

CLIMATE CHAUVINISM: RETHINKING LOSS & DAMAGE

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INTRODUCTION: “LIFT ME UP”

“And yet it is still so tempting for white women to interpret their own ascent as a matter of pure merit, and their own quest for parity as the most urgent priority. It is so easy to be unconcerned with domination, silencing, and oppression when they are perpetrated on those you barely see.”

– Rafia Zakaria, author and journalist¹

The rise of white feminism has decentered and disempowered women of color and Third World voices in academic discourse based on historical delineations of colonialism and slavery. In this Article, we consider the impact of this erasure in the international law arena related to climate change discussion of loss and damage. The spillover effect of the pedestal on which white feminism is placed occurs in political implementation and international negotiation from the corporate world to the foreign policy arena. More specifically, we examine how white feminism has hindered climate change adaptation and environmental protection by deprioritizing frontline and vulnerable communities.

In particular, we explore the normative implications of Rafia Zakaria’s *Against White Feminism: Notes on Disruption* as an entry point for this discussion. Zakaria’s book serves as a counter-manifesto to white feminism’s alignment with colonial, patriarchal, and white supremacist ideals, instead centering itself on the perspectives of women of color. Zakaria considers the legacy of the British feminist imperialist savior complex and what she describes as “the colonial thesis that all reform comes from the West” to the condescension of the white feminist-led “aid industrial complex” and the conflation of sexual liberation as the “sum total of empowerment.”² Zakaria’s arguments build on the work of intersectional feminists, Kimberlé Crenshaw, Adrienne Rich, and Audre Lorde.

This Article proceeds in three parts. Part I provides background information on the impacts of climate change and unequal burden on non-whites. This part contemplates white feminism as a risk multiplier in climate change. Part II delves into our personal accounts of hurricanes and intersections of white feminism. Part III explores the stalemates in

1. RAFIA ZAKARIA, *AGAINST WHITE FEMINISM: NOTES ON DISRUPTION* 173 (2021).

2. *Id.* at 72-75, 110, 120.

international climate negotiations as an opportunity to rethink loss and damage as a mechanism for climate change adaptation.

I. “DROWNING IN AN ENDLESS SEA”

Climate change impacts sea level rise along with hurricane frequency and intensity. In addition, climate change can decrease the speed of hurricanes, which in turn increases precipitation and flooding.³ The warmer seas also impact the ferociousness of the hurricanes themselves. Rapid industrialization, fossil fuel emissions, ocean acidification, pollution, and the warming planet create a deadly brew for the weather. Climate change has been a political issue since the 1970s and 1990s, but four countries, in particular, have politicized climate change issues on partisan lines.

The United States, Canada, Australia, and the United Kingdom demonstrate the most extreme rifts as to climate change, according to a study from the Yale Program on Climate Change Communications.⁴ The United Kingdom served at the helm of the colonial empire for centuries and the United States, Canada, and Australia were the dominant English-speaking colonies. In an article in *The Financial Times*, other academics used language such as “political culture war,” “ideology and personal values,” “age and gender,” “cultural projects and subtexts,” and “egalitarianism and radical individualism” to describe the divide in political views regarding climate change.⁵ The word “race” was not mentioned once. Evolving attitudes on climate change are not simply based on cultural beliefs, politics, and media. Race is a more important and determinative criteria when determining the “views” on climate change because it is hard for people of color to deny the impacts of climate change when they belong to the frontline communities that are disproportionately impacted.

White males have dominated the field of U.S. climate negotiations. The White House sent three Black women out of a team of sixteen people as a part of the U.S. delegation to COP 27, but no other women of color—no Latinas, no Asian women, no Native American women, no Muslim women, no Arab women—to the First African COP in an Arab and African

3. *Hurricanes and Climate Change*, CTR. FOR CLIMATE AND ENERGY SOLS., <https://www.c2es.org/content/hurricanes-and-climate-change/> (last visited Jan. 17, 2022).

4. Jennifer Carman et al., *Americans’ Willingness to Prepare for “Climate Change” vs. “Extreme Weather,”* YALE PROGRAM ON CLIMATE CHANGE COMM’N. (Sept. 23, 2021), <https://climatecommunication.yale.edu/publications/americans-willingness-to-prepare-for-climate-change-vs-extreme-weather/>.

5. Sarah Murray, *How Climate Change Became Political*, FIN. TIMES (Oct. 31, 2021), <https://www.ft.com/content/4bac715b-2812-4610-a528-dc8db9ecd635>.

country.⁶ Even the American Bar Association sends white men as observers on international climate negotiations.⁷ Progress for diversity has been agonizingly slow, and time is not on the side of climate advocates.

A. Hurricanes

Our Fall 2022 semester in Orlando, a city over thirty miles inland, included two hurricanes, which shut down our law school for a total of six academic days. As women of color, we share our reflections on past hurricanes later in this Article, but we also pause to share the importance of our perspectives in how we decipher and code the politics of international climate change.

In Florida, we are situated in a low-lying peninsula surrounded by water on three sides. Current residential sites are “partly determined by history, looking at historical settlement patterns and land-use decisions” and those historical trends affect risk from flooding and hurricanes.⁸ NOAA modeling predicts a rise in Category Four and Five hurricanes in the future.⁹ A review of hurricanes from 1979 to 2017 indicates an increase in the number of major hurricanes and a decrease in the number of smaller hurricanes.¹⁰

6. *U.S. Delegation to the 2022 UN Climate Conference (COP 27)*, U.S. DEP’T OF STATE (Nov. 2, 2022), <https://www.state.gov/u-s-delegation-to-the-2022-un-climate-conference-cop27/>.

7. Amanda Robert, *ABA Observers Will Share Their Takeaways from the UN Climate Change Conference in Glasgow*, AM. BAR ASS’N. J. (Nov. 24, 2021, 8:59 AM), <https://www.abajournal.com/web/article/aba-members-attend-and-reflect-on-international-climate-change-conference>.

