



Avoiding or pursuing gender just transitions: The standard of review and *KlimaSeniorinnen Schweiz*

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Abstract

The primary focus of gender just transition has been on the nature of work, exploring how to redesign and reorient jobs. But what is the role, if any, of law in this process? This article explores an under examined legal concept, the standard of review, through the lens of the landmark judgment, *KlimaSeniorinnen Schweiz v Switzerland*, from the European Court of Human Rights. It argues that the Court's innovation with respect to the standard of review, creating an interrogative and deferential standard, is conceptually confusing and ill-suited to gender justice transitions. This approach alleviates male living patterns from scrutiny and continues to perpetuate women's exclusion from the constitutional structure of the state. Drawing on feminist jurisprudence from a range of apex and regional courts, as well as the empirical evidence on the impacts of climate change, it argues that courts should always calibrate the standard of review to intensely scrutinise when gender justice transition is the crux of the case.

Key words

Women, equality, climate change, standard of review

Resumen

La transición con perspectiva de género se ha centrado principalmente en la naturaleza del trabajo, analizando cómo rediseñar y reorientar los puestos de trabajo. Pero, ¿qué papel desempeña, si es que desempeña alguno, el derecho en este proceso? Este artículo analiza un concepto jurídico poco estudiado, el criterio de control, a través del prisma de la sentencia histórica del Tribunal Europeo de Derechos Humanos en el caso *KlimaSeniorinnen Schweiz contra Suiza*. En él se sostiene que la innovación del Tribunal con respecto al criterio de control —al crear un criterio interrogativo y deferente— resulta conceptualmente confusa y poco adecuada para las transiciones con perspectiva de género. Este enfoque exime a los patrones de vida masculinos del

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escrutinio y sigue perpetuando la exclusión de las mujeres de la estructura constitucional del Estado. Basándose en la jurisprudencia feminista de diversos tribunales supremos y regionales, así como en la evidencia empírica sobre los impactos del cambio climático, se sostiene que los tribunales deberían ajustar siempre el criterio de control para realizar un escrutinio riguroso cuando la transición hacia la justicia de género sea el quid de la cuestión.

Palabras clave

Mujeres, igualdad, cambio climático, criterio de revisión

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1. Introduction

A gender just transition seeks “environmentally sustainable, low-carbon economies” that are “predicated on the centrality of gender equality” (UN Women 2023). This is an ambitious global goal as it requires undoing centuries of conceptualising both women and the natural world as objects that can be extracted, exploited, used, consumed and discarded. The great insight from ecofeminism is that there are shared conceptual roots to the oppression of women and the oppression of the environment (Warren 1997, Morrow 2021). A gender just and sustainable future is rooted in ecofeminism, as it requires a radical re-thinking of our relationship to the environment and gender power relations. There are overlapping definitions of a gender just transition ranging from creating more opportunities for fiscal growth for women to transforming patriarchal economic structures (Walk 2024). The core of the concept is reflected in the statement from UN Women: “[A] gender-responsive just transition is predicated on the centrality of gender equality and care in policies and programmes towards an economy that works for all people and planet while upholding rights [...] including of people facing [...] intersecting forms of discrimination on the basis of sex, income, age, race, ethnicity, gender identity and sexual orientation’ (UN Women 2023, 3). Transforming the economic system, in light of climate change, must be done in a manner that strengthens gender and other forms of equality. As the definitions allude to, the primary focus of gender just transition has been on the nature of work, asking how jobs can be reoriented, redesigned and recreated to achieve a gender just transition. But what is the role, if any, of law in this process? There is a long tradition of women using law, both successfully and unsuccessfully, to challenge inequality, outside of the context of climate change. Are there insights into how law can facilitate gender just transitions from legal battles to guarantee women’s equality?

This normative reimaging is already being done. Much attention has been paid to how the content of women’s rights needs to be rethought in light of climate degradation (*Climate Emergency and Human Rights* 2025). The work of the UN Committee on the Elimination of All Forms of Discrimination Against Women stands out. It calls for reinterpreting, for example, women’s right to work, such that it requires states to promote “women’s right to access training in nontraditional areas of work, including within the green economy, and sustainable livelihoods” (CEDAW Committee 2018). Reimagining the normative content of rights is vital in securing a gender just transition. Goldblatt’s article in this edition does the hard work of interrogating what the right to equality means in the context of a rapidly warming planet (Goldblatt 2026). However, more is required of the law. A range of legal concepts, such as standing, evidence, causality and remedy, must be rethought as the empirical realities of women’s inequality in the context of climate change destabilises long-held legal orthodoxies.

An overlooked concept in this reimaging of law in light of the commitment to gender just transitions is the standard of review. States, while affirming both the importance of women’s equality and a sustainable future, argue that courts should not forensically interrogate whether climate change (in)action breaches rights nor whether any breach is justified. States often argue that courts should employ a light touch review and be highly deferential to the state’s choices as climate change is highly politicised and as such is beyond the realm of law and courts (*KlimaSeniorinnen Schweiz* 2024). This is often because

the reason for not pursuing a gender just transition is that it is too costly. For example, a Swiss referendum on a proposed CO₂ Act was rejected as “there were fears of the increase in the cost of living and in particular a possible rise in the price of petrol” (*KlimaSeniorinnen Schweiz* 2024, [96]). Many states who intervened in *KlimaSeniorinnen Schweiz* stressed that the political economy of climate change meant the European Court of Human Rights should employ minimal scrutiny to the claim (*KlimaSeniorinnen Schweiz* 2024, [367]-[376]). Courts, so the thinking goes, are not well-placed to adjudicate when costs are at stake as they do not have the legitimacy or competency to decide whether the state should prioritise women’s sustainable equality or short-term economic stability. This claim is not new, as states have drawn on similar arguments to argue that it is institutionally inappropriate for courts to scrutinise the state’s claim that it is permissible to limit women’s equality rights (SG 2015, SC 2021, *Hibbs* 2003). With respect to women’s equality, sometimes courts accept these arguments and other times they push back and reject them (Campbell 2025). It is on this pushing back that this article is centred. It draws on this strand of jurisprudence to reflect on the methodological shifts that the standard of review needs to undergo to be responsive to not only women’s inequality but also to climate change.

