

Surfacing the Silent “Others”: Women and the Environment

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International environmental law, policy and negotiations are not gender neutral, but rather arenas where power is expressed through silencing ecological perspectives and the concerns of women and gender advocates. Drawing on a feminist ecological perspective, this article considers how environmental problems, like gender inequalities, are symptoms of problematic value-hierarchical thinking like patriarchal dualism which condones the exploitation of women and nature. Despite the gender differential impacts of environmental degradation, there is an enduring lacuna in international environmental law arising from the failure to examine structural causes of inequality and environmental problems. This article critiques the paradoxical dominance of economism and growth models of sustainable development which rely on women and nature to subsidise the system through their labour and ecosystem services. A practical alternative to economism is “gender-sensitive ecologism”. This framework can inform gender and ecological literacy at all levels — from “bottom-up” civil society and grassroots projects to the texts of international environmental treaties. Soft law’s inclusive process offers a starting point for progressive norm dissemination with the Earth Charter as a prime example of a gender and ecologically literate ethical framework.

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1. INTRODUCTION

Multiple crises of the global financial system, international failure to reach agreement over climate change, poverty, terrorism, civil wars and overpopulation mean that at this juncture in the 21st century, humanity is arguably at a crossroads. From a legal, political and governance perspective, what we make of this “Grotian moment” depends very much on who sits at the negotiating table and whose interests are taken into account.

In the context of international environmental law, women and the environment itself are silent “others”. Feminists look at supposedly gender-neutral international law and male-dominated international negotiations and ask “Where are the *women*?” Ecologists look at the unsustainable commitment to economic growth at the expense of ecological integrity and ask “Who speaks for *nature*?” These questions go unanswered by decision-makers.

Inattention is a political act.¹ In the tradition of social critics as scholars, this analysis applies a feminist research ethic to international environmental law, policy and negotiations. This approach aims to draw attention to how these areas are not gender neutral and how power is expressed through silencing ecological perspectives and the concerns of women and gender advocates.² Underlying this analysis is a deep concern that despite the deeply gendered consequences of environmental degradation, decision-makers still have not grasped the importance of placing women at the core of sustainability.

Part 2 grounds this analysis in a feminist ecological perspective which explains how patriarchal dualism links the exploitation of women with the exploitation of nature. Although ecofeminists disagree on whether women are innately connected to nature, they share a common belief that environmental problems, like gender inequalities, are symptoms of problematic value-hierarchical thinking. In this way, “all ecofeminists agree ... that women’s and nature’s liberation are a joint project”.³ Part 2 goes on to explore the gender

1 Cynthia Enloe *Maneuvers: The International Politics of Militarizing Women’s Lives* (University of California Press, Berkeley, 2000) at xii.

2 Gender, as distinct from biological sex, deals with relationships between people. Gender refers to socially constructed “ways of being” and identities drawn from masculinity and femininity. It is institutionalised through social roles and expectations for men and women and grounded in cultural and political contexts. Importantly, gender operates in a value hierarchy which privileges the masculine over the feminine.

3 Rosemarie Tong *Feminist Thought: A More Comprehensive Introduction* (4th ed, Westview Press, Boulder, 2014) at 256.

differential impacts of environmental degradation. It explains how, due to gendered social roles and deeply embedded societal inequalities, women are first to experience the effects of ecologically destructive practices.

Part 3 looks at women and gender in international environmental law, climate change negotiations, and climate finance and market mechanisms. It finds that despite a nominal embrace of women’s activism and gender issues by the UN and other actors, the lack of follow-up or incorporation into law and policy prescriptions, and the failure to examine the structural causes of inequality and environmental degradation, mean that there is an enduring lacuna in international environmental law.

Part 4 explains this lacuna in terms of a “congenital defect” inherited from public international law. It goes on to consider the key areas of feminist critique of international environmental law. It problematises the under-representation of women in politics, science and technology but acknowledges that simply adding more women without ensuring that those women are willing (or able) to challenge the dominant language and paradigm does not guarantee that law or policy will be any more gender sensitive than before. Part 4 highlights that some of the strongest provisions on sustainability are contained in soft law documents. Although these non-binding instruments show a lack of political will over gender and ecology issues, they are produced through more inclusive processes and offer a starting point for progressive norm dissemination. Finally, part 4 critiques the paradoxical dominance of economism and growth models of sustainable development. It points out that women and nature subsidise the system through their labour and ecosystem services but are simultaneously damaged by it. It explains how the deference to science and technology often comes at the expense of urgently needed social behavioural change.

Part 5 proposes that a practical alternative to economism is “gender-sensitive ecologism”. It posits that gender justice necessitates a commitment to ecological sustainability and the community of life. It points to examples of civil society and grassroots projects as avenues to put this perspective into practice from the bottom up. However, part 5 argues that social change must occur at all levels, and in this way, improving gender-disaggregated data and gender-literacy among policy-makers, and advocating for references to gender-sensitive ecologism in the operative paragraphs of international environmental treaties, are all important goals. Finally, part 5 identifies the Earth Charter as a gender and ecologically literate ethical framework to guide law, policy and governance.

2. DRAWING THE LINKS: WOMEN, GENDER, NATURE

2.1 A Feminist Ecological Perspective

Multifarious environmental degradation is “complex, cross-cutting and multi-scalar”.⁴ Yet current paradigms, especially those related to climate change, prefer to treat it as an isolated empirical problem rather than confront connected political, social and economic problems like inequality and power dynamics. The debate around climate change has successfully “othered” the environment into an external “threat”, homogenised humanity into an undifferentiated “victim” group, and reinforced economic rationality as the conceptual model to apply to environmental degradation. This is encapsulated in the superficial panacea of “sustainable development”.

This section sets out the feminist ecological underpinnings of this discussion on women and the environment. A feminist research ethic is aptly applied to international environmental law and policy, not only because gender is an especially relevant yet under-scrutinised issue in the field, but because like other critical approaches, a feminist methodology is committed to “making strange what was previously familiar” and eschewing dominant paradigmatic oriented research by revealing silences and attending to power and relationships within a phenomenon.⁵

However, feminism itself — if it could be so homogeneously described — is not ecological per se. Many branches of feminism tacitly support an instrumental attitude towards nature either by overlooking the dualism between environmental degradation and gender inequality or by emphasising women’s equal right to exploit the environment.⁶ For instance, existentialist feminist Simone de Beauvoir was not concerned with the domination of nature, only that women radically distance themselves from nature where their souls were “imprisoned” and gain the “opportunity to become men’s full partners in the campaign to control or dominate nature”.⁷

Contrastingly, the intention of the present analysis on women and the environment is to show that “it is antithetical to what women have learned and gained, by sacrifice chosen and unchosen ... to have the equality we fought for

4 Karen Morrow “Ecofeminism and the Environment: International Law and Climate Change” in Margaret Davies and Vanessa E Munro (eds) *The Ashgate Research Companion to Feminist Legal Theory* (Ashgate Publishing Limited, Surrey, 2013) at 383.

5 Brooke Ackerly and Jacqui True *Doing Feminist Research in Political and Social Science* (Palgrave Macmillan, Basingstoke, 2010) at 73.

6 Michael E Zimmerman *Contesting Earth’s Future: Radical Ecology and Post-Modernity* (University of California Press, Berkeley, 1994) at 235.

7 Simone de Beauvoir *The Second Sex* (Penguin, Harmondsworth, 1982) at 176. According to de Beauvoir, women are liberated when they are absorbed into the masculine sphere; Tong, above n 3, at 263.

turned into equal access to the means of exploitation".⁸ Thus, a central tenet of this article is that in order to genuinely attend to women's interests, feminism cannot be anything less than fully committed to "strong sustainability" or the understanding that human activity cannot exceed ecological limits.⁹

Ecofeminism is a useful theoretical starting point for this discussion because it inherently recognises the relational character of environmental problems — emerging from, and in turn, affecting socioeconomic dynamics.¹⁰ Ecofeminism, a term coined by Francoise d'Eaubonne in 1974, is less a coherent theory and more of a constantly evolving movement.¹¹ However, ecofeminism does what feminism and deep ecology¹² do not, that is, point out the intimate parallel links between the exploitation of nature and the exploitation of women.¹³ The anthropocentric origins of ecological crisis arise from the Western "conditio humana" or the ego-cult which describes humans' separation of the social and ecological systems of which they are part.¹⁴ Ecofeminism goes a step further to deconstruct human-centredness and interrogate structures of exploitation embedded *within* human society.¹⁵ It posits that androcentrism (male-centredness) is the culprit for the destruction of nature.¹⁶

Ecofeminists argue that the psychological mechanisms that lead to the oppression of women can be similarly understood in man's domination of nature.¹⁷ Rosemary Ruether termed this as "patriarchal dualism": a "logic of hierarchy" between men/women, masculine/feminine, culture/nature, mind/body, civilised/primitive, reason/emotion, rights/care.¹⁸ These value dualisms

8 Catherine Mackinnon *Feminism Unmodified: Discourses on Life and Law* (Harvard University Press, Cambridge, MA, 1987) at 4–5.

9 See Klaus Bosselmann *The Principle of Sustainability: Transforming Law and Governance* (Ashgate, Burlington, 2008).

10 Christina Shaheen Moosa and Nancy Tuana "Mapping a Research Agenda Concerning Gender and Climate Change: A Review of the Literature" (2014) 29(3) *Hypatia* 1 at 5 (early view).

11 Peter Hay *Main Currents in Western Environmental Thought* (Indiana University Press, Bloomington, 2002) at 78.

12 Earth-centred environmentalism which provides that humans should respect nature not merely for human interests but because earth has an intrinsic value. Ecofeminists say that deep ecology has an "unexamined masculinist voice"; Zimmerman, above n 6, at 284.

13 Hay, above n 11, at 75; Ariel Salleh "Stirrings of a New Renaissance" (1989) 38 *Island* 26 at 26; C Sandilands *The Good-Natured Feminist: Ecofeminism and the Quest for Democracy* (University of Minnesota Press, Minneapolis, 1999) at xvi.

14 Klaus Bosselmann *When Two Worlds Collide: Society and Ecology* (RSVP, Auckland, 1995) at 71.

15 Hay, above n 11, at 73.

16 Zimmerman, above n 6, at 277.

17 At 243.

18 Rosemary Radford Ruether *New Woman, New Earth: Sexist Ideologies and Human Liberation* (Seabury, New York, 1975); V Plumwood "Feminism and Ecofeminism" (1993) 1(2) *Society and Nature* 36 at 36; Karen Warren "The Power and the Promise of Ecological

are manifest in the language used to feminise (and anthropomorphise) the environment; characterised as “Mother Nature”, the benevolent, nurturing and bountiful mother, “eternally generous, unceasingly fecund and bountiful to the point of inexhaustibility”, is juxtaposed with nature as the threatening and unpredictable “wild woman”.¹⁹ Many ecofeminists reject the metaphor of Mother Nature “not only because it reinforces problematic stereotypes, but also because it involves projecting human categories onto nature, thereby preventing nature from showing itself to us in its *own* terms”.²⁰ As Joni Seager says:²¹

[t]he earth is not our mother. There is no warm, nurturing, anthropomorphized earth that will take care of us if only we treat her nicely. The complex, emotion-laden, conflict-laden, quasi-sexualized, quasi-dependent mother relationship ... is not an effective metaphor for environmental action.