8. Katie Sinclair, *Water, Water Everywhere, Communities on the Brink: Retreat as a Climate Change Adaptation Strategy in the Face of Floods, Hurricanes, and Rising Seas*, 46 *ECOLOGY L.Q.* 259, 262, 267-68 (2019) (“After the devastation of Hurricane Katrina, over four hundred lawsuits were filed by property owners in the Lower Ninth Ward and St. Bernard Parish against the federal government; all alleged that the government’s construction of the levees and the MRGO contributed to the extensive flood damage. Plaintiffs attempted to recover under different theories. In *Katrina Canal Breaches*, plaintiffs brought a tort claim against the Army Corps of Engineers for negligently building the MRGO and failing to maintain the levee systems. Plaintiffs in *St. Bernard Parish I* took a different route, alleging that flooding caused by the construction of the MRGO constituted a ‘taking’ under the Fifth Amendment and that flood victims were entitled to just compensation. The failure of both sets of plaintiffs to recover under these lawsuits shows the current limits of litigation to adequately address compensation for hurricane and flood victims, and the need for an alternative approach that not only increases compensation but also reduces the risk of future property losses.”).

9. *CTR. FOR CLIMATE AND ENERGY SOLS.*, *supra* note 3.

10. *Id.* (“Warmer sea temperatures also cause wetter hurricanes, with 10-15 percent more precipitation from storms projected. Recent storms such as Hurricane Harvey in 2017 (which dropped more than 60 inches in some locations), Florence in 2018 (with over 35 inches) and Imelda in 2019 (44 inches) demonstrate the devastating floods that can be triggered by these high-rain hurricanes.”).

When Hurricane Katrina struck New Orleans in 2005, “the historical inequities in settlement patterns ripple through to the modern day.”¹¹ Hurricane Katrina also showed that “the poor have little or no capacity to escape rising waters or extreme weather events.”¹² None of what happened in New Orleans in 2005 was a surprise or unexpected: “Despite clear indications that the White House knew the levees might fail, the ‘surprise alibi’ was used to justify the horrific delays in bringing relief to those trapped in city.”¹³

B. Sea Level Rise

In the United States, Florida remains “the most vulnerable state in the nation to sea level rise, with Miami having the largest amount of exposed assets and the fourth-largest population vulnerable to sea level rise in the world.”¹⁴ These grim predictions for Florida also play out for other major

11. Sinclair, *supra* note 8, at 262.

12. Jonathan Lovvorn, *Climate Change Beyond Environmentalism Part I: Intersectional Threats and the Case for Collective Action*, 29 GEO. ENV'T L. REV. 1, 20 (2016) (“This problem is exacerbated because low-wealth countries have less infrastructure and resources to deal with disasters—creating a devastating one-two punch of no individual capacity for escape and no prospects for government rescue. That the people of New Orleans experienced this exact knock-out blow while living in the wealthiest country in the world should be a piercing climate change wake-up call for any public interest organization that advocates for the interests of the economically disadvantaged, either internationally or here in the United States.”).

13. Joshua P. Fershee, *The Rising Tide of Climate Change: What America’s Flood Cities Can Teach Us About Energy Policy, and Why We Should Be Worried*, 39 ENV'T L. 1109, 1124–25 (2009) (“For as many as six days, people at the Superdome were trapped in ‘squalid and inhumane conditions’ without adequate food and water, not to mention the lack of medical care, functioning toilets, or air conditioning in the stifling New Orleans heat. The surprise was not that New Orleans was underwater—rather, it simply was a surprise that New Orleans did not end up under water a day earlier.”).

14. Julia Toscano, *Climate Change Displacement and Forced Migration: An International Crisis*, 6 ARIZ. J. ENV'T L. & POL'Y 457, 466–67 (2015) (“Miami-Dade County’s estimated beachfront property value is more than \$14.7 billion, not including infrastructure. With sea levels expected to rise between nine inches to two feet by 2060, threatening the sustainability of the state’s beaches, much of this beachfront property will succumb to rising surges and disappear among the waves. In addition, in an attempt to prevent beach erosion, Miami-Dade County is spending roughly \$32 million for beach erosion prevention and beach re-nourishment between 2013 and 2017. Moreover, Miami-Dade County alone has more people living less than four feet above sea level than any other state except Louisiana. With approximately 95% of Florida’s sixteen million residents living within 35 miles of coastal areas and sea levels expected to rise from eight inches to 2.5 feet by 2100, Florida’s coastal regions are vulnerable to being overwhelmed by rising seas and floods caused by increasingly occurring storm surges. Besides the vertical rise of the sea, Florida residents are also susceptible to the horizontal advancement of ocean water. The Natural Resources Defense Council reported that the horizontal advance of ocean water flowing inland is 150 to 200 times the vertical rise. Consequently, sea level rising is going to directly cause flooding of homes, hotels, and property within 200 to 250 feet of the

cities across the world but the slow rate of change projected for these cities makes it harder to sound the alarm in their respective cases.¹⁵ Sea level rise is complex, but the legal issues related to the lawyer’s duty to confront the sea level rise *denier* are simple and stem from elementary legal concepts. “Complete failure to consider facts associated with sea level rise and obvious legal doctrines related to property, torts, and administrative law likely constitutes a breach of the lawyer’s duty of care to the client.”¹⁶

II. “KEEP ME SAFE—SAFE AND SOUND”

We coin the phrase “climate chauvinism” to build on the formulation of “environmental chauvinism,¹⁷ as a move away from the “business as usual” formulation of environmental law making.¹⁸ Western courts, namely in the United States, have failed to forge new jurisprudence to match the momentum that the urgency of the climate action moment requires.¹⁹ Further, oil and gas companies, like ExxonMobil, have engaged in deceitful

current shoreline, resulting in significant damage to Florida’s cities, beaches, ecosystems, tourist centers, infrastructure, economy, and agriculture systems.”).

