



# Legal Response Initiative

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## Gender equality in a new climate agreement\*

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### Gender and the climate negotiations

All over the world the economic, political and legal clout of women is less than that of men. Women experience unequal access to resources and decision-making processes. In developing countries, many women are directly dependent on local natural resources for their livelihoods. They are charged with securing water, food and fuel for cooking and heating. As a result women in developing countries are generally more vulnerable to the adverse impacts of climate change and less able to cope with them.

Recent studies demonstrate that gender equality and women's empowerment are central to development and environmental sustainability. Gender issues have, therefore, been increasingly recognised as an integral part of the international community's efforts to address climate change. All measures taken to respond to climate change - whether focused on adaptation, loss and damage, mitigation, finance, technology or capacity building - have a gender dimension.

Due to increased outreach and advocacy on the linkage between gender and climate change, in Doha in 2012, the

eighteenth session of the Conference of the Parties (COP) to the UN Framework Convention on Climate Change (UNFCCC) adopted decision 23/CP.18 on promoting gender balance and improving the participation of women in UNFCCC negotiations and in the representation of parties in bodies established pursuant to the Convention or the Kyoto Protocol (KP)<sup>1</sup>.

The decision calls for climate policy to address the needs of men and women equally and puts forward a general goal of gender balance. Parties are invited to gradually but significantly increase the participation of women in delegations and UNFCCC and KP bodies. To track progress the secretariat will maintain information on the gender composition of bodies and delegations and report to the COP.

To allow the COP to consider the information being tracked by the secretariat, the issue of gender and climate

\* By Linda Siegele and Christoph Schwarte. The paper relies in parts on ideas developed during a workshop held in Bonn in June 2014.

<sup>1</sup> For a compilation of all relevant decisions refer to: Bridget Burns and Joanna Patouris, *Gender and Climate Change, Technical Guide to COP 20, 2014*.

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change is now a standing item on the agenda of sessions of the COP. Since Parties agreed to the COP 18 decision, a number of gender-related activities have taken place under the Convention and KP processes. For example, Parties and organisations have made submissions on options and ways to advance the gender balance goal, which are compiled in a miscellaneous document by the UNFCCC secretariat.<sup>2</sup> In addition, the secretariat has prepared a Report on Gender Composition.<sup>3</sup>

## Gender in the 2015 agreement

In the Ad-hoc Working Group on the Durban Platform (ADP)<sup>4</sup> parties to the UNFCCC are currently negotiating a new international agreement on climate change. Parties have agreed to adopt this agreement in 2015 with the aim of its entering into force by 2020. This process provides an important opportunity to raise climate-related gender concerns and push for their inclusion in a new global deal.

In both written submissions and oral interventions to the ADP process, Parties and groups of Parties have called for the integration of gender into the 2015 agreement. There has been support across many countries, developing and developed alike, to treat gender equality as either a guiding principle of the 2015 agreement, a cross-cutting element, or both.<sup>5</sup>

### Parties' statements

"...gender equality should be included in the basic principles of the new instrument..."

**Least Developed Countries Group, June 2014**

"...gender equality should be a fundamental principle of the 2015 agreement to ensure effective global action[s]..."

**Environmental Integrity Group, March 2014**

"...the integration of gender considerations as a cross-cutting issue that needs to be mainstreamed..."

**African Group, June 2014**

"...the 2015 agreement should...adopt a gender perspective... [and] should have [a] stand-alone clause...and be applicable to all of its provisions..."

**Mexico, UNFCCC, June 2014<sup>6</sup>**

This short paper outlines a set of technical options on how gender concerns might be integrated in a new international agreement on climate change. It does not make any substantive proposals or promote specific views and opinions. Examples presented are meant to illustrate the basic legal tools and techniques available to the international community to strengthen gender equality via a new agreement. While in practice these tools and techniques are often closely linked, for the purposes of this paper they have been differentiated as follows: (1) textual provisions, (2) subsequent decisions, (3) new bodies and

(4) procedural rules.

## Textual provisions

A variety of approaches are available to reflect gender equality in the 2015 agreement. As a general (guiding or cross-cutting) principle, it could be introduced either in the preamble or in the substantive provisions of the agreement. Preambular language helps set the context for the operative part of an agreement but has no binding legal value. The preamble may, however, be used to guide the interpretation of the following provisions and generally underline the importance of gender equality in the context of climate change.