This article explores gender just transitions and the standard of review through the lens of the landmark 2024 judgment, *KlimaSeniorinnen Schweiz v Switzerland*, from the European Court of Human Rights. This was a case brought by older women arguing that the state’s climate change policies were in violation of the European Convention of Human Rights, a claim upheld by the Court. Although the claim was centred on the health impacts of climate change and gender did not play a significant role in the Court’s reasoning process (Hefti 2024), it is still intriguing to explore this case from the perspective of gender just transition. This is because it brings into the spotlight the state’s energy and economic policies, which would be at stake in pursuing gendered sustainable economies. Moreover, it was a case brought by older women. Factoring in gender into the analysis, as done in this article, marks out both the dangers of siloing women and climate change and how attention to gender can enrich climate change litigation. This section begins by sketching out the main claims in *KlimaSeniorinnen Schweiz*. While there has been debate on whether the Court correctly calibrated the degree of inquisitiveness in evaluating the claim (Eckes 2025, Klein 2026), what has been largely overlooked is how the Court created a novel hybrid standard of review that was somehow both deferential and interrogative. To evaluate this innovation, Section 3 takes a step back, turning to explore similar arguments on the standard of review for claims that it is constitutionally permissible to limit women’s equality rights, outside of the climate change context. Building on this feminist theorising and jurisprudence, Section 4 then argues that the standard of review pioneered in *KlimaSeniorinnen Schweiz* is doomed to fail as it grossly misunderstands the nature of climate change. Moreover, it is ill-suited to review breaches or proposed limits with respect to gender just transitions. The hybrid standard of review does not capture how the setting of climate change benchmarks may continue to insulate from judicial scrutiny men’s living patterns while placing women’s under a microscope. Nor does it recognise how mitigation, adaption and resilience measures may, on one hand, impose seemingly trivial demands that on closer inspection place significant environmental burdens on women and on the other hand, ignore women, perpetuating their continued exclusion from public life. Drawing

on jurisprudence from a range of apex and regional courts, equality and justification theory, as well as the empirical evidence on the impacts of climate change, this article argues that courts should always calibrate the standard of review to intensely scrutinise when gender just transition is the crux of the case. The article concludes with broader reflections on how the standard of review can continue to evolve so that all aspects of law reflect the global commitment to gender just transitions.

2. Interrogating and avoiding gender just transitions

Every living thing on the planet will be impacted by climate change, but climate change is not the great leveller. Antecedent inequalities are exacerbated and compounded by climate change and different groups will experience the impacts of climate change differently. This is the heart of *KlimaSeniorinnen Schweiz*. Older women in Switzerland argued that their physical ability to adapt to increasing heatwaves was limited (*KlimaSeniorinnen Schweiz* 2024 [24]). The warming climate was intensifying their physical ailments and was leading to increased risk of morbidity. The women approached the European Court of Human Rights both in their individual capacity and through their climate-change association (*KlimaSeniorinnen Schweiz* 2024 [10]). They argued that Switzerland had failed to sufficiently reduce its carbon emissions, thereby endangering their health, in violation of Article 2 (right to life) and Article 8 (right to private life) of the European Convention on Human Rights. They also argued that the failure of the Swiss domestic courts to redress their rights was a violation of Article 6 (right to a fair trial) and Article 13 (right to a remedy). Notably, despite the gender dimensions of the claim, the older women did not invoke Article 14 (non-discrimination) and as mentioned above, gender played a minimal role in the Court's analysis. There was a plethora of issues for the Court to consider, with a significant portion of the judgment devoted to whether the women had standing (*KlimaSeniorinnen Schweiz* 2024, [458]-[537]). The Court ultimately held that the association, not the individual women, did have standing and concluded that there was a violation of Articles 6 and 8 and that it was unnecessary to determine if there were breaches of Articles 2 and 13. In coming to this conclusion, the Court pioneered an innovative standard of review that was searching with respect to some aspects of the claim and deferential in relation to others. This section now turns to examine this hybrid standard of review in more detail.

2.1. Establishing the purpose of the intensity of review

Beyond whether a right has been breached or whether that breach could possibly be justified, there is an initial question that shapes the entire process of adjudicating any claim. How intensely will the Court review the arguments of the older women that there has been an interference of their rights? And how much will it scrutinise the state's arguments that any *prima facie* interference is justified such that there is no violation of the Convention? Calibration of the standard of review, or in the parlance of the European Court of Human Rights, pinpointing the margin of appreciation, matters greatly to the outcome of any claim. Broadly, a minimal degree of scrutiny corresponds with concluding either there is no breach or any interference is justified, whereas a high degree tends to result in the opposite conclusion. The seemingly simple question on how closely to assess the claim that older women's rights have been violated by Switzerland's

(in)action on climate change raises deep questions on the role of courts in protecting human rights.

Determining the precise intensity requires courts to traverse competing imperatives. On one hand, states must make hard decisions with respect to how to guarantee women's equality, respond to climate change and fulfil a wide range of other objectives. The difficulty in making these decisions means the state is entitled to judicial respect and courts should employ a minimal intensity of review when assessing the claim (King 2008, Young 2009). On the other hand, democratically elected national bodies may fail to take seriously the lives of minorities, like older women, and a searching standard of review protects the rights of these groups from political vicissitudes (Dixon 2017). To resolve this tension, courts examine a canon of push-and-pull factors (Kavanagh 2023, Chan 2024). For the purposes of this article, the relevant factors are the nature of the right and democratic legitimacy. When the (alleged) rights violation is more severe, greater scrutiny should be employed and when the claim strays towards the political realm a lesser degree is more institutionally appropriate (Elliott 2015, Kavanagh 2023, 278, Chan 2024, 32, *DA and RA* 2026). Both factors are centred on the nature of the subject. There is no established methodology for resolving tensions between these factors and, prior to *KlimaSeniorinnen*, little thought has been given to how these factors can and should operate in the case of claims that touch upon existential threats to the planet. The Court, however, side-stepped and avoided any complexities by pretending that the competing degrees of scrutiny argued for in the case could be harmoniously integrated. By placing artificial conceptual boundaries on climate change, believing it is possible to separate climate objectives from climate change measures, the Court held that the standard of review was deferential to respect the political decisions of national bodies while also holding that it was searching to protect against serious rights infringements. As argued in Section 3, a fractured standard of review is conceptually incoherent. Moreover, this approach is inconsistent with the realities of women's inequality and the relationship between gender and climate change mitigation, adaption and resilience.