15. Robin Kundis Craig, *A Public Health Perspective on Sea-Level Rise: Starting Points for Climate Change Adaptation*, 15 WIDENER L. REV. 521, 524–25 (2010) (“Sea-level rise poses two fundamental challenges for community, state, and regional governments trying to formulate adaptation strategies. First, sea-level rise is slow, measured in millimeters per year, and the full extent of climate change-driven sea-level rise is expected to take centuries to manifest. This is a planning horizon outside the political ken of most governmental bodies; indeed, planning horizons longer than a few decades are extremely rare. Second, scientists are still uncertain regarding the extent of the problem. Specifically, how high will the oceans rise?”).

16. Keith W. Rizzardi, *Sea Level Lies: The Duty to Confront the Deniers*, 44 STETSON L. REV. 75, 79–80 (2014) (“In property and environmental law, due diligence is a customary feature of many transactions, requiring the lawyers and other professionals to help clients ascertain whether a course of action should or should not be pursued. In tort law, including malpractice law, parties, including lawyers, may be held liable for negligence if they breach their duty to a person and that failure causes injury. In matters of administrative law, basic judicial doctrines dictate that although agencies receive deference in complex matters of science, courts will often take a ‘hard look’ at the facts to ensure that the government has not failed to consider an important aspect of the problem, including climate change.”).

17. J.J. Spoon and C.J. Williams, (2022). *Environmental chauvinism? Explaining issue expansion among non-mainstream parties.*, PARTY POL. 0(0) (2022). <https://doi.org/10.1177/13540688221117262>.

18. “Many unglamorous cases have been filed and decided, failing to get into the headlines. But the result is that the aggregate effect of all those ‘unimportant’ cases has been lost in the commentary, completely crowded out by predictions of waves of common law nuisance claims and the next ‘big’ regulatory case. The fact is that there have been few common law cases, none reaching the merits, and few ‘big’ cases like *Massachusetts v. EPA* and *American Electric Power v. Connecticut*, while there have been scores of cases building up a case law under a variety of statutes.” David Markell & J.B. Ruhl, *An Empirical Assessment of Climate Change in the Courts: A New Jurisprudence or Business As Usual?*, 64 FLA. L. REV. 15, 85–86 (2012).

19. *Id.*

tactics to evade regulatory measures to curb carbon emissions.²⁰ This superiority on the part of First World countries in implementing climate solutions is problematic and is rooted in white racial supremacy and white racial capitalism.²¹ The hubris of these First World countries is compounded by large transnationals that halt and sidestep any regulatory regimes that would lead to comprehensive environmental protection, cognizable reductions in carbon emissions, and a means to protect the weak and vulnerable from the catastrophic disasters that are compounded by climate change impacts. We refer to these complex dynamics as “climate chauvinism.” Sociology, political science, and comparative law have used the term “cultural chauvinism” as “the claim that cultural differences prevent us from adopting and adapting the superior procedural devices of other legal systems.”²² The origins of the term, chauvinism, hail to Napoleonic France.²³ Western policymakers are planning, prepping, and

20. Thomas Landers, *A New Path to Climate Justice: Adaptation Suits Against Private Entities*, 30 GEO. ENVTL. L. REV. 321, 326 (2018).

In light of recent investigations about what ExxonMobil may have known and not disclosed about climate change, CLF bills its lawsuit as an effort to “Expos[e] ExxonMobil’s Dangerous Campaign of Deceit and Denial.” More recently, driven in part by the same alleged deception, New York City sued five oil companies, including ExxonMobil, seeking compensation for the enormous costs of addressing the effects of climate change. Meanwhile, because the current President and Congress are determined to roll back U.S. climate regulations, the courts have become an increasingly important venue for achieving climate change solutions and remedies. On a more theoretical level, many law journal articles have discussed the mismatch between existing statutes, which strive to maintain an ecological status quo, and climate change, which is eroding that very notion. (internal citations omitted) *Id.*

See also Kirsten Engel & Jonathan Overpeck, *Adaptation and the Courtroom: Judging Climate Science*, 3 MICH. J. ENV’T & ADMIN. L. 1, 17 (2013); J. Brent Marshall, *Geoengineering: A Promising Weapon or an Unregulated Disaster in the Fight Against Climate Change?*, 33 J. LAND USE & ENV’T L. 183, 188 (2017); Raina Wagner, *Adapting Environmental Justice: In the Age of Climate Change, Environmental Justice Demands A Combined Adaptation-Mitigation Response*, 2 ARIZ. J. ENV’T L. & POL’Y 153, 163 (2011).

21. “While relying on GHG-based industries, the Global North exploited resources of the Global South and built a one-sided global economic architecture without sharing their technology, goods, or information to include the Global South in their success.” Madison Shaff, *International Law and Climate Displacement: Why A Climate Justice Approach Is Needed*, 52 TEX. ENV’T L.J. 59, 63 (2022).

22. John H. Langbein, *Cultural Chauvinism in Comparative Law*, 5 CARDOZO J. INT’L & COMP. L. 41, 48–49 (1997).

23. *Chauvinism*, BRITANNICA (last visited April 8, 2023), <https://www.britannica.com/topic/chauvinism>.

Another word that the French gave us is chauvinism. This word is derived from a French soldier, Nicolas Chauvin. Chauvin served in the French army under Napoleon, whom he came to idolize. Even after Napoleon’s final defeat at Waterloo in 1815 and his exile to St. Helena, Chauvin and many of his comrades remained devoted to Napoleon and the cult of military glory.

analyzing worse case scenarios when a number of geographic regions and spots are already facing dire climate upheaval.²⁴ Climate change adaptation is a luxury and manifestation of First World policies. Countries like Pakistan and Haiti are already experiencing climate catastrophe that is worsened by rich countries shutting their borders to those displaced by disasters.