For example, the following notions may be considered (or recognised, acknowledged, recalled etc.) in a preamble:

- women and men have an equal voice in decision-making on climate change and broader governance processes,
- women and men shall be given equal access to the resources necessary to respond to the adverse effects of climate change, or
- all climate change policies, processes and actions shall follow a gender-sensitive approach.

Including gender equality provisions in the operative part of a new agreement would further strengthen the role of gender equality in future efforts to address climate change. If the agreement is (at least partially) framed as a new legal instrument adopted under the UNFCCC, a stand-alone principle, commitment or other provision on gender equality would have to be placed within the context of the Convention and relate to its existing guiding principles.

For example, a principle-related provision could read as follows: Gender equality and women's empowerment are critical to achieving the ultimate objective of the Convention. Accordingly, Parties shall promote gender equality and women's empowerment and ensure their full and effective participation in climate change policies, programmes and decision-making at all levels.

While such a provision reflects a broad general intention,

<sup>2</sup> The compilation of submissions is available at <http://unfccc.int/resource/docs/2013/cop19/eng/misc02.pdf>.

<sup>3</sup> The report is available at [http://unfccc.int/documentation/documents/advanced\\_search/items/69111.php?preref=600007569](http://unfccc.int/documentation/documents/advanced_search/items/69111.php?preref=600007569).

<sup>4</sup> The ADP was established by COP decision 1/CP.17 with a mandate to develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention and to finish its work by COP 21 (Paris, 2015) and for the outcome of its work to come into effect and be implemented from 2020.

<sup>5</sup> See Burns, B "Towards a New Climate Agreement – Update from June Climate Talks" (30 June 2014) available at <http://www.wedo.org/themes/sustainable-development-themes/climatechange/towards-a-new-climate-agreement-update-from-june-climate-talks>.

<sup>6</sup> Gender Equality Language and Entry Points: ADP Submissions / Interventions and SB40 Draft Conclusions (Women's Environment and Development Organization, 29 June 2014) available at [http://www.wedo.org/lwp-content/uploads/Gender-Equality-Language\\_June2014.pdf](http://www.wedo.org/lwp-content/uploads/Gender-Equality-Language_June2014.pdf).

more specific clearly defined activities or outcomes would also indicate a stronger, possibly obligatory commitment by the Parties. In the same way Article 4 of the UNFCCC envisages the development of national inventories or scientific cooperation, a new agreement could add obligations for national policies and measures on mitigation and adaptation to include gender equality considerations.

## 2 Subsequent decisions

Any aspirational language and general commitment or mandate included in a new agreement, would provide a foundation for further developments post 2015 and possibly lead to a natural progression towards additional measures, processes and institutions.

Nevertheless, by anchoring a mandate to take further steps to improve women's participation, enhance gender balance and develop policies that address the needs of women and men equally in the new agreement, Parties would instantly reinforce the provisions of the Doha decision (23/CP.18) on gender balance. While it is unlikely that a concrete and detailed set of measures will be agreed in the short time to 2015, a new agreement could delegate the authority to gradually define and adopt such measures to new or existing bodies. Relevant areas of activity could, for example, include:

- Preparing gender equality guidelines to be incorporated into all initiatives, programmes and processes under the new instrument;
- Providing opportunities for capacity building of both women and men on issues associated with the development of gender-sensitive climate change policy;
- Developing model rules and regulations to measure success in promoting gender balance and elaborating gender-sensitive climate policy;
- Integrating gender equality criteria in accountability and reporting mechanisms; and
- Establishing additional bodies and institutions to strengthen the linkages among gender-interested stakeholders, both inside and outside the Convention.

## 3 New bodies

In order to support the effective consideration of gender issues under the UNFCCC and to ensure a degree of successful implementation and follow-up, the parties could decide to establish a dedicated body or task force. This could be, for example a team of gender specialists to promote the effective implementation of urgent work on gender and climate change or a more informal platform to strengthen and facilitate linkages among gender-interested stakeholders.

