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*Climate migration from a gender perspective:  
Legal avenues to address invisibility*

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***Key words***

*Climate migration – Gender – non-discrimination – Non-refoulement – Right to life*

***Abstract***

*Climate change evidences a clear fragilisation of human rights, especially in territories already experiencing greater exposure to the effects of climate change and less resilience due to existing socio-economic contexts. The interconnected realities of climate change and the contexts of poverty, food insecurity and conflict have differential consequences for women and girls, exacerbated by situations of forced migration. This study reflects on international legal avenues to address, on the one hand, the lack of international legal recognition of climate migration and, on the other, the absence of a gender perspective. Legal silence renders invisible the differential vulnerability of women migrants, while the effects of climate change and gender discrimination shape their entire migration process. In order to*

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*protect women climate migrants, this contribution proposes the extension of the non-refoulement obligation and the granting of humanitarian permits as legal avenues to address invisibility.*

## **1. Introduction**

According to the International Organization for Migration World Migration Report ([IOM, 2022](#)), in 2020 there were 281 million people on the move in the world, nearly half of whom were women. This means that 3.60% of the world's population is migrant. According to the United Nations High Commissioner for Refugees ([UNHCR, 2022](#)), 89.3 million people have been forcibly displaced by the end of 2021 for political reasons, mainly due to persecution, conflict, violence, human rights violations or events that seriously disturbed public order. Among them, 27.1 million are refugees or asylum seekers and some 53.2 million are internally displaced persons, i.e. within the borders of their own countries ([UNHCR, 2021, p. 22](#)).

Despite the importance of these statistics, they do not reflect the totality of displacement of people worldwide. In particular, people fleeing environmental degradation are not included, even though the fact that the number of internally displaced people fleeing disasters exceeds the number of people crossing international borders for political reasons. Indeed, the Internal Displacement Monitoring Centre (IDMC) states that, in 2021, some 1900 natural or climate-related disasters generated 23.7 million displacements in 141 countries and territories ([IDMC, 2022](#)). This is the highest number recorded since 2012, exceeding three times the number of displacements due to conflict and violence ([IDMC, 2022](#)).

The fact is that climate change has negative repercussions in different parts of the world, but especially on those people, that are particularly exposed due to high level of vulnerability, such as indigenous and Afro-descendent women and girls, older women, LGBTIQ+ (lesbian, gay, bisexual, transgender/transsexual, intersex and queer/questioning) people, women and girls with disabilities, migrant women, and those living in rural, remote, conflict and disaster-prone areas ([UN Women; A/RES/69/283; A/HRC/50/39](#)).

Gender roles and women's response to global environmental crises are conditioned by social, roles not only depending on gender, but based on other social identifiers, such as age, location, dependencies, class, sexual orientation, and religious identity ([UNHCR, 2018, p. 5](#); [Pentlow, 2022](#)). Power structures and relationships lead to greater vulnerability to extreme weather events and disasters related to climate change ([UNDP, 2016, pp. 1-8](#)). This vulnerability increases when women and girls become "climate migrants". In general, all types of migration, according to [IOM](#), are gendered processes. Migrants of all genders have different needs and priorities and are exposed to different risks in the migration process, above all being woman and climate migrant from the Global South. However, the current legal frameworks do not recognise and protect differentially neither climate migrants nor the particular situation of women migrants, contributing to perpetuate existing inequalities and vulnerabilities.

This work reflects on the reality of many migrant women and girls who are forced to leave

their homes due to environmental degradation in contexts of profound inequality. In this respect, there is a clear intersection between migration, class and gender, expanding the degrees of vulnerability and discrimination ([Arora-Jonsson, 2011](#)). Climate vulnerabilities increase as these intersections add more layers of invisibility ([UN Women](#)). This makes it possible to analyse existing legal avenues for responding to climate migration from a gender-sensitive perspective.