In the following personal narratives, we share how we experienced climate chauvinism and recalled past climate disasters to inform the current situation. Having both grown up in Florida in the dangerous path of hurricanes and as women of color law professors, we draw upon our intersectional experiences.

A. *Nadia's personal account*

I rattled on about the military carbon emissions, the theory of coloniality, and racial capitalism at the ClassCrits Conference in Houston. I was speaking rapidly, reading passages from the article that I was reviewing. I made my points. I laid out my argument. The Q&A session was ending. It was the last panel of the day's conference. My flight was also leaving that day, so I wouldn't be attending the conference dinner. I was in my element, but out of my comfort zone. Pakistan was not top of mind in Texas.

I wanted to add in one more comment. And then it hit me. To speak about Pakistan. I was rough and raw, and I couldn't speak, because of the raw emotions. I could not collect myself even if I tried. When I wanted to

Chauvin's excessive patriotism become so well known that in 1831, it became the subject of a play, *La Cocarde Tricolore* by Charles T. and Jean Hippolyte Cogniard. In it, a character named Chauvin was so outrageously zealous in his hero worship of Napoleon and his insistence on the inherent superiority of all things French that his name became synonymous with excessive patriotism or nationalism.

Since its origin in the nineteenth century, the word has expanded its definition. It is no longer confined to patriotism or nationalism; it can now be used to mean "undue partiality to one's own group or kind" or "a prejudiced belief in the superiority of one's own group."

When the word is used in these extended senses, most authorities recommend the use of some qualifying word or words to demonstrate that the original meaning is not the intended one. A few examples are linguistic chauvinism, literary chauvinism, and, of course, the ever-unpopular male chauvinism.

24. Mia Hammersley, *The Right to A Healthy and Stable Climate: Fundamental or Unfounded?*, 7 ARIZ. J. ENV'T L. & POL'Y 117, 145 (2017). See also Philip Rathgeb, Martin Gruber-Risak, *Deserving Austrians First: The Impact of the Radical Right on the Austrian Welfare State*, 42 COMPAR. LAB. L. & POL'Y J. 43, 43-44 (2021); Andrew Kent, *The Jury and Empire: The Insular Cases and the Anti-Jury Movement in the Gilded Age and Progressive Era*, 91 S. CAL. L. REV. 375, 381-82 (2018).

mention my country of origin, I was swarmed with a flood of emotions that my normally composed self could not restrain. It was the first time it happened to me during an academic talk. Just three weeks earlier, my own state experienced a catastrophic storm. How do I describe the urgency of the situation?

To see my city flooded, wind debris shattering and uprooting lives, including my own. The semester where the tree fell on my house. If what was happening there in Pakistan was happening to me in Florida, I couldn't just rattle on about it. The Americans can send bombs, drones, and military aid to Pakistan until the cows come home, but only send meager international aid. Even President Biden referred to Pakistan as a dangerous country. Those who were most at threat of climate change were vilified. I felt as if Americans did not have the heart to care about Pakistan's disastrous monsoon floods.

U.S. climate leaders say that they can hear the cries of desperation from Pakistan, but they don't actually hear us. They don't care about us. Am I not allowed feelings, or emotions, and just have to carry on as if nothing has happened? How many fires can I put out? How do I explain the flooding in Pakistan when I felt everyone was looking at me like I was from Mars when I just said the word "Pakistan?"

B. Victoria's personal account

The first time I understood there was a difference in how people experienced climate disasters, I was ten years old. As a Miami baby, even at ten, I was used to hurricanes. But in the days before Hurricane Andrew, it was different. Everyone was scared.

The windows stood out the most. Those belonging to the richer houses were covered in hurricane shutters, the average-looking homes had windows covered in sheets of plywood, and the worst-looking, especially those I saw on my way to tennis practice every day, had windows draped in masking tape.

My childhood was spent playing tennis afterschool in the heart of Miami. It was my mother's way of sprinkling Black culture into an otherwise white-washed, private school education. When my best friend stopped coming to practice after the storm, I called her. Through tears, she told me her family had lost everything. The 174 mph winds had flattened her home, and her small Haitian family, consisting of her, her mother, and her older sister, were living in their car because the shelters were not safe for them. Eventually, they moved to Atlanta and I never saw her again.

I later learned she was one of more than 100,000 Miamians displaced by the storm.²⁵ Poor people suffered the most, but poor Black and brown women, particularly immigrants, suffered worst of all. Whether it was the inability to procedurally apply for available resources, avoiding government rescue workers for fear of deportation, living in neighborhoods without electricity or trash removal for months, or the increase in crimes against women both in and outside the domestic home, in those weeks after the storm these women suffered under policies and practices that simply did not account for them at all.²⁶

I have no idea what covered my friend's windows in the days before the storm. But if I were to guess, a poor family of Haitian Black women living in the path of a category 5 hurricane... neither masking tape, plywood, nor shutters could have saved them from what was to come.

C. *White Privilege*

According to medical researchers, the first cholera death was a twenty-eight year-old, mentally ill man from Mirebalais, Haiti.²⁷ His neighbors said he wandered the streets nude and liked to drink and bathe in the Latem River.²⁸ In Haiti, the Meye River feeds the Latem River. He could not have known that miles away, the UN peacekeepers' raw sewage had contaminated the Meye River.²⁹ The peacekeepers came to Haiti to aid in earthquake recovery and contracted cholera while on a previous mission in Nepal.³⁰ Twenty-four hours after he experienced his first choleric symptom, the young man from Mirebalais was dead.³¹ His death was followed by an additional 9,792 deaths and the infection of 820,000 more.³² It took six

25. Betty Morrow & Elaine Enarson, *Hurricane Andrew Through Women's Eyes: Issues and Recommendations*, 14 INT'L J. MASS EMERGENCIES & DISASTERS 5, 9 (1996).