2.2. *Grave and legal or contentious and political: What is climate change?*

The state and the older women in *KlimaSeniorinnen Schweiz* had diametrically different understandings of what climate change is and how the nature of climate change impacts the standard of review. The state argued that climate change is essentially a political problem as it requires hard decisions on resource allocation and trade-offs and demands developing mitigation, resilience and adaption that are both costly and require significant changes in living patterns (*KlimaSeniorinnen Schweiz* 2024, [261], [351], [367]). It would, thus, be institutionally inappropriate to employ a searching standard of review. As one intervening state explained, "climate and energy policy should be predominantly a political and democratic exercise [...] the Court was not a supervisor of society-wide policy decisions" (*KlimaSeniorinnen Schweiz* 2024, [372]). Or as Switzerland argued that the "judicialization of the matter... would only create tensions... [with] the separation of powers... the Court could not act as a supreme court for the environment" (*KlimaSeniorinnen Schweiz* 2024, [338]). These arguments cast climate change as a political, not legal, issue and raise fears of democratic illegitimacy and institutional overreach if the Court searchingly assessed the claim. These arguments were compelling to the dissenting judge, who was sceptical of the role the Court could play in the

“survival of our planet” (*KlimaSeniorinnen Schweiz* 2024, [6] dissenting opinion of Judge Eicke). Judge Eicke advocated for “extreme caution and prudence”, to the point where he concluded that the claim should have been held as not justiciable (*KlimaSeniorinnen Schweiz* 2024, [10], dissenting opinion of Judge Eicke). The state’s arguments in this case set up a dichotomy between law and politics and assumed that climate change could be neatly categorized as one or the other. As explored in Section II, this not new and these claims have routinely been employed to argue that limitation rationales for women’s inequality should not be forensically interrogated.

The older women in *KlimaSeniorinnen Schweiz* also examined the nature of climate change and its impacts on women’s equality to argue that a searching standard was required. Their arguments stressed the temporality of climate change and the significance of its impacts (*KlimaSeniorinnen Schweiz* 2024, [330]). The “scientific consensus now was that there remained *very little time*, if any, to prevent catastrophic temperature increases” and there was clear evidence that the climate emergency “posed an existential threat to the effective enjoyment of human rights in the future” with over an estimated “nine million climate-related deaths per year by the end of the century” (*KlimaSeniorinnen Schweiz* 2024, [334], [378], [396]). While the older women also stressed the gendered nature of the health impacts of climate change, they did not emphasize its impact on women’s equality, which, as argued below, was a missed opportunity to establish why a searching standard of review was warranted. Notwithstanding this gap, the arguments that the older women did put before the Court for a searching standard follow a common pattern. In the jurisprudence on women’s equality rights, women continually argue that the gravity and severity of patriarchal inequality demand that alleged breaches of their right to equality and any potential limits on their equality be ruthlessly examined.

2.3. Neither here nor there: Fracturing the standard of review

The arguments of the state and the older women are in tension with each other. Both ground their claims as to the correct level of scrutiny in the nature of climate change, but they focus on very different aspects. The state stressed that the responses to climate change were multifaceted, polycentric and requiring contentious trade-offs and that it is the political realm that should be entrusted to make these tough decisions. The older women emphasized the narrowing window of time to address climate change, the irreversible and devastating impacts on their legal rights that will occur if the current course of action continues unchanged, and that the legal realm should scrutinize, against established criteria, state (in)action that perpetuates these violations.

The Court attempted a synthesis of these two diverging positions. It recognised that the urgency of present-day conditions, confirmed by scientific knowledge, “should carry considerable weight in the weighing up of any competing considerations” (*KlimaSeniorinnen Schweiz* 2024, [413], [543]). Drawing on anti-majoritarian arguments, the Court was alive to the risk that contemporaneous political processes may be dominated by short-term thinking and overly prioritise the present moment at the cost of the future (*KlimaSeniorinnen Schweiz* 2024, [413], [420], [436], [456]). At the same time the Court found that the “necessity of combating climate change involves various conflicts, the weighing-up of which falls...within the democratic decision-making processes” (*KlimaSeniorinnen Schweiz* 2024, [357]). Emblematic of the Court’s failure to

come to a resolution on the degree of scrutiny was its holding in one paragraph that it “cannot ignore the pressing scientific evidence and the growing international consensus regarding the critical effects of climate change on the enjoyment of human rights” (*KlimaSeniorinnen Schweiz* 2024, [456]). But in the very next paragraph it held that the “Court must also bear in mind its subsidiary role and the necessity of affording... a margin of appreciation... in the measures to combat climate change, as well as the need to observe appropriate respect for the prevailing constitutional principles, such as those relating to the separation of powers” (*KlimaSeniorinnen Schweiz* 2024, [457]). As further evidence of the Court avoiding the key issue at stake, it held that:

The Court is mindful of the fact that in a context such as the present one it may be difficult to clearly distinguish issues of law from questions of policy and political choices and, therefore, of the fundamentally subsidiary role of the Convention, particularly given the complexity of the issues involved with regard to environmental policy-making [...] It has stressed that national authorities have direct democratic legitimation and are in principle better placed than an international court to evaluate the relevant needs and conditions. In matters of general policy, or political choices, on which opinions within a democratic society may reasonably differ widely, the role of the domestic policy-maker is given special weight. However, this does not exclude the possibility that where complaints raised before the Court relate to State policy with respect to an issue affecting the Convention rights of an individual or group of individuals, this subject matter is no longer merely an issue of politics or policy but also a matter of law having a bearing on the interpretation and application of the Convention. In such instances, the Court retains competence, albeit with substantial deference to the domestic policy-maker and the measures resulting from the democratic process concerned and/or the judicial review by the domestic courts [...].