## *2. Differential climate impacts and the associated vulnerabilities based on gender discrimination*

Women and girls contribute in a very important way to the well-being and development of their communities and countries, as well as to the conservation of the environment ([CEDAW/C/GC/37](#)). However, the often-invisible links, which exist between women and the environment, especially in relation to the conservation and management of natural resources, together with the persistent dynamics of hetero-patriarchal power domination – which exclude women from decision-making processes – have prevented the proper integration of the gender perspective in policies and legal norms for environmental protection ([Alston, 2014](#)). International human rights law, in particular, the Convention on the Elimination of All Forms of Discrimination against Women ([CEDAW, 1979](#)), prohibits discrimination based on gender. However, in many countries, women often face systemic discrimination, harmful stereotypes and social, economic and political barriers that limit their ability to adapt. In these circumstances, although climate impacts affect the entire population, women and girls suffer differential consequences. This is for two reasons. First, they constitute more than half of the world's population and therefore half of its potential, yet they are also the majority of those living in extreme poverty and most exposed to the environmental degradation ([HRC, Res. A/HCR/41/26, 2019](#)). Second, they suffer from the limitations imposed by gender roles and traditional care responsibilities related to the management of natural resources ([UNEP](#)). Moreover, according to the IPCC, gender inequality increases due to climate-related disasters ([IPCC, 2014](#)). The impacts of climate change make women the first to feel the effects when they have to travel increasingly long distances to find resources to feed their family, particularly affecting their health during pregnancy and motherhood. In addition, women and girls are often the last to eat or be rescued; they face increased health and safety risks when water and sanitation systems are compromised; and they assume a greater burden of domestic work and care when there are no resources or when access to them is difficult in crisis contexts. Women and girls often have an unequal and demanding responsibility in caring for children, the elderly and the sick ([UNEP; Alston, 2014; CEDAW/C/GC/37](#)).

Consequently, the needs of women and girls, in a context of climate change, are magnified by inequalities. Discriminatory social and cultural norms prevent them from having equal access to financial services, infrastructure, full health services, including sexual and reproductive health and rights, water supply, owning land and other assets, and enjoying a safe

environment. These barriers avoid them to learn and apply their knowledge and skills, without being able to receive equal pay for the same work, and without being able to participate in decision-making and assuming leadership roles in public life ([Terry, 2009](#)). Therefore, economic and social vulnerabilities increase environmental vulnerabilities, which at the same time feed other discriminations, determining their capacity to migrate.

### *3. The persistence of gender vulnerabilities in climate migration processes*

Climate migrations include all those internal or international displacements caused, directly or indirectly, by climate change. These human migrations are a complex and heterogeneous phenomenon and cover different situations ([IOM, 2019](#)). In addition, UN estimates that, by 2050, the effects of climate change will result in the displacement of 150 million or more people due to extreme weather events, slow-onset events, such as rising sea level and desertification, relocation from high-risk areas and conflicts over scarce resources, increasing the special vulnerability of women to climate change ([A/HRC/37/59, 2018](#)).

This context of vulnerability, aggravated by cultural norms and gender roles, shapes women's responses to disasters ([Lama, Hamza, Wester, 2021](#); [A/HRC/37/59, 2018](#)) and restrictive, gender-blind migration policies limit the ability to migrate and expose women to serious violations of rights, having less control than men do over the decision to migrate ([A/HRC/50, 2022](#)).

As explained later on, the legal frameworks do not adequately contemplate the differential situation of women in the context of climate change impacts. This is largely due to the lack of participation of women, at least on an equal basis and representing the diversity, especially from the Global South, in national and international decision-making forums ([UNFCCC; WEDO](#)).

In contexts where the impacts of climate change force people to flee, women, and especially those in situations of poverty and exclusion, are those who are more likely to be "trapped" by circumstances. Those who stay, too often face increased discrimination for being part of a headed household for a woman and not for a man ([Webb, 2016](#); [Hunter, David, 2009](#); [CEDAW/C/GC/37](#)). When there is the opportunity to flee from the consequences of degradation, in migratory transit women and girls face a situation of permanent insecurity and violence, which is replicated to all of them, regardless of the reasons that led to their movement ([Chindarkar, 2012](#); [IUCN, 2020](#)). According to the World Trafficking in Persons Report ([UNODC 2020](#)), female representation has been increasing so that out of every ten victims detected worldwide, about five are adult women and two are girls.

In camps for displaced persons or temporary shelters, often used after a disaster, the experiences of women are also differentiated ([IUCN, 2020](#)). Too often, the specific needs of women and girls (pregnancy, lactation, menstruation, etc.) are not addressed with the same urgency as issues such as housing, water and food aid, causing anxiety and stress. In addition, women and children are more vulnerable to attack and abuse, especially after dark, when they

need to use the latrines in communal camp facilities ([Pittaway, Rees, 2006](#)).