26. *Id.* at 6-8, 11-12.

27. Louise C. Ivers & David A. Walton, *The "First" Case of Cholera in Haiti: Lessons for Global Health*, 86 AM. J. TROP. MED. HYG. 36-38 (2012).

28. *Id.* at 36.

29. Camila Domonoske, *U.N. Admits Role in Haiti Cholera Outbreak That Has Killed Thousands*, NAT'L PUB. RADIO (Aug. 18, 2016, 1:27 PM), <https://www.npr.org/sections/thetwo-way/2016/08/18/490468640/u-n-admits-role-in-haiti-cholera-outbreak-that-has-killed-thousands>.

30. *Id.*

31. Ivers & Walton, *supra* note 27, at 36.

32. Daniel H.F. Rubin et al., *Reemergence of Cholera in Haiti*, 387 N. ENG. J. MED. 2387, 2387-89 (2022) ("Cholera was absent from Haiti until an inadvertent introduction by United Nations security forces in October 2010. The ensuing epidemic sickened 820,000 people and caused 9,792 reported deaths.").

years for the UN to admit that its peacekeepers caused the Haitian cholera outbreak.³³

When the Institute for Justice and Democracy in Haiti sued the UN for the loss and damage incurred by the Haitian people, it lost.³⁴ Represented by the United States, the UN asserted immunity from suit and refused to address the requests to install a national water and sanitation system on the island, make reparation payments to cholera victims and their families, and a public apology.³⁵

Cholera remained on the island for nine years, until the last reported case in January, 2019.³⁶ Then in October 2022, a cholera outbreak ensued again, and by December, it infected 13,672 Haitian people and killed 283.³⁷ Scientists concluded that the strain likely descended from the *Vibrio cholerae* strain that caused the 2010 epidemic.³⁸

Twenty-three years later, now that the world can see the loss and damage, the disease, death, and suffering that came at the hands of the UN in the days following the worst earthquake the country had seen, why is the UN not required to pay for the damage to the Haitian people?

And in all this, what of the women's experience? During the recovery period, the needs of Haitian women were overlooked, particularly in the reporting done by white women. In the UN's self-applauding Haitian case study of the contribution of women to the humanitarian response after the earthquake, the report noted, "while rates of 'transactional' sex increased, there was no evidence of an increase in sexual violence as such."³⁹

But according to MADRE, a nonprofit working with organizations in Port-au-Prince seeking justice for women in Haiti, in its statement submitted to the UN Human Rights Council in May 2010, a delegation of U.S. lawyers and women's health specialists concluded that rapes in the camps were dramatically underreported, and the majority of women they interviewed were raped by two or more individuals.⁴⁰

33. Jonathan M. Katz, *U.N. Admits Role in Cholera Epidemic in Haiti*, N.Y. TIMES (Aug. 17, 2016), <https://www.nytimes.com/2016/08/18/world/americas/united-nations-haiti-cholera.html>.

34. See *Georges v. United Nations*, 834 F.3d 88, 98 (2d Cir. 2016) (affirming judgment of lower court for lack of subject matter jurisdiction).

35. Domonoske, *supra* note 29.

36. Rubin et al., *supra* note 32.

37. *Disease Outbreak News; Cholera – Haiti*, WORLD HEALTH ORG. (Dec. 13, 2022), <https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON427>.

38. Rubin et al., *supra* note 32.

39. Irina Mosel, *Evaluation of UN Women's Contribution to Increasing Women's Leadership and Participation in Peace and Security and Humanitarian Response*, OVERSEAS DEV. INST. 119, 129 (2013), <http://cdn-odi-production.s3.amazonaws.com/media/documents/8967.pdf>.

40. MADRE, *Post-Earthquake Violence Against Women in Haiti: Failure to Prevent, Protect and Punish*, RELIEFWEB (May 18, 2010), <https://reliefweb.int/report/haiti/post->

Residents of the Global South disproportionately bear a greater burden of climate change, and the women of the Global South remain the greatest of these burden carriers; yet, even in activism, their cries are continuously ignored. “Toxic colonialism” is a phrase coined by Jim Puckett of Greenpeace to refer to the “dumping of the industrial wastes of the West on territories of the Third World.”⁴¹ The risk of this transboundary movement of hazardous waste to Third World countries has deleterious effects to its Black and brown residents,⁴² particularly since these developing nations rarely have adequate technology or infrastructure to properly dispose of the toxic waste.⁴³ Waste employees lack proper protective gear and inadequate structural protections to prevent leakage of toxic waste to the water, soil, or crops.⁴⁴

As one of the largest global hazardous waste generators, the U.S. is a significant contributor to the transboundary movement of toxic waste.⁴⁵ Between 2020 and 2021, the U.S. exported 200,000 tons of plastic to Latin America and the Caribbean making it the largest exporter of this type of waste in the region.⁴⁶ The top exporters of waste as of 2021 were Japan, the U.S., the Netherlands, and Germany, and the top recipients of waste were Malaysia, Indonesia, India, and Thailand.⁴⁷ It remains, however, the women, who carry the greater burden of a life inhaling the fumes of toxic waste disposal.

earthquake-violence-against-women-haiti-failure-prevent-protect-and-punish (“From January 13-March 21, KOFAVIV tracked 230 incidents of rape in 15 camps in Port-au-Prince. There are over 500 camps in the capital. Medecins Sans Frontiers reported 68 cases of rape in the month of April at one of their clinics in Port-au-Prince.”).

41. Laura A. W. Pratt, *Decreasing Dirty Dumping? A Reevaluation of Toxic Waste Colonialism and the Global Management of Transboundary Hazardous Waste*, 35 WM. & MARY ENV'T L. & POL'Y REV. 581, 587 (2011) (quoting Tam Dalyell, *Thistle Diary: Toxic Wastes and Other Ethical Issues*, NEW SCIENTIST, July 4, 1992, <https://www.newscientist.com/article/mg13518285-900-thistle-diary-toxic-wastes-and-other-ethical-issues-comment-from-westminster-by-tam-dalyell/>).