It follows from the above considerations that the Court’s competence in the context of climate-change litigation cannot, as a matter of principle, be excluded. Indeed, given the necessity of addressing the urgent threat posed by climate change, and bearing in mind the general acceptance that climate change is a common concern of humankind [...] (*KlimaSeniorinnen Schweiz* 2024, [449]-[451]).

In this long quote, the Court was proverbially “neither here nor there”. Climate change is legal; climate change is political. Climate change is for legislatures and executives; climate change is for courts. Climate change is serious requiring judicial interrogation; climate change is challenging requiring deference. This double-speak is confusing. Is the standard of review searching or light-touch? What did this supposed harmony between the conflicting positions mean for the practical resolution of the older women’s claim that Switzerland’s climate laws and policies were an unjustifiable breach of the right to private life?

The Court translated this synthesis into a split standard of review (*KlimaSeniorinnen Schweiz* 2024 [543]). When setting objectives in response to climate change, such as the amount of reduction in carbon emissions, the Court will intensely review this goal-setting exercise. This means when a state tries to defend a climate change goal such that are out of step with “internationally anchored targets and commitments” (*KlimaSeniorinnen Schweiz* 2024, [543]), that is, the state tries to argue that competing considerations mandate a less ambitious goal, the Court will rigorously assess the legitimacy, veracity and proportionality of that claim. When deciding the precise legal and policy interventions to achieve the climate change goal, the Court will be deferential

to the choices of the political branches of the state. How the state intends to achieve its goal, what areas of life it prioritises for change and which remain untouched, and the reasons for these decisions, are subject to less scrutiny. In this case, this division operated without complications. Through a detailed investigation into Swiss legislative history, the Court found that the state had a temporal gap in setting legal reduction targets for greenhouse gas emissions, with the time between 2025 and 2030 having no set targets (*KlimasSeniorinnen Schweiz* 2024, [566]). The Court held that the gap was a breach of Article 8.

The simplicity of the facts in *KlimaSeniorinnen Schweiz* belies more challenging questions raised by the Court's calibration of the level of scrutiny. Can the setting of climate change goals and the design and implementation of measures to achieve those goals be categorised as separate from each other such that it is coherent and practically workable for the Court to apply two different standards of review? Or is there more definitional and conceptual blurriness between goals and measures? Does paying attention to the role of gender in relation to climate change complicate the proposed hybrid standard of review? Courts have tried in the past to splice women's equality into different categories to determine whether a minimal or searching standard of review was warranted when assessing the state's justification for limiting that equality. The next section seeks to learn lessons from the feminist jurisprudence to evaluate the Court's approach to the standard of review with respect to climate change and gender just transitions.

3. Nothing new under the sun: Women's equality and the standard of review

Although climate change is in many ways *sui generis* and requires a fundamental re-evaluation of every aspect of life, and the novel hybrid standard of review pioneered by the Court may *prima facie* be responding to this need, the underlying challenges with respect to calibrating the degree of scrutiny raised in *KlimaSeniorinnen Schweiz* are not new. The position of the state and the arguments of the older women on the standard of review have been repeatedly invoked in women's claims for equality rights. There have been similar attempts to divide women's equality as between legal and political and between serious and trivial when calibrating the standard of review. This section argues this approach not only falters for a lack of coherency but can dangerously distort assessing whether the women's equality has been breached and the permissible limits on women's equality. It then uses these insights in Section 3 to evaluate the feasibility and workability of the fractured standard of review in *KlimaSeniorinnen Schweiz* and, more broadly, the intensity of judicial review in relation to gender just transitions.

3.1. The fallacy of fracturing political and legal

The legal-political divide has been strongly criticized from many different angles as untenable (King 2012). West (1989) has argued that law is "both a product of politics and itself a political force." Women's equality is emblematic of a phenomenon that straddles both law and politics. Patriarchy itself is political but, at the same time, law has a prominent role in maintaining patriarchy (Pateman 1988, Fredman 1997). For example, political beliefs on women's role in marriage have manifested in laws which criminalise adultery (Joseph Shine 2018). Women's legal right to equality is also connected to broader political movements, as rights to vote were linked to controversial political debates on whether the civic participation was contingent on owning property and marriage

equality rights were entangled with the politics of colonialism (Fredman 1997). Rubio-Marin (2022) observes women's equality "cannot be contained, in terms of domains, and should instead inspire a transformative agenda" that cuts across all conceptual boundaries.

In practice, using the political-legal categorisation as a methodology for pinpointing the degree of scrutiny has not been used to create a hybrid standard of review as in *KlimaSeniorinnen Schweiz*. It has been weaponised to re-characterise the claim to amplify the institutional inappropriateness of meaningfully interrogating the state's justification for limiting women's equality. For example, in a series of cases from the UK Supreme Court, the central issue was whether the state was justified in ignoring women's care roles when designing access to social benefits. The Court, however, re-purposed the central argument to be whether the state was justified in reducing the amount of financial entitlements the individual could claim from the state (SG 2015, SC 2021). This shifted the case from an issue of gender and care to the highly political and contentious issue of the level of material resources needed to be an equal member of society. The Court stressed the political dimensions of the claim and, unsurprisingly, this amplification attracted a light-touch, arguably non-existent, review of the state's justifications. Similarly, when the US Supreme Court had to determine whether creating an accountability mechanism for when the state allegedly perpetuated pregnancy discrimination was a justifiable limit on federalism, the judges on the Court shifted the claim (Hibbs 2003, Coleman 2012). Justice Kennedy re-framed a case on gender into an analysis on whether individual claims on the state treasury were sufficient to impede on federalism. By morphing the claim from pregnancy to entitlement to public funds, he stamped the claim as political and employed a standard of review that ultimately resulted in women not being able to bring suit against the state when they believe they had experienced pregnancy discrimination. In each case, the degree of scrutiny was fatal for women's claims to equality, as the UK Supreme Court glossed over evidence that the design of benefits was not rationally connected to the government's aim in pursuing that design (Campbell 2021) and the US Supreme Court, particularly in *Coleman*, ignored persuasive data that the state had consistently committed pregnancy discrimination such that it would meet constitutional standards to justify intruding on federalism (Coleman 2012, dissenting opinion of Justice Ginsberg).

