The reflexive relationship between climate change and various forms of inequality is increasingly being highlighted by the international system for the promotion and protection of human rights. Human rights monitoring mechanisms, ranging from the United Nations Human Rights Council and its Special Procedures to the Treaty Monitoring Bodies and the Office of the High Commissioner for Human Rights, have noted that discrimination and inequalities constitute both causes and consequences of climate change–related injustices.1

Intersectionality is a concept that has been used by social theorists to critique the manner in which laws and policies developed from a single identity perspective ignore, and thereby reinforce and perpetuate, the experiences of oppression faced by people who exist at the crossroads of multiple characteristics.2 Intersectional approaches acknowledge that discrimination and inequality are dynamic and interactive constructions rather than fixed in time and space.3 Beyond their deployment as observational aids designed to render visible complex power relations, intersectional methods also serve a transformative purpose in that they seek to redress the structural factors and institutions that nurture and sustain inequalities.4

The utility of intersectionality as an analytical methodology and as a tool for inclusive, innovative policy-making has gained wide acceptance from scholars and activists working from the standpoint of critical race and feminist studies.5 The adoption of intersectional approaches to non-discrimination by international human rights monitoring mechanisms is, however, still in its infancy.6 The application of an intersectional paradigm to human rights analyses of the impacts of climate change is even less developed, although there has been some work done on intersectionalities and climate change from a socio-ecological perspective.7

This chapter seeks to outline the ways in which the UN human rights monitoring mechanisms are beginning to address intersectional forms of inequality and to map some pathways for future work by the international human rights system on the issue of intersectionalities within the context of climate change.

The first section briefly introduces theories of intersectionality and the manner in which these have been applied within the context of climate change policies. The role of the UN human rights treaty monitoring bodies and their increasing engagement with the idea of
Intersectional discrimination is then addressed in the second section. The work of the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) and of the Committee on the Rights of the Child (CRC Committee) is highlighted, as these are the institutions that have, thus far, produced the most significant interpretive guidance on the issue of intersectional discrimination and on the relationship between human rights and climate change. The contribution of the Human Rights Council and its Special Procedures to the development of intersectional approaches to climate change is outlined in the third section of the chapter. The conclusions examine the potential of intersectionality as an analytical tool and as a form of policy and legislative practice that could be developed to advance discussions within the UN human rights monitoring system on the linkages between climate change, sustainable development and human rights.

**Intersectionality, equality and climate change**

Intersectionality is a form of resistant knowledge developed to unsettle conventional mindsets, challenge oppressive power, think through the full architecture of structural inequalities and asymmetrical life opportunities, and seek a more just world.

Social theorists have demonstrated that gender, ethnicity, disability, age, socio-economic status and other identity characteristics are reflections of social hierarchies that shape political and economic power and promote or limit an individual’s enjoyment of rights and capabilities. These accounts offer a critical counterpoint to traditional approaches to anti-discrimination law and social policy-making, which tend to reduce inequality to a singular attribute and, in the process, fail to identify and confront the complex power relations that constitute and reinforce oppression.

From a socio-ecological perspective, a number of authors have drawn attention to the need for policies and legislation to better reflect and value the mutually dependent relationship between humans and nature. These theorists, many working within an eco-feminist paradigm, have sought to highlight the ways in which economic, political and social institutions have been built to serve the interests of powerful elites in exploiting the environment. To this end, a number of authors have used intersectional forms of analysis to draw out the systems of power grounded in anthropocentrism, racism, classism, colonialism and sexism that underlie most human-nature interactions. These studies interrogate dominant modes of production, consumption and natural resource use and the ingrained assumptions about human behaviour and the characteristics of a ‘good life’ upon which these are based.

Recent advocacy and analytical work on intersectionality and climate change has stressed the need to incorporate the experiences of indigenous and rural women, children and youth, and other historically marginalized groups within the development and monitoring of climate change mitigation and adaptation policies and programmes. These interventions seek to emphasize the interconnectedness of demands for social equality and environmental sustainability, and they incorporate the environment as a stakeholder that must be given ‘standing’ within decision-making structures. The expansion of intersectional methods to encompass the interests of non-human species constitutes a significant theoretical and practical development.