42. See Pratt, *supra* note 41, at 587.

43. *Id.*

44. Alexia Dreau, *Why is the Global Waste Crisis a Social Justice Issue?*, ZERO WASTE EUR. (Feb. 18, 2022), <https://zerowasteurope.eu/2022/02/why-is-the-global-waste-crisis-a-social-justice-issue/>.

45. Pratt, *supra* note 41, at 610.

46. María Fernanda Ramírez Ramos, *From “Backyard” to “Dumpster”: This is How the US is Using Latin America as its Dumping Ground*, LATIN AM. POST (Oct. 12, 2022), <https://latinamericanpost.com/42329-from-backyard-to-dumpster-this-is-how-the-us-is-using-latin-america-as-its-dumping-ground>.

47. *Id.*

III. “HOLD ME DOWN”

Poisoned women give birth to poisoned children. “Recent body burden analysis has shown that [toxic] chemicals do get passed onto children during pregnancy.”⁴⁸ Women of the Third World whose countries suffer from pollution due to chemicals emitted from toxic waste experience “reproductive, developmental, immunological, hormonal, and carcinogenic effects...”⁴⁹ But if developed nations are continually allowed to turn a blind eye once the trash leaves their shores, and bear no fiscal or ethical responsibility to facilitate its proper disposal, the burden of toxic colonialism on the women of the Global South will impact generations.

Within America’s boundaries, environmental racism manifests itself in the forms of government-driven placements of factories and waste sites in communities of color through zoning and land use regulations, as well as race-based resource-allocation that causes infrastructures in Black and brown neighborhoods to crumble under the pressures of climate change.

It’s five times more likely for a Black child to have lead poisoning from proximity to a waste site than a white child. Even wealthy Black families are more likely to live next to a waste site than low-income white families. Black Americans are exposed to 56% more pollution than they produce. Latinx Americans are exposed to 63% more pollution than they produce, and white Americans are exposed to 17% less pollution than they produce. Native Americans are also suffering constant environmental injustices.⁵⁰

A. *Cancer Alley*

Consider the story of Sharon Lavigne, a Black woman from St. James Parish, Louisiana.⁵¹ Specifically, she resides within the eighty-five-mile stretch from New Orleans to Baton Rouge along the Mississippi River, dubbed “Cancer Alley” or “Chemical Corridor,” because it contains the

48. *Women Disproportionately Vulnerable to Health Risks from Chemical and Waste Pollution*, BASEL, ROTTERDAM, STOCKHOLM CONVENTION (Mar. 1, 2019), <http://www.brsmeas.org/?tabid=7965> (“Due to a combination of socio-economic, cultural, and physiological factors, women and girls are disproportionately vulnerable to the harmful impact of pollution from chemicals and waste.”).

49. *Id.*

50. Sam Davis with Amber Skinner, *Environmental Racism in the United States*, DOGWOOD ALLIANCE (Jan. 3, 2022), <https://www.dogwoodalliance.org/2022/01/environmental-racism-in-the-united-states/>.

51. Nina Lakhani, *Cancer Alley Campaigner Wins Goldman Prize for Environmental Defenders*, THE GUARDIAN, (June 15, 2021, 3:30 EDT), <https://www.theguardian.com/us-news/2021/jun/15/sharon-lavigne-goldman-prize-cancer-alley-campaigner>.

largest cluster of cancer cases in the United States.⁵² The Lung Cancer Center reported that fifty different toxic chemicals pollute the air along this stretch of land.⁵³ The corridor is ninety percent Black, low-income residents.

In 2018, when St. James Parish's majority-white council re-zoned yet another predominately Black residential area for industrial use two miles from Ms. Lavigne's home to accommodate a \$1.25 billion dollar Chinese-owned plastics plant, Ms. Lavigne led the resistance.⁵⁴ With the Tulane environmental law clinic and through her faith-based environmental justice organization, Rise St. James, she mounted such an opposition that the company withdrew its land use application.⁵⁵

Ms. Lavigne's efforts were immeasurable, but it will take more than a brave Black grandmother to remove approximately 200 and growing petrochemical plants, pipelines, and oil depots currently operating in the corridor.⁵⁶ Most know the story of Cancer Alley; yet no one has ever taken legal or fiscal responsibility. Michael Regan, an Environmental Protection Agency ("EPA") administrator, embarked on a "Journey to Justice" tour speaking to Cancer Alley residents, and on January 26, 2022, he announced his plan to conduct unannounced inspections of the plants along Cancer Alley.⁵⁷ Regan noted that the EPA also purchased \$600,000 of mobile air pollution monitoring equipment.⁵⁸

Of recent note, the EPA sent a Letter of Concern dated October 12, 2022, to the Louisiana Department of Environmental Quality and the Louisiana Department of Health for the disparate adverse impact of Black residents living the "Industrial Corridor" experience.⁵⁹ The EPA alleges discrimination and that the strategic placement of the factories and failure

52. Megan O'Leary, *Lung Cancer in Louisiana's Cancer Alley*, LUNG CANCER CTR. (Feb. 10, 2022), <https://www.lungcancercenter.com/news/cancer-alley-louisiana/>; *see also* Lakhani, *supra* note 51.

53. O'Leary, *supra* note 52.

54. Lakhani, *supra* note 51.

55. *Id.*

56. O'Leary, *supra* note 52.

57. *Id.*

58. *Id.*

59. Letter from U.S. Env't Prot. Agency, Off. of Env't Just. & External Civ. Rts., to Dr. Chuck Carr Brown, Sec'y, Louisiana Dep't of Env't Quality and Dr. Courtney N. Phillips, Sec'y, Louisiana Dep't of Health (Oct. 12, 2022), <https://www.epa.gov/system/files/documents/2022-10/2022%2010%2012%20Final%20Letter%20LDEQ%20LDH%2001R-22-R6%2C%2002R-22-R6%2C%2004R-22-R6.pdf>. [hereinafter EPA Letter].

to adequately warn residents of air toxicity violates their civil rights.⁶⁰ Yet, even in this Letter of Concern, neither liability nor compensation is mentioned as a possible remedy.