There are several points worth reflecting on from the practice of justifying limits on women's equality and more broadly the role of law in facilitating gender just transitions. First, these judgments belie a normative darkness. Characterising care as within the political realm, and as such warranting minimal judicial scrutiny, is a continuation of a constitutional lineage that has excluded women from the constitution and conceptualised women's traditional roles as insignificant and invisible to constitutional norms, values and rules (Rubio-Marin 2022, Neo 2022, Fredman 2024). Gender just transitions will invariably require a revaluation of care, for example, by investing in the low-carbon care economy, and as the UN Women definition of gender just transition, mentioned above, points towards the need to expand who and what, both human and non-human is owed care (Heidegger *et al.* 2021, UN Women 2023). The exclusion of care from constitutions is worrying as it implies that the caring dimensions of gender just transitions will be pushed to the fringes of the law. In turn, this means that justifications for denigrating ignoring, or exacerbating women's care burdens in climate change

resilience, mitigation and adaption will not be meaningfully assessed by courts. Second, the law-politics divide is highly malleable, and courts have not carefully delineated what is law and what is politics. Rather they have used the law-politics classification to emphasize the political and shield decisions that deprioritise women's equality from judicial scrutiny. This should stand as a warning that hybrid standards of review, as in *KlimaSeniorinnen Schweiz* are similarly vulnerable to manipulation and that climate change policies may continue to be insulated from judicial interrogation.

3.2. The intertwining of serious and non-serious breaches of women's equality

The standard of review with respect to limits on women's equality has also been fractured between serious and non-serious breaches of women's rights. The orthodox position is that the more intense, grave or serious the breach of the right, the more heightened and intense the standard of review (Elliott 2015). Conversely, the more minor or trivial the breach, the less searching the degree of scrutiny. Again, this categorisation is premised on the assumption that breaches of rights can be cleanly labelled as serious or non-serious.

This does not hold true for women's equality rights. Patriarchy is a totalising force that touches upon every aspect of life. It is a system of political, legal, economic, social and culture norms, institutions, relations and practices that is marked by its depth, pervasiveness and interconnectedness (Walby 1990). Seeming inconsequential aspects operate to bolster more insidious elements of women's inequality. The drudgery of housework or punishing beauty standards are not minor. They reflect deeply entrenched gendered norms which in turn are connected to women's legal subjugation and should be taken as serious aspects of oppression. The famous slogan "the personal is political" pushed against attempts to segment women's lives between the personal, private and unimportant and the political, public and serious. US feminists argued back that this splicing was artificial and did not coincide with the experience of inequality as "personal problems [were] political problems" (Hanisch 2024). This is because women's inequality is a polycentric web. Everyday norms and expectations on dress, attitude, daily chores are inherently linked, *inter alia*, to women's legal denigration, political exclusion, extreme forms of violence and continued economic oppression. Attempting to argue that there is less severe breach of women's equality is simply wrong.

Despite these feminist insights, courts continue to try to frame inequality against women as minor so as to legitimate a lower standard of review. In the benefit reform cases from the UK Supreme Court, the gendered impact of restricting access to benefits was framed as being unable to afford to hold a child's birthday party at a commercial venue (SC 2021, [12]). This trivialised the punitive economic power of the restriction. It also failed to account for how being able to participate in cultural rituals, like birthdays, contributed to social exclusion. The seemingly meaningless decision of which a parent is responsible for the school-run, for preparing lunches, helping with the math homework, means women have less time to invest in paid work and which can have grave impacts on women's pension entitlements. In a case from the Canadian Supreme Court, the dissenting judges tried to frame women's decision to shift to part-time work (which had negative ripple effects due to the legal structure of the pension system) as a "social phenomenon" (Fraser 2020, [207]). Branding women's caring roles as sociocultural removes it from the seriousness of legal constitutional rights. It is also ahistoric as it fails

to appreciate the history of using law to confine women to the home and how that history shapes contemporary practices on care. This labelling blatantly ignores how these ordinary, everyday decisions interact with the structures of the labour market to materially disadvantage women at work. The practice of adjudicating rights can downplay the severity of women's equality to push the court to a light-touch review.

These cases also resonate with gender just transitions as interventions to ensure a sustainable future may shift work onto women, and this shift may too readily be dismissed as small but the effect of this shift only further locks women into entrenched patterns of disadvantage. For example, policies that support sustainable consumption patterns may place more environmental burdens on women. Since they perform the dominant share of care work in the home, these policies demand that women ensure everything from laundry soap to yogurt containers to domestic energy use is sustainable, creating environmental homework for women and doing little to disrupt underlying gender power relations (Heidegger *et al.* 2021, 13). Yet in reviewing these policies, courts may trivialise these everyday practices and fail to accurately to see how these policies breach women's equality and to assess whether disproportionately imposing climate change mitigation on women is justified.

3.3. *Centring the commitment to women's equality*

The way forward lies in recognising the seriousness and importance of the commitment to women's equality and clarifies the role of courts in adjudicating gender just transitions. Equality rights serve a central purpose in undoing enduring legacies of gendered disadvantage, stigma, oppression, and exclusion. The inclusion of women's equality in the constitutional structure was a recognition of the power of law to subjugate women and an entrenched commitment to end that oppression. In *Bhe v Khayelitsha*, Justice Langa of the South African Constitutional Court explained that the right to equality is one of

the most valuable rights in any open and democratic state. [It] assume[s] special importance in South Africa because of our past history of inequality and hurtful discrimination on grounds that include race and gender (2004, [71]).

Women's equality stands as an entrenched landmark, signalling that legal power hierarchies based on the superiority of men and the inferiority of women must end.