As with the work being done in socio-environmental studies, the application of intersectional methods within discussions on human rights and climate change will require the adoption of a ‘radically cross disciplinary stance’. It remains to be seen whether the international human rights system is sufficiently permeable to respond to the demands and the challenges to existing institutional structures that this kind of interdisciplinarity presents.
UN human rights treaty monitoring bodies and intersectional discrimination

The adoption of the core international human rights treaties and the subsequent practice these instruments have inspired has broadened the reach of international anti-discrimination law. Developments in equality law have occurred not only in terms of the definition of the acts or omissions that may constitute discrimination, but also in relation to the grounds upon which discrimination must be prohibited.

The oldest of the multilateral human rights treaties, the Convention on the Elimination of Racial Discrimination (CERD), prohibits distinctions based on ‘race, colour, descent, or national or ethnic origin’. The two International Covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), added an open-ended list to the categories of prohibited discrimination that includes, ‘sex, language, religion, political or other opinion, national or social origin, property, birth or other status’.

Treaty provisions on non-discrimination in international and regional instruments now routinely refer to ‘other status’, in order to leave the potential categories of prohibited grounds open, thus allowing the mechanisms a certain degree of latitude in their responses to newly identified forms of inequality and oppression. The category of ‘other status’ has been read as including a number of different attributes, such as age, disability, migrant or refugee status, place of residence, health situation, status of deprivation of liberty, sexual orientation, physical appearance and poverty.

In recent years, a number of the human rights treaty monitoring bodies, including the CERD Committee, the Human Rights Committee (HRC) and the CESCR, have begun to mention forms of multiple and intersectional discrimination within their work. The incorporation of intersectional approaches to the interpretation of equality guarantees in international human rights law is occurring, albeit in a piecemeal, ad hoc manner that varies depending on the mechanism concerned.

Committee on the Elimination of Discrimination Against Women

The CEDAW Committee has gradually begun to move from a ‘double discrimination’ paradigm towards a more fully fledged approach to intersectionality that recognizes the existence of ‘intersecting and compounded forms of disadvantage’. Several of the Committee’s decisions in individual cases submitted under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women have recommended transformative remedies to address situations of intersectional discrimination against women.

In its more recent interpretive General Recommendations, the Committee emphasizes the obligations of States Parties to take positive measures to ensure that policies and legislation respond to the particular circumstances of women-headed households, widows, religious and ethnic minority women, African-descendent and indigenous women, women with disabilities, elderly women and other groups. In its 2016 General Recommendation no. 34 on the rights of rural women, the Committee notes, ‘Women working in rural areas, including peasant, pastoralists, migrants, fisherfolk and landless, also suffer disproportionately from intersecting forms of discrimination’. The CEDAW Committee’s General Recommendation no. 37 on disaster risk reduction in a changing climate, due to be adopted in 2018, also addresses the need for coherent policy and legislative frameworks on climate change mitigation and adaptation that reflect the experiences of diverse groups of women, including those in rural and urban settings, indigenous women, women with disabilities, girls and older women.
While the Committee has pointed out the need for States parties to address the ‘macroeconomic roots’ of gender inequality and climate change, it has not yet developed specific policy recommendations concerning the ways in which these phenomena should be tackled. In the absence of far-reaching proposals for institutional reform, the treaty body tends to return to well-worn techniques for redressing inequalities within existing power structures and frameworks, such as the adoption of participatory policy-making processes, temporary special measures including quotas, interventions to confront harmful stereotypes and discriminatory social and cultural norms and practices, legislative reform and the collection of disaggregated data. These recommendations are certainly important and constitute the building blocks for the application of an intersectional paradigm within the Committee’s work; however, they do not contribute to the radical transformation of power relations that intersectionality theorists have frequently proposed.