Scholars argue that the shift from holistic and organic to instrumentalist views of nature — that “she” can be “mastered, conquered, controlled, penetrated, subdued, and mined by men” — coincided with the European Enlightenment and growth of empirical and mechanistic science.²² For instance, the writings of Francis Bacon in the 17th century “used vivid sexual imagery to describe the force and violence with which nature’s secrets would be extracted from ‘her’”.²³ By “othering” nature from the “*conditio humana*”, so-called “scientific rationality” licensed the total conquest of nature to render her inert, mechanised and commodified. Although we often consider the origins of present-day environmental degradation in terms of the Industrial Revolution, the ideological shift to unsustainable practice began about a century earlier. Several authors point out that this shift to a negatively gendered and mechanistic view of nature coincided with the witch trials in England and continental Europe.²⁴ According to Brian Easlea, it was no coincidence that modern science was born during a holocaust when 8 to 11 million women were killed on charges of witchcraft.²⁵ He says, “[t]his holocaust of women was not ... an outcome of the dark, superstitious Middle Ages, but was contemporaneous with the beginning

Feminism” in Karen Warren (ed) *Ecological Feminist Philosophies* (Indiana University Press, Bloomington, 1996) at 20.

19 Carolyn Merchant *Earthcare: Women and the Environment* (Routledge, New York, 1995) at 80.

20 Zimmerman, above n 6, at 249 (emphasis in original).

21 Joni Seager *Earth Follies: Feminism, Politics and the Environment* (Earthscan, London, 1993).

22 Tong, above n 3, at 256.

23 Hay, above n 11, at 75.

24 Merchant, above n 19, at 81–84.

25 Brian Easlea *Liberation and the Aims of Science: An Essay on Obstacles to the Building of a Beautiful World* (Chatto & Windus/Sussex University Press, London, 1973).

of the New Age, of modernity, the era of discoveries and inventions, of modern science and technology".²⁶ Ecofeminists draw on these links to show the parallels in gendered violence and shifts in traditional and indigenous concepts of sustainability. Disturbingly, "this ... violence was the foundation upon which modern science, medicine, economy and the modern state were built up".²⁷

Ecofeminists differ on whether the link between women and nature has a biological origin or whether it is a social construction. Nature or cultural ecofeminists advocate a kind of biological essentialism which advances that women's physiology and reproductive roles make them intrinsically more caring, nurturing, relational and intuitive, and thus more connected with nature.²⁸ For these theorists, women exist between nature and culture.²⁹ In contrast, social constructivist or transformative ecofeminists contend that the dualism between women and nature is a social construction. Salleh explains that women are not innately closer to nature than men, "[but] throughout history, men have chosen to set themselves apart, usually 'over and above' nature and women".³⁰ In this author's opinion, gender roles can be similarly restrictive for men and it may be fairer to say that historically assigned gender roles have "permitted the development of insights and empathies denied to men".³¹ Similarly, global ecofeminists such as Vandana Shiva argue that because women are more involved in sustaining "daily life" — a biological and social role — they are more concerned about the health of ecosystems.³²

Ecofeminists are explicit about agency but maintain that women are not equally responsible for environmentally destructive norms.³³ There can be no doubt that women around the world are complicit in environmental degradation as they consciously or unconsciously support or partake in unsustainable practice and consumption.³⁴ However, in the case of climate change, ecofeminists would argue that causative industrial patterns of production and consumption are gendered through capitalist patriarchy. As Skutsch

26 Maria Mies and Vandana Shiva *Ecofeminism* (Zed Books, London, 1993) at 145.

27 At 146.

28 See, for example, Mary Daly *Gyn/Ecology* (Beacon Press, Boston, 1978).

29 See Sherry Ortner "Is Female to Male as Nature is to Culture?" in Mary Heather Mackinnon and Marie McIntyre *Readings in Ecology and Feminist Theory* (Sheed and Ward, Kansas City, 1995) at 52–53.

30 Salleh, above n 13, at 26.

31 Hay, above n 11, at 78.

32 See Vandana Shiva *Earth Democracy: Justice, Sustainability and Peace* (South End Press, Boston, 2005); Maria Mies "White Man's Dilemma: His Search for What He Has Destroyed" in Maria Mies and Vandana Shiva *Ecofeminism* (Zed Books, London, 1993) at 132–163.

33 Seager, above n 21.

34 Chris Cuomo "Unravelling the Problems in Ecofeminism" (1992) 12 *Environmental Ethics* 351 at 356.

explains, “responsibility for the direct or indirect production of greenhouse gases is more or less proportional to financial shares in the economy”.³⁵ Since women have a “smaller financial share in the economy, one could argue that they are proportionately less responsible”.³⁶ Moreover, Seager argues that masculinist individualism is inherent in those institutions which cause the most environmental harm — private corporations, the military, and some states.³⁷

Despite the academic division of ecofeminism into various genres, they collectively challenge the presumed inferiority of women and nature in contrast to the superiority of both men and culture.³⁸ Uniquely, ecofeminists understand and recognise how oppositional dualisms are produced through language and embedded in structural conditions such as institutions, norms and law.³⁹ The ensuing gender hierarchy and “logic of domination” occurs subtly and without overt mobilisation by men or explicit support by women, making it seem like the natural order of things.⁴⁰

In many ways, distinguishing the origins of women’s connection to nature is irrelevant; women are physiologically involved in giving life but similarly socialised into their mothering and domestic roles which necessitate a greater involvement in the environment — for example, in food production and preparation.⁴¹ Confronting unsustainable human practice and gender equality is not served by denying a natural or even spiritual connection between women and the environment. However, this should not be based on the belief that women are *more* natural than men because it could also be argued that men have this connection but are gendered out of it and towards hegemonic masculinities which are based on dominance and are increasingly economically defined.⁴² In sum, “[w]omen’s oppression is neither strictly historical nor strictly biological. It is both.”⁴³

Although feminism is typically conceived of as an issue of social justice, the immanence of gender hierarchies in the neoliberal economic system and

35 Margaret M Skutsch “Protocols, treaties, and action: The ‘climate change process’ viewed through gender spectacles” (2002) 10(2) *Gender & Development* 30 at 34.

36 At 34.

37 Seager, above n 21.

38 Tong, above n 3, at 265.

39 RW Connell “Masculinities and Globalization” (1998) 1(3) *Men and Masculinities* 3 at 17; Margaret Davies *Asking the Law Question: The Dissolution of Legal Theory* (Law Book Co, Sydney, 2002).

40 Connell, above n 39, at 17.

41 See Ortner, above n 29, at 40–41 and 51.

42 For example, True argues that the prevailing hegemonic masculinity — that is, the masculine model/identity to aspire to — is the transnational businessman. See Jacqui True *The Political Economy of Violence Against Women* (Oxford University Press, Oxford, 2012) at 36.

43 Ynestra King “Feminism and the Revolt of Nature” (1981) 13(4) *Heresies* 12 at 14–15.

exploitation of the environment means that feminism is necessarily, “just as much a movement to end naturism as it is a movement to end sexism”.⁴⁴ Thus, a feminist critical approach to international environmental law and policy necessarily inheres an ethic of ecologically sound “strong sustainability” or “ecologism” because there will be no gender justice without environmental justice, and vice versa. As the next section discusses, the disproportionately harmful impacts of environmental degradation on women bolster the case for a feminist-informed advocacy of genuinely ecologically viable sustainable practice and the inclusion of women and a gender perspective in all aspects of environmental law and policy-making.

2.2 The Gender Differential Impacts of Environmental Degradation

This section builds the linkages between gender equality and ecologism by exploring the gender differential impacts of environmental degradation. Economic globalisation is creating new challenges for women as well as new opportunities for advancing women’s access to productive resources and economic independence. Although the rate at which patterns of consumption and production are destroying the environment threatens to ultimately reverse the benefits for *all* humankind, the immediate effects of destruction are not aggregated harms equally threatening to people around the world. The impacts of environmental degradation are differentiated across various social axes such as socio-economic status and poverty, sex, class, ethnicity, indigeneity, religion, and age.⁴⁵ The recognition of the intersectionality of environmental impacts draws upon analysis of peoples’ “situatedness in power structures based on context-specific and dynamic social categorisations”.⁴⁶ Thus, in the eyes of social scientists, there is no such thing as a “natural” or inevitable disaster because political, social and economic dynamics affect the causes, impacts, preparedness, planning and responses to environmental shocks.⁴⁷

44 Warren, above n 18, at 25.

45 See Irene Dankelman *Gender and Climate Change: An Introduction* (Earthscan, London, 2010); IPCC “Climate Change 2014: Impacts, Adaptation and Vulnerability” *IPCC Fifth Assessment Report* (IPCC, Geneva, 2014) at 19.2; Dorothea Hilhorst and Greg Bankoff “Introduction: Mapping Vulnerability” in Greg Bankoff, Georg Frerks and Dorothea Hilhorst (eds) *Mapping Vulnerability: Disasters, Development, and People* (Earthscan, London, 2004); Bernadette P Resurrección “Persistent women and environment linkages in climate change and sustainable development agendas” (2013) 40 *Women’s Studies International Forum* 33 at 39.

46 Anna Kaijser and Annica Kronsell “Climate change through the lens of intersectionality” (2014) 23(3) *Environmental Politics* 417; Farhana Sultana “Gendering Climate Change: Geographical Insights” (2014) 66(3) *The Professional Geographer* 372.

47 Gregory Squires and Chester Hartman (eds) *There is No Such Thing as a Natural Disaster: Race and Class and Katrina* (Routledge, New York, 2006).

However, across all these categories, the one factor that will invariably determine the impact of environmental destruction is gender. Because women's gendered social roles are less abstracted from nature — in terms of labour, natural resource management, caregiving, childrearing, and providing sustenance to their families and communities — they are first to experience the effects of ecologically destructive practices. For example, the hazards linked to climate change such as flooding, drought and desertification, loss of biodiversity and damage to other “ecosystem services” are likely to disrupt agriculture and create food shortages, reduce access to clean drinking water,⁴⁸ force migration, increase prevalence to disease such as malaria, cholera and HIV/AIDS,⁴⁹ and exacerbate armed conflict and gender-based violence.⁵⁰ The compound vulnerabilities and human insecurity created by environmental degradation are simply too vast to list, but these will have lasting impacts for current and future generations.

At this point, one has to acknowledge that women in the developed and developing world have vastly different experiences, especially in terms of the impacts of degradation on their daily survival.⁵¹ Still, nowhere in the world do women share equal rights with men.⁵² This means that although gendered vulnerability to environmental degradation is relative, there are at least varying degrees of common experience throughout the world that is born from gender inequality.

Despite an enduring lack of sex-disaggregated data, we know that women account for two-thirds of the world's adult illiterates and on average occupy only 17 per cent of seats in national parliaments.⁵³ Of the 500 largest corporations in the world, only 13 have a female chief executive officer.⁵⁴ Violence against women occurs to varying degrees in all countries and affects women of all ages and socio-economic groups.⁵⁵ Because women are more likely to be responsible for reproductive and unremunerated subsistence and

48 IPCC, above n 45, at ch 19; Lorena Aguilar, Ariana Araujo and Andrea Quesada-Aguilar *Gender and Climate Change Factsheet* (IUCN, Costa Rica, 2007).

