force 21 March 1994) [UNFCCC], art 2.

4 UNFCCC, art 4.

they were classified as developed (Annex I) or developing (Non-Annex).<sup>5</sup> Annex I states were obliged under the Agreement to reduce their emissions to below 1990 levels through domestic mitigation efforts and through funding mitigation infrastructure or reforestation in developing nations.<sup>6</sup> The Protocol is now widely considered a failure in achieving its aims, due to the lack of commitment by the world's largest emitters. The United States refused to ratify the Agreement due to dissatisfaction that the other largest emitters of the world — China and India — faced little to no obligations to reduce emissions as Non-Annex parties.<sup>7</sup>

The Paris Agreement is the successor to Kyoto. It seeks to address the failures of the first treaty and outline new obligations for the parties to the UNFCCC. It opened for signature on 22 April 2016 and has been signed by 197 parties to date. It entered into force on 4 November 2016<sup>8</sup> and, thirty days thereafter, at least 55 UNFCCC parties, accounting for at least 55 per cent of global greenhouse gas emissions, had ratified the treaty in accordance with art 21.<sup>9</sup> As of 7 August 2017, 159 parties had ratified the Paris Agreement, accounting for 86.32 per cent of global greenhouse gas emissions.<sup>10</sup> Crucially, the United States and China, the two largest global emitters, were early ratifiers of the Agreement, supporting an incredibly swift ratification process.<sup>11</sup> The aims of the Paris Agreement as outlined in art 2 are:<sup>12</sup>

- i) holding the increase in the global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the

---

5 UNFCCC, art 4.

6 Kyoto Protocol to the United Nations Framework Convention on Climate Change 2303 UNTS 148 (opened for signature 11 December 1997, entered into force 16 February 2005) [Kyoto Protocol], art 3.

7 George W Bush, President of the United States “President Announces Clear Skies & Global Climate Change Initiatives” (National Oceanic and Atmospheric Administration, 14 February 2002).

8 UNFCCC Secretariat “Paris Agreement Status of Ratification” (7 August 2017) UNFCCC <[www.unfccc.int](http://www.unfccc.int)>.

9 Paris Agreement (opened for signature 22 April 2016, entered into force 4 November 2016), art 21.

10 UNFCCC Secretariat “Paris Agreement Status of Ratification” (7 August 2017) UNFCCC <[www.unfccc.int](http://www.unfccc.int)>; and “Paris Agreement Ratification Tracker” (7 August 2017) Climate Analytics <[www.climateanalytics.org](http://www.climateanalytics.org)>.

11 “Paris Agreement” United Nations Treaty Collection <[www.treaties.un.org](http://www.treaties.un.org)>. Although, President Trump has since indicated that the United States will be withdrawing from the Agreement: Ari Natter “Donald Trump Notifies UN of Paris Exit While Keeping Option to Return” *Time* (online ed, 5 August 2017).

12 Paris Agreement, art 2.

temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;

- ii) increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and
- iii) making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

The means proposed to meet these aims shares Kyoto's approach of acknowledging the different responsibilities and capabilities of states in light of their past emissions and current capacity. However, unlike the comparatively crude division of Kyoto parties into Annex I and Non-Annex parties, the Paris Agreement addresses this concern by allowing each country to set its own Nationally Determined Contribution (NDC).<sup>13</sup> The NDCs are required to be ambitious, progressive and set with a view to achieving the art 2 aims.<sup>14</sup> Every five years countries are held to account for their NDC by a "global stocktake" of emissions administered by the UNFCCC Secretariat, and are required to update their NDC to meet a more ambitious target.<sup>15</sup> The NDCs are not legally binding, so there are no legal repercussions if the stocktake finds a state is not meeting its NDC. However, findings are reported to all parties, relying on a 'name and shame' system of accountability.<sup>16</sup>

This process is considerably more 'bottom up' than the Kyoto Protocol and allows for flexibility in setting targets that suit countries' circumstances. It appears this approach appeased critical countries like the United States, which were dissatisfied by the Kyoto Protocol placing weighty obligations on some nations and none on others.<sup>17</sup> However, this flexibility is also the key weakness of the Agreement, which relies heavily on states' willingness to avoid embarrassment and does not hold them legally accountable for emissions reductions.

---

<sup>13</sup> Article 3.

<sup>14</sup> Article 3.

<sup>15</sup> Article 14.

<sup>16</sup> Article 15.

<sup>17</sup> Bush, above n 7.

### III GENDER AND CLIMATE CHANGE

Before addressing the extent to which gender has been included in the creation and text of the Paris Agreement, it is important to outline the significance of the connection between gender and climate change. Climate change law and policy can generally be broken down into two key areas aimed at reducing negative social outcomes: mitigation and adaptation. Mitigation is aimed at reducing current emissions and avoiding further increases in global temperatures. Adaptation is aimed at helping vulnerable communities weather the negative effects of climate change. This article examines the gender dynamics of mitigation and adaptation approaches and argues that it is necessary for gender considerations to be included in these approaches if they are to most effectively and efficiently reduce the negative effects of climate change. This is for two key reasons: gender mainstreaming increases the efficiency of climate change policy; and if gender considerations are not included, climate change policy itself may threaten progress towards gender equity and actually engender negative social outcomes.<sup>18</sup>

#### *A Mitigation*

Historically, international mitigation law has focused on large-scale economic and technological solutions that are firmly rooted in industries traditionally controlled by men.<sup>19</sup> The Kyoto Protocol is a clear example of this. It primarily employed a market-based approach where states would trade carbon credits to offset their emissions if they were unwilling to adjust their domestic emissions.<sup>20</sup> This focus has been disproportionately dominant in international law and policy on climate change, resulting in the wider discourse around mitigation being tinged with a male viewpoint and an ignorance of social solutions and outcomes stemming from mitigation law.<sup>21</sup> Introducing gender and other human rights-based considerations to the scope of international climate change law creates opportunities to diversify and strengthen the approach taken by countries.

---

18 Skutsch, above n 2, at 32.

19 Minu Hemmati and Ulrike Röhr “Engendering the climate-change negotiations: experiences, challenges, and steps forward” (2009) 17 *Gender and Development* 19 at 20.