This is the crucial insight for calibrating the standard of review. The fundamental importance of women's equality demands a searching, rigorous, intense or heightened degree of scrutiny. A searching investigation expresses respect for the acute burdens that women are expected to bear to achieve other competing aims. If women are meant to legally endure economic precarity, patriarchal sociocultural norms that ignore, demean and stigmatise them and constraints on their agency, it is fitting that courts respect the magnitude of harms women have endured and continue to endure by ruthlessly interrogating violations of their rights and the veracity of any justifications to those rights. This holds true whether the violation is seemingly trivial or because the violation occurs within a realm of life not traditionally conceptualised in legal terms. To hold otherwise is to import caveats to women's equality, implying that achieving women's equality in certain areas of life is crucial whereas in others it is not. This is inconsistent with the objectives of equality rights and fails to understand that women's inequality is

not bounded or contained but cuts across all aspects, all areas and in all domains. Lowering the degree of scrutiny in these cases can dangerously result in courts accepting at face-value claims that breaching women's rights are worth it, regardless of the severity of that breach or the flimsiness of limitation claims, simply because that inequality occurs within certain realms of life.

The lower standard of review, as the state argued in *KlimaSeniorinnen Schweiz*, is in place to protect the choices made by the institutions with greater democratic legitimacy. However, there is nothing institutionally inappropriate in demanding a rigorous defence whenever women's equality is at stake; nor does it require courts to subjectively decide where constitutional priorities should lie. Courts are not overreaching their role in the separation of powers but are furthering the state's commitment to women's rights by having inquisitive minds. All that is required is that courts not accept claims at face-value and that argument be rigorously interrogated for its veracity, strength and persuasiveness against established criteria.

Courts are beginning to embrace this understanding of the standard of review. The European Court of Human Rights has held that states must provide very weighty reasons when seeking to limit women's equality (*JD and A v UK* 2019). The Indian Supreme Court held that it "is the task of judges to scrutinize closely, whether, if the extent to which the impugned practices, rules or norms are rooted in historical prejudice, gender stereotypes and paternalism. Such attitudes have no place in our society" (*Hotel Priya* 2022). Justice O'Connor, in her dissent in the US Supreme Court, explained that any light-touch review would be wrong as "fidelity to the Constitution's pledge of equal protection demands more when a facially sex-based classification is at issue" (*Nguyen* 2001). The Canadian Supreme Court had to determine whether the cancellation of a statutory right for back pay for decades of unequal pay was justified in light of the collapse of the economy of the province. This case could have been framed as purely political, as how to respond to an unprecedented fiscal crisis is quintessentially a matter for the executive and legislative branches of government. However, in this case the response impacted on women's legal right to equal pay. The Court, in its justification analysis, acknowledged that the case had political and legal dimensions, but this entanglement did not oust the role of the Court. Justice Binnie centred women's equality in determining the standard of review, explaining that "it should be stated at the outset that legislation aimed at perpetuating pay inequity is a very serious matter" (*NAPE* 2004 [52]). He went on to explain that "if an individual's Charter right or freedom is violated by the state, it is no answer to say that violation was driven or justified for political reasons" (*NAPE* 2004 [81]). The importance of equality demanded that the Court not rubber-stamp the state's determination that violating women's equality was worth it. The state was required to provide persuasive evidence that it had weighed all other financial options. The Court held the state had discharged this burden. The higher intensity of review does not prevent women's equality rights from being limited, but it does demand they be limited on the base of cogent, persuasive, evidence-based and compelling arguments.

4. Justifying gender just transitions

Attempting to classify women's claim to equality within the political-legal or serious-trivial paradigm for the purposes of calibrating the standard of review fails to

understand the nature and lived experience of inequality and could be used, in practice, to shield the state's decision to infringe on that equality from meaningful scrutiny. Drawing from these insights, the hybrid standard of review pioneered by the European Court of Human Rights in *KlimaSeniorinnen Schweiz* is both conceptually incoherent and unworkable because the nature of the relationship between gender and climate change cannot be divided and atomised in this manner. Examining the realities of climate change and measures to achieve gender just transitions, this section makes the case that any fracturing of the standard of review between intense and deferential is a methodological wrong turn. Centring the strength of the legal commitment to women's equality, gendered violations of rights in the context of climate change should attract a searching standard of review. Climate change is simply another domain in which women's equality rights can be breached, and courts should be as interrogative when women's inequality is alleged in this area of life. The commitment is not diluted or reduced simply because inequality occurs within the context of climate change. The standard of review should remain heightened. These arguments also establish the crucial importance of not ignoring or muting the gender dimensions of the case as was done in *KlimaSeniorinnen Schweiz*. These claims are explored below.

4.1. *The embracing and total nature of climate change*

The European Court of Human Rights attempted to categorise climate change goals and measures between legal and political. This, however, is a search for simplicity that does not correspond to the complexity, interconnectedness and conceptual messiness of reality. Setting targets for reducing carbon emissions is a *scientific act*, based on masses of empirical data; it is a *legal act*, as the targets are codified in binding international and increasingly domestic law; and target setting is a *political act*. The Intergovernmental Panel on Climate Change's recommendation, based on the Paris Agreement, is to keep average global temperature within 1.5 degrees Celsius of the preindustrial era. This is an intertwined scientific, legal and political decision. What is acceptable level of global warming is not only a product of prior legal commitments and scientific evidence on what is needed to stop climate change but also a product of debate, contention, compromise and ideological beliefs on the relationship between humans and nature (Chu 2023). It is simply not accurate to frame climate change benchmarks as an exercise in law as they are a delicate balance of law, science and politics. While politics plays a role in setting the legal objectives, law plays a role in implementing climate change reduction, mitigation, resilience and adaption measures. Legislation and regulation, ranging from how caps fit on plastic bottles to the amount of pollution cars can emit, creates legally enforceable standards. Much like women's equality, establishing climate change objectives cannot be contained within a purely legal or purely political silo; climate change is a problem that transcends traditional doctrinal paradigms. It is simply not coherent to try to divide whether a measure is legal or political or whether a goal is law or politics. Hilson (2024) observed that there are different methodologies for setting climate changes objectives regarding carbon budgets and queries what standard of review would be used to assess whether the methodology for objectives passes muster with the Convention, further emphasizing the unworkability of the Court's fractured standard of review. There is also a risk, as in the strand of jurisprudence on women's equality rights, that in future climate change litigation cases, courts will use the proposed

hybrid standard of review to reframe the claim to be about the politics of implementing climate change and insulate all decisions on climate change from any degree of judicial scrutiny.