49 Valerie Githinji and Todd Crane “Compound Vulnerabilities: The Intersection of Climate Variability and HIV/AIDS in Northern Tanzania” (2014) 6 *Weather, Climate, and Society* 9; Aguilar and others, above n 48.

50 IPCC, above n 45, at 19.4.2.2.

51 Vandana Shiva *Staying Alive: Women, Ecology and Survival* (Zed Books, London, 1988).

52 Clair Apodaca “Measuring Women's Economic and Social Rights Achievement” (1998) 20(1) *Human Rights Quarterly* 139.

53 See United Nations *Millennium Development Goals Gender Chart* (United Nations Statistics Division and UN Women, New York, 2014); United Nations *The World's Women 2010: Trends and Statistics* (Department of Economic and Social Affairs, New York, 2010) at xii and viii.

54 *The World's Women 2010*, above n 53, at x.

55 True, above n 42.

informal work, they earn only 10 per cent of the world’s income, comprise 70 per cent of those living in extreme poverty, and own one per cent of the world’s resources.⁵⁶ The majority of agricultural workers are women and they are the main producers of the world’s staple crops; women produce 60 to 80 per cent of the food in most developing countries and provide up to 90 per cent of the rural poor’s food intake.⁵⁷ Moreover, women, with their children, represent 80 per cent of the world’s refugee population.⁵⁸

Traditionally, in both socio-economic studies and in international negotiations characterised by a North–South cleavage, analyses of the effects of environmental degradation have been gender-blind, focusing instead on poverty as the main determinant of vulnerability. What these conceptualisations overlook is that poverty is a highly gendered status. Although other factors such as race and poverty render women of colour in the developing world “doubly disadvantaged”,⁵⁹ the fact remains that across all social strata women’s “vastly unequal access to resources, constraints on their movements and freedom, reduced income generation capacity, and disproportionate caring responsibilities” is determinative of their exposure to, and ability to adapt to, environmental shocks.⁶⁰

This is not to say that women are intrinsically vulnerable, rather that gender and other structural causes of inequality intersect to create “historically and culturally specific patterns of practices, processes and power relations that render some groups or persons more disadvantaged than others”.⁶¹ This understanding was first iterated by scholars working in disaster relief from extreme weather events who noticed vast gender differential mortality rates — women were up to 14 times more likely than men to die in a natural disaster.⁶² They explained this in terms of “the socially-constructed gender-specific

56 Margaret Alston “Women and Adaptation” (2013) 4 WIREs Clim Change 351 at 353.

57 Aguilar and others, above n 48.

58 Alston, above n 56, at 353.

59 See, for example, Vernice Miller, Moya Hallstein and Susan Quass “Feminist Politics and Environmental Justice: Women’s Community Activism in West Harlem, New York” in Dianne Rocheleau, Barbara Thomas-Slayter and Esther Wangari (eds) *Feminist Political Ecology: Global Issues and Local Experiences* (Routledge, London, 1996); Morrow, above n 4, at 383.

60 Alston, above n 56, at 352–353; Ewa Charkiewicz “A Feminist Critique of the Climate Change Discourse. From Biopolitics to Necropolitics?” (2009) 6 *Critical Currents* 18 at 19.

61 Elaine Enarson “Through women’s eyes: A gendered research agenda for disaster social science” (1998) 22(2) *Disasters* 157; Seema Arora-Jonsson “Virtue and vulnerability: Discourses on women, gender and climate change” (2011) 21 *Global Environmental Change* 744.

62 Eric Neumayer and Thomas Plümper “The Gendered Nature of Natural Disasters: The Impact of Catastrophic Events on the Gender Gap in Life Expectancy, 1981–2002” (2007) 97(3) *Annals of the Association of American Geographers* 551; see also Heather Goldsworthy “Women, global environmental change and human security” in Richard A

vulnerability of females built into everyday socio-economic patterns”.⁶³ Where gender equality was greater, so women’s vulnerability was lessened.

Thus, relative to men, the burden of environmental degradation falls disproportionately on women due to the gendered division of labour arising from socially prescribed roles. Women are most often responsible for conducting the necessary domestic or household tasks such as collecting water and fuel. Scarcity of subsistence resources, increased male migration and overall climate change migration are likely to increase women’s domestic burden, compromising their time for income-earning, education or leisure.⁶⁴ The related sanitation and health challenges are also likely to impact on women disproportionately, in their reproductive, caregiving and domestic roles.⁶⁵ Women are more likely to live in disaster-prone areas, or rurally where their access to information and alternate survival strategies are limited.⁶⁶ Their caregiving role means they are less able and likely to flee in an immediate disaster. In many natural disasters, women’s restrictive clothing or inability to swim — a result of gender relations — increases mortality rates for women.⁶⁷

Likewise, because women in the developing world comprise the majority of agricultural workers they will suffer differentially in terms of subsistence food production, reduced income, or lack of substitute employment to buy food. Women’s subsequent need to diversify their livelihood strategies, as stranded or displaced peoples, and their undervaluation in the labour market, creates and increases vulnerability to exploitation — early marriages, illegal resource extraction and smuggling — and violence.⁶⁸ Lack of business as usual means that girls drop out of school at higher rates, whether because of loss of facilities, families’ inability to pay, or need for more household labour.⁶⁹ Lack of education, in turn, reduces “the ability of girls and women to access information

Matthew and others (eds) *Global Environmental Change and Human Security* (MIT Press, Cambridge, MA, 2010).

63 Neumayer and Plümper, above n 62, at 551.

64 *The World’s Women 2010*, above n 53, at xi; Yianna Lambrou and Grazia Piana *Gender: The Missing Component of the Response to Climate Change* (Food and Agriculture Organization of the United Nations, Rome, 2006) at 16.

65 Anthony G Patt, Angie Dazé and Pablo Suarez “Gender and Climate Change Vulnerability: What’s the Problem, What’s the Solution?” in Matthias Ruth and María Eugenia Ibarrarán (eds) *Distributional Impacts of Climate Change and Disasters: Concepts and Cases* (Edward Elgar Publishing Limited, Cheltenham, 2009) at 84.

66 UNEP “Gender in Priority Areas: Climate Change” <<http://www.unep.org/gender/data/Genderinpriorityareas/ClimateChange/tabid/55110/Default.aspx>>.

67 Patt and others, above n 65, at 84.

68 See True, above n 42.

69 Patt and others, above n 65, at 85.

and resources, or make their voices heard in decision-making processes at the household or community level".⁷⁰ In short, environmental degradation exacerbates pre-existing gender inequality.⁷¹

These material and social conditions also limit women's capacity for adaptation; that is, the ability to adjust to or minimise the negative impact of altered environmental conditions. Women's lack of political and institutional access and decision-making power, lack of ownership of land and resources, lack of access to finance, technology and training, and restricted freedom of association all undermine their access to information, resources, capacity-building and local organising for adaptation.⁷²

In sum, vulnerability to environmental degradation is a "differentiating process".⁷³ While we are attuned to issues of poverty and development with the concept of common but differentiated responsibility for climate change, arguably the most intrinsic yet under-problematised axis is the differential impacts between men and women. This understanding of the power structures that underlie environmental problems has been obfuscated by scientific, economic and political framings of climate change.⁷⁴ However, once we acknowledge that "gender relations are constitutive of all power relations"⁷⁵ and patriarchy is the most enduring form of oppression,⁷⁶ it becomes clear that addressing the human and ecological dimensions of the environmental problem is intimately connected to gender justice. Finally, it must be emphasised that transforming gender relations is not only a "women's issue". Deconstructing the narrative of hierarchy and dominance "would also free men from the constraints imposed upon them by patriarchy"; thus, a critical gender and ecological perspective can be seen as a human emancipation movement.⁷⁷

70 At 85.

71 IPCC, above n 45, at 13.2.1.5.

72 At 16.3.2.7; Dankelman, above n 45, at 21–54; Alston, above n 56, at 354; Lambrou and Piana, above n 64, at 16.

73 Hilhorst and Bankoff, above n 45.

74 Moosa and Tuana, above n 10, at 1.

75 Joan Scott "Gender as Useful Category of Historical Analysis" (1987) 91(5) *American Historical Review* 1053.

76 Zimmerman, above n 6, at 284.

77 At 234.

3. WOMEN AND GENDER IN INTERNATIONAL ENVIRONMENTAL LAW AND NEGOTIATIONS

3.1 International Environmental Law: Where are the Women?

This part of the article critically examines the treatment of women and gender in international environmental law, climate negotiations, and climate market and finance mechanisms. It finds that after decades of feminist activism there is a growing consideration of gender in environmental law and policy. Yet problematically, these acknowledgements of gender issues do not seem to progress beyond rhetoric, nor do they identify the structural factors that give rise to both gender inequality and environmental degradation.

International environmental law emerged as a discrete branch of international law following the 1972 UN Conference on the Human Environment in Stockholm. In 1987 the World Commission on Environment and Development published *Our Common Future*, commonly known as the Brundtland Report.⁷⁸ The Report develops and defines the concept of sustainable development first codified in the 1980 World Conservation Strategy but makes no mention whatsoever of women or a gender differential experience of environmental degradation.⁷⁹ In 1984 the UN Environment Programme (UNEP) established a senior women's advisory group on sustainable development and a year later at the 1985 UN Third World Conference on Women in Nairobi, Indian women's resistance to logging as part of the Chipko movement catapulted women's livelihoods and environmental destruction onto the international stage.⁸⁰ Nevertheless, on the whole, piecemeal international environmental agreements on conservation, species protection and fisheries did not contemplate the gender dimensions of environmental issues.⁸¹

The turning point was at the 1992 UN Conference on Environment and Development in Rio de Janeiro (the Rio Earth Summit). In 1991, UNEP and the Women's Environment and Development Organization (WEDO) organised the World Women's Congress for a Healthy Planet in Miami to prepare for the Rio Earth Summit. The Women's Congress brought together more than 1,500

78 World Commission on Environment and Development *Our Common Future* (Oxford University Press, Oxford, 1987) [Brundtland Report].

79 The Brundtland Report states: "sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs". See also IUCN, UNEP, WWF *World Conservation Strategy: Living Resources Conservation for Sustainable Development* (IUCN, Gland, 1980).

80 See Shiva, above n 51.

81 Annie Rochette "Transcending the Conquest of Nature and Women: A Feminist Perspective on International Environmental Law" in Doris Buss and Ambreena Manji (eds) *International Law: Modern Feminist Approaches* (Hart Publishing, Oxford, 2005) at 214–215.

women from 83 countries and produced the Women's Action Agenda 21.⁸² The international mobilisation of women over global environmental issues was significant given that, previously, women's activism was focused on local and community interests and grassroots movements.⁸³ The organised effort was necessary in light of the scanty recognition of women in the initial draft of the global blueprint for sustainable development (Agenda 21), notwithstanding numerous official statements showing cognisance of gender concerns.⁸⁴ In particular, the Women's Congress had to push for women to be recognised as agents and not merely victims of external conditions.