20 Kyoto Protocol, art 6.

21 Hemmati and Röhr, above n 19, at 20–21.

Aspects of mitigation law and policy support the idea that gender-responsive approaches can increase the efficiency of mitigation. Commentators highlight the nuance and efficiency that mitigation law could reach if it were to fully address the causes of growing emissions, instead of focusing on shifting technological practices.<sup>22</sup> In particular, although North America and Europe are currently disproportionately responsible for emissions, they are projected to be overtaken by developing regions.<sup>23</sup> This emissions landscape has its roots in two phenomena: the rapid population growth of developing countries; and the unsustainably large carbon footprints of people in developed countries.<sup>24</sup> Where population growth increases emissions, there is clear a synergy between addressing the estimated 200 million women who currently have no access to family planning services, and protecting the environment.<sup>25</sup>

In developing countries, gender-responsive mitigation efforts have the ability to engage communities and create ‘win-win’ outcomes for women and their families. Women are the primary managers of household energy use, so mitigation policies addressing household energy could be significantly more efficient if they engaged women as primary stakeholders.<sup>26</sup> For example, an energy mitigation programme in Georgia replaced traditional woodfire water heating with solar heating in low income households.<sup>27</sup> The traditional method had poor health outcomes for women and children due to the effort needed to collect firewood and smoke pollution.<sup>28</sup> The programme employed local women and trained them to install and maintain the solar panels, which reduced their domestic workload and increased their financial freedom.<sup>29</sup> From a mitigation perspective, the project resulted in a decrease of 245,000m<sup>3</sup> of annual carbon emissions.<sup>30</sup> It also led to reduced demand for firewood, which in turn could reduce deforestation.<sup>31</sup>

---

22 Terry, above n 1, at 9.

23 At 9.

24 At 9.

25 At 9.

26 UNFCCC Secretariat *Report on the in-session workshop on gender-responsive climate policy with a focus on mitigation action and technology development and transfer* FCCC/SBI/2015/12 (2015) at 5–6.

27 At 7.

28 At 7.

29 At 8.

30 At 8.

31 At 8.

Gender considerations have a more nuanced and equally important role in examining the social structures that lead to high energy consumption when accounting for the carbon footprints of individuals. Societal constructs of masculinity and femininity are linked to the way that consumers act. For example, Western masculine norms define motorsports and the use of powerful and emissions-heavy cars as a positive activity for men.<sup>32</sup> A Swedish study, looking into this culture, showed significantly greater car ownership and use by men over women.<sup>33</sup> The study acknowledged that if female car use was the norm, emissions from the transport sector would be significantly lower.<sup>34</sup> Encouraging countries to examine such behaviour and target their policies to promote better attitudes could achieve a great degree of mitigation without as much need for the development of new technologies or costly emissions trading schemes.

Examining these same examples, support can be found for the view that non-gendered policy threatens women's wellbeing and the progress of gender equity. Regarding transport emissions, some Western nations have engaged in emissions reduction efforts that appear to reinforce gender inequity rather than challenge it. For example, the congestion and emissions produced by mothers participating in the school run has led to substantial negative attention from the media and government in the United Kingdom.<sup>35</sup> This is despite large numbers of men driving alone to work at similar times. Traditionally, unpaid female activities such as the school run are viewed as less productive or necessary than the activities of typical employment.<sup>36</sup> Climate change policy suggests restricting these activities in order to lessen transport emissions, which can lead to women facing unequal treatment for car use.<sup>37</sup>

In developing countries, past climate change law has also had the potential to worsen gender inequity and reinforce women's poverty and lack of power. For example, the emissions trading scheme under the Kyoto Protocol did not require countries investing in developing nations to consider the social

---

32 At 10.

33 Gerd Johnson-Latham *A study on gender equality as a prerequisite for sustainable development* (Ministry of the Environment, Report to the Environment Advisory Council, Sweden, 2007) at 53.

34 At 50.

35 Terry, above n 1, at 10.

36 At 10.

37 At 10.



impact of their mitigation schemes.<sup>38</sup> Thereafter, many developed nations invested in large-scale infrastructure projects to achieve maximum credits for their funds.<sup>39</sup> Local communities benefitted from these projects by way of job opportunities for building and maintaining this infrastructure which, due to traditional male dominance in these sectors, fell largely to men.<sup>40</sup> Through this investment, gender pay gaps can be increased and reinforced, leaving women with consistently fewer resources than men.

## ***B Adaptation***

At the time the Kyoto Protocol was being adopted, the severe effects of climate change were not yet felt, and the early law reflects this. Kyoto provided adaptation policy that merely encouraged developing nations to prepare for its eventuality, and set up an Adaptation Fund that fell far short of projected needs.<sup>41</sup> Domestic adaptation policies have been intermittent and primarily focused on disaster relief.<sup>42</sup> Yet in the Paris Agreement, adaptation takes a primary position.<sup>43</sup> In 2016, a number of countries were already experiencing rising sea levels, extreme weather events and rapidly ascending temperatures.<sup>44</sup> In fact, the first six months of 2016 were the hottest on record, averaging approximately 1.3 °C warmer than pre-industrial levels.<sup>45</sup> The proportion of the global population vulnerable to the effects of climate change is growing, with the effects disproportionately experienced by women.<sup>46</sup> Rural women in developing countries who are responsible for collecting water, fuel and managing agricultural work are particularly at risk and in need of urgent adaptation planning action.<sup>47</sup>

With the current rate at which temperatures are rising, adaptation is set to become an insurmountable task for countries to address and is expected to

---

38 At 15.

39 At 36.

40 At 36.

41 The World Bank *World Development Report 2010: Development and Climate Change* (2010) at 233.

42 At 247.

43 Paris Agreement, art 2.

44 Damian Carrington “Shattered records show climate change is an emergency today, scientists warn” *The Guardian* (online ed, London, 17 June 2016) at 1 and 3.

45 Andrea Thompson “First Half of 2016 Blows Away Temperature Records” *Scientific American* (online ed, United States, 19 July 2016) at 3–6.

46 Terry, above n 1, at 7.

47 At 7.

cost between \$70–\$100 billion globally per year between 2010 and 2050.<sup>48</sup> As such, efficient expenditure is important for countries when creating adaptation policies. A gender framework is one means to achieve this efficiency. If women represent the most vulnerable members of society, then alleviating their struggles ensures targeted spending on those who need it most. For example, climate disasters have a devastating and immediate effect on women. In the 1991 Bangladesh cyclone, 82.5 per cent of deaths of people between 20 to 44 years old were women who died largely by drowning.<sup>49</sup> This stemmed from local gender norms that tied female honour to seclusion, meaning women stayed at home for too long before attempting to evacuate.<sup>50</sup> In addition, most women had not been taught to swim as children, as this was seen as a male activity.<sup>51</sup> Following Hurricane Mitch in Honduras and Nicaragua, women and girls faced poorer nutrition as cultural norms required that they eat after the men and boys.<sup>52</sup> Climate disasters are therefore an area where efficient outcomes can be achieved through disaster planning with gender considerations in mind.

