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INTERSECTIONAL DISCRIMINATION OF WOMEN WITH DISABILITIES AND LEGAL REGIME OF ENVIRONMENTAL PROTECTION

Abstract

This article will analyze three legal regimes that serve the protection of the environment, and which recognize the importance of the gender dimension of equality – the regime of climate change, the regime of biodiversity and the regime of desertification seen through the context of disability. The relationship between intersectional discrimination of women with disabilities and environmental protection will be examined.

The paper will explain the concept of intersectional discrimination. Also, it will examine which model of approach to disability is appropriate when it comes to improving the position and empowerment of women with disabilities. It will be considered whether and in which way the international instruments related to the legal regimes of climate change, biodiversity and desertification regulate the position of persons with disabilities.

People with disabilities are one of the most vulnerable categories when it comes to the effects of climate change. Women and girls with disabilities are in an even more unenviable position. Forced migrations due to the harmful effects of climate change, which will certainly happen in the future, will be especially difficult for this category of people, so it can be said that this group of people is discriminated against. The second part of the paper will present proposals on how it is possible to strengthen and improve the position of women and girls with disabilities in these regimes.

Key words: *Women with disabilities; Intersectional discrimination; Environment; Climate change; Biodiversity.*

I INTRODUCTION

People with disabilities are the most vulnerable category of people to the consequences of environmental damage. This category of people often faces discrimination because of their vulnerable position. Women and girls with disabilities are in an even more unenviable position, because in addition to the usual barriers and prejudices faced by people with disabilities in general, they face additional discrimination based on their gender and gender identity,

which leads to intersectional discrimination. The Convention on the Elimination of All Forms of Discrimination against Women and other human rights instruments reflect the specific obligations of states to achieve gender equality, promote women's empowerment and fulfil women's rights.¹ Hence, the obligations of states to apply to all their actions, including those taken in relation to the environment, and include an affirmative obligation to prevent foreseeable human rights violations that may result from environmental degradation.²

It can be noticed that the branch of international environmental law is more gender sensitive than other branches of public international law. Legal instruments and agreements adopted over the past decades have begun to integrate language that recognizes and promotes gender equality and human rights, including key multilateral environmental agreements (MEAs) such as the Biodiversity Convention (CBD), the United Nations Framework Convention on Climate Change (UNFCCC), the Paris Climate Agreement,³ the Convention to Combat Desertification (UNCCD).⁴ These legal instruments have recognized the vital role that women play in environmental management and the importance of their full participation in achieving environmental risk reduction goals. Women being disproportionately affected by climate change, they play a crucial role in climate change adaptation and mitigation. Women have the knowledge and understanding of what is needed to adapt to changing environmental conditions and to come up with practical solutions. But they are still a largely untapped resource. Unleashing the knowledge and capability of women represents an important opportunity to craft effective climate change solutions for the benefit of all.⁵ According to the provisions of these agreements, gender equality is the key to maximizing the efficiency, effectiveness and fairness of initiatives, programs and projects aimed at reducing biodiversity loss and tackling climate change. This paper will point out the position of women and girls with disabilities in the legal regime of environmental protection.

1 Countries must work to change harmful gender stereotypes about women and girls and men and boys that perpetuate discrimination and limit opportunities for women and girls to achieve their full potential. Convention on the Elimination of All Forms of Discrimination against Women, art. 5. The United Nations adopted CEDAW on 18 December 1979. New York.

2 For All Coalition: For the Promotion of Gender Equality and Human Rights in the Environment Agreements, [http://www.oas.org/es/cim/docs/ConceptNote-ForAllCoalition\[EN\].pdf](http://www.oas.org/es/cim/docs/ConceptNote-ForAllCoalition[EN].pdf), 2.

3 Paris Agreement, C.N.92. 2016.TREATIES-XXVII.7. d of 17 March 2016, arts. 7(5) and 11(2).

4 Principle 20 of the Rio Declaration on Environment and Development, General Assembly, A/CONF.151/26 (Vol. I), 12 August 1992. Similar formulation, although targeting the specific role that women have in the conservation and sustainable use of biological diversity and combating deforestation is contained in the Preamble to the 1992 Convention on Biological Diversity (United Nations, *Treaty Series*, vol. 1760, 79) and the Preamble of the Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (A/RES/53/191 of 18 February 1999).

5 International Union for Conservation of Nature, Gender and climate change, <https://www.iucn.org/resources/issues-briefs/gender-and-climate-change>.

Firstly it will be considered which concept of disability can contribute the most to reducing intersectional discrimination. Next, the notion of intersectional discrimination of people with disabilities will be analyzed and clarified. Afterwards, it will be examined to what extent the most important international instruments related to the legal regimes of climate change, biodiversity and desertification regulate the position of persons with disabilities and to what extent they are committed to gender equality of women with disabilities. A special part of the paper will be dedicated to the participation of women and girls with disabilities in the development of climate action plans. Forced migration due to the harmful effects of climate change, which will certainly happen in the future, will be especially difficult for people with disabilities. In the concluding remarks, proposals will be presented on how it is possible to strengthen and improve the position of women and girls with disabilities in the legal regime of environmental protection.

II MODELS OF DISABILITY AND ENVIRONMENTAL PROTECTION

As regards the theoretical considerations of the disability model, it is noticeable that the two models play a dominant role. These are the medical and sociological methods. This chapter will analyze which model is best to apply when it comes to the position and participation of people with disabilities in environmental protection.

According to an influential but widely criticized medical model, disability can be understood in terms of the functional limitations of a person with a disability caused by a clinically visible pathological condition. Disability is something that needs to be diagnosed, treated and cured through rehabilitation or normalization.⁶ This model has been heavily criticized given the fact that it is too much based on medical findings, bodily damage and injuries, completely ignoring the social context and barriers that society places on people with disabilities.

Due to the shortcomings of the medical model, a social model of disability emerged. The social model claims that disability is not a physical condition of an individual, but the result of “socially produced inequality and dependence”.⁷ Disability understood in this way is a social category: a means of classifying and treating people in ways that lead to discrimination. The disadvantages of both models of disability are reflected in the fact that they completely ignore personal experiences in dealing with and overcoming barriers faced by people with disabilities. The social model has good reasons to

6 Adrienne Asch and David Wasserman, “Bioethics” in Gary L. Albrecht (ed.), *Encyclopedia of Disability* (2006), 165–171.