The Women's Action Agenda 21 is among the few adroitly framed statements of gender-literate and ecologically sound principles for sustainability. Specifically, it recognises that human beings are part of a web of life. Rather than proffer an instrumental or anthropocentric approach to the biosphere to achieve gender equity, it proposes that "we have a special responsibility to respect all of the Earth community".⁸⁵ Importantly, it recognises that patriarchy, manifest in concepts like "free-market" ideology, "economic growth" and the military-industrial complex, underlies the abuse of nature and women. Moreover, it identifies that environmental degradation is fundamentally a moral and spiritual issue arising from social and political failure and "an absence of responsibility towards future generations".⁸⁶

During the Rio Summit, women's groups were similarly active at the parallel NGO forum, ensuring that women's issues were not sidelined in the very full agenda.⁸⁷ Women's NGOs also held their own forum alongside the Earth Summit, called Planeta Femea. As a result of their efforts, the final document for Agenda 21 is dynamic, intersectional and gender-literate.⁸⁸ It specifically focuses on women in chapters 2 and 24. Women are identified as vulnerable due to environmental degradation and poverty but are also identified as agents whose public participation, education and traditional resource management knowledge is important for sustainable development. What is at once unique and paradoxical about Agenda 21 is that it accommodates different vocabularies

82 WEDO *Women's Action Agenda 21* (WEDO, New York, 1991).

83 Karen Morrow "Gender, international law and the emergence of environmental citizenship" in Susan Buckingham and Geraldine Lievesley (eds) *In the Hands of Women: Paradigms of Citizenship* (Manchester University Press, Manchester, 2006) at 35; K Saunders "Introduction: Towards a Deconstructive Post-Development Criticism" in K Saunders (ed) *Feminist Post-Development Thought: Rethinking Modernity, Post-Colonialism and Representation* (Zed Books, New York, 2002) at 16–18.

84 Morrow, above 83, at 44.

85 *Women's Action Agenda 21*, above n 82, at preamble.

86 At preamble.

87 Morrow, above 83, at 44.

88 *Agenda 21: Programme of Action for Sustainable Development* UN Doc A/CONF 151/26/Rev1 (14 June 1992).

such as transformative “bottom-up” approaches of changing consumption, eradicating poverty and empowering women, with emphasis on economic instruments, efficiency and technology. Thus, while Agenda 21 acknowledged, in an unprecedented way, the links between women, sustainability and poverty, it did not fully assume the structural critique of the women’s manifesto and instead proposed a growth-based model of development.⁸⁹

The other soft or non-binding agreements from the Earth Summit — the Rio Declaration and the Forest Principles — also mention women. The Rio Declaration recognises women’s “vital role in environmental management and development” and advocates that their full participation is essential to achieve sustainable development.⁹⁰ Likewise, the Forest Principles call for the active promotion of women’s participation in all aspects of the management, conservation and sustainable development of forests and cite women as one of a list of interested parties who should be involved in the development, implementation and planning of national forest policies.⁹¹

Despite the success of women’s groups at the Rio Earth Summit, what may seem like a willing embrace of women’s issues by the UN and states is tempered by the distinct lack of follow-up on gender issues in the reviews of Agenda 21 by the Commission on Sustainable Development (CSD).⁹² For example, the Prototype Global Sustainable Development Report of 2014 reveals that Agenda 21 has lacked systematic implementation, most of the chapters are off-track and have made no progress, and three chapters on changing consumption patterns, promoting sustainable human settlement development and protection of the atmosphere have seen regression.⁹³

The broad statements on women’s role and inclusion needed to be given meaning through specification and operationalisation. Unfortunately, this did not happen, which essentially demonstrates how “gender aspects evaporate during implementation, monitoring, and evaluation of environmental and climate-related projects, as they do when it comes to development

89 Christa Wichterich *The Future We Want: A Feminist Perspective* (Heinrich Boll Foundation, Berlin, 2012) at 16.

90 *The Rio Declaration on Environment and Development* UN Doc A/CONF 151/5/Rev1 (signed 13 June 1992) at principle 20.

91 *Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests* UN Doc A/CONF 48/14 (signed 13 June 1992) at principles 5(b) and 2(d).

92 The CSD has been replaced by the High-Level Political Forum on Sustainable Development.

93 United Nations *Prototype Global Sustainable Development Report* (online unedited edition) (United Nations Department of Economic and Social Affairs, Division for Sustainable Development, New York, 1 July 2014) <<http://sustainabledevelopment.un.org/globalsdreport/>> at 40.

projects".⁹⁴ Moreover, neither of the binding treaties adopted at Rio gave substantive mention to gender or women, probably owing in part to the fact that the women's movement focused less on these outcomes and more on the sustainability blueprints in Agenda 21 and the Rio Declaration.⁹⁵

The Convention on Biological Diversity recognises in the preamble that women play a vital role in the conservation and sustainable use of biological diversity and affirms the need for their full participation in policy-making and implementation of the Convention.⁹⁶ Such an inclusion, while admittedly significant, belies actual attentiveness to women's agency and instead sends the message that if the treaty's substantive prescriptions are prefaced by a general reference to women, the duty will be discharged. Evidently, greenhouse gas emissions have nothing to do with gender because the United Nations Framework Convention on Climate Change (UNFCCC) — the framework for practical response to climate change — makes no mention of either women or gender, nor does the 1998 Kyoto Protocol.⁹⁷ Morrow explains that the lack of engagement in women's perspectives in the UNFCCC regime was unsurprising given that the negotiations were state dominated, politically contentious, characterised by a North/South cleavage and highly technical.⁹⁸

Post-Rio, women's activism over the environment and sustainable development gathered pace, leading to articulation in two environmental treaties. The UN Convention to Combat Desertification (UNCCD) is one binding agreement which truly attends to gender.⁹⁹ It mandates states to promote the participation of women,¹⁰⁰ and to ensure their effective participation in the preparation of national action programmes.¹⁰¹ The UNCCD is praiseworthy for its bottom-up approach and emphasis on local capacity-building and education, and recognising women and men as partners with government, NGOs, and community leaders.¹⁰² However, despite this model law, the Convention has been plagued by a lack of resources and implementation.

94 Wichterich, above n 89, at 21.

95 Morrow, above n 4, at 384.

96 The Convention on Biological Diversity 1760 UNTS 79 (adopted 5 June 1992, entered into force 29 December 1993) at preamble.

97 The United Nations Framework Convention on Climate Change 1771 UNTS 107 (adopted 9 May 1992, entered into force 21 March 1994); The Kyoto Protocol to the United Nations Framework Convention on Climate Change 2303 UNTS 148 (adopted 11 December 1997, entered into force 16 February 2005).

98 Morrow, above n 4, at 384.

99 The United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa 1954 UNTS 3 (adopted 17 June 1994, entered into force 26 December 1996).

100 Article 5(d) and preamble.

101 Article 10(2)(f).

102 Article 19(1)(a).

The Stockholm Convention on Persistent Organic Pollutants recognises that local exposure to persistent organic pollutants can have significant health impacts for women and future generations.¹⁰³ It requires parties to cooperate with women's groups and facilitate development and implementation of women-targeted educational and public awareness programmes on the health effects of persistent organic pollutants.¹⁰⁴ The extent to which the women are targeted through the Convention is unclear as there is no thoroughgoing gender analysis of the regime. This author noted only four women's NGOs (of a total 134) accredited to the meetings of the Conference of Parties, despite women likely being a disproportionately affected group — as agricultural workers, food preparers, and child-bearers and nursing mothers.¹⁰⁵

Recognition of the links between women and environments can be found in several thematic areas of UN work. For example, the Beijing Declaration and Platform for Action, the outcome document from the 1995 Fourth World Conference on Women, appreciates the links between socio-economic and gendered inequalities which perpetuate women's vulnerability to environmental degradation and impede their role in sustainable development.¹⁰⁶ Similar acknowledgement of the nexus can be found in areas such as population, social development, human settlements and food.¹⁰⁷ The UN's quinquennial report *The World's Women*, likewise acknowledges that "lack of access to clean water and energy, environmental degradation and natural disasters disproportionately affect women in terms of health, unremunerated work and well-being".¹⁰⁸ Similarly, the latest IPCC report recognises some of the ways that gender interacts with climate change, although this engagement is peripheral and fairly recent.¹⁰⁹

103 Stockholm Convention on Persistent Organic Pollutants 2256 UNTS 119 (adopted 22 May 2001, entered into force 17 May 2004).

104 Articles 7(2) and 10(1)(c).

105 See UNEP website "Stockholm Convention: Non-Governmental Organizations" <<http://chm.pops.int/Partners/NGOs/tabid/294/Default.aspx>>.

106 *The Beijing Declaration and Platform for Action* (adopted at the 16th Plenary Meeting of the Fourth World Conference on Women, Beijing, 15 September 1995) <http://www.un.org/en/events/pastevents/pdfs/Beijing_Declaration_and_Platform_for_Action.pdf> at [246]–[258]; Christopher Joyner and George Little "It's Not Nice to Fool Mother Nature! The Mystique of Feminist Approaches to International Environmental Law" (1996) 14 B U Int'l L 223 at 226.

107 *Report of the International Conference on Population and Development*, Cairo, 5–13 September 1994, UN Doc A/CONF 171/13 (18 October 1994); *Report of the World Summit for Social Development*, Copenhagen, 6–12 March 1995, UN Doc A/CONF 166/9 (19 April 1995); *Report of the United Nations Conference on Human Settlements*, Istanbul, 3–14 June 1996, UN Doc A/CONF 165/14 (7 August 1996); *Report of the World Food Summit*, Rome, 13–17 November 1996, UN Doc WFS 96/Rep.

108 *The World's Women 2010*, above n 53, at 141.

109 IPCC, above n 45.

While this recognition is important, these institutions use a common language which frames women as homogenous impacted victims without any consideration of the “complex drivers of gendered vulnerabilities and relations of power within which they are embedded”.¹¹⁰ The female victim narrative “more easily dovetails with the pervasive positivist framing of most climate change discourses that measures impacts, counts victims, and looks for opportunities for mitigating actions”.¹¹¹ Because nowadays there is an expectation that gender or women are at least nominally included in official statements and responses, these issues are blunted and shoehorned into institutional discourse via rhetorical add-ons and designation as “women’s issues” — when in fact they concern the whole of society.¹¹²

3.2 Women and the Climate Change Regime

What started as a lacuna in the UNFCCC carried through the Conferences of Parties (COPs) as a distinct lack of women’s participation — as both country representatives and NGOs — and a silencing of gender perspectives under the guise of the regime’s “gender neutrality”. Hemmati and Röhr explain that the international women’s movement erred in assuming that, after Rio, women’s concerns would be mainstreamed into UN environmental processes.¹¹³ At the 1995 COP 1 in Berlin, uncoordinated women’s groups failed to make much political impact and focused on specific issues such as nuclear energy, alternate transportation and urban planning.¹¹⁴ At COP 3 in Kyoto, 1997, the activities of women’s groups were minimal. It is thought that the monopoly of economic arguments did not create a space for the progressive and ethically driven activism of women’s organisations.¹¹⁵ Consequently, many women and gender activists simply stayed at home.¹¹⁶

At COP 6 in The Hague, NGOs held a side event called “The Power of Feminine Values in Climate Change”. Despite the Conference having the highest share of women participants, women’s groups and discussions were inconsequential to the main agenda and “banished to the back corner of the

110 Resurrección, above n 45, at 37.

111 At 41.

112 At 41.

113 Minu Hemmati and Ulrike Röhr “Engendering the climate-change negotiations: experiences, challenges, and steps forward” (2009) 17(1) *Gender & Development* 19 at 22.