Acknowledging and rectifying the lack of representation that women have in the decision-making and leadership of many communities can also increase the efficiency of adaptation policy. If adaptation efforts are created and implemented through local government or community leaders, women might be excluded if they are absent from these positions.<sup>53</sup> Engaging the expertise of local women is paramount, especially regarding developing countries' food supply, as women comprise more than half of the agricultural force in some Asian and African countries.<sup>54</sup> Failure to ensure the participation of these women when conducting adaptive planning undermines the potential success of policy implementation.<sup>55</sup> For example, women of the Ganges River Basin were consulted on their agricultural responses to increasingly frequent

---

48 The World Bank *Economics of Adaptation to Climate Change: Synthesis Report* (2010) at 89.

49 Valerie Nelson and others "Uncertain Predictions, Invisible Impacts, and the Need to Mainstream Gender in Climate Change Adaptations" (2002) 10 *Gender and Development* 51 at 55.

50 At 55.

51 At 55.

52 At 56.

53 Terry, above n 1, at 7–8.

54 Cheryl Doss *The role of women in agriculture* (Food and Agriculture Organisation of the United Nations, ESA Working Paper No 11–02, March 2011) at 8.

55 Nelson and others, above n 49, at 57.

monsoons.<sup>56</sup> They had already managed their own adaptation by switching to different crops and diversifying their food sources through fish farming.<sup>57</sup> If these women had not been consulted, adaptation policymakers might have wasted resources in suggesting efforts that had already been implemented or that had been tried and failed.

Adaptation efforts may also threaten the progress of gender equity and could have negative social outcomes. At the very least, gender-blind adaptation efforts allow current gender inequities to persist as, while both men and women may receive equal support, women begin from a lower position. In addition, they can add to current inequities, such as exacerbating unequal representation in leadership. The less assistance women are given to adapt to changing climates, the more time they will have to dedicate to farming or collecting water and fuel.<sup>58</sup> This reduces the time they have to get educated, to participate in local politics and to engage with their communities — areas where female participation is already limited. Gender inequities are reinforced and, in the case of future policy creation, women's voices are excluded from typical means of consultation. This is likely to worsen as climate change destabilises traditional job markets: reports studying communities in Tanzania and Kenya facing climate stress observed that men were more able to diversify their work to secure their lifestyles.<sup>59</sup> Women were held back because of a lack of capital to start their own businesses; gender norms excluded them from profitable activities; and reproductive burdens discouraged many employers from hiring them.<sup>60</sup> This becomes a vicious cycle. Women are limited to industries hit hardest by climate change and, because of the long hours and poor pay they receive, they are unable to raise capital or spend time lobbying those who may be able to help them.

Research suggests that climate disasters often lead to a more extreme reversion to strict or traditional gender roles. Following Hurricane Mitch in Honduras and Nicaragua, men exhibited increased levels of alcoholism, gambling and violence, often at the expense of women and family resources.<sup>61</sup>

---

<sup>56</sup> Terry, above n 1, at 13.

<sup>57</sup> At 13.

<sup>58</sup> At 11.

<sup>59</sup> At 13.

<sup>60</sup> At 13.

<sup>61</sup> Nelson and others, above n 49, at 56.

Women faced greater responsibility for the elderly and children when schools and other institutions were unable to provide for them.<sup>62</sup> This reduced their time and opportunity to seek extra work to support themselves and their families and they were less likely to be able to escape their circumstances. Adaptation policy that ignores this dichotomy of experience may give financial support to the family unit as a whole, or seek employment for both men and women without considering their differing responsibilities, and so it will fail to address these gendered outcomes.

In conclusion, gender-responsive approaches to mitigation and adaptation can improve the efficiency of climate policy and help reduce negative social outcomes. Further, as key stakeholders, women deserve a seat at the table when negotiating new law and can help improve its content and implementation. As the key piece of international law in this area for the time being, it was important for the Paris Agreement to recognise the role of women both in the drafting process and the text.

#### **IV GENDER INCLUSION IN THE LAW-MAKING PROCESS**

The main stage for the creation of the Paris Agreement was COP21 held from 30 November to 12 December 2015, although significant drafting of the Agreement was carried out at meetings throughout 2015. Conferences of the parties have been held every year since the enactment of the UNFCCC and women have had an increasingly larger presence at them. Greater participation by women and gender-focused groups has been important for the Agreement as a whole. Yet, while women were involved in the creation of the Paris Agreement to a degree not seen before in international lawmaking, there were significant gaps in their inclusion that need to be addressed moving forward. This section addresses the extent to which women were included and gender was discussed in the creation of the Paris Agreement. It outlines the general importance of including women in negotiations and then examines the three key forms that women and gender-focused groups took at COP21: their presence in national delegations; the roles of gender-focused third parties; and the holding of gender-focused events.

---

<sup>62</sup> At 55.

### *A Importance of women in negotiations*

Justification for the participation of women in foreign policy processes is typically framed in two ways: providing for participation corrects the injustice of women being excluded; and including women increases the efficiency of these processes.<sup>63</sup> This holds true in climate change law. Women are important stakeholders in climate change, both as problem-solvers and as those affected by it. Ensuring wider stakeholder representation means involving women in the creation of climate solutions. This lends greater legitimacy to the process, while failing to involve women amounts to an injustice.<sup>64</sup> Women from vulnerable communities such as female farmers or indigenous women play a particularly important role in the implementation of climate change policy, so their voices are especially necessary.