In the post-migration stage, in the new place, integration is also experienced differently by women depending on various factors, including their inclusion in the labor market and the impact of migration on their status. The lack of an adequate protection as climate migrants aggravates women's situation. Despite the fact that the increased occupation of women in the new place may cause a change in gender roles within the household, this does not always translate into greater equality, as women can easily find themselves with various jobs (outside and inside the home), poorly paid or directly unpaid ([UNHCR, 2020](#)). This produces a pattern of violence against migrant women, mainly due to factors such as the feminization of poverty, institutional racism and xenophobia ([CMW, CEDAW, UN Women, OHCHR, 2016](#)).

The lack of concrete protection instruments, together with the limited application of those that exist and that should be implemented, added to the scarcity of safe and dignified migration routes, means that women in situations of climate displacement are completely unprotected and therefore, they face risks such as sexual and gender-based violence, exploitation and trafficking.

Therefore, migrant women (and specifically poor, women of color/racial minorities or lower-caste women) are doubly invisible and unprotected, despite the fact that women represent almost half of the migrants and refugees in the world ([UN Women](#)).

#### ***4. Towards gender-sensitive legal protection for climate migration?***

At present, the phenomenon of climate migration is still not sufficiently covered by international law ([Behrman, Kent, 2018](#)). Nevertheless, timid advances in the protection of the rights of people on the move – whether within a state or across international borders – have been made in various normative frameworks and intergovernmental initiatives, which are beginning to include disasters and climate change as a root cause of migration, and even a gender perspective.

##### ***4.1. Developments in International Migration and Refugee Law***

Under the [1951 Geneva Convention relating to the Status of Refugees, as amended by its 1967 Protocol](#), the figure of “climate refugees” and “environmental refugees” are not legally recognized. According to international refugee law, people impacted by climate may apply for asylum or refugee status only if they can show that the central reason they are fleeing their home country is that they faced or have reason to fear future persecution due to race, religion, nationality, political opinion or membership in a particular social group. While it is true that climate migration is not protected under the Geneva Convention, many women in contexts where climate change interacts with other factors, are at greater risk of experiencing gender-based violence from physical, sexual, mental or economic harm, as well as the threat of violence, coercion or deprivation of liberty. Indeed, some national legislation has included

gender-based persecution as a ground for refugee status, thus expanding the scope of application of the Geneva Convention. For example, in Spain, with [Law 12/2009](#) of 30 October 2009, on the right to asylum and subsidiary protection, that recognises persecution on grounds of gender or sexual orientation as a ground for asylum. Also, in Luxembourg with [Loi du 18 décembre 2015](#) relative à l'accueil des demandeurs de protection internationale et de protection temporaire, that recognizes gender in the identification of membership of a "social group" as a reason for persecution. When disasters interact with gender-based violence, during and after the move, migrant women can be protected under the subsidiary protection or other humanitarian protection measures, such as humanitarian permits or temporary protection. However, the drawback again is that for a person to be recognised as a refugee, he or she must have suffered a well-founded fear and demonstrate it. Therefore, the burden of proof is on those who individually suffer persecution or fear persecution from the aforementioned causes.

The 2016 [New York Declaration for Refugees and Migrants](#) and the 2018 Global Compact on Refugees ([A/RES/73/151](#)) and [Global Compact for Safe, Orderly and Regular Migration](#) also recognize climate change as a driver of migration.

The Global Compact on Refugees not only recognizes the need to protect environmental forced displacement, but also put special emphasis on the gender perspective. As part of the Programme of Action, section on «Meeting needs and supporting communities», (§74) devotes special reference to women and girls. It recognises that they may experience particular gender-related barriers that require adaptation of responses in the context of large refugee situations. In this regard, States and relevant stakeholders are requested to seek to adopt and implement policies and programmes to empower women and girls in refugee and host communities, and to promote the full enjoyment of their human rights, as well as equal access to services and opportunities.

Furthermore, the Global Compact for Safe, Orderly and Regular Migration includes among its objectives to ensure that «persons affected by sudden-onset and slow-onset natural disasters (...) have access to humanitarian assistance that meets their essential needs with full respect for their rights wherever they are» (§18.k), and recognizes that «adaptation (to environmental disruptions) in the country of origin is a priority» (§18.i).