114 See N Wamukonya and M Skutsch “Is there a Gender Angle to the Climate Change Negotiations?” (2001) 13(1) *Energy & Environment* 115; GenderCC “COP1 in Berlin: Solidarity in the Greenhouse?” <<http://www.gendercc.net/policy/conferences/cop1.html>>.

115 GenderCC “COP3 in Kyoto — Missing Women’s Organisations?” <<http://www.gendercc.net/policy/conferences/cop3.html>>.

116 GenderCC, above n 115.

exhibition hall outside of the conference centre”.¹¹⁷ Finally, in 2001 the first and only official reference to women — a call for more nominations of women to UNFCCC and Kyoto Protocol bodies and ongoing maintenance of records on the gender compositions of the various bodies — was made in the text of the COP 7 Marrakech Resolution.¹¹⁸ Ten years after the Rio Earth Summit, the 2002 World Summit on Sustainable Development (WSSD) held in Johannesburg saw “sustainable development” retooled for neoliberal global governance.¹¹⁹ Women’s civil society groups prepared just as enthusiastically as for Rio, but ironically, their efforts failed to net similar results as the debate was more development-oriented.¹²⁰

Although they highlighted the lack of gender awareness in the climate change negotiations process and the fallacy of its proclaimed “gender neutrality”, women’s environmental NGOs remained largely fragmented and peripheral at the Conferences until COP 11 in Montréal in 2005 where a major shift in gender and climate activism took place. Uniquely, NGOs began their work in advance of the Conference and organised strategy meetings, shared their research and set up an email system of coordination.¹²¹ At the Conference they drafted a statement on gender and climate change and distributed it in the plenary.¹²² They also set up a booth disseminating information and held a workshop and talks by civil society representatives and Lena Sommestad, Minister for the Environment for Sweden. For the first time women were given the opportunity to make a statement in the plenary on behalf of all “women”.¹²³

Building on the success of a coordinated civil society approach, COP 13 at Bali saw the landmark formal establishment of a worldwide network of women’s groups called “GenderCC — Women for Climate Justice”.¹²⁴ The network published position papers which set out their gender perspective on important issues up for negotiation.¹²⁵ Several high-profile side events were co-hosted with UN agencies.¹²⁶ The intention behind these efforts was to take the

117 GenderCC “COP6 in The Hague — Role of women in the negotiations” <<http://www.gendercc.net/policy/conferences/cop6.html>>.

118 GenderCC “COP7 in Marrakech — Call for nomination of women” <<http://www.gendercc.net/policy/conferences/cop7.html>>.

119 Charkiewicz, above n 60, at 20.

120 Morrow, above n 83, at 52.

121 GenderCC “COP11/CMP1 in Montreal — A comprehensive gender strategy” <<http://www.gendercc.net/policy/conferences/cop11.html>>.

122 GenderCC, above n 121.

123 GenderCC, above n 121.

124 GenderCC “COP13 in Bali — A new era of integrating gender into climate change debates” <<http://www.gendercc.net/policy/conferences/cop13.html>>.

125 GenderCC, above n 124.

126 GenderCC, above n 124.

network’s position and agenda to high-level delegates.¹²⁷ Despite the expressed commitment of the president of the conference, Indonesian Minister for the Environment Rachmat Witoelar, to mainstream gender into the Bali outcomes, he did not succeed in doing so.¹²⁸

In the lead-up to COP 15 in Copenhagen the Women and Gender Constituency worked tirelessly to try to prevent the constant elimination of references to women/gender in the official negotiation text. They proposed a paragraph on the relevance of gender to climate change and the necessary empowerment of women in the Shared Vision document.¹²⁹ The Conference in Copenhagen was a major disappointment from an ecological, gender and civil society perspective. For the first time, civil society groups were excluded from participating until the second week of the Conference.¹³⁰ Likewise, the gender language in the draft text was steadily watered down in final negotiations and as a result the Copenhagen Accord and the measures for mitigation and financing made no mention of gender.¹³¹

After years of lobbying, the Women and Gender Constituency headed up by GenderCC finally gained observer status in the UNFCCC regime in 2010; long after Environmental NGOs, Business and Industry, Local Government and Municipal Authorities, Indigenous Peoples, Research and Independent Organisations and Trade Unions.¹³² While it must be acknowledged that the delay was partly owing to a previous lack of coordination among women’s groups, it is also a reminder of how new and under-scrutinised the frame of gender is in this area of international law and politics.

Despite this long-overdue achievement, COP 17 in Durban in 2011 was a disappointment from both an environmental and gender perspective. There was limited progress on a second commitment period for the Kyoto Protocol, and references to gender were once again removed from the Shared Vision document. GenderCC called the Durban outcomes “a breakdown, not a breakthrough”.¹³³

At COP 18 in Doha in 2012, a decision was made to improve the participation of women. What was called for was “gender balance” rather than

127 GenderCC, above n 124.

128 Hemmati and Röhr, above n 113, at 24–25.

129 GenderCC “Road to Copenhagen” <<http://www.gendercc.net/policy/conferences/road-to-copenhagen.html?L=2index.php>>.

130 GenderCC “Gender and Climate Change Activities @ COP15 — Copenhagen 2009” <<http://www.gendercc.net/policy/conferences/cop15.html?L=2index.php>>.

131 *Report of the Conference of the Parties on its fifteenth session, held in Copenhagen from 7 to 19 December 2009*, “Decision 2/CP.15 Copenhagen Accord” FCCC/CP/2009/11/Add.1 (30 March 2010).

132 Morrow, above n 4, at 385.

133 GenderCC “Gender and Climate Change Activities @ COP17 — Durban 2011” <<http://www.gendercc.net/policy/conferences/durban-2011.html>>.

“gender equality”. The women’s movement was once again disappointed that gender issues were reduced to a “numbers game” of formal female participation rather than the recognition that “substantive gender equality is needed to accomplish fundamental changes in human behaviour”.¹³⁴ As Morrow states, “participation without commensurate influence represents a mere illusion of progress, exhibiting only superficial engagement with the issues rather than actually addressing them”.¹³⁵

The non-binding outcome document of the 2012 United Nations Conference on Sustainable Development (Rio+20) titled “The Future We Want” refers to gender equality and women’s empowerment frequently, even devoting an entire section to it. However, the Conference itself was largely seen as a continuance of political stalemate as no agreement was reached on a post-Kyoto commitment to emissions reduction, and parties sought to replicate the failed system of Millennium Development Goals with new Sustainable Development Goals. Moreover, the Conference’s proffer of “green economy” as the way forward has been lambasted by feminists and civil society alike for being devoid of a gender perspective and a mere recycling of an unsustainable model. The green economy takes into account natural capital and environmental services but not “the basic assumption of feminist economics, namely that social reproduction and care also have a role in creating value”.¹³⁶ The paradigm similarly fails to address fundamental issues of redistribution and power relationships, favouring instead to reformulate the capitalist principle of maximising returns.¹³⁷

Ostensibly, gender has gained traction in the UNFCCC regime with the 2013 COP 19 in Warsaw having the first ever UNFCCC in-session workshop on gender and climate change in the first week of the Conference and a “Gender Day” in the second week. These initiatives were repeated at COP 20 in Lima where the Women’s Caucus participated directly in negotiations.

Still, this increased attention has failed to dazzle the gender and climate change community. As one commentator described the key demands of the Women and Gender Constituency at COP 20: “We didn’t come here to negotiate gender equality on a dead planet.”¹³⁸ It is ever-apparent that the Parties have no intention of addressing the root causes of inequality which the Women and Gender Constituency sees as fundamental to gender inequality and unsustainable emissions levels. GenderCC describes how in Warsaw “Gender Day” was trivialised with celebrations and launches with “little opportunity

134 GenderCC “Gender and Climate Change Activities @ COP18 — Doha 2012” <<http://www.gendercc.net/policy/conferences/cop18.html>>.

135 Morrow, above n 4, at 387.

136 Wichterich, above n 89, at 39.

137 At 40.

138 Kate Lappin, Regional Coordinator for AWLPD <<http://womengenderclimate.org/release-women-at-cop-20-blast-failure-for-real-action-in-lima/>>.

for engaging in a serious discussion on how to proceed on gender issues”.¹³⁹ When representatives of the Women and Gender Constituency posed questions on gender to the chairs of the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) at a designated “gender event” they were bluntly ignored.¹⁴⁰

Even the launch of the “Lima Work Programme on Gender”, which is intended to improve the implementation of gender-responsive climate policies and mandates across all areas of negotiations, faced challenges with governments trading language on “gender equality” for “gender balance”.¹⁴¹

Thus, while there is a developing profile for gender and climate change, the continued refusal to mainstream gender perspectives into negotiations for the next protocol — or to even engage questions on the same — sheds real doubt on the sincerity of this “progress”. The Women and Gender Constituency is not simply tackling women’s under-representation in negotiations — although this is necessary and important — they challenge dominant discourses of economic growth and “solutions” focused on technologies and markets rather than equity, justice, ecological integrity and stewardship. Ironically, the notional increase of women participants in the mainstream has served to depoliticise the gender approach. State actors are gravely mistaken if they think that attentiveness to gender can be placated with hollow pretence and starved of real influence.

3.3 Women and Climate Finance

Women’s environmental groups differ in their attitudes towards the various climate finance mechanisms such as emissions trading, the Clean Development Mechanism and those programmes funded through the Global Environmental Facility.¹⁴² While some groups would engage with these approaches, seeking to carve out opportunities for women and gender equity, others, such as GenderCC, reject the “financialisation of nature” as empirically and ethically

139 GenderCC “Gender and Climate Change Activities @ COP19 — Warsaw 2013” <<http://www.gendercc.net/policy/conferences/warsaw-2013.html>>.

140 GenderCC, above n 139.

141 GenderCC “RELEASE: Women at COP 20 Blast Failure for Real Action in Lima” <<http://womengenderclimate.org/release-women-at-cop-20-blast-failure-for-real-action-in-lima/>>.

142 The Global Environment Facility (GEF) is the financial mechanism of the UNFCCC tasked with assisting developing (non-Annex I) parties to comply with their obligations through the Special Climate Change Fund and the Least Developed Countries (LDCs) Fund. The Clean Development Mechanism (CDM) is one of the market mechanisms established by the Kyoto Protocol to allow industrialised countries to invest in projects in developing countries to generate carbon credits (called Certified Emissions Reductions) for Annex I commitments and simultaneously increase economic productivity, technology transfer and sustainable development in the locale. The Kyoto Protocol also established the Adaptation Fund which receives a share of the proceeds from the CDM.

flawed.¹⁴³ They say that approaches to climate change which do not confront problematic patterns of consumption and production are ecologically null in spite of the potential (but generally unrealised) advantages they may offer women.¹⁴⁴

Although the need for developed countries to reduce emissions cost-effectively could provide opportunities for local communities and women to generate income through sequestration projects, these projects may also threaten local livelihoods and biodiversity because the need to generate cheap and fast tradable carbon credits favours industrial-scale monocultures such as agrofuels or non-indigenous forests which extinguish community rights and access.¹⁴⁵ UN figures show that a minuscule amount of the US\$6.5 billion for the Climate Investment Fund actually reaches grassroots operations or those women who are most in need of financing for adaptation.¹⁴⁶ Gender analysis of these large-scale projects is virtually non-existent, despite the opportunity this presents for genuinely sustainable development.¹⁴⁷

Kronsell explains how the investment system is not gender neutral; the preference for large-scale projects must be read in light of the fact that “men dominate the transport and energy sectors both in the labor force, the educational system and in management”.¹⁴⁸ The economic rather than developmental (or equity) emphasis means that carbon investors are unlikely to think that targeting women with market renewable energy technology is going to net greater gains in carbon offset.¹⁴⁹

Even smaller projects can draw on gendered essentialisms about women as nature’s guardians in order to burden them with the responsibility of “cleaning up” or preserving resources without any of the remuneration, property or rights over the resources — effectively subsidising, through their unpaid labour, consumptive patterns in the North.¹⁵⁰ Fundamentally, these market strategies rely on existing structures of resource distribution which are inherently gendered to the detriment of women, who, due to structural inequalities, are

143 Wichterich, above n 89, at 22; for further doubt that carbon trading works see Oscar Reyes and Tamra Gilbertson “Carbon Trading: How it Works and Why it Fails” (2010) 45 *Soundings* 89; Srikanth Subbarao and Bob Lloyd “Can the Clean Development Mechanism (CDM) Deliver?” (2011) 39(3) *Energy Policy* 1600.

