

IEL: Perspectives of Women Scholars

Climate Migration: A Gendered Perspective

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Abstract. Climate change is being felt with increasing force and frequency, not only due to extreme weather events, but also due to the number of people who are forced to abandon their territories due to crucial humanitarian needs and protection gaps. However, pre-existing social, economic, and environmental vulnerabilities create a greater likelihood of being forced to move due to the impacts of climate change. Particularly important is this situation for women and girls who face intersectional and socio-structural discriminations, which shape their adaptation and resilience to climate impacts and, in the worst cases, conditions their migration processes. While migration induced by climate change has a very important gender component, it has not received enough attention. Neither statistical data nor legal frameworks adequately integrate and address climate migration from a gender perspective, which contributes to perpetuating vulnerabilities, invisibility and lack of protection. Therefore, this article addresses the international legal potentialities, developments, but also the limitations, to protect climate migrants from a gender sensitive and responsive perspective.

Keywords: Climate change, climate migration, gender, intersectional vulnerabilities

1. Introduction

According to the *Global Migration Report* of the International Organization for Migration (IOM),¹ there were 281 million people on the move in the world in 2020. This means that 3.60% of the world's population is migrant. Almost half of them are women.² This migration is based on a variety of different reasons and phenomena, such as war, political, cultural or religious persecution, as well as economic and humanitarian crises. According to the United Nations High Commissioner for Refugees (UNHCR),³ 89.3 million people were forcibly displaced by the end of 2021 for political reasons, mainly due to persecution, conflict, violence, human rights violations or acts that seriously disturbed public order. Among them, 27.1 million are refugees or asylum seekers and some 53.2 million people are internally displaced, i.e. within the borders of their own countries.⁴

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1 International Organization for Migration (IOM) (2022), *World Migration Report*, 2022. Geneva: IOM Publications.

2 *Ibid.*

3 United Nations High Commission for Refugees (UNHCR) (2022), *Global Trends Report 2021* Denmark: UNCHR Publications.

4 *Ibid.*, p. 22.

Climate change is increasingly part of this set of reasons⁵ and regarded a ‘planetary concern’ and a ‘planetary crisis.’⁶ Climate migration comprises internal or international human displacement caused, directly or indirectly, by climate change.⁷ According to Intergovernmental Panel on Climate Change (IPCC) report of WGII “Climate Change 2022: Impacts, Adaptation, and Vulnerability,” it distinguishes between

‘(a) adaptive migration (i.e., where migration is an outcome of individual or household choice), (b) involuntary migration and displacement (i.e., where people have few or no options except to move), (c) organised relocation of populations from sites highly exposed to climatic hazards and (d) immobility (i.e., an inability or unwillingness to move from areas of high exposure for cultural, economic or social reasons).’⁸

In general, human migration is a complex and heterogeneous phenomenon, and while it can encompass different situations,⁹ climate disasters are currently causing more internal displacement than politically induced displacement. This is the finding of the Internal Displacement Monitoring Centre (IDMC), which states that, in year 2021, some 1900 natural or climate-related disasters generated 23.7 million displacements in 141 countries and territories.¹⁰ This is the highest number recorded since 2012, exceeding the number of displacements due to conflict and violence by three times.¹¹ In year 2022, disasters caused as many as 32.6 million internal displacements worldwide.¹²

With these data, climate migration is an indisputable reality. In addition, the UN estimates that, by year 2050, the effects of climate change will result in the displacement of 150 million or more people due to extreme weather and slow-onset events such as sea-level rise and desertification.¹³ Also, the IPCC predicted that, in the coming years, migration would become a response to climate change, with millions of people displaced by coastal flooding, coastal erosion, desertification processes and losses in agricultural production.¹⁴ However, as recalled by the IOM (2009), climate change in itself does not cause human migration, but rather produces environmental effects that worsen existing vulnerabilities and make it difficult for people to survive in their territories.¹⁵ In this regard, people who leave their territories of origin do so in very complex contexts, in search

5 Rigaud, Kanta Kumari; de Sherbinin, Alex; Jones, Bryan; Bergmann, Jonas; Clement, Viviane; Ober, Kayly; Schewe, Jacob; Adamo, Susana; McCusker, Brent; Heuser, Silke; Midgley, Amelia (2018). *Groundswell: Preparing for Internal Climate Migration*. Washington, DC: World Bank.

6 Bharat H. Desai (2023), “Global Climate Change as a Planetary Concern: A Wake-up Call for the Decision-makers”, *Green Diplomacy*, 14 February 2023; Global Climate Change as a Planetary Concern: A Wake-Up Call for the Decision-makers — Green Diplomacy. Also see Bharat H. Desai (2023), “The Sleepwalking into a Planetary Crisis: Invoking International Law”, *SIS Blog* (Part I and Part II), 29 March 2023; Blog Special - I : The Sleepwalking into a Planetary Crisis: Invoking International law (sisblogjnu.wixsite.com); Blog Special- II : The Sleepwalking into a Planetary Crisis: Invoking International Law (sisblogjnu.wixsite.com).