The specific tasks and responsibilities of a new body would have to be agreed by the Parties. A provision in a new agreement may read, for example: A committee on gender and climate change is hereby established to advise Parties and other bodies responsible to take decisions under this Agreement on gender issues. The committee shall consist of one man and one woman (or another ratio, minimum threshold or composition) from each of the five official United Nations regions, LDCs and SIDS.<sup>7</sup> It shall perform, inter alia, the following functions:

- Integrate and mainstream gender issues into the joint efforts of parties to meet the ultimate objective of the Convention;
- Review the operation and functioning of all bodies responsible to take decisions under this agreement, including their rules of procedure, to ensure equal and effective participation of women in decision making processes;
- Promote and facilitate the exchange of information on integrating and mainstreaming gender issues in measures adopted by the Parties to address climate change and its effects;
- Commission gender-specific statistical analysis of vulnerabilities of women to climate impacts, especially those women living in particularly vulnerable developing countries;
- Monitor and review domestic policies, legislation and actions in facilitating the ability of women and other vulnerable groups to address the adverse effects of climate change;
- Issue guidelines on the integration and mainstreaming of gender issues into legal and institutional frameworks addressing climate change, at all levels; and
- Make recommendations on matters necessary for the full integration of gender issues in the implementation of this agreement.

Additional decisions by the parties may be necessary to determine selection criteria, necessary qualifications, terms of office etc. in order to ensure broad and transparent participation in the new committee. Those decisions could be immediately reflected in a 2015 agreement or be taken subsequently.

On the basis of the latter approach, the relevant provision in a new legal instrument could read, for example: Parties to this Agreement shall, at their first meeting, appoint on an interim basis seven women (and a certain number of men, another ratio or threshold) from its midst for a period not

<sup>7</sup> The five UN regions are Africa, Asia, Latin America and the Caribbean, Central and Eastern Europe, and Western Europe and others. Given the long-recognised vulnerabilities to climate change of LDCs and SIDS, it is common to provide them with special representation on UNFCCC committees.

exceeding one year to make recommendations on the further process for the nomination and appointment of the members of the committee to be adopted by the Parties at their next meeting.

## 4 Procedural rules

In addition to substantive provisions, procedural tools may help to gradually improve gender balance in delegations and bodies established under the UNFCCC. In many countries the under-representation of women has been, at least in part, successfully addressed through quotas (for seats in parliament, positions in government or recruitment places). The quota system requires those who control institutional processes to ensure that women participate in growing numbers and that existing barriers are removed. Quotas can be applied as a temporary measure until the relevant objective is achieved.

If the current climate negotiations result in an international treaty in 2015, there would be (at least) one new decision making body - the COP serving as the meeting of parties to the new agreement. This body is likely to follow the same draft Rules of Procedure applied by the COP but could decide to modify and supplement them. This may, equally, provide an opportunity to review the existing rules generally in light of the gender discussion and integrate additional requirements.

Formal quotas on gender would chart new territory in international relations. Technically, the composition of delegations and their compliance with a formal percentage quota for women, could be monitored in connection with the review of credentials (Rule 19 of the draft Rules of Procedure). Alternatively, decision making in different bodies may be tied to a minimum requirement for the participation of female delegates. Under the draft Rules of Procedure (being applied) a debate requires the presence of at least one third of parties. The presence of two thirds of parties (quorum) is required to take a decision.<sup>8</sup>

These quorum requirements could be tailored to include a similar procedural threshold with regard to women delegates who represent parties and act on their behalf during the course of decision making processes (whether by voting or consensus). A corresponding provision in a new agreement could, for example, state: The quorum for decisions by Parties requires the presence of at least two thirds of the Parties to this Agreement of which at least one third shall be represented, at the time when the decision is taken, by women. Such a formal requirement related to the number of women present and representing a party might be limited to specific issues or decisions.

<sup>8</sup> Rule 31, draft Rules of Procedure, available at <http://unfccc.int/resource/docs/cop21/02.pdf>.

The international negotiations under the United Nations Framework Convention on Climate Change (UNFCCC) are amongst the most complex multilateral law and policy making processes ever. Meetings are characterized by the use of technical jargon, reference to legal principles and procedural norms. The Legal Response Initiative (LRI) supports delegates from poor and particularly climate vulnerable developing countries as well as civil society observer organizations free of charge through a global network of lawyers from law firms, barrister chambers and universities. They provide hands-on assistance during meetings, publish briefing papers and build the capacity of lawyers and negotiators from developing countries. We constantly seek experienced lawyers with expertise in one or more areas of the law from any jurisdiction with a good command of English to extend our network of pro bono legal expert advisers. Please contact the advice coordinator directly if you are interested in joining the network: [coordinator@legalresponseinitiative.org](mailto:coordinator@legalresponseinitiative.org). If you require legal advice in connection with the international climate negotiations please contact: [enquiries@legalresponseinitiative.org](mailto:enquiries@legalresponseinitiative.org)



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