7 Karen Beauchamp-Pryor, ‘Visual impairment and disability: a dual approach towards equality and inclusion in UK policy and provision’ in Nike Watson, Alan Roulstone, and Carol Thomas (eds.) *Handbook of Disability Studies*, (2022), 185.

highlight marginalization, exclusion and oppression of people with disabilities from full participation in wider society.⁸ However, such a focus threatens to obscure attention on how the life experience of a person with a disability is shaped by their physical impairments.⁹

A critical realist model of disability has emerged as a form of response to the vulnerability of people with disabilities to the impact of climate change. There are four elements of the critical realist model of disability climate justice: contextual and environmental features that cause vulnerability; adaptive capacity and resilience to climate change; perceptions of and information gathering about climate change risk; and climate action and policy.¹⁰ The critical realist model suggests the value of an interactional approach between individual (medical conditions, impairment, disposition, etc.) and structural (environment, discrimination, support systems, policy, culture, etc.) factors. This approach forms the foundation for a critical realist model of climate justice, which centers the disability experience in developing an empirically testable theory of how people with disabilities adapt to climate change and develop resilience for climate-related disasters.¹¹ Existing research has paid insufficient attention to what factors support the adaptive capacity of woman with disabilities, with twice the number of studies focusing on their vulnerability.¹² Critical realist model of disability represents an upgrade of the social model adapted to the specific challenges posed by climate change, with the fact that many elements of this model can be used for other environmental problems faced by people with disabilities.

III DEFINITION OF INTERSECTIONAL DISCRIMINATION

For the purpose of understanding how sensitive and difficult the position of persons (women) with disabilities is, it is necessary to explain and define the concept of intersectional discrimination and determine its connection with gender identity.

Analyzing discrimination in the traditional way takes one factor as the basis of discrimination, completely ignoring possible discrimination on several grounds. This approach does not take into account the specifics of the

8 See Ljubomir Tintor, *Osobe sa invaliditetom i problem pristupačnosti*, master's thesis, University of Belgrade Faculty of Law, Belgrade, 2018, 6.

9 Jonas-Sébastien Beaudry, "Beyond (Models of) Disability?", *The Journal of Medicine and Philosophy*, Vol. 41, No. 2, 210-220.

10 Molly M. King and Maria A. Gregg, Disability and climate change: 'A critical realist model of climate justice' (2021), 2.

11 *Ibid.*

12 Cadeyrn J. Gaskin, Davina Taylor and Susan Kinnear, "Factors Associated with the Climate Change Vulnerability and the Adaptive Capacity of People with Disability: A Systematic Review", *Weather, Climate, and Society*, Vol. 9, Issue 4, 801-814.

position of a person who has simultaneously been discriminated against on several grounds that are so intertwined that they cannot be separated.¹³ This form of discrimination is called intersectional discrimination. The term was first used by Kimberlé Crenshaw in 1989 in an article dealing with the experiences of black women. Crenshaw developed concepts of intersectionality mainly by considering discrimination based on racial diversity and discrimination based on gender identity.¹⁴ From Crenshaw's analysis, it can be concluded that the position of women with disabilities is extremely sensitive. The position of a woman with a disability is not comparable to the position of a man with a disability, nor can it be compared to the position of a woman without a disability. Intersectional discrimination should be distinguished from other forms of discrimination, especially multiple discrimination that occurs when one person is discriminated against on several grounds, but in a way that these grounds can be separated – a person is discriminated on different grounds at different times.¹⁵

Intersectional discrimination had a significant impact on the creation of environmental protection policy and the creation of measures in the climate crisis. As a result of that influence, Intersectional environmentalism was born. Intersectional environmentalism is an inclusive version of environmentalism that advocates for both the protection of people and the planet. It identifies the ways in which injustices happening to marginalised communities and the earth are interconnected.¹⁶ Women with disabilities may be particularly affected by intersectional discrimination due to disability and less able to evacuate or migrate due to limited mobility or sensory impairment.

When considering the intersectional discrimination of women with disabilities in the legal regime of environmental protection – it is unquestionable. This claim is supported by the fact that there is no participation of persons with disabilities in the creation of multilateral environmental agreements, as well as the non-participation of this vulnerable category in the creation and implementation of measures to reduce environmental risks. Disabled women are also more likely to find it difficult to get involved with activist groups and decision making. Although their experience is extremely important to establish adequate measures to prevent environmental degradation.

13 Mirjana Dokmanović, 'Višestruka i intersekcionalna diskriminacija – Koncept, definicije i uvođenje u zakonodavstvo', *Pravni život*, Vol. 66, No. 10, 2017, 211–226.

14 Kimberlé Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics", *University of Chicago Legal Forum*, Vol. 1989, Issue 1, 1989, 139167. In her analysis, Crenshaw suggests that the position of a person where race and gender intersect is more difficult and unfavorable than the social position of a person who suffers from discrimination on one grounds.

15 Dokmanović, *op. cit.*, 218.

16 Fran Haddock, What is Intersectional Environmentalism, and why is it so Important? <https://curious.earth/blog/what-is-intersectional-environmentalism/>.