7 International Organization for Migration (IOM) (2019), *Glossary on Migration*. Geneva: IOM Publications. See also, Mayer, Benoît (2016). *The Concept of Climate Migration: Advocacy and its Prospects*. Cheltenham, UK: Edward Elgar Publishing.

8 Cissé, G., McLeman, R., Adams, H., Aldunce, P., Bowen, K., Campbell-Lendrum, D., Clayton, S., Ebi, K.L., Hess, J., Huang, C., Liu, Q., McGregor, G., Semenza, J., & Tirado, M.C. (2022). “Health, Wellbeing, and the Changing Structure of Communities” In *Climate Change 2022: Impacts, Adaptation, and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem, B. Rama (eds.)]. Cambridge, UK: Cambridge University Press, p. 1079.

9 International Organization for Migration (IOM) (2019), *Glossary on Migration*. Geneva: IOM Publications.

10 Internal Displacement Monitoring Centre (IDMC) (2021), *Global Report on Internal Displacement 2020*, Geneva: IDMC.

11 *Ibid*.

12 Internal Displacement Monitoring Centre (IDMC) (2022), *Global Report on Internal Displacement*, available at: <https://www.internal-displacement.org/global-report/grid2022.pdf> (accessed on 15 October 2023).

13 Rigaud, Kanta et al. (2018), *cit. supra*. Human Rights Council (HRC) (2018). *Human Rights and Climate Change*, Res. A/HRC/RES/38/4, available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/38/4.html (accessed on 15 October 2023).

14 Intergovernmental Panel on Climate Change (IPCC) (1990), *Impacts Assessment, Climate Change*, Report prepared for IPCC by Working Group 11. See also IPCC (2019), *IPCC Special Report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems*. Final Government Distribution. Geneva: Intergovernmental Group of Experts on Climate Change. See also Rigaud, Kanta et al. (2018), *cit. supra*.

15 Laczko, Frank, Aghazarm, Christine (2009), *Migration, Environment and Climate Change: Assessing the evidence*, Geneva: International Organization for Migration; Keane, David (2004), “The Environmental Causes and Consequences of Migration: A Search for the Meaning of Environmental Refugees”, 16 *Georgetown International Environmental Law Review*, 210-224.

of safety and well-being, exercising their human right to migrate with dignity, to other safe territories, whether within or outside their countries.¹⁶

Moreover, while climate change has negative impacts in different parts of the world, it particularly affects those poor and marginalized segments in many societies (women, the elderly, migrants, indigenous groups, etc.) most at risk due to their high level of vulnerability created by discriminatory social processes.¹⁷ Thus, these most impacted sectors of the population are also the most vulnerable, even before considering climate impacts. The IPCC refers to vulnerability as:

‘The propensity or predisposition to be adversely affected. Vulnerability encompasses a variety of concepts and elements, including sensitivity or susceptibility to harm and lack of capacity to cope and adapt.’¹⁸

Therefore, vulnerability is not only about people’s exposure to the risk of disasters or climate change, but also about the contexts in which they find themselves with their particular circumstances, which determine their adaptive capacities without moving from their places of origin. In this sense, IPCC understands that

‘Differences in vulnerability and exposure arise from non-climatic factors and from multidimensional inequalities often produced by uneven development processes (very high confidence). These differences shape differential risks from climate change. (...) People who are socially, economically, culturally, politically, institutionally, or otherwise marginalized are especially vulnerable to climate change and also to some adaptation and mitigation responses (medium evidence, high agreement). This heightened vulnerability is rarely due to a single cause. Rather, it is the product of intersecting social processes that result in inequalities in socioeconomic status and income, as well as in exposure. Such social processes include, for example, discrimination on the basis of gender, class, ethnicity, age, and (dis)ability.’¹⁹

In the case of gender discrimination, which can intersect with other factors of inequality, it mainly affects indigenous and Afro-descendant women and girls, older women, LGBTIQ+ (lesbian, gay, bisexual, transgender/transsexual, intersex and queer), women and girls with disabilities, migrant women and those living in rural, remote, conflict and disaster-prone areas.²⁰ Climate impacts add new situations of fragility to society and climate change shapes, determines and conditions all processes of human mobility: from the decision to leave and the conditions of transit to the ability to return.²¹ In addition, the situation of multidimensional inequality and insecurity is present throughout the migration process and is particularly critical in the case of migrant women and girls,²² who account for 80% of all climate displacement, according to United Nations Development Programme (UNDP) and the Global Gender and Climate Alliance.²³

According to UNDP, “Climate change is not gender neutral”.²⁴ Women’s response to the global climate crisis is shaped by social and community expectations and roles differentiated not only by gender, but by other social

16 Piguet, Etienne, Pécoud, Antoine, De Guchteneire, Paul (2011). “Migration and climate change: An overview” 30:3 *Refugee Survey Quarterly*, pp. 1-23.