Female involvement can increase the efficiency of the process by ensuring the participation of perspectives often ignored by male negotiators and by adding gender-focused approaches to the negotiations.<sup>65</sup> Women have historically been excluded from participating in international diplomacy, with the exception of their role as the wives of important men.<sup>66</sup> The reasons discussed in the literature for this exclusion are diverse, from concerns about women's ability to juggle diplomatic life with family responsibilities, to views that women are too passive and conciliatory to be effective leaders.<sup>67</sup> However, a number of studies on the role of women in diplomacy have endorsed the efficiency framework by arguing that women bring a number of skills to diplomatic negotiations that broaden the style and success of decision-making groups in a diplomatic setting.<sup>68</sup> Studies have linked female negotiators to a more collaborative, patient, attentive negotiation style that is interested in sourcing “‘win-win’ outcomes”, suggesting that female negotiators can

---

63 Moez Dharsani and Alexandra Ericsson “Women in Diplomacy: How is the Problem of Absence of Women in Diplomacy framed by the UN?” (Bachelors Thesis, University West, 2013) at 9–10.

64 Terry, above n 1, at 7–8.

65 Hemmati and Röhr, above n 19, at 20.

66 Dharsani and Ericsson, above n 63, at 8.

67 James M Scott and Elizabeth A Rexford “Finding A Place for Women in the World of Diplomacy: Evidence of Progress Towards Gender Equity and Speculation on Policy Outcomes” (1997) 17 *Rev of Public Personnel Administration* 31 at 32.

68 At 53.

greatly add to the value of international agreements.<sup>69</sup> It is on the basis of these observations that I examine the representation of female diplomats and gender-focused activists who seek to include female voices within the climate debate.

### ***B National delegations to COP21***

Women within the national delegations of the Parties at COP21 held the most direct influence over the negotiated Agreement. These delegations were comprised of experts from relevant industry, research and local organisations, as well as ministry and diplomatic representatives from the public sector.<sup>70</sup> They took an active role at the conference by participating in daily debates and negotiations, and in the drafting of the Agreement.

Female representation in these delegations has grown steadily as the COPs progressed, from as low as seven per cent representation to approximately 35 per cent representation at COP21.<sup>71</sup> The benefits of this for negotiations was discussed by attendees of the conferences, reflecting feminist scholarship on the value of female approaches to legal negotiation. Delia Villagrasa, a member of the environmental NGO community at the early COPs, noted that German and Swiss female lead negotiators acted differently from their male peers. They were proactive in engaging with the delegations of developing nations who required greater support.<sup>72</sup> Villagrasa also identified them as bridge-builders who, according to Jennifer Morgan, Director of the WWF Climate Programme, could cut gaps between negotiation and the real world.<sup>73</sup>

The New Zealand delegation presented strong female leadership at the conference. Aside from the leading ministerial representatives, Simon Bridges, Timothy Grosser and John Key, women took on strong leadership roles. Jo Tyndall was New Zealand's Climate Change Ambassador for the conference and Anna Broadhurst was the Lead Advisor from the Environment Division of the Ministry of Foreign Affairs and Trade.<sup>74</sup> However, while the involvement

---

69 At 53.

70 Hemmati and Röhr, above n 19, at 26.

71 At 26–27. See also, Women's Environment and Development Organization *UNFCCC: Progress on Achieving Gender Balance, By the Numbers: A Quick Review* (18 May 2016) [WEDO] at 1.

72 Hemmati and Röhr, above n 19, at 28.

73 At 28.

74 UNFCCC Secretariat *Provisional list of participants: Part two FCC/CP/2015/MISC2 (Part 2)* (2015) at 108.

of women has grown, and it appears those women who are awarded leadership positions are making inroads in ensuring more collaborative and equitable negotiations, very few of the women in national delegations are being awarded leadership positions. At COP21, only 10 per cent of Delegation Heads were women.<sup>75</sup> This was a considerable drop from the smaller UNFCCC drafting meetings leading up to COP21 in 2015, where, for a time, over 30 per cent of delegations were led by women.<sup>76</sup> This suggests that although there may be women qualified to lead, when it comes to more significant conferences such as COP21, men are overwhelmingly trusted with leadership positions over women. It also suggests the rising numbers of women attending may still be occupying clerical or administrative positions, rather than being engaged as experts or decision-makers for their countries.

Further criticism can be made about the representation of women in national delegations across regions. The statistics citing that 30 per cent of delegation attendees were women at COP21 ignored that some delegations had on average much better or worse representation. At COP21, 40 per cent of delegations from the Western European and Others (WEOG) regional voting bloc were women, and at the four drafting meetings prior to COP21, this bloc achieved 50 per cent representation on average.<sup>77</sup> New Zealand's delegation to COP21 had 15 women in a delegation of 37 (40.5 per cent).<sup>78</sup> However, national delegations from the Asia-Pacific and Africa blocs had around 30 per cent female representation at the drafting meetings, and around 25 per cent representation at COP21.<sup>79</sup>

While the high female representation of WEOG countries should be applauded, low female representation in regions where women are the most affected by climate change is concerning.<sup>80</sup> Realistically, it will not be women from developed nations experiencing the life-threatening food insecurity or forced migration that many women in the Asia-Pacific and African regions will face.<sup>81</sup> Because national delegations generally represent the key policy

---

75 WEDO, above n 71, at 2.

76 At 1.

77 UNFCCC Secretariat *Provisional list of participants*, above n 74, at 1.

78 At 108–109.

79 WEDO, above n 71, at 1.

80 Hemmati and Röhr, above n 19, at 24.

81 UNFCCC Secretariat *Report on the in-session workshop on gender-responsive climate policy*, above n 26,

makers and stakeholders from domestic climate sectors, the lack of female representation at COP21 points to a worrying lack of female representation at the domestic level.<sup>82</sup> In light of the Paris Agreement relying so heavily on the NDCs of parties, the make-up and decision-making of countries domestically is crucial for implementing the Agreement.

While third parties, the media and a transparent system can go some way to holding countries to account, there is no binding mechanism within the Agreement to force countries to adjust their policies.<sup>83</sup> Further, without gender considerations as a mandatory requirement in NDCs, there is even less incentive to involve women in policymaking.<sup>84</sup> For women to be so excluded from climate negotiations points to systemic ignorance of the benefits of diverse gender perspectives and the potential for numerous negative outcomes to manifest in climate policy flowing from the Paris Agreement.

### ***C Gender-focused third parties***

While female negotiators on national delegations ultimately must represent the varied interests of their states, lobbyists at the conference could represent more specific viewpoints. At COP21, the key representatives for women and advocates for gender-related issues were the large number of gender-focused NGOs and observers.