IV THE SITUATION OF WOMEN WITH DISABILITIES AND MULTILATERAL ENVIRONMENTAL AGREEMENTS

Every seventh person in the world has some form of disability, but like indigenous communities and other marginalized groups, they are routinely left out of conversations and actions to protect the right to a clean and healthy environment.¹⁷ It is necessary to involve all people with disabilities in the drafting of environmental agreements. With a unique insight into their own situation and barriers, women and men with disabilities have an important role to play in proposing creative and relevant solutions for the advancement of their communities and the protection of our common planet.¹⁸ People with disabilities are often deprived of their rights, face stigma and discrimination, and suffer the consequences of environmental degradation in a unique way. Policies to mitigate the impacts of environmental degradation frequently fail to consider disability rights. For example, during climate change-related emergencies, people who are deaf or blind may not have equal access to warning alerts, and persons with mobility issues are not always able to access shelters. Due to the lack of understanding of the position of persons with disabilities, they are very often more exposed to the greater impact of environmental degradation. Very often, when creating a contract, the negative consequences of degradation on disability are not considered at all. The goal of organizations of persons with disabilities is to involve the international community more intensively in the creation of the MEA. Every disability and experience creates a unique situation, and even well-trained responders will need a way to communicate with individuals about their specific needs.¹⁹

The Stockholm Declaration, as the first international instrument dealing with environmental protection, only mentioned man as a right holder, completely ignoring other categories such as people with disabilities or women. The Rio Declaration adopted 20 years later recognized the importance of women as well as their ability to participate effectively in the economic and social processes of their countries as an essential condition for sustainable development.²⁰ It should be noted that this international instrument does not highlight the position of women with disabilities and the importance of their participation in the creation of environmental policy. The participation

17 Persons with Disabilities and the Environment, https://www.greengrants.org/meettheactivists/disabilities_and_environment/.

18 *Ibid.*

19 Climate-xchange, Climate Justice for All, Including the Disability Community, <https://climate-xchange.org/2021/08/12/climate-justice-for-all-including-the-disability-community/>.

20 Tuohy Honor, "Where Gender Equality and Environmental Law Meet: Appointing a Gender Focal Point for Ireland", *University College Dublin Law Review*, No. 19, 2019, 34–35. Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development. Rio Declaration on Environment and Development – The United Nations Conference on Environment and Development, Having met at Rio de Janeiro from 3 to 14 June 1992, principle 20.

of women with disabilities in the creation of environmental protection policy is also minimal due to gender stereotypes. In the continuation of this paper, it will be pointed out to what extent international conventions that deal with environmental protection and recognize the importance of gender equality emphasize the gender equality of women and girls with disabilities and regulate their position.

1. The impact of desertification on discrimination of women with disabilities

United Nations Convention to Combat Desertification is the only legally binding international agreement linking environment and development with sustainable land management. Land degradation has a much greater impact on women than on men as gender stereotypes reduce access to arable land, water and food. Nowhere in the Convention does it explicitly list persons with disabilities as a particularly vulnerable category of people, but it is clear that all barriers faced by women can be applied by analogy to women and girls with disabilities.

„When land is degraded and usable land becomes scarce, women are affected differently and disproportionately due to their significant role in agriculture and food production, greater vulnerability to poverty, and typically weaker legal protection and social status.“²¹ Gender inequality is in fact a great contribution to increasing the vulnerability of women to environmental damage. Due to poor inclusion, women with disabilities have narrowed access to information so that they cannot access adequate technology to combat desertification and / or mitigate the effects of drought, with the aim of contributing to sustainable development in the affected areas. Desertification has a significant impact on access to adequate food and drinking water, which can endanger the lives of a large number of people (women) with disabilities, given their poor health.

The text of the Convention emphasizes the important role of women in regions affected by desertification and / or drought, especially in developing countries, and the importance of ensuring the full participation of men and women in efforts to combat desertification.²² In addition to emphasizing the important role of women in its Preamble, the importance of ensuring “full participation of both men and women at all levels in anti-desertification programs” was recognized and provisions on women’s rights were introduced in the operational part of the agreement. Thus, consideration of women’s needs and their specific status has become an integral part of the responsibilities of affected countries. Of particular importance for women with disabilities is Article 19, which regulates the adoption of measures designed to raise public

21 UN Woman, <https://www.unwomen.org/en/how-we-work/intergovernmental-support/climate-change-and-the-environment/united-nations-convention-to-combat-desertification>.

22 UN Woman, United Nations Convention to Combat Desertification, <https://www.unwomen.org/en/how-we-work/intergovernmental-support/climate-change-and-the-environment/united-nations-convention-to-combat-desertification>.

awareness and ensure adequate capacity building. A key factor in overcoming discrimination against women with disabilities in the fight against desertification is their involvement in the creation of national programs to combat desertification. People with disabilities know best what form of measures in national plans would facilitate the position of this vulnerable group. Article 13 of the Convention on Desertification, which provides for the cooperation and support of states in drafting action plans, may also be important for women with disabilities.²³ States could contribute to reducing intersectional discrimination by raising the awareness of persons with disabilities about desertification factors in order to take adaptation measures as adequately as possible.

At the end of this part, it is necessary to mention the Abidjan Declaration made at COP15. This Declaration emphasizes the importance of gender equality as a means of accelerating land renewal. States have set a reduction in the gender gap as one of their main goals, among other things, by eradicating discrimination based on disability.²⁴ This objective includes Facilitating access to technology, services and resources to enable effective participation in land renewal efforts.

2. Convention on Biological Diversity and the status of women with disabilities

Of all the major MEAs, the CBD has a relatively long and substantial history of recognizing the links between advancing gender equality and effectively meeting the Convention's goals. When implementing the provisions of the CBD, especially for the period from 2020, it was emphasized that addressing gender equality and the role of women is relevant for achieving different global outcomes of biodiversity. It was pointed out that women are under-represented in decision-making processes related to biodiversity and natural resource management and have much less access, ownership and control over land and natural resources and related benefits compared to men.²⁵ This means that women have less capacity to support the achievement of biodiversity goals, and their knowledge, experience and interests may not be taken into account. This puts women with disabilities at a particularly disadvantageous and discriminatory position, as they are often unable to express their views due to their health condition and, as a result, contribute to the achievement of biodiversity goals.²⁶ Gender norms and stereotypes, many of which

23 The United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (UNCCD), adopted by General Assembly UN, 14 October 1994, art. 13.

24 Abidjan Declaration on Gender and Report from the Gender Caucus, Conference of the Parties Fifteenth session 9–20 May 2022.

25 Towards a gender-responsive post-2020 global biodiversity framework: Imperatives and Key Components, A submission by the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) as an input to the development of the post-2020 global biodiversity framework 1 May 2019.