These American stories are interminable. In 2008, 1,000,000,000 gallons of coal ash were dumped in the Emory River in Kingston, Tennessee, a city where ninety percent of its residents are white. The EPA labeled the ash as hazardous and authorized the Tennessee Valley Authority to transport the coal ash waste to Uniontown, Alabama, a city where ninety percent of its residents are Black.⁶¹ The Tennessee Valley Authority subsequently reclassified the waste as non-hazardous.⁶² The waste remains in Uniontown to this day.⁶³

And for the record, as of the writing of this Article, the Black residents of Jackson, Mississippi, still do not have clean drinking water.⁶⁴ Although the crisis was directly caused by Mississippi's main water facility failing due to unprecedented flooding in September 2022, the failure originates from the neglect of white-led governments to invest any of the billions of federal dollars the state has received in the water infrastructure of a majority Black city.⁶⁵

B. *Loss & Damage*

Racial capitalism leads to environmental injustice which is resolved only through money and resource allocation that both eliminate the threat and compensate victims for the damage and loss. Victims must be restored “insofar as possible (and desirable) to their pre-impact physical and emotional status.”⁶⁶

60. Jennifer Hijazi, *EPA Finds Evidence of Disparate Impacts in ‘Cancer Alley’ (1)*, BLOOMBERG L. (Oct. 13, 2022, 1:44 PM), https://news.bloomberglaw.com/environment-and-energy/epa-finds-evidence-of-disparate-health-impacts-in-cancer-alley_

61. *See* Davis, *supra* note 50.

62. *Id.*

63. *Id.*

64. Dr. Mel Michelle Lewis, *Climate and Environmental Injustice: Thousands Without Water in Jackson, Mississippi*, AM. RIVERS (Sept. 2, 2022), https://www.americanrivers.org/2022/09/climate-and-environmental-injustice-thousands-without-water-in-jackson-mississippi/?gclid=Cj0KCQiA1sucBhDgARIsAFoytUt1u9iiRQCMjIYu9UEHRD_EvKKCvrdr16A3W2nOIXMDS58r19zpXsaAuizEALw_wcB.

65. *Id.*

66. Manuel Rafael Alba, *Natural Disaster and Household Recovery in the Aftermath of Hurricane Andrew: A Case Study of Four Hispanic Households in South Miami Heights*, FIU ELEC. THESES & DISSERTATION (July 14, 1995), <https://digitalcommons.fiu.edu/cgi/viewcontent.cgi?article=2369&context=etd> (citing Anthony

Until the major contributors to global warming assent to this form of recovery, a critical mass of climate change victims is accumulating. Over the next ten years, it is likely most of us will become what Lerner dubbed, accidental activists, residents of sacrifice zones—the most polluted and poisoned places, fighting to ensure that those who cause global warming allocate sufficient resources to those who suffer from global warming.⁶⁷

Liability avoidance is a global theme. The Paris Agreement expressly excludes the right of victims to seek compensation or sue for liability.⁶⁸ Even in America today, there has yet to be a clear win in environmental justice cases. In the landmark case *Bean v. Southwest Waste Management Corp.*, and a string of subsequent cases, plaintiffs lost despite apparent, targeted, environmental racism for failure to prove an intent to discriminate or because the courts found no private right of action for victims to enforce federal regulations.⁶⁹ In both the international and nation-wide contexts, there exists a shroud which serves to cover and protect those countries, corporations and local governments that need it the least.

Laura Pulido argues environmental racism cannot capture the full scope of what is happening to Black and brown people as a result of climate change. She complained that the term “environmental racism” has been conveniently limited by courts to require a demonstration of clear malice and hostility, a burden that, absent a whistleblower, is hard to irrefutably prove.⁷⁰ Environmental racism therefore fails to capture the structural and hegemonic forms of racism that contribute to racial inequality. She opts

F.C. Wallace, *TORNADO IN WORCESTER: AN EXPLORATORY STUDY OF INDIVIDUAL AND COMMUNITY BEHAVIOR IN AN EXTREME SITUATION* 392 (National Academy of Sciences 1956)).

67. Robert D. Bullard, *Steve Lerner's Sacrifice Zones: The Front Lines of Toxic Chemical Exposure in the United States*, 119 ENV'T HEALTH PERSP. 6 (June 2011) (book review), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3114843/pdf/ehp-119-a266a.pdf>.

68. Paris Agreement to the United Nations Framework Convention on Climate Change art. 8, Dec. 12, 2015, T.I.A.S. No 16-1104, <https://www.state.gov/wp-content/uploads/2021/05/16-1104-Environment-and-Conservation-Multilateral-Paris-Agreement.pdf>.

69. See *Bean v. Sw. Waste Mgmt. Corp.*, 482 F. Supp. 673 (S.D. Tex. 1979); see also *R.I.S.E., Inc. v. Kay*, 768 F. Supp. 1144, 1149 (E.D. Va. 1991) (Black Baptist church sued county for a landfill placement and lost for failure to prove discriminatory intent, despite court's acknowledgement that Blacks in King and Queen County had been disproportionately impacted by landfill placements since 1969); see also *James Emory, Inc. v. Twiggs Cnty.*, 883 F. Supp. 1546 (M.D. Ga. 1995); See *Alexander v. Sandoval*, 532 U.S. 275, 294 (2001) (finding that, despite evidence of disparate impact, Title VI of the Civil Rights Act of 1964 does not include a private right of action).