**Committee on the Rights of the Child**

Like the CEDAW Committee, the Committee on the Rights of the Child has also begun to widen the scope of its exploration of children’s rights to address the experiences of particular groups of children, including indigenous children, migrant and asylum-seeking children, girl children, children with disabilities and adolescents.

The CRC Committee has recently started drawing attention to the impact of climate change on children in its Concluding Observations and Recommendations on the periodic reports of States Parties to the Convention on the Rights of the Child. In its assessment of the report of Fiji in 2014, the Committee noted that ‘children face more acute risks from disasters and are more vulnerable to climate change than adults’ and highlighted the situation of children and families living in coastal and low-lying areas, particularly those located in the outer islands, who are experiencing loss of land and freshwater resources as well as reduced opportunities for agriculture and subsistence living.

In 2016, the Committee held a Day of General Discussion on children’s rights and the environment. The event included an examination of the impact of environmental harm on the rights of children in ‘vulnerable situations’ and it also addressed the need to ensure that ‘children of different ages, gender and social backgrounds . . . participate in decisions and actions to prevent, respond and adapt to environmental harm’.

**Intersectionality in the human rights council**

The Human Rights Council has consistently referred in its resolutions on climate change to the need to take steps to respect, protect and fulfill the human rights of ‘marginalized groups’ and people in ‘vulnerable situations’. High-level discussion panels on climate change within the Council have also examined intersectionalities in connection with the right to health and children’s rights.

A number of the Special Procedures of the Human Rights Council have engaged in intersectional forms of analysis. In relation to climate change and intersectionalities, the Special Rapporteur on Human Rights and the Environment has compiled a report that summarizes the work of various human rights mechanisms on the topic. Of particular note in this regard are the reports of the former and current Special Rapporteurs on the Right to Food – both of which have drawn attention to the specific impacts of climate change on the rights to food for rural women, small-holder farmers, people living in poverty and indigenous communities.
The Special Rapporteur on Water and Sanitation has also highlighted the fact that intersectional inequalities are exacerbated by climate change, particularly for people living in poverty.47

Recommendations related to the human rights impact of climate change and the obligations of governments to take effective measures, in particular to protect ‘marginalized and vulnerable groups’ in connection with the accessibility of the rights to food, water and sanitation, have been made within the framework of the Universal Periodic Review process.48

The Human Rights Council and the treaty bodies have seemingly embraced the concept of intersectional inequality as part of their discourse in connection with climate change. There is little indication, however, that the human rights mechanisms have begun to engage in the substantially more difficult process of moving beyond the rhetorical acknowledgement of intersectionality as an observational aid to render visible the experiences of particular groups in order to use this knowledge to challenge and reform existing power structures.

Intersectionality, climate change and international human rights mechanisms: future directions

There is ongoing debate as to the utility of intersectionality as a practical tool for activists, policy makers, legislators and the judiciary. Objections to the use of intersectional methodologies to inform policies and law-making have mainly centered on the concern that splitting identity-based groups into smaller sub-divisions (e.g. ethnic minority women or older persons with disabilities) will dilute the political power of group-based equality demands.49 There is also a degree of skepticism as to the ability of institutions and policy makers to successfully capture the complexities of an intersectional analysis within policies and laws. Others have argued that the simple addition of further sub-groups to existing anti-discrimination frameworks is not sufficient to transform the structures of power and domination that create and reinforce inequalities.50

Despite this reticence concerning the application of intersectional models in certain circles, there are signs that international human rights mechanisms are beginning to consider intersectionalities within a number of contexts.51 The development of intersectional approaches to discrimination by the various components of the international human rights monitoring system has the potential to change the way in which these mechanisms observe, measure, prevent and remedy different forms of inequality.52

The international human rights system is increasingly recognizing the need to engage with the environmental and climate change communities. It is now widely accepted that the impacts of climate change are not equally shared and that particular segments of the population – generally those people already facing violations of basic human rights – will be most affected. The application of an intersectional approach to human rights and climate change has the potential to promote substantive equality through responsive and inclusive planning, policies, legislation and remedies. Intersectional methodologies highlight positive obligations for States and other duty bearers to identify marginalized and particularly affected population groups and to ensure their participation in the conceptualization, implementation and monitoring of climate policies and legislation.