26 *Ibid.*

are rooted in the cultural patterns of states, and ingrained discrimination against women with disabilities dictate whether women can own or have access to property, land and other resources.

Vision 2050: living in harmony with nature, adopted as part of the new Strategic Plan, can also serve as a solid basis for enhanced consideration of the gender perspective in the global biodiversity framework after 2020.²⁷ The more gender equality of women and girls with disabilities is emphasized in global and national strategic plans, the better the intersectional discrimination will be suppressed. That it is necessary to include persons (women) with disabilities in the implementation and creation of measures to implement the objectives of the CBD is evidenced by the fact that biodiversity loss is not only the extinction of plant and animal species, but a serious threat to human health. Major changes in biodiversity increase risks to human health. Potential consequences of biodiversity loss include the spread of human disease, the loss of medical models, reduced supplies of raw materials for drug discovery and biotechnology, and threats to food production and water quality.²⁸ Reducing biodiversity leads to ecosystem damage that can contribute to the spread of infectious diseases. If it is known that women with disabilities are often of more sensitive health, they are certainly more susceptible to the stated harmful effects of reducing biodiversity. For this reason, women with disabilities have an increased interest in participating in the implementation of the objectives of the Convention and it should be worked on strengthening them and promoting gender equality. Ownership and control of natural resources is essential for the independence and autonomy of women with disabilities and increases their ability to contribute to the conservation of biodiversity.

The Zero draft for a global biodiversity framework after 2020 could be a milestone in improving the position of people with disabilities, especially women, given their importance for biodiversity development. This document is also important in that it explicitly states that the rights of nature should be considered and adopted.²⁹

Considering the reports on the implementation of the CBD and the Convention itself, it can be seen that, as in the case of the Convention to Combat Desertification, the role, importance and position of people with disabilities in the fight to achieve the Convention's goals are not directly mentioned. Also, the gender equality of women with disabilities is not explicitly mentioned anywhere. The gender equality of women with disabilities in this Convention can only be spoken of indirectly. For this reason, states could make biodiversity information accessible.

27 *Ibid.*

28 Eric Chivian, 'Global Environmental Degradation and Biodiversity Loss: Implications for Human Health' in Francesca Grifo and Joshua Rosenthal (eds.) *Biodiversity and Human Health* (1997), 49.

29 Ljubomir Tintor, 'Subjektivitet prirode u međunarodnom pravu – između fikcije i realnosti', *Strani pravni život*, No. 2/2022, 305–325.

3. *Discrimination of women with disabilities caused by climate change*

There are approximately 800 000 000 people with disabilities living in poor countries. Consequently, climate vulnerability and the right to health of people with disabilities are increasingly recognized.³⁰ Climate change affects men and women differently. In every country climate change has a greater impact on those sections of the population that rely mostly on natural resources for life and/or that have the least capacity to respond to natural hazards, such as droughts, landslides, floods and hurricanes. Women usually face higher risks and higher burdens due to the effects of climate change. Since the first climate agreement UNFCCC in 1992, significant progress has been made in promoting gender equality and combating intersectional discrimination against women. The Community for Women's Rights and Gender Equality, as well as women leaders within the UNFCCC, have initiated a strong change in the way gender is included in climate agreements. The 1992 UNFCCC does not mention people with disabilities. Influenced by these campaigns, The Cancun Agreement, adopted in 2010, is the first climate agreement that explicitly lists people with disabilities as one of the segments of the population whose human rights are acutely affected by the effects of climate change.³¹ The Paris Agreement adopted at the 21st session of the COP 2015 calls for gender equality and women's empowerment, and its provisions on adaptation and capacity building efforts encourage States parties to adopt gender-responsive approaches to mitigating and adapting to climate change.³² The preamble to the Paris Agreement affirms that "Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights," including the rights of persons with disabilities.³³ Disabled people being 'systematically ignored' on climate crisis, the vast majority of countries have not considered how people with disabilities can be included in climate plans. Yet women with disabilities were among the most vulnerable to climate impacts, partly because of the nature of their disabilities and also because of the social disadvantage that often accompanies this.³⁴

The Paris Agreement, later adopted, continues this trend and states in its preamble that, when taking steps to tackle climate change, the parties are

30 Climate change and the right to health of people with disabilities, <https://www.thelancet.com/action/showPdf?pii=S2214-109X%2821%2900542-8>.

31 Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010.

32 UNDP, Overview of linkages between gender and climate change, UNDP Human Development Report 2011, 2–6.

33 Preamble of the Paris Agreement under the United Nations Framework Convention on Climate Change, 22 April 2016.

34 The Sendai Framework, a strategic plan to reduce natural disaster risk for 2015-2030, was adopted at the same time as the Paris Agreement, which fully incorporated key recommendations on gender-sensitive disaster risk reduction (DRR) and promoted a stronger role for women in building resilience to risky situations. The Sendai Framework for Disaster Risk Reduction 2015-2030, Third UN World Conference on Disaster Risk Reduction in Sendai, Japan, on March 18, 2015, <https://www.undrr.org/publication/sendai-framework-disaster-risk-reduction-2015-2030>.

obliged to respect, promote and consider their human rights obligations, including those towards people with disabilities. Given the obvious gender dimension of the Paris Agreement, it can be concluded that this agreement is the first to clearly indicate the importance of gender equality of women and girls with disabilities in terms of environmental protection. However, subsequent provisions omit disability inclusion as an essential principle in action against climate change. Persons with disabilities remain largely excluded from decision-making processes and plans to address and prevent climate change and the responses to climate-related disasters and emergencies at sub-national, national, regional, and international levels.³⁵

Human Rights Watch is noted that girl with disability were identified as a very vulnerable category of people to the consequences of climate change until the Cancun Agreement, yet they were not in the focus of concrete initiatives to respect and fulfill their gender rights, such as those created for other groups (Indigenous Peoples' Platform or Gender Action Plan).³⁶ Women with disabilities around the world often have the least capacity to adapt to climate change, and their position and contribution to the fight against climate change is practically ignored in preparations and response measures.³⁷ This is mainly due to poorly designed registers of people with disabilities around the world and the lack of data on how climate change affects individual forms of disability.³⁸

Another problem that is observed is that the organizations of persons with disabilities that are most aware of the problems of this group of people are only partially or inadequately involved in negotiations on new measures for adaptation and mitigation of climate change, either internationally or nationally. The participation of people with disabilities, especially women, will impose the obligation of states to guarantee the rights of people with disabilities and, at the same time, improve the state's response to climate change, as people with disabilities are extremely educated and resourceful in designing adaptive solutions to complex problems.³⁹

The 2006 UN Convention on the Rights of Persons with Disabilities (CRPD) requires the protection of persons with disabilities in situations of risk and requires their participation in policy development. The inclusion of people with disabilities is a theme that covers all areas for all sustainable development goals, including goal 13 on climate action.⁴⁰ Taking these facts into account,

35 Disability-Inclusive Climate Action, <https://gladnetwork.net/search/working-groups/disability-inclusive-climate-action>.