The involvement of gender-focused observers at the annual COPs has increased since 1995, akin to the representation of female negotiators. While some gender-focused organisations, such as ENERGIA (Gender and Energy Network) were involved in official COP events from COP8, at the first 10 COPs from 1995 to 2005 only 23 individuals represented women's organisations as official observers.<sup>85</sup> The late recognition of the Women and Gender Constituency (WGC) was another important indicator that women and gender groups were not being given a significant space at the early COPs. At the COPs, key observers are grouped into constituencies representing a specific interest as a way to manage effective interaction between the Secretariat

---

at 8.

82 Hemmati and Röhr, above n 19, at 26–27.

83 Paris Agreement, art 14.

84 Article 4.

85 Hemmati and Röhr, above n 19, at 23 and 27.



and the 1600 plus NGOs admitted as UNFCCC observers.<sup>86</sup> Membership of a constituency brings certain benefits, including access to the Plenary floor in the form of an intervention, receipt of informal advance information from the Secretariat and access to meetings with Ministers and the Secretariat that are otherwise closed to non-constituency observers.<sup>87</sup> While the Business and Industry, Local Government, and Environmental constituencies have been recognised since 1995, it was not until 2011 that WGC — alongside the Youth Constituency — joined the seven previously recognised constituencies.<sup>88</sup> The WGC presently includes 27 separate NGOs, from broad organisations focused on many aspects of gender, to regional groups and organisations recognising women of specific backgrounds such as agriculture.<sup>89</sup>

At COP21 the WGC and the NGOs affiliated with it engaged with the conference in a number of ways. Prior to the conference, they attended drafting sessions and presented briefing papers and written responses to draft versions of the document.<sup>90</sup> On the first day of the conference, the WGC held a press conference setting out key demands for world leaders.<sup>91</sup> At the opening plenary, several representatives from organisations including the Women's Environmental and Development Organisation (WEDO) and the All India Women's Conference held interventions in the debate, setting out expectations for the Agreement to be gender-responsive and to move away from market mechanisms.<sup>92</sup> Both the WGC and individual organisations were involved in events throughout the conference, which included a daily Women's Caucus, an exhibition space highlighting gender issues and a number of workshops and events highlighting specific issues.<sup>93</sup>

---

86 UNFCCC Secretariat “Non-governmental organization constituencies” (May 2014) UNFCCC <[www.unfccc.int](http://www.unfccc.int)> at 1.

87 At 1.

88 At 1.

89 Women and Gender Constituency “Members” (2016) Women and Gender Constituency <[www.womengenderclimate.org](http://www.womengenderclimate.org)>.

90 WGC *Women and Gender Constituency: Position Paper on the 2015 New Climate Agreement* (1 June 2015) and Eleanor Blomstrom and Bridget Burns *Gender equality in the climate agreement* (Centre for International Forestry Research, Gender Climate Brief 9, 2015) at 2.

91 WGC “Women Present Key Demands for World Leaders at UN Climate Talks in Paris” (press release, 30 November 2015).

92 WGC “Opening interventions at COP21” (press release, 2 December 2015).

93 WGC “COP21 Key WGC Events” (25 November 2015) Women Gender Constituency <[www.womengenderclimate.org](http://www.womengenderclimate.org)>.

The range of women's perspectives represented by the WGC and the NGOs affiliated with it generally good but not perfect. Of the 27 members, nine represent regional interests, with Asia-Pacific, African, Indian and European-focused organisations.<sup>94</sup> Clearly this leaves important regions unaccounted for, in particular Central and South America and the Middle East. The remainder either broadly tackle issues of gender and climate change or have specific focuses such as forests, education or agriculture.<sup>95</sup> It is important to note that membership of the WGC does not reflect the total representation of gender-focused observers at the conference, but constituency status does point to those organisations with the most power and influence. And while these NGOs were active throughout the conference, the WGC has the smallest membership base of the nine constituencies. This means that the 16 organisations focused on women faced competition for visibility against some 49 Indigenous Peoples groups, 254 Business and Industry observers, and 743 Environmental organisations.<sup>96</sup> As the most direct advocates for gender concerns at the COPs, this underrepresentation risks gender concerns being drowned out by advocates for other areas of climate policy.

#### ***D Gender-related events***

The primary way for gender perspectives to be heard at COPs is through events. These have taken various forms over the years and have grown considerably in size and impact. While the UNFCCC and the Kyoto Protocol were born out of the Rio Earth Summit, which included some discussion of gender perspectives, this momentum did not carry through to the early COPs.<sup>97</sup> It was not until COP6 that regular gender-focused side events became the norm at the conferences.<sup>98</sup> These took a variety of forms from specialised workshops on specific cross-sections of climate change law to networking meetings for female environmental ministers.<sup>99</sup> It was not until COP13 onwards that multiple gender-focused events were included in each COP, rather than occasional one-off workshops. These events were hosted by a variety of parties, from observer

---

94 WGC "Members", above n 89.

95 WGC "Members", above n 89.

96 UNFCCC Secretariat "Admitted non-governmental organisations" UNFCCC <[www.unfccc.int](http://www.unfccc.int)>.

97 Hemmati and Röhr, above n 19, at 21–22.

98 At 22.

99 At 24.

NGOs to nation states. It appears that the workshops and meetings were having some impact on the decisions of nations, as gender began to appear in plenary session statements and official resolutions emerging from the COPs.<sup>100</sup>

At COP21 the scope and variety of gender events and activism had vastly changed when compared to their absence in the early COPs. The fourth UNFCCC-run Gender Day (first established at COP18) was held on 8 December and included a huge range of events across both the official conference centre and in four further pavilions run by the WGC, the Moroccan delegation, the German delegation and the Netherlands delegation.<sup>101</sup> The specific activities of the day were wide reaching. Over 30 female ministers and lead negotiators attended a breakfast meeting and participated in a number of high-level panels alongside UN agencies and NGOs throughout the day, addressing women's involvement in negotiation, women's relationship with agriculture, and many other topics.<sup>102</sup> Workshops were held on engaging indigenous women in climate solutions and implementing a UNFCCC toolkit to ensure gender mainstreaming in domestic climate policy.<sup>103</sup> UNEP and UN Women launched a joint programme targeting women's access to sustainable energy development.<sup>104</sup> In addition to this dedicated day and the daily Women's Caucuses, the WGC maintained an education pavilion throughout the length of the conference.