The hybrid standard of review also fails to appreciate the nature of climate change, and this failure echoes the serious-trivial divide analysed above. The challenges posed by climate change are not in standard setting or goal-making. The international community and individual states have made commitments to tackle greenhouse gas emissions and other drivers of climate change for decades. When these commitments have not been met, they are simply repeated and renewed. The challenge is in the “doing.” States repeatedly fail to take the positive steps and actions needed to realise climate change goals (UN Environment Programme 2025). The challenge of climate change is a challenge of action. The Intergovernmental Panel on Climate Change (Core Writing Team *et al.* 2023) has, *inter alia*, identified the lack of popular participation, political commitment and limited perception of urgency as main barriers to redressing climate change. Permitting a lower standard of review for climate change measures is legally reinforcing the main barrier to tackling the planetary crisis. It permits states to evade judicial questions on why they have failed to adopt mitigation, resilience or adaptation strategies. It is the failure to take measures to prevent irreversible damage to the equilibrium of the ecosystems that have led to, in the words of the Inter-American Court of Human Rights, “large-scale deforestation... lasting damage to biodiversity, irreversible loss of species and degradation of critical habitats...the large-scale pollution of potable water, the oceans and the atmosphere... and the irreversible alteration of natural biogeochemical such as those of carbon, nitrogen or phosphorus of which the life of the species on our planet depends” (*Climate Emergency and Human Rights* (2025) [288]). The actions with respect to human consumption patterns and lifestyle choices and the failure to make any significant changes to those patterns and choices have precipitated this brink. Fracturing the standard of review and assigning a lower standard to the (in)actions that form the core of the problem is a failure of law to respond to the nature of climate change. It also continues to alleviate the state’s duty to defend and justify its choices to de-prioritize climate change action, the action most needed to protect those human rights that will inevitably be compromised and breached if states continue to fail to act.

The synthesis between goals and measures and the importance of judicial interrogation of both are even more evident when factoring in gender. Setting legally ambitious goals to reduce greenhouse gas emissions inevitably will require targeting certain industries or sectors of the economy. The math of climate change means that to achieve the goal, for example, of keeping within 2 degrees Celsius, will require modifying current transportation or aviation patterns which are major sources of emissions (*KlimaSeniorinnen Schweiz* 2024 [81], [87], [97], [418]). Conversely, setting less ambitious targets can continue to exempt sectors of the economy from needing to undergo a transformation. There is a gender dimension to this goal setting as lower goals can continue to privilege the choices and lifestyles of men. It has been found that men “produce eight to forty percent more emissions than women, mainly due to their mobility and dietary behaviour” (Heidegger *et al.* 2021, Berland and Leroutier 2025). Failing to set ambitious goals will alleviate the need to design measures that tackle the emissions flowing from transportation or food choices, relieving men of the burdens of

climate change. Climate change measures may instead be directed towards individual, everyday behaviours, like the taxation of single use diapers (Whelan 2021) or menstrual products, or as mentioned above, because of women's role in care in home measures can creating other environmental homework for women (Heidegger *et al.* 2021, 13). This has clear gender implications. These types of measures would require women to either expend more financial resources for these products, shouldering any community stigma for continuing to use these products or spend more time using, cleaning and managing renewable ones while leaving untouched larger institutional structures used by men. Setting goals is not simply a hallowed legal process of determining the normative desirability of redressing climate change nor is implementing climate change goals an abstract political process of weighing up the short- and long-term costs. The setting of goals and the choices of measures are synergistic and all can directly impact on women's legal right to equality. Yet under the hybrid standard of review adopted in *Klimaseniorinnen Schweiz*, diaper or menstrual green taxes that can perpetuate gendered economic disadvantage, sociocultural stigmas and exclusion from public life would not be subject to meaningful legal scrutiny and law would fail to ask questions on why sectors of life that disproportionately produce carbon emissions continue to be excused from transformation. Under the guise of protecting democratic legitimacy, the hybrid standard of review can protect dominant economic ideologies that have oppressed women and the environment from scrutiny.

The pursuit of just transitions is repeatedly critiqued for ignoring gender. Recent studies have found that measures to transition away from coal have predominantly targeted male mine workers and ignore women who work in secondary and tertiary industries that support the mining industry (Walk *et al.* 2021). There are similar patterns with respect to other industries where green initiatives ignore women (Heidegger *et al.* 2021, Anderson *et al.* 2023). Under the European Court of Human Rights approach, however, none of these exclusionary measures would be subject to meaningful scrutiny as they would be stamped as political climate change measure and attract a lower standard of review. Yet this neglect and ignorance is a new iteration of a long tradition that directly impacts on women's legal right to equality and demands a searching inquiry for why the state continues to reproduce gendered power hierarchies while seeking to respond to climate change. Taken together, gender illustrates that in both the (legal) target setting and (political) measures implementing there can be an avoidance and over prioritisation of men. This will directly impact the legal equality of women. Deploying a stringent review for the setting of the climate change benchmark, but a light-touch review for the implementation measures, fails to grasp the complex relationship between gender, law, politics, goals and measures. It also fails to account for how and why the ecosystem equilibrium has been placed under untenable stress. In practice, the hybrid standard of review developed by the European Court of Human Rights can exempt from meaningful scrutiny climate change measures that perpetuate women's economic disadvantage, prejudice, stigma and stereotypes, oppressive structures and exclusion.

4.2. *The commitment to women's equality remains in the centre*

The European Court of Human Rights' hybrid standard of review is conceptually flawed, unworkable and can be applied in a manner that continues to alleviate the state from meaningful scrutiny of decisions to leave women behind in efforts to respond to

climate change. The way forward lies in reckoning with the challenges climate change poses for women's equality and the intensity should remain searching regardless of whether the goal or measure is under review.