17 United Nations Global Migration Group (GMG) (2018), Principles and Guidelines supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations, Geneva: UNO Publications.

18 Ara Begum, Rawshan, Lempert, Robert, Elham, Ali, Benjaminsen, Tor A, Bernauer, Thomas, Cramer, Wolfgang, Cui, Xuefeng, Mach, Katharine, Nagy, Gustavo, Stenseth, Nils Christian, Sukumar, Raman, Wester, Philippus (2022), Point of Departure and Key Concepts In *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem, B. Rama (eds.)]. Cambridge, UK and New York, USA: Cambridge University Press, p. 133.

19 IPCC (2014), ‘Summary for Policymakers’, in *Climate Change 2014: Part A*, p. 63.

20 UN Women (2022), *Explainer: How gender inequality and climate change are interconnected*: (<https://www.unwomen.org/en/news-stories/explainer/2022/02/explainer-how-gender-inequality-and-climate-change-are-interconnected>) (accessed on 1 September 2023). See also, Fothergill, Alice (1996) “Gender, Risk and Disaster” 14:1 *International Journal of Mass Emergencies and Disasters*, pp. 33–56 and Crenshaw, Kimberle. (1989). “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics” 1 *University of Chicago Legal Forum*, pp. 139-167.

21 Lennard, J. (Ed.) (2020), *Women and Girls in Internal Displacement*. Geneva: IDMC.

22 United Nations High Commission for Refugees (UNHCR) (2022), *Global Trends Report 2021*, cit. supra, p. 5.

23 United Nations Development Programme (UNDP) and Global Gender and Climate Alliance (2016), *Overview of linkages between gender and climate change*, New York: UNDP, pp. 1-8.

24 *Ibid.*

identifiers such as age, location, class, sexual orientation and religious identity.²⁵ Power structures and relations lead to increased vulnerability to extreme weather events and climate change-related disasters.²⁶ This structural vulnerability increases when women and girls become ‘climate migrants’. In general, all migration, according to the IOM, is a gendered process.²⁷ Migrants of all genders have different needs and priorities and are exposed to different risks in the migration process, but particularly as women and climate migrants from impoverished countries.²⁸ However, in general, existing policies and legal frameworks do not differentially recognise and protect either climate migrants or the particular situation of women migrants, contributing to the perpetuation of inequalities, existing vulnerabilities and lack of protection. Likewise, the legal vacuum makes invisible the responsibilities of the most industrialised countries, mainly the Global North, in their contribution to climate change and criminalises those who, from the Global South, are its victims and flee disasters to save their lives and live in dignity.²⁹ Thus, the effects of climate change have been constructed politically and economically for the benefit of power elites, who, through extraction, combustion, commercialisation and consumption, have enriched themselves at the expense of those who suffer human rights violations and the consequences of climate abuse.

This context of climate vulnerability is perpetuated and amplified by the existence of a clear intersection between migration, class and gender, along with economic and social factors of vulnerability and discrimination.³⁰ In turn, climate vulnerabilities increase as these intersections add further layers of invisibility.³¹ Moreover, despite the importance of climate change-induced displacement data, the vulnerabilities behind it are non-existent. This calls for a rethinking of existing legal frameworks to respond to the reality of climate migration from a gender-sensitive perspective that effectively protects human rights.

In this sense, this work addresses the migration of those people who are forced to leave their homes due to climate disasters, but who start from contexts of profound multidimensional inequality, produced by their gender identity. The analysis focuses in particular on women and girls, since they face, as will be seen below, differential socio-structural contexts, which are determined by gender. The aim is to explore some possible gender-sensitive legal responses to deploy effective protection for this hitherto invisible reality of climate migration.

2. Structural gender discriminations: Differential climate impacts and vulnerabilities

Women and girls contribute significantly to the well-being and development of their communities and countries, as well as to the conservation of the environment.³² However, the often overlooked or undervalued links between women and the environment, especially in relation to land, water and biodiversity conservation and management, together with persistent heteropatriarchal power dynamics - which exclude women from

25 United Nations High Commission for Refugees (UNHCR) (2018), *UNHCR Policy on Age, Gender and Diversity*, Denmark: UNHCR, pp. 1-24; Pentlow, Sarah (2020), “Indigenous Perspectives on Gender, Power and Climate-Related Displacement” 64 *Forced Migration Review*. Pp.28-31.