144 Wichterich, above n 89, at 22.

145 At 19.

146 At 23.

147 Fatma Denton “Climate change vulnerability, impacts, and adaptation: why does gender matter?” (2010) 10(2) *Gender & Development* 10 at 16.

148 Annica Kronsell “Gender and transition in climate governance” (2013) 7 *Environmental Innovation and Societal Transitions* 1 at 8.

149 Skutsch, above n 35, at 36.

150 Wichterich, above n 89, at 17.

least likely to directly gain access to technology and resources or indirectly benefit from projects.

4. A FEMINIST CRITIQUE OF INTERNATIONAL ENVIRONMENTAL LAW

4.1 The Gender Bias of Public International Law

The preceding part of this article illustrates how policy-makers have squandered the opportunity to graft gender and ecologically literate innovations onto the emerging body of international environmental law and policy. Rather, what is shown in the context of climate negotiations is “a parody of an unequal world economy”¹⁵¹ which silences its “others”: women, the environment and the poor. This part locates the resistance to gender sensitivity within the context of public international law. According to Birnie and Boyle, international environmental law is quite simply an application of international law to environmental problems.¹⁵² As such, it inherits the “congenital defects” of public international law,¹⁵³ which are: a lack of participation by women representatives in this “public” sphere; a lack of attentiveness to structural inequalities, especially gender; a primary purpose of regulating the legal relationships between states; and, increasingly, utilisation for capital-driven public and private interests. There is undoubtedly an increasing space for civil society and international institutions but fundamentally the system is predicated on the political will of governments who balance the theory of cooperation with the practice of competition.¹⁵⁴

Public international law and by extension international environmental law make claims to “objectivity”, “rationality”, “neutrality” and the “rule of law”. Yet it takes no great depth of insight to expose the fallacy in these assertions: law as a social construction is destined to reflect “the narratives that locate it and give it meaning”.¹⁵⁵ As two (male) feminist scholars explain: “Until only recently, men have contributed nearly everything to the philosophy and creation of international law. Men founded, developed, and interpreted the theoretical foundations and historical tradition of international law.”¹⁵⁶ International law espouses “protective” narratives — for women, for the environment, for the

151 Denton, above n 147, at 10.

152 PW Birnie and AE Boyle *International Law and the Environment* (Oxford University Press, Oxford, 2002) at 2.

153 Bosselmann, above n 14, at 79.

154 Bosselmann, above n 9, at 147.

155 R Cover “Nomos and Narrative” (1983) 97 *Harvard Law Review* 4 at 4.

156 Joyner and Little, above n 106, at 233.

colonised, for the poor in the developing world — while at the same time preventing the culpability for abuses perpetrated by those same purported “protectors” — husbands, militaries, governments and trade regimes.¹⁵⁷ Arising from a gendered and structurally unequal system, negotiated, adopted and implemented by (usually male) elites in a masculine environment, international law is designed and utilised to meet the interests of men.¹⁵⁸

The concerning failure of international environmental law to be used for anything other than a “regime of property rights between states”¹⁵⁹ makes the marginalisation of critical feminist insights in the international environmental law academe unsurprising. Clearly, international environmental law is in serious need of feminist scrutiny of its myths of “action”, “plans” and “progress” which now take the form of “sustainable development”, “green economy” and market mechanisms. Feminist analysis not only problematises the separation of environmental degradation into “legal” and “moral” problems, it permits us to “question the abstract rationality that focuses the world’s legal vision along male trajectories”.¹⁶⁰ The remainder of this part will consider the key areas of feminist critique of international environmental law.

4.2 Participation and Transformation: Problems with the Formal Equality Paradigm

It is clear that there is a deficit of women in environmental decision-making which is partly responsible for the lack of integration of gender perspectives in environmental law and policy.¹⁶¹ Women are not only underrepresented in political positions but also in science and technology fields, both of which are highly relevant and influential in environmental politics.¹⁶² Despite being very vocal and efficient in their activism, women’s participation as part of the non-government observers is low relative to men.¹⁶³ Despite the call for more nominations of women to UNFCCC and Kyoto Protocol bodies in the Marrakech Resolution (2001 COP 7), progress was slow.¹⁶⁴ For example, when UN Secretary-General Ban Ki-moon assembled an advisory group on Climate

157 Diane Otto “Lost in translation: re-scripting the sexed subjects of international human rights law” in Anne Orford (ed) *International Law and its Others* (Cambridge University Press, Cambridge, 2006) at 333.

158 Joyner and Little, above n 106, at 229.

159 Bosselmann, above n 9, at 147–149.

160 Joyner and Little, above n 106, at 235.

161 *The World’s Women 2010*, above n 53, at 154; Alston, above n 56, at 355; Denton, above n 147, at 11.

162 *The World’s Women 2010*, above n 53, at 154.

163 Hemmati and Röhr, above n 113, at 27.

164 Bridget Burns *Women’s Participation in UN Climate Negotiations 2008–2012* (WEDO, New York, 2013).

Change Financing in 2010, he appointed 19 men.¹⁶⁵ Likewise, in 2011, German political parties nominated 17 experts to the study group "Growth, Prosperity, Quality of Life", and not one woman was among them.¹⁶⁶

Data show that the number of women in national delegations to UNFCCC negotiations ranged from 15 to 28 per cent between 1996 and 2005, and on average 32 per cent from 2008 to 2012, with 2013 having the highest ever levels of female representation at 34 per cent.¹⁶⁷ Women's participation on UNFCCC boards and bodies is even lower, on average, at or below 10 per cent.¹⁶⁸ In the last five years the percentage of women heads of delegations has gradually increased to 19 per cent. The improvements are attributable to several things. First, WEDO has actively pursued the matter through the Women Delegate's Fund, a programme which provides travel support, capacity building and networking opportunities to women from the Global South to join national delegations. Similarly, the decision to promote gender balance at COP 18 in Doha also included actions to ensure effective implementation and review the progress.¹⁶⁹

Formal equality of treatment, such as through political participation, is a central tenet of liberal feminism.¹⁷⁰ There are compelling reasons from both efficiency and justice perspectives as to why more women should be included.¹⁷¹ Villagrasa found that when women led government delegations for Germany and Switzerland they acted "in ways which differentiated them from their male colleagues in a crucial manner: they actively and often went out of their 'bunker', interacting strongly with other delegations beyond formal sessions".¹⁷² They took the initiative to connect with developing countries' delegates and encourage their integration into decision-making processes.¹⁷³ Unfortunately, this example cannot be generalised and many feminists claim that "there is neither a single nor a universal relationship between the percentage of women elected to political office and the passage of legislation beneficial to women as a group".¹⁷⁴ Enloe explains that "when a woman is let in by the men who control the political elite it usually is precisely because that woman has learnt

165 Wichterich, above n 89, at 10.

166 At 10.

167 Patt and others, above n 65, at 83; Burns, above n 164.

168 Burns, above n 164.

169 Burns, above n 164.

170 Hilary Charlesworth and Christine Chinkin *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press, Manchester, 2000) at 39.

171 See Skutsch, above n 35.

172 D Villagrasa "Kyoto Protocol Negotiations: Reflections on the Role of Women" (2002) 10(2) *Gender and Development* 40.

173 Villagrasa, above n 172.

174 Sarah Childs and Mona Lena Krook "Should feminists give up on critical mass? A contingent yes" (2006) 2(4) *Politics and Gender* 523.

the lessons of masculinized political behaviour well enough not to threaten male political privilege".¹⁷⁵

Similarly, the formal equality paradigm overlooks intersections between sex and other sources of inequality such as ethnicity, religion, class, culture and sexuality; meaning that some women suffer under multiple forms of discrimination and are less likely to "gain entry".¹⁷⁶ Because there is a lack of empirical data on women in environmental negotiations, it is very difficult to know what effect increased participation would have on ecological and gender outcomes. Even if some women do have a different decision-making style from men, they gain access to a "project the terms of which are already set".¹⁷⁷

Putting these questions aside, we can presume that simply adding more women without ensuring that those women are willing (or able) to challenge the dominant language and paradigm does not guarantee that law or policy will be any more gender sensitive than before. Problematically, increasing the number of women representatives is seen as a sufficient way for "gender" to be mainstreamed into environmental matters. Rather than a substantive issue, "gender" becomes a technical criterion. Real gender mainstreaming is not concluded with a critical mass of women.¹⁷⁸ Once women have been admitted they often face similar structural and procedural hurdles that excluded them to begin with. These include information asymmetries, lack of technical capacity to engage with scientific materials, and financial constraints.¹⁷⁹ Participation is not equated with voice.

What is patently missing is a questioning "of the underlying structures and assumptions of existing decision-making structures".¹⁸⁰ In the environmental context this is the "othering" of gender inequality and ecologically informed sustainability which boldly show the vested interests in existing structural conditions. Ultimately, liberal feminist approaches do not inherently "challenge the resulting bias of the dominant model of the human and of human culture as oppositional to nature".¹⁸¹ Even if "mainstreamed" women are gender literate — and often they are not — they may still fail to promote strong ecological principles. Ideally, we should be striving to infuse these debates with

175 Cynthia Enloe *Bananas, Beaches and Bases: Making Feminist Sense of International Politics* (University of California Press, Berkeley, 1990) at 6–7.

176 Diane Otto "Holding up Half the Sky, But for Whose Benefit?: A Critical Analysis of the Fourth World Conference on Women" (1996) 6 *Australian Feminist Law Journal* 7 at 15.

177 Ann Orford "Feminism, Imperialism and the Mission of International Law" (2002) 71 *Nordic Journal of International Law* 275 at 282.

178 See Jacqui True "Mainstreaming Gender in Global Public Policy" (2003) 5(3) *International Feminist Journal of Politics* 368.

179 Morrow, above n 4, at 387.

180 Otto, above n 176, at 14; Rochette, above n 81, at 205.

181 Val Plumwood *Feminism and the Mastery of Nature* (Routledge, London, 1993) at 27–28.

women *and* men who are interested in changing gender relations and promoting ecologically inspired attitudes.