Beyond the imperative of inclusivity – something that intersectional and rights-based approaches share – an intersectional lens may be used to observe and question the normative assumptions that underlie social, economic and political institutions and forms of behavior. When deployed in this way to unsettle dominant narratives about socio-economic development and resource use, an intersectional analysis could be used to inspire radical shifts in thinking about the relationship between human rights and climate change.
Notes


8. V. M. May, supra note 4, at xi.


14. See, e.g., K. Vinyeta, K. P. Whyte and K. Lynn, supra note 7; E. Walsh, ‘Why We Need Intersectionality to Understand Climate Change’, Intercontinental Cry (8 June 2016); A. Bohr, ‘Climate Change’s Intersectionality’, Whitman Wire (11 February 2016).


and Cultural Rights (CESCR), General Comment No. 6, The economic, social and cultural rights of older persons, 7 October 1996, at para 12; CESCR, General Comment No. 20, Non-discrimination in economic, social and cultural rights, UN Doc. E/C.12/GC/20, 2 July 2009, at para 29.
21 Committee on the Elimination of Racial Discrimination (CERD Committee), General Recommendation No. 31, the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System, UN Doc. CRPD/C/GC/31 (20 August 2004).
22 CESCR, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights, UN Doc. E/C.12/GC/20 (2 July 2009), at para 34.
23 Ibid., at para 33.
24 Ibid., at para 27.
25 CAT, General Comment No. 3, Implementation of Article 14 by States Parties, UN Doc. CAT/C/GC/3 (13 December 2012), at paras 8, 32.
27 CEDAW Committee, Concluding Observations: Peru, UN Doc. CEDAW/C/PER/CO/6 (2 February 2007), at para 36.
29 HRC, General Comment No. 18, Non-Discrimination (10 November 1989). While the Committee does not expressly refer to intersectional or multiple forms of discrimination, it insists upon substantive (de facto) equality as the standard that it uses to assess state compliance with obligations under Articles 2 and 26 of the ICCPR. The Committee therefore argues that differential treatment is justified in order to redress inequalities and in paragraph 8, it cites the example of the provisions in Article 6(5) of the ICCPR that prohibit the death sentence being carried out on pregnant women.
30 CESCR, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights, UN Doc. E/C.12/GC/20 (2 July 2009), para 17, ‘[s]ome individuals or groups of individuals face discrimination on more than one of the prohibited grounds, for example women belonging to an ethnic or religious minority. Such cumulative discrimination has a unique and specific impact on individuals and merits particular consideration and remedying.’ The CESCR does not go further to suggest which particular measures States must take to consider or remedy ‘cumulative’ or multiple discrimination.
31 Bourke Martignoni and Truscan, supra note 6.
32 Ibid.
33 Ibid.
36 CEDAW, supra note 34, para. 10.
37 Ibid.
38 Quinn, supra note 9.
39 Committee on the Rights of the Child (CRC Committee), General Comment No. 11, Indigenous Children and Their Rights Under the Convention, UN Doc. CRC/C/GC/11 (12 February 2009); CRC Committee, General Comment No. 6, Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, UN Doc. CRC/C/GC/2005/6, 1 September 2005; CRC Committee, General Comment No. 20 on the Implementation of the Rights of the Child During Adolescence, UN Doc. CRC/C/GC/20, 6 December 2016.
43 HRC, supra note 1.
44 HRC, Panel Discussion on Climate Change and the Rights of the Child, 1 March 2017; HRC, Panel Discussion on Climate Change and the Right to Health, 3 March 2016.
50 Ibid.
51 Bourke Martignoni and Truscan, supra note 6, at 103.
52 Petrova, supra note 49.