Women's equality is threatened by climate change. As the older women in *KlimaSeniorinnen Schweiz* highlighted, their lives will be shortened and their health in peril due to the increase in temperature. Other aspects of women's equality are jeopardised by climate change.

Environmental degradation similarly impacts on women's right to life. The pesticides from the flower industry pollute the water and the soil and expose women working in the production process to respiratory diseases and, through repetitive movement from farming, bodily injuries (Alviar Garcia and Olarte-Olarte 2023). The increase in the salinization and eutrophication of the water means the 45 million women who work in small-scale fisheries are likely to lose their source of income (Tramontana 2026). The UN estimates that by 2050 climate change will push 158 million women into poverty, 16 million more than men pushed into poverty (UN Women 2025). Prominent international actors have advocated for reproductive policies that demand women should "avoid pregnancy to save the planet" (Albertyn 2024). Women environmental defenders have been "subject to stereotyping, aimed at delegitimizing their work" (*Climate Emergency and Human Rights* 2025 [572]). These stereotypes lead to gendered climate change violence. The UN found that 2000 women environmental defenders were killed between 2012 and 2022 (*Climate Emergency and Human Rights* 2025 [571]). Tramontana (2026) observes that "the loss of jobs and livelihoods due to environmental degradation is reported to be associated with rising rates of women victims of intimate partner abuse." During heatwaves there has been a 28 percent increase in femicide (UN Women 2025).

Climate change is a domain of life where women's equality rights can be grievously violated. This is true both in the setting of climate change objectives and in the choice of measures to achieve those goals (including the decision not to pursue certain measures). The importance of achieving women's equality is not diluted or mitigated in light of rising seas, loss of biodiversity, warming temperatures. It remains a serious legal commitment even in the context of climate change. A searching standard of review for both climate change goals and measures demonstrates judicial respect for the gravity of women's inequality and recognises that gravity is not lessened because that inequality is manifesting in a new domain of life. This approach does not place artificial boundaries between goals and measures but understands the synthesis between them can perpetuate inequalities against women. Nor does it seek to classify as serious or trivial aspects of climate change and respects that green taxes on sexual and reproductive health products and gender-based violence against women environmental defenders forms an interconnected web of gender and anthropocene oppression (oppression flowing from human domination of the ecosystem). The Inter-American Court of Human Rights noted that "the impacts of climate change are neither neutral or automatic but are shaped by institutional structures, adaptive capacities, and pre-existing conditions of discrimination or exclusion" (*Climate Emergency and Human Rights* 2025 [62]). When women allege inequality in light of climate change disasters, environmental degradation, or in light of just transition measures, rigorous and forensic judicial scrutiny recognises that these alleged inequalities are not accidental but a new facet of

long legal, political, economic and sociocultural histories that have seen women as lesser. Demanding that the state fully and meaningfully account for its objectives and (in)actions not only harnesses law towards undoing stubborn gender power hierarchies but also creates space for dismantling anthropocentric domination.

5. Conclusion

Returning to *KlimaSeniorinnen Schweiz*, it is important to remember that the case was not brought on the base of equality but on the right to life, private life, access to justice and remedy. However, given that this is a leading case on gender and climate change, its understanding of the standard of review is poised to shape global judicial practice with respect to women's equality and climate change litigation. The hybrid standard of review adopted by the European Court of Human Rights seeks to harmoniously take the human rights violations perpetuated by climate change seriously and respect the trade-offs of the executive and legislative branches of the state. This is a wrong turn. The Inter-American Court of Human Rights, citing the UN Independent Expert on foreign debt, observed that in relation to climate change "the world is experiencing a 'polycrisis' that 'requires breaking of siloes so that it can be resolved holistically' in order to achieve sustainability and resilience" (*Climate Emergency and Human Rights* 2025 [206] citing Independent Expert 2023). Seeking to rigidly categorise climate change between law-politics and goals-measures for calibrating the standard of review perpetuates the siloed thinking that undergirds climate change and fails to comprehend how transformation across all areas of life is required to respond to the "complexity of this phenomenon" (*Climate Emergency and Human Rights* 2025 [207]). The reflexively grasp of law-politics as the traditional tool for calibrating the standard of review does not reflect that these tools need to evolve because climate change is an existential challenge rooted in omissions and inaction that is quantitatively and qualitatively different in the scale, scope and nature of any other problem that has come before the courts.

The gendered dimensions of *KlimaSeniorinnen Schweiz* did not shape the Court's reasoning, but attention to gender would destabilise the conceptual coherence and feasibility of a hybrid standard of review. As argued above, the implementation of measures can drastically and negatively impact on women's equality rights and climate change mitigation, and resilience and adaption strategies can continue to exempt and privilege men's living patterns and consumption choices. A lower standard of review in the context of gender just transitions places glaring caveats on women's equality, implying that it is of lesser significance or weight because that inequality is a function of climate change. A searching standard of review, however, respects that patriarchy is not contained within traditional legal paradigms and understands that legal orthodoxy must evolve and shift to achieve women's equality. The methodology for calibrating the standard of review should eschew weighing push-and-pull factors and attempt to dissect the nature of the problem into rigid categories. Intense judicial scrutiny is warranted as it captures how carbon emission objectives, green gendered taxes and gender-based violence against women after a flash flood are connected and that all of these inequalities are serious demanding of objective, sufficient and evidence-based reasons, defences and justifications.

A heightened standard of review in the context of women and climate change can be the starting point for more radical legal transformations perhaps even beyond the ambitions

of gender just transitions. Human rights instruments have been anthropocentric, conceptualising human relationships in a manner divorced from nature and the environment. Yet to respect, protect and fulfil human rights in the next years, decades and centuries the relationship between humans and nature must be more fully captured by law and the centrality of humans may need to shift or expand to capture these long-ignored relationships. A searching standard of review may be warranted in all cases of climate change adjudication, absent any element of gender just transitions, as the care or lack of care humans expend to nature may need to be thoroughly justified. Gendered oppression and anthropocene oppression are entwined, sharing common ideological roots, and achieving equality for all requires using law in forensic, searching and interrogative manner to ask questions, and demand evidence, logic and reason on why goals and measures fail to break and end that oppression.

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