In comparison to the early COPs, gender had a huge presence at COP21. Due to the small number of groups primarily dedicated to representing women, initiatives like events are necessary to counteract what may otherwise be an event overwhelmed by business or government interests. The concentration of this effort into a single day rather than being spread throughout the conference also improved visibility. The impact of these events is hard to measure empirically, however it appears clear that initiatives like Gender Days at least give national delegations a general awareness of gender considerations, if not a deeper understanding. This carries significance in terms of influencing parties both in the negotiations and in the NDCs they put forward following the Agreement.

---

100 At 24.

101 UNFCCC "Gender Day" (December 2015) UNFCCC <[www.unfccc.int](http://www.unfccc.int)>.

102 UN Women "UN Women at COP21: Gender equality and women's empowerment in the context of climate change" (press release, 3 December 2015).

103 UNFCCC "Gender Day", above n 101.

104 UN Women "UN Women at COP21", above n 102.

## V GENDER IN THE TEXT OF THE PARIS AGREEMENT

As active as women and gender NGOs may have been at COP21, their participation centred on achieving meaningful reference to gender in the Paris Agreement. By simply including gender in the text of the Agreement, Paris has improved on the UNFCCC and Kyoto Protocol considerably, as neither prior treaty included any reference to gender or women at all.<sup>105</sup> The Paris Agreement has three references to gender in its text: in the preamble; and in arts 7 and 11, which outline how countries are to address adaptation and capacity-building measures as part of their NDCs. However, three references to gender does not guarantee that gender concerns are adequately addressed in the Agreement. Further, it is important to consider which aspects of the gender and climate change discourse have been excluded from the Agreement. While including gender in the Agreement was an important step in international climate change law, I argue it fell short of fully addressing gender issues and relegated women to being victims of global warming rather than promoting them as agents of change.

### *A Inclusion of gender*

Accepting the inclusion of gender in the Agreement as a success by itself would be to adopt a tokenistic approach. It is important to assess the quality of the references within the Agreement against the outcomes sought for women. I propose to use a three-part framework to evaluate the articles of the Agreement, as follows:

- i) How does the article address gender concerns?
- ii) How significant is the inclusion of gender in the article?
- iii) How significant is the article in the Paris Agreement?

Through the first question, I consider whether the reference to gender reflects the concerns of gender campaigners at COP21 and gender and climate change scholarship. It is important that the article addresses the nuanced role of gender in climate change law, rather than merely mentioning it. Similarly, that article should reflect all the ways gender and the specific area of climate change law interact. Through the second question I consider whether the reference to

---

<sup>105</sup> Hemmati and Röhr, above n 19, at 29.

gender has a significant role in framing the issue the article addresses. Ideally the reference should be a focal point in the clause of the article it is included in, rather than being part of a large list of considerations. Finally, I consider how important the article is to the entire Agreement. Indicators of this may be that the article links closely to the core aims of the Agreement, imparts a compulsory obligation in the actions of parties or is positioned earlier in the Agreement rather than being relegated to the back of the treaty. It may also act as a key article which other aspects of the Agreement are reliant on. Finally, I look at how the three references to gender impact on the wider perception of gender as a relevant consideration in climate change law.

### 1 Preamble

The first reference to gender in the Agreement is within one of the 16 preambular clauses:<sup>106</sup>

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

The clause is relatively direct in addressing gender concerns. It reflects the wider conversation around gender and climate change, namely that gender is one of a number of social considerations to be included within the discussion.<sup>107</sup> The reference to both gender equality and female empowerment suggests that the drafters grasped both the positive and negative impacts climate change policy could have on communities, and the benefit of including all genders in any actions taken. These are the kinds of gender and human rights considerations that the WGC and gender NGOs promoted during the drafting of the Agreement.<sup>108</sup>

While gender is one of a number of considerations in the clause, it is referenced twice by mentioning both “gender equality” and “the empowerment

<sup>106</sup> Paris Agreement, preamble (emphasis added).

<sup>107</sup> Terry, above n 1, at 6.

<sup>108</sup> WGC *Position Paper on the 2015 New Climate Agreement*, above n 90, at 1.

of women”, giving it greater significance. It could be argued that setting it aside from the initial list with the conjunction “as well as” reduces it to a secondary consideration. To the contrary, considering “as well as” is not a clear subordinating conjunction such as “before”; the phrase seems to have been included merely as a drafting technique to break up the list. Gender campaigners did not assume that gender should take a primary position over all other social considerations, so the fact that it has been included alongside other considerations in the article is not a negative outcome.<sup>109</sup>

Regarding the significance of the clause to the Paris Agreement as a whole, as part of the preamble to the operative clauses, it does not place any legal obligations on parties. However, art 31(2) of the Vienna Convention on the Law of Treaties states that the preamble is part of the context through which a treaty’s ordinary meaning is to be interpreted.<sup>110</sup> Thus, parties are to interpret the operative clauses of the Agreement with the preamble in mind, especially if there are ambiguities in the text. However, unlike more assertive preambulatory phrases such as “affirming”, “emphasising” or “stressing”, “acknowledging” does not infer quite the same strength of intention of holding countries to account by the considerations listed in the clause.<sup>111</sup> While ideally countries would consider all aspects of the preamble in their actions under the Agreement, in reality it is unlikely that they will.

## 2 Article 7

Article 7 is the primary focus on adaptation measures for NDCs in the Agreement. Reference to gender can be found in paragraph 5 of the article:

Parties acknowledge that adaptation action should follow a country-driven, *gender-responsive*, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions, where appropriate.

(emphasis added)

---

<sup>109</sup> At 1–2.

<sup>110</sup> Vienna Convention on the Law of Treaties 1155 UNTS 331 (opened for signature 23 May 1969, entered into force 27 January 1980), art 31.

<sup>111</sup> Giuseppina Scotto di Carlo *Vagueness as a Political Strategy: Weasel Words in Security Council Resolutions Relating to the Second Gulf War* (Cambridge Scholars Publishing, Newcastle upon Tyne, 2013) at 68.

The article refers to gender as a way of framing the quality and type of adaptation action that countries should pursue. The use of the term ‘gender-responsive’ as opposed to a specific reference to women evidences a more nuanced approach to gender. The article also takes a generalised approach to gender considerations, rather than specifying a particular methodology for countries to follow. Yet, by referencing the consideration and participation of local communities and their knowledge, art 7 indicates that countries are expected to develop locally-specific policies that work for communities. This is an approach that is emphasised in current gender-responsive adaptation efforts.<sup>112</sup>

Article 7 is one of the longest in the entire Agreement, and addresses a range of adaptation concepts through 14 paragraphs. Where the first four paragraphs of the article frame the issue of adaptation, paragraph 5 is the first to prescribe a recommended approach to adaptation for parties to take in their NDCs. It is the only paragraph within art 7 that primarily deals with the quality and nature of adaptation policy to be made. The later paragraphs instead focus on cooperation between parties in developing policy, or on the mechanisms of creating plans and communicating them for transparency purposes.