#### ***4.2. Developments in International Climate Change Regime***

A significant milestone in this regard was the adoption of the [2015 Paris Agreement](#), that it is the first international treaty on climate change mentioning migration, gender and human rights. In its Preamble, it acknowledges that

« [...] climate change is a common concern of humankind, [and that] Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in



vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity» (§11, p. 21).

Paragraph 5 of Article 7 of the Paris Agreement «acknowledge[s] that adaptation action should follow a [...] gender-responsive [...] approach» and paragraph 2 of Article 11 mentions that «capacity-building should be [...] a process that is [...] gender-responsive».

This reference is aligned with other international instruments also adopted in 2015: the Sendai Framework for Disaster Reduction Risk ([A/RES/69/283](#)) or the Agenda 2030 for Sustainable Development ([A/RES/70/1](#)), which treat migration as a positive adaptation and development strategy.

In terms of gender and climate change, at COP 25 Parties agreed on a 5-year enhanced Lima work programme on gender and its gender action plan ([Decision 3/CP.25](#)).

It is also relevant to mention that between 2020 and 2021, of the 87 States Parties to the Paris Agreement that reported their climate commitments through «Nationally Determined Contributions», 29% (i.e. 25 States) included references to human mobility related to climate change and gender perspective ([FCCC/PA/CMA/2021/8](#)).

In addition, the decision accompanying the Paris Agreement ([FCCC/CP/2015/10/Add.1](#)) established a [Task Force on Displacement](#) (TFD) of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts. Its main objective is to develop recommendations, to avert, minimize and address displacement related to the adverse impacts of climate change, in accordance of article 8 of the [Paris Agreement](#). In its second TFD work plan includes, as one of the 22 activities, the development of disaggregated data collection based on gender migration.

#### ***4.3. Developments in International Human Rights Law***

Particularly important in terms of international climate migration is the decision adopted in 2020 by the Human Rights Committee ([CCPR](#)) of the 1966 International Covenant on Civil and Political Rights ([ICCPR](#)). Although not in itself binding and not particularly focused on gender issues, the CCPR decision constitutes an interpretative extension of the human rights and can contribute to broadening the scope of protection for climate migrants in general and women in particular.

The case started with the application of Ioane Teitiota ([Case No 2727/2016, decision of 24 October 2019](#)), a citizen of Kiribati, who requested the right of political asylum in New Zealand, because climate change, by raising the sea level in the Pacific area, endangered his survival and that of his family.

By using the obligation of *non-refoulement*, the CCPR stated that countries cannot deport people facing climate change-induced conditions that violate the right to life ([Human Rights Committee, 2020](#)). This reasoning, which expands the principle of *non-refoulement* redefining the legal requirements in contexts of climate change impacts, is based on the human rights contained in the art. 6-7 ICCPR, the [1984 Convention against Torture](#) and the right to a safe,

clean, healthy and sustainable environment ([A/HRC/RES/48/13](#); [A/RES/76/300](#)).

This argument could also encompass new legal avenues to protect women who move because of the impacts of climate change and face additional risks due to their gender. Under these circumstances, no State could return a woman, who have been displaced due to disasters, if it is demonstrated that her live is at extreme risk in her home country, not only because of existing climate impacts, but also because she experienced gender inequalities, which increased her vulnerability to climate change ([A/HRC/RES/10/4](#)). In particular, because evidence shows that different forms of gender-based violence tend to increase during and in the aftermath of disasters, including in the context of climate-related migration and displacement ([Le Masson, Lim, Budimir, Podboj, 2016](#)).

The extension of the *non-refoulement* obligation, in the case of women climate migrants, would be more than justified when gender discrimination, as a form of gender violence, leads to differential exposure to the effects of climate change, reducing resilience capacities and thus compromising the right to life at origin and throughout the migration process ([A/HRC/RES/10/4](#)). In this sense, while climate change is the main driver of migration, gender discrimination and gender-based violence increase vulnerabilities and expose women differently than other migrants. Although the Committee does not introduce the issue of gender, it asserts that the right to life should be interpreted broadly, in line with its General Comment [No. 6](#) (1982) on the right to life, which according to Human Rights Council (HRC) depends on the right to a safe, clean, healthy and sustainable environment ([A/HRC/RES/48/13](#); [A/76/L.75](#)). The CCPR based on its previous case *Portillo Cáceres et al. v. Paraguay* ([CCPR/C/126/D/2751/2016](#)), in which states that «a narrow interpretation does not adequately convey the full concept of the right to life». As declared in the CCPR precedent case *Warda Osman Jasin v. Denmark* ([CCPR/C/114/D/2360/2014](#)), this includes considering those circumstances, in which the living conditions compromise the basic human standards give raise to the prohibition of *non-refoulement* based on Article 7 ICCPR, in order to protect personal integrity dignity of the person returned.