4.3 Soft Law

When we use a gendered lens, we see how the gendered binary of legal versus moral, rational versus emotional plays out in the international arena. Part 3 of this article showed that when gender is recognised, this is overwhelmingly in the context of treaties’ preambles, or in non-binding or soft law agreements. Likewise, some of the strongest provisions on sustainability are contained in soft law documents. All this is contrasted with hard international environmental law which invariably recognises states’ sovereign rights to exploit their natural environments.¹⁸² The relegation of gender issues and holistic conceptualisations of the environment to devalued soft law instruments is significant. As feminist international law scholars Charlesworth and Chinkin explain, “states use ‘soft’ law structures for matters that are not regarded as essential to their interests (‘soft’ issues in international law) or where they are reluctant to incur binding obligations”.¹⁸³

Women with environmental “problems” suffer a double marginalisation — both gender and environmental problems are issues to be dealt with “through ‘soft’ modalities of law-making that allow states to appear to accept such principles while minimising their legal commitments”.¹⁸⁴ This marginalisation is even more exacerbated when we add in other intersectional factors such as poverty and race.

However, soft law may be preferable to no recognition at all. Although soft law is aspirational and makes recommendations, the *process* of creating these instruments is valuable. It provides an avenue for a greater diversity of actors in addition to states, making it more democratic and narrative driven in structure, and crucially it affords these participants actual influence in the conversation.¹⁸⁵ Because soft law documents are non-binding they may not create legal rules but they allow for the proclamation of norms in the international context. Norm emergence is the first stage in the “norm life-cycle” of political change, followed by tipping points, acceptance and internalisation.¹⁸⁶ The framing

182 See, for example, Convention on Biological Diversity, above n 96, at art 3; *Declaration of the United Nations Conference on the Human Environment* (Stockholm, 21st Plenary Meeting, 16 June 1972) at principle 21 [Stockholm Declaration]; *The Rio Declaration*, above n 90, at principle 20.

183 Charlesworth and Chinkin, above n 170, at 66.

184 At 66.

185 Morrow, above n 83, at 49.

186 Martha Finnemore and Kathryn Sikkink “International Norm Dynamics and Political Change” (1998) 52(4) *International Organization* 887.

of alternative discourses in soft law documents is a starting point for norm dissemination and may, given enough time, result in institutionalisation through codification or state practice. Whether we have the time, in ecological terms, to follow this time-consuming process of norm creation and legalisation is another matter.

4.4 Economic Growth and Technological Solutions

The pathological commitment to economic growth in the face of exceeded planetary boundaries poses enormous problems for all life on earth. The growth paradigm is particularly alarming for women. Fundamentally, is the paradox that the capitalist economy is causing the very destruction of the environment it is poised to save through market mechanisms and growth paradigms. As Ann Orford put it, “the narrative of economic globalization, in which we move together into a future of greater freedom, prosperity and integration, itself erases the conditions of its possibility”.¹⁸⁷ The free market assumes a rational actor, making purchasing decisions on an informed and rational basis. In practice, and in a global marketplace, this is rarely the case. Women and nature are the buffer zone for the reproduction of capital: women’s time is infinitely elastic as they perform reproductive roles and other unpaid work, and take on paid work despite lower pay and declining working conditions.¹⁸⁸ Nature is thought of solely in terms of its instrumental value as a sink and a resource for the expropriation and privatisation of wealth, not as a commons to sustain human life.¹⁸⁹ When we consider that markets receive subsidies from women’s and ecological “services”, it presents like a symptom of schizophrenia for economic “rationality” — which denies interdependence and relies on unsustainable transfers — to then be relied on to achieve sustainability of humans and nature. There is nothing reasonable or logical about this approach.

As was seen in part 2 of this article, women are first to suffer the detrimental impacts of environmental degradation and least able to adapt due to structural inequalities. The capitalist system reinforces gender identities and structures which disadvantage women relative to men, poor relative to rich. As Rochette aptly explains, “[f]or too many people, especially women who represent 70% of the world’s poor, the promises of economic globalisation have not been

187 Orford, above n 177, at 290.

188 Charkiewicz, above n 60, at 22; Saskia Sassen “Counter-geographies of Globalization: Feminization of Survival” in K Saunders (ed) *Feminist Post-Development Thought: Rethinking Modernity, Post-Colonialism and Representation* (Zed Books, New York, 2002) at 89.

189 Martha McMahon “From the ground up: ecofeminism and ecological economics” (1997) 20 *Ecological Economics* 163 at 168.

realised".¹⁹⁰ Yet the public recognition of gender and wealth differential impacts by the UN and other stakeholders would lead one to expect that a neoliberal economic approach needs to shed the assumption that all individuals are formally equal in the marketplace. To "bring in" women and nature into the market cannot work "because it fails to understand how the system is dependent on their being outside: the spheres of women and nature are preconstructed as unequal outside the marketplace".¹⁹¹ Thus, despite increasing rhetoric about gender and poverty and environment, these issues remain substantively marginalised because anything else would be to blow on the neoliberal house of cards.

Closely affiliated with neoliberal economic approaches are scientific and technological solutions. The emphasis on scientific evidence has been vital to measuring the impact of humans on the environment and rebutting climate change deniers. However, in proposing solutions to environmental problems, the deference to science and technology often comes at the expense of urgently needed social behavioural change.¹⁹² Once again we see the inherent binaries present in a gendered system; the privileging of universal empirical science over culturally embedded indigenous or local knowledge and the continuation through "technology" of the non-reflexive separation between "self" and "nature".¹⁹³

Part of the feminist scepticism of technological approaches arises from the fact that there is very little data showing the relative advantages and disadvantages for men and women of various strategies. Moreover, the lack of women in science and technology fields widens the information asymmetry.

Additionally, because women are underrepresented in national and international politics, there is a major democratic deficit in the assumption of a growth and technology paradigm. As explained previously, women's empowerment by states parties is not intended by the privileged approach of market economy and reliance on "science". This predetermination in line with existing structural biases restricts the transformative agency of gender-literate women and men. Within these "highbrow" discussions of markets and technicalities the intellectual space for social and ethically motivated interventions is limited.¹⁹⁴

What is missing in all levels of environmental law and governance is a critical self-reflexivity which addresses the socially constructed conditions which harden into structural inequalities. Ecofeminists would say that it is not

190 Rochette, above n 81, at 232.

191 McMahan, above n 189, at 168.

192 Rochette, above n 81, at 224; Kronsell, above n 148, at 6.

193 See Sandra Harding *The Science Question in Feminism* (Cornell University Press, Ithaca, NY, 1986); Shiva, above n 51, at 14–15.

194 Denton, above n 147, at 12.

enough to acknowledge the structural bias against nature (anthropocentrism); genuine sustainability must respond to the configuration of social relationships between human beings, a major axis of which is gender. Doing this would necessarily require a hard look at the “contemporary enclosure of feminist and environmental discourse within the rationality of the market”.¹⁹⁵ The next part charts the various sites of excavation which will help to surface the silent “others”.

5. FROM ECONOMISM TO GENDER-SENSITIVE ECOLOGISM

The previous part of this article problematised the “institutional bias” against sustainability within states because of the dominant intellectual attitude of “economism” which affirms the power and the pretended right of economics to determine the whole of society and reinforces patriarchal dominance with devastating effects for women and nature.¹⁹⁶ This part maps the various areas which may inform further research agendas in gender and ecologically sound global governance. The ecofeminist insights that informed this critical analysis have been reframed by this author into the practical term “gender-sensitive ecologism”. In doing so, it moves beyond the internal dissonance and categorisation within ecofeminism and prefers the term “gender sensitive” over “feminism”, because, despite essentially meaning the same thing, in a political and legal context it is likely that feminism will be (incorrectly) interpreted as women-only and rejected on this basis. In fact, attending to gender hierarchies is important for women *and* men.

As an attitude, gender-sensitive ecologism is founded on the insight that most of our ecological problems are social problems and must be dealt with accordingly, in our social institutions.¹⁹⁷ Moreover, it inheres the belief that economics cannot mediate humans’ relationship with their biophysical surroundings because, as a frame, it obscures “the complexity of human aspirations and duties” which must necessarily include ethics of care such as respect for the community of life, recognition of ecological integrity, social

¹⁹⁵ Charkiewicz, above n 60, at 22.

¹⁹⁶ Klaus Bosselmann “Earth Democracy: Institutionalising Sustainability and Ecological Integrity” in J Ronald Engel, Laura Westra and Klaus Bosselmann (eds) *Democracy, Ecological Integrity and International Law* (Cambridge Scholars Publishing, Newcastle Upon Tyne, 2010) at 93; Johannes Heinrichs “A Model of Value-Based Democracy as Condition of Ecological Sustainability” in J Ronald Engel, Laura Westra and Klaus Bosselmann (eds) *Democracy, Ecological Integrity and International Law* (Cambridge Scholars Publishing, Newcastle Upon Tyne, 2010) at 41.

¹⁹⁷ Heinrichs, above n 196, at 41.

justice and intergenerational equity.¹⁹⁸ By overcoming the duality between “self” and “nature”, people may “see life in terms of bounty, not scarcity, and in terms of cooperation, not aggressive competition”.¹⁹⁹ These concepts are perceived as “feminine” because they are “othered” from, and alternate to, the dominant masculine economic system which privileges certain people along lines of gender, socio-economic status and race. In actuality, these notions are neither intrinsic nor exclusive to women but because of women’s structurally unequal position are proffered by women as a way towards sustainability for all forms of life.

5.1 Gender-sensitive Ecologism from the Bottom Up

Both the gender and environmental agendas require profound societal change and neither can be fully addressed without the other. As this discussion has shown, “practical progress towards realising these mutually supporting goals has at best been slight and at worst illusory”.²⁰⁰ When we consider that the international legal order is profoundly gendered, and that those in power will not protect the environment for their own sake, what makes us think they would do it out of fairness to women? Considering alternative frameworks for global environmental governance requires looking past the “illusion of an impartial, objective, legal order” to solve our ills and recognising our own citizenship and agency in what are “intensely political and negotiable contexts”.²⁰¹ This can be characterised as a “bottom-up” community-driven, self-sufficient approach to sustainability.

Global civil society’s engagement in environmental discussions is one such manifestation of citizenship.²⁰² Inclusive participation of people from different countries, cultures, professions and ways of life increases the likelihood that all interests will be taken into account. Moreover, it provides for social change to an ethic of care for the environment to be taken from an intellectual abstraction to a contextualised way of life.²⁰³ Broad participation allows for the governance discourse to move beyond neoliberal ideology and into socially innovative

198 See Klaus Bosselmann, Peter G Brown and Brendan Mackey “Enabling a Flourishing Earth: Challenges for the Green Economy, Opportunities for Global Governance” (2012) 21(1) *Review of European Community and International Environmental Law* 20; see IG Simmons *Humanity and Environment: A Cultural Ecology* (Longman, Harlow, 1997) at 204.

199 Zimmerman, above n 6, at 242.

200 Morrow, above n 83, at 56.

201 Hilary Charlesworth and David Kennedy “Afterword: and forward — there remains so much we do not know” in Ann Orford (ed) *International Law and its Others* (Cambridge University Press, Cambridge, 2006).