26 United Nations Development Programme (UNDP)/ Global Gender and Climate Alliance (2016). *Cit. Supra*, 1-8.

27 International Organization for Migration (IOM), n/d. *Gender, Migration, Environment and Climate Change*, available at: <https://environmentalmigration.iom.int/gender-migration-environment-and-climate-change.html> (accessed on 13 October 2023).

28 UNDP (2016). *Overview of linkages between gender and climate change*. New York: UNDP, p. 4.

29 Anand, Ruchi (2004). *International Environmental Justice: A North-South Dimension*, Ashgate, p. 1; Rosignoli, Francesca (2022). “Environmental Justice and Climate-induced Migration”, In Kent, Avidan, Behrman, Simon (Eds.), *Climate Refugees. Global, Local and Critical Approaches* Cambridge: Cambridge University Press. pp. 301–319

30 Arora-Jonsson, Seema (2011). “Virtue and Vulnerability: Discourses on Women, Gender and Climate Change”, 21:2 *Global Environmental Change*, pp. 744-751.

31 Crenshaw, Kimberle (1989). “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics”, *cit. supra*; UN Women, n/d. *Women Refugees and Migrants*: (<https://www.unwomen.org/en/news/in-focus/women-refugees-and-migrants.html>) (accessed on 6 September 2023).

32 Committee on the Elimination of Discrimination against Women General (CEDAW) (2018), Recommendation No. 37 on *Gender-related dimensions of disaster risk reduction in the context of climate change*, CEDAW/C/GC/37. See also Fothergill, Alice. (1996). “Gender, Risk and Disaster”, *cit. supra*, pp.33–56.

decision-making processes - have prevented the proper integration of a gender perspective into policies and legal standards for environmental protection.³³

The United Nations General Assembly recognises this, when it states that

‘[...] the importance of gender equality, gender-responsive action to address climate change and environmental degradation, and the empowerment, leadership, inclusion in decision-making and the full, equal and meaningful participation of women and girls, as well as the role of women as managers, leaders and advocates of natural resources and agents of change for the protection of the environment.’

While international human rights law prohibits discrimination based on gender, particularly through the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),³⁴ in many countries, women often face systemic discrimination, harmful stereotypes, and social, economic and political barriers that limit their ability to adapt and be resilient. 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 thus half of its potential, but they are also the majority of people living in extreme poverty, being a social group discriminated against and more exposed to environmental degradation.³⁵ Approximately 70 per cent of the 1.3 billion people living in poverty are women,³⁶ many of whom depend on natural resources for their survival, which are increasingly at risk as climate impacts worsen.³⁷

UNESCO³⁸ estimates that 781 million people over the age of 15, almost two-thirds of them women, remain illiterate, while access to information and education through appropriate communication channels is vital to ensure women’s empowerment, especially during disasters. According to the IPCC, gender inequality further increases because of climate-related disasters.³⁹ The impacts of climate change mean that women, especially those living in more impoverished communities, are the first to feel the effects as they have to travel increasingly long distances to obtain resources to feed their families, particularly affecting their health during pregnancy and childbearing. In addition, women and girls are often the last to eat or be rescued; face greater health and safety risks when water and sanitation systems are compromised; and take on a greater burden of domestic and care work when resources are unavailable or difficult to access in crisis contexts. Women and girls often have an imposed and unequal responsibility for the care of children, the elderly and the sick.⁴⁰ This situation increases school dropout rates, as girls are forced to spend more time helping their mothers manage the increased workload. This responsibility, in crisis contexts, such as those that can occur in the aftermath of a disaster, can cause them to face a heavy psychological burden.⁴¹

Consequently, the needs of women and girls in a context of climate change are magnified by inequalities and discriminatory social and cultural norms, which prevent them from having equal access to financial services, infrastructure, comprehensive health services - including sexual and reproductive rights - water supply, ownership of land and other assets, and enjoying a safe environment. These barriers prevent them from learning and applying their knowledge and skills, from receiving equal pay for equal work, and from participating in the political,

33 Alston, Margaret. (2014). “Gender mainstreaming and climate change”, 47(B) *Women’s Studies International Forum*, 287-294.

34 UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13.

35 Human Rights Council (HRC) (2019). *Analytical Study on Gender-Responsive Climate Action for the Full and Effective Enjoyment of the Rights of Women*, Resolution A/HRC/41/26, available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/GenderResponsive/A.HRC.41.26.pdf> (accessed on 6 September 2023).

36 Jones, Nicola, Presler-Marshall, Elisabeth (2012), “Governance and Poverty Eradication: Applying a Gender and Social Institutions Perspective” 32 *Public Administration & Development*, p. 371.

37 United Nations Environment Programme (2016), *Gender Equality and the Environment. Policy and Strategy*. Nairobi, Kenya: UNEP.