36 *Ibid.*

37 UNHCR: Rights of Persons with Disabilities in the Context of Climate Change, A/HRC/44/30, §§4-5, 2020, <https://undocs.org/A/HRC/44/30>.

38 Some people with disabilities experience greater health problems due to extreme weather conditions than other people with disabilities depending on the degree of disability. For example, some people with severe spinal cord injuries have less ability to sweat, which makes them more sensitive to high temperatures.

39 The Council of Canadians with Disabilities, *The Rights of Persons with Disabilities in the Context of the UN Framework Convention on Climate Change*, Framework paper, 2019, 21–24.

40 EDF, How the SDGs Support the CRPD, <http://old.edf-feph.org/how-do-sdgs-support-convention-rights-persons-disabilities>.

the UN Human Rights Council called for a “comprehensive, integrated, gender-sensitive approach to climate change that includes access to disability”.⁴¹ Inadequate inclusion of the specific needs of persons with disabilities in action plans violates Article 4 of the CRPD.⁴² The fact that no state mentions persons with disabilities in the mitigation plans, while in the plans for climate adaptation 35 countries in general mentions persons with disabilities, but does not provide for special measures that would correspond to the vulnerability of persons with disabilities to the negative effects of climate change.⁴³ An additional problem is the fact that the documents use the medical model of disability, so it is unlikely that the envisaged adaptation measures will be effective. When creating measures of adaptation and mitigation to climate change, states should create measures based on the principle of universal design so that they are acceptable for persons (women) with disabilities.⁴⁴

In 2019, the UN Human Rights Council adopted Resolution 41/21 on climate change and human rights. The Resolution emphasizes that climate change is a common concern of humanity and that the parties must promote and consider their obligations regarding human rights, health rights, rights of persons with disabilities and persons in vulnerable situations when taking mitigation and adaptation measures.⁴⁵ The Resolution notes that persons with disabilities are particularly affected by intersectional discrimination. States are invited to pay special attention to women with disabilities and to take into account their specific needs, pointing out that sudden-onset natural disasters and slow-onset events seriously affect the access of persons with disabilities to food and nutrition, safe drinking water and sanitation, health-care services and medicines, education and training, adequate housing and access to decent work.

Thus, during 2020, a study was conducted – the first gender-sensitive document exclusively dedicated to the position of persons with disabilities in the context of the impact of climate change. This document emphasizes that inclusive climate action is necessary, which requires meaningful, informed and efficient participation of persons with disabilities, as well as the participation of their representative organizations.⁴⁶ This would certainly lead to the improvement of men, and especially women with disabilities,

41 *Ibid.*

42 Sébastien Jodoin, Persons with Disabilities and Climate Action: how we can be more inclusive?, <https://www.internationaldisabilityalliance.org/videos/persons-disabilities-and-climate-action-how-we-can-be-more-inclusive>.

43 States make plans for a decarbonized society, instead of including people with disabilities, they further isolate them. The position of women with disabilities is even more unfavorable due to their sex and gender stereotypes that have not yet been eradicated.

44 The practical application of universal design principles helps people, regardless of age and physical ability, to be safe and independent. It is especially important for people with disabilities. Universal design improves the quality of life. People with disabilities achieve equality only if they can use all aspects of the built environment.

45 Human Rights Council, Resolution 41/21 adopted by the Human Rights Council on 12 July 2019.

46 Resolution adopted by the Human Rights Council on 16 July 2020, Human Rights Council Forty-fourth session.

particularly in terms of social protection, then resilience to climate change and, finally, raising the awareness of emergency services about the vulnerability of this category of people. Inclusive action would involve tailored access to information.⁴⁷

Unfortunately, women with disabilities are mostly marginalized in the decision-making process and their implementation. There are no indications of future progress on this issue, because obviously the inclusion of persons (women) with disabilities in climate actions is a dead letter on paper in most countries of the world. It is paradoxical that countries that are most vulnerable to the negative impacts of climate change, which are also the poorest, are working on intensive inclusion, so it is not realistic to expect them to persevere in the efforts to include people with disabilities. Women and girls with disabilities must play a key role in planning for climate change disasters long before they happen because they know their own needs best. As such, policy makers and local actors need tools and resources to engage women and girls with disabilities in emergency planning initiatives. More active participation of women and girls with disabilities in climate litigation is also necessary, and states should offer more concrete measures to improve their position in action plans for adaptation to climate change, which is currently lacking.⁴⁸

Such cases would certainly contribute to reducing the effects of intersectional discrimination against women and girls with disabilities, to which the consequences of climate change also contribute. For climate action to be effective, the whole society must be engaged and no one must be left behind. This has made the coronavirus disease pandemic (*COVID-19*) even more visible by revealing inequalities in all societies and highlighting the link between human health and the health of the planet.⁴⁹ Adverse health aspects related to climate change may include heat-related disorders, such as heat stress and the economic consequences of reduced work capacity; respiratory disorders, including those exacerbated by air pollution.⁵⁰ Sudden disasters, including cyclones, floods, heat waves, and fires are responsible for bodily injuries, an increase in water-borne diseases, cases of hyperthermia and heat stroke, heat-related deaths, and disrupted access to critical medical services.⁵¹ Adapting to climate change provides a global opportunity to increase health equality for people with disabilities in line with the UN's sustainable development

47 Human Rights Council, Panel discussion on promoting and protecting the rights of persons with disabilities in the context of climate change, Forty-sixth session 22 February–19 March 2021, 2–3.