Article 7 is one of the most significant articles in the Agreement. As set out in art 2, increasing the ability to adapt to the adverse effects of climate change is one of the Agreement's core purposes.<sup>113</sup> Further, it is one of the undertakings parties must make as part of their NDCs, as set out in art 3. As global warming progresses and countries feel its effects more seriously, adaptation efforts are going to take a more prominent place within the NDCs and the Paris Agreement. With this, art 7, and paragraph 5 in particular, has the potential to directly affect the way parties plan for domestic adaptation.

### 3 *Article 11*

Article 11 deals primarily with the responsibilities under the Agreement to promote capacity-building of developing nations and communities. Paragraph two reads:

Capacity-building should be country-driven, based on and responsive to national needs, and foster country ownership of Parties, in particular, for developing country Parties, including at the national, subnational and local

---

<sup>112</sup> Nelson and others, above n 49, at 56.

<sup>113</sup> Paris Agreement, art 2.

levels. Capacity-building should be guided by lessons learned, including those from capacity-building activities under the Convention, and should be an effective, iterative process that is participatory, cross-cutting and *gender-responsive*.

(emphasis added)

In light of the above discussion in Part III concerning how vulnerable women from developing nations are to the effects of climate change, gender considerations are an important aspect of capacity-building efforts. This paragraph promotes a ‘bottom-up’ approach where states being assisted in capacity-building have greater agency in the relationship. The inclusion of “gender-responsive” within the last sentence of the paragraph may lead to the reference being read as only concerning the participation process of capacity-building (as is discussed in that sentence) rather than the full scope of capacity-building.

Article 11 only has five paragraphs, and only two of those specifically address the nature of capacity-building. The inclusion of gender in this paragraph is significant for directions of capacity-building. Gender considerations could potentially have been taken into account in para five, which outlines the institutional arrangements that are to be made to support the capacity-building process underneath the Agreement, especially as previous efforts under Kyoto institutions had a number of negative outcomes for women in developing regions.<sup>114</sup>

Article 11 is the least important of the three discussed. Article 11 only directs the actions of developed countries that have the means to support capacity-building. It involves developing countries in its protection of their right to self-govern to an extent, which is clearly an improvement on Kyoto mechanisms and an outcome sought by gender campaigners.<sup>115</sup> Further, it should be noted that art 11 is a subsidiary article to art 9 on financing, which is likely to take the primary role in regards to supporting developing nations, and which does not make any reference to gender.

The overall effect of these references is positive, but limited. This is most evidently expressed in all three being prefaced with the word “should” rather than “shall”, which throughout the Paris Agreement negotiations was recognised

---

<sup>114</sup> Skutsch, above n 2, at 37.

<sup>115</sup> WGC *Position Paper on the 2015 New Climate Agreement*, above n 90, at 8–9.



as an indicator of recommendations as opposed to legal obligations.<sup>116</sup> Some countries are therefore likely to fail to meet the standards expressed in their NDCs on the excuse of capacity or irrelevance, and it places a continuing onus on the civil community and gender-focused organisations to keep countries informed and accountable under the Agreement.

### ***B Gaps in the Paris Agreement***

While it is important to closely examine the references to gender in the Agreement, it is necessary also to highlight the absence of references to gender in the text. Due perhaps to both the fledgling nature of the Agreement, and to its relative improvement over the Kyoto Agreement's complete lack of mentioning gender, few extended critiques of the Agreement from a gender perspective have been made so far. However, in examining the goals for the Agreement held by gender-focused groups prior to its drafting and to their critiques of draft editions of the Agreement, some consensus emerges about the areas where the Paris Agreement has failed to adequately address gender concerns.

Gender was reflected in the articles that detail the specific obligations for two out of the three core aspects of the Agreement's purpose as expressed in art 2. Article 7 referenced adaptation and art 11 referenced capacity-building, which arguably is a secondary consideration to the Agreement's broader financing goals. Yet there is no mention of gender in regards to mitigation in art 4, the third core purpose of art 2. This is especially concerning considering mitigation is arguably the primary purpose of the agreement — particularly in light of the huge emphasis before, during and after COP21 of setting temperature increase limits.<sup>117</sup> The key implication of this gap is that women's position in climate change law under the agreement has been relegated to that of victims needing support in adapting and building capacity, rather than as agents of change who can help actively tackle global warming.

As to how the Paris Agreement could have better provided for gender concerns, there are two key critiques. First, it is suggested that gender,

---

116 Lisa Friedman "Negotiations: How the world solved the 'shall' crisis and reached a new climate accord" *Climatewire, E&E News* (online ed, United States, 14 December 2015). This language is in contrast to a number of aspects of the Agreement, largely relating to transparency measures, which use stronger language and are legally binding upon the parties.

117 Saleemul Huq "1.5 to stay alive: UN's warming goal feels the heat" *Climate Change News* (online ed, Bangladesh, 22 September 2016).

alongside other human rights concerns, should have been included within the art 2 purpose section. Second, it is suggested that gender references should have been inserted into the majority of the Agreement's articles.

### *1 Purpose approach*

Article 2 holds a primary position in the framing and implementation of the overall agreement. Article 3 of the Agreement sets the requirement that all aspects of the NDCs that parties are required to address (as defined in arts 4, 7, 9, 10, 11 and 13) must be done with the view to achieving the purpose as outlined in art 2.<sup>118</sup> This means that the contents of art 2 must be adhered to in relation to mitigation (art 4), adaptation efforts (art 7), the financing of developed countries (art 9), technology development (art 10), capacity-building (art 11) and the transparency framework (art 13).

WEDO, one of the prominent women's advocacy organisations at the conference, released a Gender Brief prior to COP21 with recommendations as to how gender could be best incorporated into the Agreement. Their singular recommendation for the text of the operative agreement was that art 2 should include the following obligation:<sup>119</sup>

... ensure that all climate change related actions, respect, protect, promote, and fulfill human rights for all, including the rights of indigenous peoples; ensuring gender equality and the full and equal participation of women; ensuring intergenerational equity; ensuring a just transition of the workforce that creates decent work and quality jobs; ensuring food security; and the integrity and resilience of natural ecosystems.