38 UNESCO, UNESCO Institute for Statistics (UIS) (2021), *World Atlas of Gender Equality in Education*, Paris, France: UNESCO.

39 Intergovernmental Panel on Climate Change. (2014), *Climate Change 2014: Impacts, Adaptation and Vulnerability. Summary for policymakers*.

40 United Nations Environment Programme (2016), *Gender Equality and the Environment: Policy and Strategy*, Nairobi, Kenya: UNEP, p. 13.

41 Committee on the Elimination of Discrimination against Women General (CEDAW) (2018). Recommendation No. 37 on *Gender-related dimensions of disaster risk reduction in the context of climate change*, CEDAW/C/GC/37. See also, Alston, Margaret. (2014). “Gender mainstreaming and climate change” 47(B) *Women’s Studies International Forum*, pp. 287-294.

community and household decision-making processes that affect their lives and taking leadership roles in public life.⁴²

For example, during the 2004 Asian tsunami (70% of the victims were women), many women and children were trapped in their homes, while most men were outside.⁴³ Cultural and religious norms about respective gender roles sometimes limit women's ability to make quick decisions in disaster situations and, in some cases, the clothes they wear and/or their childcare responsibilities may hinder their mobility in times of emergency.

Economic and social disparities and access to productive resources increase climate vulnerabilities, which in turn fuel other discriminatory vulnerabilities, conditioning the ability to migrate.

3. Climate gender migration processes: Persistence of vulnerabilities

This context of vulnerability is not only compounded by access to resources and gender equality, but can be determining factors in the decision to migrate, while gender norms and migration policies in receiving communities can lead to unfavorable outcomes for women.⁴⁴ This affects women's human rights, which should be promoted and protected by the 1979 Convention on the Elimination of All Forms of Discrimination against Women⁴⁵ at all stages of prevention, mitigation, response, recovery and adaptation to climate change and related disasters.

Estimates on the number of women and girls under eighteen displaced or potentially at risk of displacement in the context of natural disasters and climate change remain primarily unknown. The main reason argued for this is the lack of data collection referred to above, which is usually limited in the context of disasters to the evacuation and early recovery phase and rarely includes gender-disaggregated data.⁴⁶ However, depending on particular regions and contexts, women are more likely to migrate.⁴⁷ This is a function of how the effects of climate change and gender roles jointly influence the decision to migrate.⁴⁸ In Bangladesh, for example, both floods and crop failures increased the migration of women who have less secure access to land.⁴⁹ In contrast, in Ethiopia, droughts increased men's migration over a 10-year period, but reduced women's movements for marriage.⁵⁰

Although there has been an increase in the feminisation of migration in recent years, in general, women tend to have less control over the decision to migrate. This is due to many factors, one of the most important of which is the violation of women's rights, which increases as natural resources become scarcer and access to them is restricted in a discriminatory way. In addition, it has been suggested that women's lower economic capacity to recover from the economic losses of the disaster or the impact of climate change on livelihoods, combined with

42 Terry, Geraldine (ed.) (2009), *Climate Change and Gender Justice. Practical Action*, London: Publishing in Association with Oxfam GB, Rugby.

43 UNDP (2016). *Overview of linkages between gender and climate change*, available at: <https://www.undp.org/sites/g/files/zskgke326/files/publications/UNDP%20Linkages%20Gender%20and%20CC%20Policy%20Brief%201-WEB.pdf> (accessed on 6 September 2023).

44 Lama, Phudoma, Hamza, Mo, Wester, Misse (2021), "Gendered Dimensions of Migration in Relation to Climate Change" 13:4 *Climate and Development*, pp. 326-336.

45 UN General Assembly (1979), *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13

46 Lennard, Jeremy (Ed.) (2020). *Women and Girls in Internal Displacement*. Geneva: IDMC, p. 7; UN General Assembly (2023), *Main findings and recommendations of the midterm review of the implementation of the Sendai Framework for Disaster Risk Reduction 2015–2030*, Res. A/77/640, 31 January 2023, par. 9, 19.

47 Lama, Phudoma, Hamza, Mo, Wester, Misse (2021), "Gendered dimensions of migration in relation to climate change". *Cit supra*, p. 326-336. Human Rights Council (HRC). (2018). *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, A/HRC/37/59, available at: <https://www.ohchr.org/en/documents/thematic-reports/ahrc3759-report-special-rapporteur-issue-human-rights-obligations>, p. 7.

48 Erman, Jeylan and Behrman, Julia A. (2021), "Childhood Origins, Migration, and First Modern Contraceptive Use in Turkey" 52 *Studies in Family Planning*, pp. 539-555.

49 Gray, Clark L., Mueller, Valerie (2012). Natural Disasters and Population Mobility in Bangladesh. *Proceedings of the National Academy of Sciences*, 109(16), 6000-6005. Also, Ramachandran, Sujata (2005), *Indifference, impotence and intolerance: transnational Bangladeshis in India. Global Migration Perspectives*, Geneva: Global Commission on International Migration.