48 See more about climate litigation in Ljubomir Tintor, 'Značaj slučaja Urgenda za razvoj klimatskih parnica na području Evrope', *Strani pravni život*, No. 2/2021, 249–265.

49 Human Rights Council, *op. cit.*

50 Alyssa Gutnik and Marcie Roth, *Disability and Climate Change: How climate-related hazards increase vulnerabilities among the most at risk populations and the necessary convergence of inclusive disaster risk reduction and climate change adaptation* (2017), 22–23.

51 Muluken Azage, Abera Kumie, Alemayehu Worku, Amvrossios C. Bagtzoglou and Emmanouil Anagnostou, 'Effect of climatic variability on childhood diarrhea and its high risk periods in northwestern parts of Ethiopia', *PLoS ONE*, Vol. 12, No. 10, 2017.

goals through adequate inclusion, empowerment, non-discrimination and accessibility.

At the panel discussion, it was decidedly emphasized that persons with disabilities face serious intersectional discrimination. It was concluded that intersectional discrimination can lead to some people with disabilities being more exposed to the harmful effects of climate change, thus limiting their rights. Global warming could limit access to adequate food, water, sanitation, health, adequate housing and decent work.⁵²

The pandemic showed that the previous Sendai Framework for Disaster Risk Reduction was inadequate for the needs of people with disabilities, and that insufficient attention was paid to inclusiveness during its development. People with disabilities did not receive information in accessible formats on how to get involved in the action climate and were not included in the emergency action plans. This has put their lives in danger, as the current pandemic has shown.⁵³

Surprisingly, the global mortality rate of people with disabilities in natural disasters is up to four times higher than that of people without disabilities due to a lack of inclusive planning, available information, early warning systems, transport and discriminatory attitudes within institutions and among individuals.⁵⁴

All people, including women with disabilities, must be recognized as rights-holders and obstacles to their inclusion, such as discrimination, must be eliminated. An intersectional approach that has taken into account the specific requirements of people with disabilities should contribute to the development of adequate registers of categorization of persons with disabilities in order to better adapt climate action plans to their needs. It is essential that these plans are gender-sensitive, bearing in mind the special characteristics of women, and that women and girls make up a total of 2/3 of people with disabilities.

States should design their climate actions to encourage the empowerment of women with disabilities. In recent years there have emerged interesting proposals that people with disabilities and their organizations have a separate delegation that would participate on an equal basis in the COP. This way, people with disabilities would become more visible, and the public and contracting states would become aware of the intersectional discrimination faced by women with disabilities.. The fact that the Israeli minister did not participate in COP26 shows that the voice of women with disabilities is systematically ignored due to their disability.⁵⁵

52 Human Rights Council, *op. cit.*, 4.

53 *Ibid.*

54 Takashi Izutsu, Disability-inclusive disaster risk reduction and humanitarian action: an urgent global imperative: United Nations World Conference on Disaster Risk Reduction and the Progress, 29 November 2019, 17–19.

55 Keiligh Baker, Climate change: Why are disabled people so affected by the climate crisis?, <https://www.bbc.com/news/disability-59042087>. States should ensure the accessibility of

3.1. Climate migration as an example of intersectional discrimination against women with disabilities

The effects of climate change – such as storms, rising sea levels and droughts – can often force people to find new homes in safer and more stable climates. This “climate migration” can happen for several reasons. The consequences of climate change can be reflected in the reduction of resources needed for survival, such as limited food or water in regions affected by drought. Leaving areas experiencing chronic flooding due to rising oceans. This is especially relevant in low coastal areas.

According to the International Organization for Migration (IOM), there are likely to be more than 100 million “climate migrants” in the coming decades – and that number could reach nearly a billion by 2050 under the worst of circumstances.⁵⁶ People with disabilities face serious problems during migration. They have serious difficulties in finding adequate transport, finding a job, and adequate health care. People with disabilities may face even more obstacles when relocation is unplanned or occurs in the short term, as is often the case with climate-related migration. Some of the many problems that people with disabilities may experience during climate migration include: poor accessibility of transport that is adequate to transport their mobility equipment and necessary supplies while migrating. This can be difficult enough with time to plan, but it is especially difficult when people have to escape from extreme weather conditions in short time frame. Clear evidence from the past and current natural disasters and refugee situations show that people with disabilities have a low survival rate and in many situations are even neglected or left to die.⁵⁷

Another barrier that may arise during climate migration is finding adequate accommodation to meet disability needs, including physical accessibility and proximity to public transport and medical/social services. In many cases, people may be forced to live in emergency shelters for extended periods of time, without adequate physical access and services necessary for the existence of people (women) with disabilities.⁵⁸ An additional problem is the possibility of separating people with disabilities from their family members and personal assistants. One of the crucial obstacles is that people with disabilities face two to three times more poverty and are unable to cover the costs of migration.

Women with disabilities are in an even more difficult position as their employment is even lower. All of this puts women with disabilities at in-

meeting venues, shelters and work places. Strengthen the capacities of people with disabilities to respond to climate change by ensuring that information is made available in accessible formats.

56 World Institute of Disability, Climate-Related Migration and Displacement, <https://wid.org/2018/09/26/climate-related-migration/>.

57 Adrien Weibgen, “The Right to Be Rescued: Disability Justice in an Age of Disaster”, *The Yale Law Review*, Vol 124, No. 7, 2015, 2412–2416.

58 Dhaka Declaration 2015+1 Adopted at the Dhaka Conference 2018 on Disability and Disaster Risk Management Dhaka, Bangladesh, May 15 –17, 2018, 1–3.

creased risk, as the world's poorest people continue to experience the most severe impacts of climate change through income loss, displacement and hunger.⁵⁹ Very often people with disabilities are faced with all these problems, especially women who give up migration. Thus, they are forced to live in a degraded and devastated environment, which further impairs their health.