70. Laura Pulido, *Rethinking Environmental Racism: White Privilege and Urban Development in Southern California*, 90 ANNALS OF THE ASS'N OF AM. GEOGRAPHERS 1, 13 (Mar. 2000).

instead to broaden the label by recapturing environmental racism as simply, “white privilege.”⁷¹

“A focus on white privilege enables us to develop a more structural, less conscious, and more deeply historicized understanding of racism. It differs from a hostile, individual, discriminatory act, in that it refers to the privileges and benefits that accrue to white people by virtue of their whiteness.”⁷²

Legally, it is difficult to prove UN peacekeepers were allowed into Haiti with cholera because they hate Haitians or wanted to harm them. However criminally negligent their behavior may have been. But, white privilege does explain why the UN is not liable for the outbreak.

White privilege explains how the EPA not only acknowledges Cancer Alley is killing Black people specifically, but the local governments seem to be targeting Black neighborhoods; and yet do not hold a single parish liable nor require a single factory to provide substantive remuneration to restore the residents of this poisonous corridor. While it may be difficult to prove the corridor exists because local governments do not care about the health of its Black residents, white privilege explains their protection, at the expense of Black lives.

This point is why the loss and damage fund conceptually created and agreed to at the global climate summit COP27 came as such a shock. By all accounts, the results of the 2022 UN convention on climate change were minimal, until developing countries unified in an unprecedented way to lobby for environmental justice. Marshaled by Pakistan, a country where millions are still missing after severe flooding, which “contributes 0.8% of the global carbon footprint,” these nations corralled 200 countries, including the U.S., to agree to a loss and damage fund.⁷³ The idea is that smaller countries that cannot simply “avoid or adapt” to climate change-induced disasters are compensated for the damage those disasters cause by the countries who are responsible for the lion’s share of environmental abuse.⁷⁴

The agreement is notable because in many respects the sheer creation of the fund is a tacit admission of the reality of climate change and the perpetrators of it. But is it enough?⁷⁵ Can it address the complexities of the

71. *Id.*

72. *Id.*

73. Martina Ijini, *What is ‘Loss and Damage’ Compensation?* EARTH.ORG (Nov. 7, 2022), <https://earth.org/loss-and-damage/>.

74. *Id.*

75. Saleemul Huq & Roger-Mark De Souza, *Not Fully Lost and Damaged: How Loss and Damage Fared in the Paris Agreement*, Wilson Ctr. (Dec. 22, 2015), <https://www.wilsoncenter.org/article/not-fully-lost-and-damaged-how-loss-and-damage->

damage caused by environmental racism, particularly when its greatest impact is on those at the intersection of race, gender, and class? While international bodies, including UNFCCC, have recognized loss and damage as distinct from adaptation because of harms that have already occurred.⁷⁶ The impacts of climate change are severe and profound.⁷⁷

CONCLUSION

In America, like the globe, Black and brown women are at the forefront of environmental activism;⁷⁸ yet, they are not represented in climate policy-making, despite bearing the greater burden.⁷⁹ The UN estimates women represent eighty percent of people displaced by climate change.⁸⁰ Notwithstanding, out of the 110 leaders at COP27, only seven of them were women.⁸¹ According to the Women's Environment and Development Organisation, COP27 had the lowest concentration of women leaders since 2015.⁸²

The transformational change Zakaria calls for in the global feminist movement—a change that shares power with women of color, does not

fares-the-paris-agreement; and Bonnie Smith, *Adapting the Paris Agreement*, 4/18/2016 GEO. ENV'T L. REV. ONLINE 1, 1 (2016).

76. Jacob Wise, *Climate Change Loss and Damage Litigation: Infeasible or A Useful Shadow?*, 38 WIS. INT'L L.J. 687, 700 (2021). See also Cinnamon P. Carlame, *From Covid-19 to Climate Change: Disaster & Inequality at the Crossroads*, 12 SAN DIEGO J. CLIMATE & ENERGY L. 19, 21 (2021): "In contrast to the acute harms of natural disasters and pandemics, the violence and disruption of climate change threatens to engulf us storm by storm, fire by fire, inch by inch of sea level rise before we can even agree that it is a disaster worth trying to avoid, minimize, or prepare for." *Id.*

77. Myanna Dellinger, *Rethinking Force Majeure in Public International Law*, 37 PACE L. REV. 455, 463 (2017): "Time has now come to rethink the ability of nation states, as well as private parties, to avoid financial liability based on weather events that were once successfully argued to be unpreventable and unforeseeable by the parties. "Extreme" weather events are no longer so; they are becoming the order of the day. '[L]aw is itself a human construct.' Excuse doctrines based on unwarranted perceptions that we have not and cannot affect the weather must be reconstructed to reflect modern on-the-ground reality. The law is often considered to adapt too slowly to the realities of modern life, such as in the technical areas and, here, the scientific and meteorological. At the same time, the general public is losing faith in the judiciary's ability to progressively solve some of today's most urgent societal problems." (Internal citations omitted) *Id.*

78. Bullard, *supra* note 67.

79. Jessica Kutz, *Representation, Protection, Restitution: Women Lay Out Key Demands at COP27 Climate Summit*, THE 19TH (Nov. 15, 2022, 1:10 PM PST), <https://19thnews.org/2022/11/women-cop27-climate-environment-demands/>.

80. Esme Stallard, *COP27: Lack of Women at Negotiations Raises Concerns*, BBC NEWS (Nov. 16, 2022), <https://www.bbc.com/news/science-environment-63636435>.

81. *Id.*

82. *Id.*

white-wash women's experiences, nor presume solutions that neither consider nor consult Black and brown women—is the same transformational change required in this global fight for environmental justice. Our very lives depend on the ability of the collective to find creative, impactful, and feasible solutions that halt our extinction. However, the sustainability of even the best of these solutions is impractical without the contributions of the indigenous women to whom our history belongs.