202 Morrow, above n 83, at 56.

203 See Kronsell, above n 148, at 9.

approaches to dealing with environmental problems. However, a feminist methodology would be quick to scrutinise the power and relationships within the concept of global civil society. Although the global civil society approach promises a great deal, it cannot be assumed “gender neutral” and attentive to all silences. In fact, some scholars have pointed to gender hierarchies within large environmental organisations and the civil society cleavage between male-led professional elite “representatives” and female-led grassroots activism.²⁰⁴ Thus, just like any concentration of power, the green civil society movement “needs to set its house in order on gender issues”.²⁰⁵

Part of a bottom-up approach requires building capacity within the citizenship. An important part of building local capacity for sustainability and adaptation comes through community empowerment and education (CEE) and training. While these responsibilities fall within the mandate of governments, projects such as Kenya’s Green Belt Movement demonstrate grassroots community confrontation of environmental problems. Founded in 1977 by Professor Wangari Maathai, the Movement epitomises the “think globally, act locally” approach. The Green Belt Movement “encouraged the women to work together to grow seedlings and plant trees to bind the soil, store rainwater, provide food and firewood, and receive a small monetary token for their work”.²⁰⁶ In the era of climate change, these forests are also sinks for carbon dioxide. The movement intrinsically links local ecological experiences with broader social problems of disempowerment and erosion of communitarian values. From its conception the movement has encouraged women and their communities “to examine why they lacked agency to change their political, economic, and environmental circumstances”.²⁰⁷ Forest management projects similar to those of the Green Belt Movement exist in Mali, Burkina Faso, Uganda, India and Nepal.²⁰⁸

Encouraging women’s leadership, access to, and control of natural resources should be a core goal of any local project in sustainability. As was the case with the Green Belt Movement (which has seen financing from the World Bank’s Community Development Carbon Fund), providing funding and credit to women for livelihood and sustainability projects increases the likelihood that the resulting “public goods” will benefit the whole community. The ability of women to earn while carrying out this work also helps to increase their economic independence and reinvest in other mitigative or adaptive measures.

204 Seager, above n 21, at 185–94; Rochette, above n 81, at 205.

205 Morrow, above n 83, at 51.

206 The Green Belt Movement “Our History” <<http://www.greenbeltmovement.org/who-we-are/our-history>>.

207 Green Belt Movement, above n 206.

208 Margaret M Skutsch “Access to finance for community forest management under Kyoto and the UNFCCC” (2002) 35 European Tropical Forestry Research Network Newsletter.

Women, likewise, need to be targeted in financed climate projects and given equitable access to and instruction in any “green” technologies for both efficiency and equity reasons.²⁰⁹

Technology should also be combined with women’s traditional knowledge and sustainability practices. Patricia Glazebrook makes a strong case for including women’s local knowledge of conditions and resource management techniques in mitigation and adaptation strategies at all policy levels.²¹⁰ By doing so we reinvigorate women’s agency and increase the likelihood that future generations will be socialised into sustainable practice.

While putting into practice an ethic of care for community and environment, the Green Belt Movement also encourages women to challenge lack of political accountability and democracy, land grabbing and failed resource management. Thus an important part of acting locally to improve sustainable livelihoods is enabling women to lobby their interests at higher levels. This is the premise behind WEDO’s multi-dimensional capacity-building programme, the Women Delegates Fund (WDF). It trains women from the Global South in thematic areas of climate change and funds their travel so that they can join national delegations to UNFCCC negotiations.

5.2 Gender-sensitive Ecologism from the Top Down

However important and empowering bottom-up approaches and micro-level projects are in effecting gender-sensitive ecologism, these cannot compensate for much-needed macro-level changes. Thus, an analogous site of transformation is at the global level. Although ultimately we need transformation of the structural biases of states and the international political and legal order, we cannot risk disengaging from these spheres. To do so may leave those of us concerned with gender and the environment waiting for a Godot that never comes. Assuredly, the answer is not acquiescence — the preceding discussions have highlighted the problems with doing so — but rather the participation of a critical gender-ecology voice from within and outside existing regimes. This is the approach of GenderCC and the Women’s Caucus which is “committed to engaging closely with ongoing negotiations, yet without compromising the independent, and sometimes radical, stance that the network has developed”.²¹¹

If policy-makers are to respond to the concerns of gender-literate ecologists there is a pressing need for multidisciplinary and gender-disaggregated research to back up theory with robust data. Issues like resource use, effects of environmental degradation, capacity for mitigation and adaptation, clean

209 Aguilar and others, above n 48.

210 Patricia Glazebrook “Women and Climate Change: A Case-study from Northeast Ghana” (2011) 26(4) *Hypatia* 762.

211 Hemmati and Röhr, above n 113, at 26.

development projects and national-level environmental reporting would be infinitely more informative if the data were differentiated between men and women (as well as other social axes).

Moreover, there is a basic need to educate everyone from policy-makers to on-the-ground project managers about what “gender” actually means, how it is relevant to environmental issues and how it can be incorporated into responses. A study by Kronsell shows how even in one of the world’s most gender-progressive countries — Sweden — few stakeholders knew what a gender perspective was. She says that “the knowledge about the gender relevance of climate issues and what a gender perspective would entail was rudimentary at best”.²¹²

Similarly, the farcicality of “mainstream” approaches to gender in the environmental context — such as those exposed in parts 3 and 4 of this article — needs to be problematised. For example, gender policies in climate change need to extend beyond simplified expression which presents the system as gender neutral but empirically dominated by men. Moving forward, it will be important to continue to advocate for the inclusion of references to women and gender in environmental treaties and binding agreements. This is because legal references speak the language of the system. Unlike moral arguments, “only if gender aspects are integrated in the documents will there be a chance to refer to them and hold governments accountable to their commitments”.²¹³ International organisations and norm-entrepreneurs can help this process along by developing (in an inclusive way) gender-sensitive ecological strategies as “best-practice” guidelines for other states and entities.²¹⁴

Two such examples of ethical frameworks which could guide policy-making are the previously referred to Women’s Action Agenda 21 and the Earth Charter. The Earth Charter is the latest iteration of fundamental ethical principles and practical guidelines and its pedigree continues to grow with endorsement by forward-thinking stakeholders.²¹⁵ It enjoys “broad public ownership” due to its democratic and consultative process of formation. The Charter puts forward a truly universal ecological understanding of “earth democracy”. According to Ron Engel, earth democracy is “a revival of some of the deepest historical and normative roots of the thick interpretation of democracy”.²¹⁶

212 Kronsell, above n 148, at 11.

213 Hemmati and Röhr, above n 113, at 29.

214 Aguilar and others, above n 48.

215 See generally J Ronald Engel and Klaus Bosselmann *The Earth Charter: A Framework for Global Governance* (KIT Publishers, Amsterdam, 2010).

216 J Ronald Engel “Contesting Democracy” in J Ronald Engel, Laura Westra and Klaus Bosselmann (eds) *Democracy, Ecological Integrity and International Law* (Cambridge Scholars Publishing, Newcastle Upon Tyne, 2010) at 37.

Encouragingly, the Earth Charter was not purely the result of women’s activism but came about through the recognition by men *and* women of the social dimensions of a healthy planet. In this way it is an apt manifesto for gender-sensitive ecologism. Ideas of strong sustainability, ecological integrity and the “community of life” are immanent in the text of the Charter.²¹⁷ At principle 11 it affirms the fundamental tenet of gender-sensitive ecologism: that gender equality and equity are not only matters of justice but are “prerequisites to sustainable development”. In the section titled “The Way Forward” it acknowledges that what is required is “a change of mind and heart”. The Earth Charter, like other ethical frames before it, provides an articulate ethical framework that could be used as the basis of legal regulation and global governance.²¹⁸

In sum, we need effective operationalisation of gender issues into gender-sensitive environmental policy both from the bottom up and the top down. It is clear that technological solutions are not enough to ensure sustainability. The West’s standard of living cannot be generalised and it would be paradoxical if gender equality meant equal opportunity to exploit and control nature. Fundamentally, there are deeply contentious issues of redistribution tapping at the window of neoliberal economic dominance. Thus, it is important that when a principle such as “common but differentiated responsibilities” is given legal effect, that it takes into account social as well as gender-specific differences.²¹⁹

The goal is to re-embed the economy in social and natural relationships, and to link global social justice with environmental and gender justice.²²⁰ Global governance can address these issues by framing “economic activity for a good life rather than for growth”.²²¹ Thus concepts like “buen vivir” (the good life) or the “precautionary economy” (“vorsorgendes wirtschaften”) proposed by Adelheid Biesecker remind us of the actual purpose of economics — to sustain human life.²²² The insight of gender-sensitive ecologism is that “the ‘good life’ ... means that one cannot separate between the overthrow of masculine power structures and the promotion of alternative economic practices and relations to nature”.²²³ These must be the goals of future global governance.

217 The Earth Charter (launched 2000) <<http://www.earthcharterinaction.org/content/pages/Read-the-Charter.html>>.

218 See Engel and Bosselmann, above n 215.

219 Wichterich, above n 89, at 21.

220 At 41.

221 At 44.

222 At 44.

223 At 46.

6. CONCLUSION

This analysis has undertaken to critically examine the processes and outcomes of international environmental policy and law-making from a “gender-sensitive ecological” perspective. The immanence of gender bias in law and society and the lack of feminist voice in international environmental law made this a profoundly challenging task. However, as with most areas of critical feminist analysis, once we uncover the audacity with which women and ecological concerns are continually sidelined, the agenda becomes a compelling one. We find that while anthropocentrism is the ideology giving rise to the current ecological crisis, gender relations likewise have a lot to answer for in an environmental context. Thus, part 2 of the article set out the feminist ecological perspective that allows us to see the relational character of environmental problems and the operation of patriarchal dualisms in the exploitation of women and nature. It linked the increasingly evident gender-differential impacts of environmental degradation to unequal structural conditions embedded in social, political and economic institutions.

Part 3 began by critically examining the absence of women and gender in international environmental law. It gave a detailed analysis of the emergence of women’s activism and “gender” as a relevant issue in the context of the climate change regime. It revealed that despite increased attention, the core arguments of the Women and Gender Constituency continue to be ignored. Part 3 also drew attention to the lack of women and gender sensitivity in climate finance mechanisms, despite their purported sustainable development objectives.

Part 4 explained how the gender deficit of international environmental law is an inherited congenital defect from public international law. It went on to critique women’s lack of participation and the relegation of gendered and holistic understandings of ecological crises to soft law instruments. Finally, it critiqued the dominance of market and technological approaches to the environment as paradoxical and ignorant of the social and ethical changes that are needed. Part 5 proposed a practical framing of gender-sensitive ecologism to guide the development of global governance. It argued that ecological experiences must be linked with gender inequalities and other social injustices at micro and macro levels.

Moving forward, it is hoped that gender-sensitive ecologism can continue to articulate more sophisticated understandings of gender and environmental problems and inform the drafting of better law and policy. As Hemmati and Röhr explain, while there is a growing awareness of and rhetorical commitment to gender issues, really integrating gender sensitivity into

environmental protection will remain a big challenge.²²⁴ If this task seems formidable we may contemplate the words of Brian Urquhart who said that “struggle is the essence of life ... if we tire of this effort, it will be at our extreme peril”.²²⁵

224 Hemmati and Röhr, above n 113, at 26.

225 Brian Urquhart *A Life in Peace and War* (Harper & Row, New York, 1987) at 378.