Intersectional discrimination against women with disabilities in the context of climate migration can also be reflected in difficult employment. Women with disabilities can very easily face limited employment opportunities that match an individual's personal abilities, or in some cases there may be subtle or explicit discrimination in employment. Discrimination is most often based on gender. In the context of natural disasters where people are displaced to escape insecurity and violence, the relationship between disability and forced displacement is even more complicated. Disability may be the result of forced displacement; on the other hand, migrant women with disabilities are more likely to be sidelined in all aspects of humanitarian assistance due to physical, environmental and social barriers to accessing information, health and rehabilitation services.⁶⁰

One of the key problems that women with disabilities face as migrants is invisibility as a migrant with disabilities in the international normative framework. At present, international instruments on migrants have not yet directly integrated the disability dimension into the normative language. It is noticed that people with disabilities in modern discourses on climate migration are classified as migrants – victims.⁶¹

Simply strengthening existing human rights and disability laws and policies can benefit climate migrants, even if international agreements on climate migration and disability do not yet exist. Guaranteeing access to health and social services, protection against discrimination, employment support, etc. will benefit migrants who might otherwise face obstacles.⁶² In addition, women with disabilities could be considered a priority group in need of migration assistance. Solutions to improve the position of women with disabilities should be sought within the climate regime, so that action plans for adaptation and mitigation will be adapted to this vulnerable group.

59 Weibgen, *op. cit.* 2412–2416.

60 Mansha Mirza, *Unmet needs and diminished opportunities: disability, displacement and humanitarian healthcare*, Research Paper No. 212, 2011, 9–14.

61 UNHCR, Disability, Displacement and Climate Change, April 2021. <https://www.unhcr.org/protection/environment/60896a274/disability-displacement-climate-change.html>. Many forcibly displaced people settle in camps and in slums, where infrastructure and services are weak and inaccessible, impacting the autonomy and dignity of persons with disabilities, especially when there has been loss or damage of assistive devices. The barriers for people with disabilities in such environments are heightened. For example, climate change is expected to expose hundreds of millions of people to increased water stress. Forcibly displaced women and girls with disabilities already face barriers accessing safe water for drinking, sanitation and hygiene.

62 UNHCR, Conclusion on refugees with disabilities and other persons with disabilities protected and assisted by UNHCR, Executive Committee 61st session (2010), <https://www.unhcr.org/excom/exconc/4cbeb1a99/conclusion-refugees-disabilities-other-persons-disabilities-protected-assisted.html>.

V CONCLUSION

After the presented arguments, it can be concluded that the gender equity of women and girls with disabilities has a key role in causing intersectional discrimination. The social model of disability in combination with the critical realist model of disability is the most acceptable so that persons with disabilities can actively participate in environmental protection and the fight against climate change.

The position of women and girls with disabilities in the legal regime of environmental protection is very unfavorable. As people with disabilities, they suffer extremely grave consequences caused by environmental disasters. Although international law on the protection of environment is more sensitive to gender than other branches of international law, it is noticeable that the position of women with disabilities is not regulated. From the provisions of the Convention on Biological Diversity we can indirectly conclude the importance of the participation of women with disabilities in environmental protection and the fight against climate change. The committees that oversee the implementation of agreement commitments in their reports do not analyze the issue of women with disabilities and their importance in the fight for environmental protection. The only international instrument that mentions people with disabilities in the context of environmental protection is the Paris Agreement on Climate Change. In the future, these Committees will have to play more attention to this vulnerable group in their reports when it comes to environmental degradation. Better solutions will have to be offered in terms of evacuation plans for people with disabilities in crisis situations in order to overcome the intersectional discrimination that is now very noticeable. It is necessary to actively involve women with disabilities in the creation of climate change adaptation measures and to base them on universal design. Adaptation measures should be based on the concept of universal design as it enables movement without barriers.

Today, the prevailing view is that the experience that women with disabilities have in overcoming everyday obstacles would be of fundamental importance in the fight for environmental protection, primarily adaptation to climate change. For these reasons, it is necessary to include women with disabilities in the creation of climate policies. Effective inclusion would certainly reduce the effects of intersectional discrimination.

REFERENCE LIST

- Asch Adrienne and Wasserman David, "Bioethics" in Gary L. Albrecht (ed.), *Encyclopedia of Disability*, (SAGE Publications, Inc., Newbury Park, 2006).
- Azage Muluken, Kumie Abera, Alemayehu, Amvrossios C. Bagtzoglou and Anagnostou Emmanouil, 'Effect of climatic variability on childhood diarrhea and its high risk periods in northwestern parts of Ethiopia', *PLoS ONE*, Vol. 12, No. 10, 2017.

- Baker Keiligh, Climate change: Why are disabled people so affected by the climate crisis? <https://www.bbc.com/news/disability-59042087>.
- Beauchamp-Pryor Karen, 'Visual impairment and disability: a dual approach towards equality and inclusion in UK policy and provision' in Nike Watson, Alan Roulstone and Carol Thomos (eds.), *Handbook of Disability Studies* (Routledge, London, 2022).
- Beaudry Jonas-Sébastien, 'Beyond (Models of) Disability?', *The Journal of Medicine and Philosophy*, Vol. 41, No. 2, 210–228.
- Chivian Eric, 'Global Environmental Degradation and Biodiversity Loss: Implications for Human Health' in Francesca Grifo and Joshua Rosenthal (eds.) *Biodiversity and Human Health* (Island Press, Washington, D.C, 1997), 27–50.
- Climate-xchange, Climate Justice for All, Including the Disability Community, <https://climate-xchange.org/2021/08/12/climate-justice-for-all-including-the-disability-community/>.
- Crenshaw Kimberlé, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics', *University of Chicago Legal Forum*, Vol. 1989, Issue 1, 1989, 139–167.
- Dokmanović Mirjana, 'Višestruka i intersekcionalna diskriminacija – Koncept, definicije i uvođenje u zakonodavstvo', *Pravni život*, Vol. 66, No. 10, 2017, 211–226.
- EDE, 'How the SDGs Support the CRPD', <http://old.edf-feph.org/how-do-sdgs-support-convention-rights-persons-disabilities>.
- Gutnik Alyssa and Roth Marcie, *Disability and Climate Change: How climate-related hazards increase vulnerabilities among the most at risk populations and the necessary convergence of inclusive disaster risk reduction and climate change adaptation*, Forum for Human Rights and Disability, Nepal, 2018.
- Human Rights Council, Panel discussion on promoting and protecting the rights of persons with disabilities in the context of climate change, Forty-sixth session, 22 February–19 March 2021.
- Izutsu Takashi, Disability-inclusive disaster risk reduction and humanitarian action: an urgent global imperative: United Nations World Conference on Disaster Risk Reduction and the Progress, 29 November 2019.
- International Union for Conservation of Nature, Gender and climate change, <https://www.iucn.org/resources/issues-briefs/gender-and-climate-change>.
- Jodoin Sébastien, Persons with Disabilities and Climate Action: how we can be more inclusive?, <https://www.internationaldisabilityalliance.org/videos/persons-disabilities-and-climate-action-how-we-can-be-more-inclusive>.
- Mirza Mansha, *Unmet needs and diminished opportunities: disability, displacement and humanitarian healthcare*, Research Paper No. 212, 2011.
- Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010.