50 Gray, Clark L., Mueller, Valerie (2012). "Drought and Population Mobility in Rural Ethiopia" 40:1 *World Development*, pp. 134-145.

their greater exposure to sexual violence, makes them much more likely to move away from the disaster site than men, who tend to remain in their homes to rebuild and protect family assets.⁵¹

Thus, in this context, they often face discrimination for running a household alone in the absence of their partner, taking on traditional male roles, but without obtaining the same rights, such as participation in the management of natural resources.⁵² All these tasks reduce women's access to paid work or schooling for girls,⁵³ which often forces the decision to migrate under the worst conditions. Furthermore, climate risks also add a further difficulty in women's migration, due to all these structural differences.⁵⁴

As explained below, legal frameworks do not adequately address either climate migration or the differential situation of women in these contexts determined by climate change impacts. This is largely due to the lack of women's participation, at least on equal terms and representing diversity, especially from the Global South, in national and international decision-making fora.⁵⁵ In contexts where climate change impacts force people to flee, women, and especially those in situations of poverty and exclusion, are the most likely to be "trapped" by circumstances.⁵⁶ In addition to higher mortality and a greater likelihood of suffering assaults and other forms of sexual violence,⁵⁷ women tend to be excluded from the post-disaster rehabilitation and reconstruction phases, which increases their marginalisation and vulnerability.⁵⁸

Those who stay behind too often face further discrimination for being part of a female-headed household rather than a male-headed household.⁵⁹ Added to this is the discrimination they still suffer in many countries due to the registration and inheritance rules in favour of men as heads of household and owners, which represent an additional obstacle for women to exercise their rights inherent to legal personality and to recover ownership and possession of the family property when the men on whom they depend have died or disappeared in the disaster.⁶⁰

When there is an opportunity to flee the consequences of disasters, women and girls in transit migration face a situation of ongoing risk, insecurity and violence, which is replicated for all of them, regardless of the reasons for their displacement.⁶¹ Thus, according to the Global Report on Trafficking in Persons,⁶² female representation

51 Lennard, Jeremy (Ed.) (2020), *cit. supra*, p. 7.

52 Webb, Jon (2016), *Gender Dynamics in a Changing Climate: How Gender and Adaptive Capacity Affect Resilience*, Nairobi: CARE Climate Change. See also, Committee on the Elimination of Discrimination against Women General (CEDAW) (2018). Recommendation No. 37 on *Gender-Related Dimensions of Disaster Risk Reduction in The Context of Climate Change*, CEDAW/C/GC/37, available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no37-2018-gender-related.html> accessed on 9 October 2023).

53 Hunter, Lori M., David, Emmanuel. (2009). *Climate change and migration: Considering the gender dimensions*, University of Colorado, Boulder: Institute of Behavioural Science.

54 Khan, Saiyara (2018), *A More Just Migration: Empowering Women on the Front Lines of Climate Displacement*, Environmental Change and Security Program. Woodrow Wilson International Center for Scholars.

55 WEDO (2022), *Women's Participation in the UNFCCC*, available at: <https://wedo.org/womens-participation-in-the-unfccc-2022-report.pdf> (accessed on 9 October 2023).

56 Simpkins, Grapham (2022), "Low Income Population Groups Trapped" 3 *Nature Review Earth Environment*, p. 496.

57 UN General Assembly (2009). *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons*, Walter Kälin. *Addendum: Protection of Internally Displaced Persons in Situations of Natural Disasters*, Res. A/HRC/10/13/Add.1, paras. 34-35 and 47.

58 Commission on Human Rights (2006), *Women and Adequate Housing. Report by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination*, Miloon Kothari, E/CN.4/2006/118, para. 59; UN General Assembly (2008). *Protection of and assistance to internally displaced persons. Note by the Secretary-General: Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Mr. Walter Kälin, in accordance with General Assembly resolution 62/153 and Human Rights Council resolution 6/32, A/63/286*, para. 60; UN General Assembly (2009), *ibid.*, para. 32.

59 CEDAW (2018). General recommendation No.37 on *Gender-related Dimensions of Disaster Risk Reduction In A Changing Climate*, 13 March 2018, CEDAW/C/GC/37.34

60 OHCHR. (2005). *Protection of internally displaced persons in situations of natural disaster: a working visit to Asia by the Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons*, Walter Kälin, p. 24.

61 Chindarkar, Namrata. (2012), "Gender and Climate Change-Induced Migration: Proposing a Framework for Analysis". 7(2) *Environmental Research Letters*, pp. 025-601.