Furthermore, this interpretation follows the CCPR General Comment No. 36 ([2018](#)) on the right to life. Its states that «[e]nvironmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life». Consequently, «(...) [t]he obligations of States parties under international environmental law should thus inform the content of article 6 of the Covenant (...)».

In this General Comment, the CCPR argues that special consideration should be given to women and girls in situations of environmental degradation, as it may give rise to direct threats to life or prevent them from enjoying their right to life with dignity under [Article 6](#) of the ICCPR. In particular, it affirms, «Legal protections for the right to life must apply equally to all individuals and provide them with effective guarantees against all forms of discrimination, including multiple and intersectional forms of discrimination».

In terms of gender-sensitive perspective, this is connected to the General recommendation [no.](#)



[37](#) of the Committee on the Elimination of Discrimination against Women on «Gender-related dimensions of disaster risk reduction in the context of climate change». This recommendation recalls the obligation of States to «(...) ensure that all policies, legislation, plans, programmes, budgets and other activities related to disaster risk reduction and climate change are gender responsive and grounded in human-rights based principles», with priority being accorded to the most marginalized groups of women and girls, «such as internally displaced, stateless, refugee, asylum seeking and migrant women», as requested by the Human Rights Council ([A/HRC/RES/38/4](#)). Under this obligation, States could promote and reinforce the extension of the *non-refoulement* obligation to climate migration from a gender-sensitive perspective, considering the real risk of climate harm and the gender based violence on return, where women face a particularly vulnerable situations.

In general, the contribution of the CCPR in the protection of climate migration from a gender-sensitive perspective can have several potential legal consequences. First, internationally, through its replicability in the different regional systems for the protection of human rights, namely the African, the Inter-American and the European systems. Second, domestically, with the possibility for states to expand the scope of protection of the Geneva Convention, applying the reinterpretation of *non-refoulement* obligation in order to protect the right to life, i.e. considering the existence of a gender-based discrimination in a climate change context, where general living conditions fall far below the minimum international standards of human rights law. This can be articulated, for example, by granting humanitarian international protection or by updating migratory regulations and policies to recognise the reality of forced movements of people due to climate change or environmental degradation (as in the case of Cyprus, Finland, Sweden, Denmark, and Italy), including the potential adoption of gender-responsive policies and laws. The existing gender discrimination situates women differently in the face of forced climate migration processes, intersecting with other vulnerabilities, which requires a more gender-responsive and rights-based migration policies and laws related climate change, with the aim to respect, protect and fulfil the human rights of migrant women and girls facing climate change disruptions.

## **5. Final remarks**

Protecting the rights of women and girls against systemic discrimination, gender inequality and gender-based violence is critical at all times, but most particularly in situations of displacement, including those in the context of the adverse effects of climate change and disasters, which exacerbate pre-existing women rights violations.

The CCPR's decision has opened up the possibility of interpreting the scope of international protection according to the circumstances faced by climate migrants, as it recognizes that countries cannot deport people who face climate change-induced conditions that violate their right to life. This decision has to be interpreted jointly with the HRC reasoning's and with the CEDAW Committee recommendations, which all strengthened the obligation of *no-refoulement*

in situations where discriminations against women undermine their capacity to face with climate change impacts and compromise the right to life. These arguments alone, without modifying the Geneva Convention, would be sufficient to extend humanitarian protection to climate migrants, integrating gender responses to the implementation of the principle of *non-refoulement*. Consequently, the competent authorities must assess the individual situation, as well as the context of vulnerability, climate risks and impacts, and the general living conditions in countries of origin, especially of women, in order to determine whether the right to freedom from inhuman or degrading treatment and the right to life are sufficiently guaranteed.

In the near future, as climate change impacts induce more people to migrate, the normative development and application of the principle of *non-refoulement* to protect climate migrants is likely to play a relevant role. Undoubtedly, this requires comprehensive innovative legal-political responses, adapting existing refugee and migration legal frameworks to humanitarian grounds based on the climate change and gender to protect the rights of migrant women.

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