The Council of Canadians with Disabilities, The Rights of Persons with Disabilities in the Context of the UN Framework Convention on Climate Change, Framework paper, 2019.

The Sendai Framework for Disaster Risk Reduction 2015-2030, Third UN World Conference on Disaster Risk Reduction in Sendai, Japan, on March 18, 2015, <https://www.undrr.org/publication/sendai-framework-disaster-risk-reduction-2015-2030>.

Tintor Ljubomir, 'Subjektivitet prirode u međunarodnom pravu- između fikcije i realnosti', *Strani pravni život*, No. 2/2022, 305–325.

Tintor Ljubomir, 'Značaj slučaja Urgenda za razvoj klimatskih parnica na području Evrope', *Strani pravni život*, No. 2/2021, 249–265.

Tintor Ljubomir, *Osobe sa invaliditetom i problem pristupačnosti*, master's thesis, University of Belgrade Faculty of Law, Belgrade, 2018.

Tuohy Honor, "Where Gender Equality and Environmental Law Meet: Appointing a Gender Focal Point for Ireland", *University College Dublin Law Review*, No. 19, 2019, 29–45.

UN Woman, <https://www.unwomen.org/en/how-we-work/intergovernmental-support/climate-change-and-the-environment/united-nations-convention-to-combat-desertification>.

UNDP, Overview of linkages between gender and climate change, UNDP Human Development Report 2011.

UNHCR, Disability, Displacement and Climate Change, April 2021, <https://www.unhcr.org/protection/environment/60896a274/disability-displacement-climate-change.html>.

UNHCR, Conclusion on refugees with disabilities and other persons with disabilities protected and assisted by UNHCR, Executive Committee 61st session (2010), <https://www.unhcr.org/excom/exconc/4cbeb1a99/conclusion-refugees-disabilities-other-persons-disabilities-protected-assisted.html>.

UNHCR, Rights of Persons with Disabilities in the Context of Climate Change., A/HRC/44/30. §§4-5, 2020, <https://undocs.org/A/HRC/44/30>.

Weibgen Adrien, "The Right to Be Rescued: Disability Justice in an Age of Disaster", *The Yale Law Review*, Vol. 124, No. 7, 2015, 2202–2679.

World Institute of Disability, Climate-Related Migration and Displacement <https://wid.org/2018/09/26/climate-related-migration/>.

***, Towards a gender-responsive post-2020 global biodiversity framework: Imperatives and Key Components, A submission by the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) as an input to the development of the post-2020 global biodiversity framework, 1 May 2019.

***, Persons with Disabilities and the Environment, https://www.greengrants.org/meettheactivists/disabilities_and_environment/.

***, For All Coalition: For the Promotion of Gender Equality and Human Rights in the Environment Agreements, [http://www.oas.org/es/cim/docs/ConceptNote-ForAllCoalition\[EN\].pdf](http://www.oas.org/es/cim/docs/ConceptNote-ForAllCoalition[EN].pdf).

***, Climate Change and the Right to Health of People with Disabilities, <https://www.thelancet.com/action/showPdf?pii=S2214-109X%2821%2900542-8>.

***, Disability Inclusive Climate Action, <https://www.internationaldisabilityalliance.org/climate-change>.

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INTERSEKCIJSKA DISKRIMINACIJA ŽENA SA INVALIDITETOM I PRAVNI REŽIM ZAŠTITE ŽIVOTNE SREDINE

Apstrakt

U ovom radu biće analizirana tri pravna režima koji služe zaštiti životne sredine, a koji prepoznaju značaj rodne dimenzije ravnopravnosti – režim klimatskih promena, režim biodiverziteta i režim dezertifikacije posmatrani kroz kontekst invaliditeta. Biće ispitan odnos između intersekcijske diskriminacije žena sa invaliditetom i zaštite životne sredine. U radu će biti objašnjen koncept intersekcijske diskriminacije. Takođe, biće ispitano i koji je model pristupa invaliditetu prikladan kada je u pitanju unapređenje položaja i osnaživanje žena sa invaliditetom. Razmotriće se da li i na koji način međunarodni instrumenti koji se odnose na pravne režime klimatskih promena, biodiverziteta i dezertifikacije regulišu položaj osoba sa invaliditetom. Osobe sa invaliditetom jedna su od najranjivijih kategorija kada su u pitanju efekti klimatskih promena. Žene i devojčice sa invaliditetom su u još nezavidnijem položaju. Prisilne migracije zbog štetnih uticaja klimatskih promena, koje će se svakako dešavati u budućnosti, posebno će biti teške za ovu kategoriju ljudi, pa se može reći da je ova grupa diskriminisana. U drugom delu rada biće izneti predlozi kako je moguće ojačati i unaprediti položaj žena i devojčica sa invaliditetom u ovim režimima.

Ključne reči: *Žene sa invaliditetom; Intersekcijska diskriminacija; Životna sredina; Klimatske promene; Biodiverzitet.*