62 United Nations Office on Drugs and Crime (UNODC) (2022), *Global Report on Human Trafficking*, available at: https://www.unodc.org/documents/data-and-analysis/glotip/2022/GLOTiP_2022_web.pdf (accessed on 9 October 2023).

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, women's experiences are also differentiated.⁶³ Too often, the specific needs of women and girls (pregnancy, breastfeeding, menstruation, etc.) are not met with the same urgency as those for shelter, water and food aid. These conditions often cause women to suffer from 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 the communal camp facilities.⁶⁴

In the post-migration stage, at destination, integration is also experienced differently by women depending on several factors, including their insertion in the labour market and the impact of migration on their status.⁶⁵ Although women's increased employability in the new location may lead to a change in gender roles within the household, this does not always translate into greater equality, as women can easily find themselves in a variety of jobs (outside and inside the household), poorly paid or not paid at all.⁶⁶ This produces a pattern of violence against migrant women, mainly due to factors such as the feminisation of poverty, institutional racism and xenophobia.⁶⁷

The lack of concrete protection instruments, together with the poor application of those that already exist and should be implemented, coupled with the scarcity of safe and dignified migratory routes, means that women in situations of climate displacement are completely unprotected and therefore face risks such as sexual and gender-based violence, exploitation and trafficking. Migrant women (and in particular poor women, women of colour/racial minorities or lower castes) are therefore doubly invisible and unprotected, despite the fact that women represent almost half of the world's migrants and refugees.⁶⁸

4. Global climate migration: Need for gender-sensitive legal responses

At present, the phenomenon of climate migration is not yet sufficiently regulated by international law,⁶⁹ for a number of reasons. One is the relative newness of population displacement due to the devastating effects of climate change. Another is that most of these displacements occur within state borders, usually over short distances, from rural to urban areas, and therefore fall under the jurisdiction of national law. Moreover, these displacements occur in the most impoverished countries, mainly in the Global South, where the effects of climate change interact with other political, economic and social factors.⁷⁰

In recent years, however, there have been some developments in different sectors of international regulation to recognise climate change as a cause of migration, including from a gender-sensitive perspective. These developments, while positive, have demonstrated the lack of an integrative vision between the international legal regime on migration and refuge, climate change and human rights.

63 Castañeda Camey, I., Sabater, L., Owren, C. and Boyer, A.E. (2020). *Gender-based violence and environment linkages: The violence of inequality*. Wen, J. (ed.). Gland, Switzerland: IUCN. p. 272

64 Pittaway, Eileen, Rees, Susan (2006), "Multiple Jeopardy: Domestic Violence and the Notion of Cumulative risk for Women in Refugee Camps", 18 *Women against Violence: An Australian Feminist Journal*, pp. 18–25.

65 United Nations High Commission for Refugees (UNHCR) (2020), *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters*, 1 October 2020, Geneva: UNHCR, p. 10.

66 *Ibid.*

67 CMW, CEDAW, UN Women, OHCHR. (2016). *Addressing gender dimensions in large-scale movements of refugees and migrants*, available at: <https://www.ohchr.org/en/2016/09/addressing-gender-dimensions-large-scale-movements-refugees-and-migrants.html> (accessed on 10 October 2023).

68 UN Women (n.d.), *Women refugees and migrants*, available at: (<https://www.unwomen.org/en/news/in-focus/women-refugees-and-migrants#:~:text=Today%2C%20around%20the%20world%2C%20people,million%20refugees%20worldwide%20%5B1%5D.>) (accessed on 9 October 2023).

69 Behrman, Simon, Kent, Avidan. (2018). *Climate Refugees: Beyond the Legal Impasse*, London: Routledge.

70 Anand, Ruchi. (2004). *International Environmental Justice: A North-South Dimension*, *cit. supra*.

4.1. Advances in international migration and refugee law

At present, “climate refugees” are not legally recognised under the 1951 Geneva Convention relating to the Status of Refugees,⁷¹ as amended by its 1967 Protocol,⁷² and are therefore not protected by refugee status. However, according to UNHCR, people who move across borders in the context of climate change or disasters may have a well-founded fear of persecution that compels them to seek refuge abroad, especially when climate change acts as a multiplier of threats affecting people’s enjoyment of their human rights and when the state is unable or unwilling to provide protection.⁷³

In this sense, the situation experienced by many women in contexts where climate change interacts with other factors increases the risk of suffering gender-based violence through physical, sexual, mental or economic harm, as well as the threat of other types of violence, coercion or deprivation of liberty. Thus, some national legislations have included gender-based persecution as a ground for refugee status, thus extending the scope of application of the Geneva Convention. For example, in Spain, Law 12/2009 of 30 October 2009 on the right to asylum and subsidiary protection recognises persecution on grounds of gender or sexual orientation as a ground for asylum. For its part, Luxembourg has the Law of 18 December 2015 on “Accueil des demandeurs de protection internationale et de protection temporaire”, which recognises gender in the identification of belonging to a “social group” and as a ground for persecution. When disasters interact with gender-based violence, during and after the migration process, migrant women can be protected under subsidiary protection status or other humanitarian protection measures, such as humanitarian or temporary protection permits. However, again the drawback is that for a person to be recognised as a refugee they must have suffered a well-founded fear and prove it. Therefore, the burden of proof falls on those who individually suffer persecution or fear persecution for the reasons mentioned above.