In earlier drafts, art 2.2 had included some aspects of this human rights approach, but by the beginning of COP21 the article had been reduced to its current form.<sup>120</sup> A version of this phrase resulted in the human rights preamble clause, and while this can still influence one's reading of the Agreement, it does not impose binding obligations on parties of the type included in the proposed art 2.

The WGC, representing the common views of all the gender organisations present at COP21, published a response to the Draft Agreement as it stood

---

118 Paris Agreement, art 3.

119 WGC *Position Paper on the 2015 New Climate Agreement*, above n 90, at 2.

120 WGC *Response on the 'Draft Paris Outcome', Version of December 5th, 15.00, including the 'Reflections' Note* (7 December 2015) at 1.

coming into COP21. Their response supported the purpose approach and the need for the explicit mentioning of specific human rights concerns like those of women and indigenous peoples in the article, rather than the “dangerously diluted” form art 2.2 took.<sup>121</sup> Following the finalisation of the Agreement, the WGC reiterated this point in a press statement to the parties, claiming it “would have gone far to ensure that all forthcoming climate actions take into account the rights, needs and perspectives of women and men and encourage women’s full and equal participation in decision-making”.<sup>122</sup> Instead, the WGC claimed, the removal of these concerns shifted the overall purpose of the Agreement from one that was considerate of fundamental human rights to one that was committed to continuing business interests.<sup>123</sup> While this claim is somewhat exaggerated — human rights concerns were included within the preamble, and intermittently throughout the operative text — it does have some merit in that the social implications of the Agreement are less central, and instead the purpose adopts a conventionally technical outlook.

## 2 *Individual article approach*

Women’s organisations also recommended the incorporation of gender in specific articles throughout the Agreement, often in conjunction with the purpose approach. The analysis above shows gender was incorporated into specific articles throughout the Agreement, but only to a limited extent. An argument could be made that gender is appropriately or proportionately included in many, if not all of the articles of the Agreement. The WGC referred to a number of articles where they supported the specific inclusion of gender considerations. In particular, the WGC identified articles addressing loss and damage, financing, technology and mitigation.<sup>124</sup> They emphasised their concern that gender issues were missing in mitigation considering its significance to the agreement at large.

The core strength of the individual article approach is the specific tailoring of certain aspects of the articles to gender. For example, the use of “gender-responsive” in art 11 connected the term to ideas of participation in

---

<sup>121</sup> At 1.

<sup>122</sup> WGC “A Reality Check on The Paris Agreement: Women Demand Climate Justice” (press release, 12 December 2015) at 1–2.

<sup>123</sup> At 2.

<sup>124</sup> WGC *Response on the ‘Draft Paris Outcome’*, above n 120.

the capacity-building process, highlighting to countries that women should be involved from a democratic perspective. Yet the general nature of the Agreement was to be built upon through the use of specific guidelines and recommendations from the UNFCCC as to how best to achieve it, so this point is not particularly persuasive. In fact, gender activists, when suggesting articles for the Draft Agreement, tended to keep references to gender broad so as to acknowledge the wide reach of gender issues across the policy process.<sup>125</sup>

The purpose approach is stronger due to its colouring of the entire agreement with a gender focus. While art 3 does not obligate compliance with art 2 for every article, all the key provisions targeted by gender activists are covered by the obligation, and those that are not will be read in light of the purpose as per art 31 of the VCLT.<sup>126</sup>

While the individual article approach allows greater signposting of important sections, gender is always a relevant consideration. The Paris Agreement can be amended to follow either of these approaches, however, such amendments would only apply to parties that agree to be bound by them.<sup>127</sup> At this early stage it is unlikely that any party would try to amend the agreement, although it is possible this may be explored if actions by parties under the Agreement are overwhelmingly found to negatively impact gender equity and human rights.

## VI CONCLUSION

In the eyes of the international community, the Paris Agreement is in many ways a success story. It achieved widespread support, leading to remarkably swift ratification. It provides for the differing circumstances of parties, yet seeks ambitious commitments for the necessary goal of avoiding excessive temperature increases. These achievements are only more extraordinary considering the decades of stagnant international action that preceded them. Yet these strengths also point to its weaknesses, raising the question of whether the consideration afforded to parties for their unique circumstances is too lenient. Further, the United States's recent denouncement of the Agreement has further tested its apparent strength. While this denouncement has so far

---

<sup>125</sup> At 1–4.

<sup>126</sup> At 1–4; and VCLT, above n 110, art 31.

<sup>127</sup> VCLT, art 40.

had the effect of leading to a rallying cry in favour of the Agreement by the remaining parties, there remains significant uncertainty as to how it will affect parties' commitments in the future.

There is therefore an imperfect balance in the Agreement: positive steps forward are taken to advance international responses to climate change, while weaknesses in the Agreement's effectiveness remain. This imperfect balance is further evident in the extent to which women and gender-focused groups were involved in the creation and text of the Paris Agreement. Gender is a necessary consideration of climate change law both to increase its efficiency and in order to reduce its social harm. This consideration begins with gender inclusiveness in the creation of law, as women and gender-focused groups lend legitimacy and unique perspectives to the process. While this was achieved in the creation of the Paris Agreement to an extent, it was ultimately inadequate in fully and equitably representing the voices of women in leadership positions, in negotiating parties from developing regions, and in relation to the presence of other observer interests such as industry or local municipalities. This was ultimately reflected in the text for, although reference to gender is a success that should be recognised, the references were limited and placed no obligations upon parties. Those drafting the Agreement ignored the common consensus of gender activists at COP21 and decided on a treaty where the purpose section failed to recognise the social implications underlying the environmental law.

Despite these failings, the question remains whether the Paris Agreement will actually facilitate meaningful gender considerations in the domestic policies of the parties. As the Agreement has only recently come into force it is a difficult question to resolve, although one that will gain more clarity as states' NDCs are submitted to the UNFCCC. Certainly gender NGOs will need to continue to campaign and support countries to include gender within their contributions, and to use the Agreement's various transparency measures in shedding light on those that fail to do so. At this pivotal time, ensuring gender remains part of the debate and informs the actions of parties is essential for a future of international climate change law that benefits us all.