An important development has been the adoption of the 2016 *New York Declaration for Refugees and Migrants*,⁷⁴ the *Global Compact on Refugees*⁷⁵ and the *Global Compact for Safe, Orderly and Regular Migration*,⁷⁶ which recognise climate change as a driver of migration. Despite being non-legally binding international instruments, they mark a relevant political-legal trend in the visibility of this migratory phenomenon.

In particular, the *Global Compact on Refugees* not only recognises the need to protect environmentally forced displacement but also places special emphasis on a gender perspective.⁷⁷ As part of the Programme of Action, the 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 the adaptation of responses in the context of large refugee situations. In this regard, States and relevant stakeholders are called upon 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.

The 2018 *Global Compact for Safe, Orderly and Regular Migration* includes among its objectives to ensure that “[...] persons affected by sudden 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 recognises that

71 United Nations (UN) (1951), Convention relating to the Status of Refugees (adopted on July 28, 1951, entered into force on April 22, 1954) 189 *UNTS* 137.

72 United Nations (UN) (1967), Protocol relating to the Status of Refugees (adopted January 31, 1967, entered into force October 4, 1967) 606 *UNTS* 267.

73 United Nations High Commission for Refugees (UNHCR) (2020), *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters*, UNHCR, 1 October 2020, p. 10. See also Roberts, Adam (1998), “More Refugees, less Asylum: A Regimen in Transformation” 11:4 *Journal of Refugee Studies*, pp. 375-395.

74 UN General Assembly, *New York Declaration for Refugees and Migrants*: resolution / adopted by the General Assembly, 3 October 2016, A/RES/71/1.

75 UN High Commissioner for Refugees (UNHCR), *Global Compact on Refugees*, 2018. Adopted by the General Assembly on 17 December 2018, Res. A/RES/73/151.

76 Global Compact for Migration (2018) *Global Compact for Safe, Orderly and Regular Migration*: Intergovernmentally Negotiated and Agreed Outcome, 13 July, available at: https://refugeesmigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf (accessed on 5 September 2023).

77 The Forced Migration Research Network (2018), *The World’s Biggest Minority? Refugee Women and Girls in the Global Compact on Refugees*, University of New South Wales: Australia.

“adaptation (to environmental disruptions) in the country of origin is a priority” (§18.i). In addition, the Global Compact promotes gender-responsive migration governance. Specifically, the Global Compact is guided by the need to promote gender equality and the empowerment of women and girls and by the recognition of women’s role as agents and drivers of change and it encourages States to adopt a gender-sensitive lens to examine their policies and practices in order to reduce vulnerability to gender-based violence.⁷⁸

In 2011 final report to the Human Rights Council, the former Special Rapporteur on the human rights of migrants, noted the growing relevance of climate change and its effects on human displacement and recommended further studies on the effects of climate and environmental change on human mobility.⁷⁹ Other mandate holders have also prepared very timely reports relevant to this issue, in relation to their respective mandates, notably the Special Rapporteur on the human rights of internally displaced persons⁸⁰ and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living.

The Special Rapporteur on the human rights of migrants released the report on “Good practices and initiatives on gender-responsive migration legislation and policies”,⁸¹ which compiles information on good practices, discusses challenges and provides recommendations to States on how to enhance gender responsiveness in their governance on migration. The report aims to contribute to migration as a gendered phenomenon and its impact on human rights, in order to enable states to better protect migrant women and girls from gender-based discrimination, abuse and violations at all stages of migration, as well as to support their empowerment and the fulfilment of their human rights. In addition, in his report of 2022, the Special Rapporteur analyses the complex relationship between climate change, human rights and migration, as well as the multiple drivers of cross-border migration in the context of climate change.⁸² The Special Rapporteur examines the human rights situation of migrants, especially women, children, indigenous peoples, minorities and other groups in specific situations of vulnerability, affected by the adverse effects of climate change, and analyses progress made in creating available and flexible pathways for regular migration in the context of climate change as an adaptation alternative.

4.2. *Advances in international climate change regime*

A significant milestone in this regard has been the adoption of the 2015 Paris Agreement,⁸³ which is the first international treaty on climate change to mention migration, gender and human rights. In its Preamble, it recognises that

[...] climate change is a common concern of humankind, [and that] Parties should, in taking action to address climate change, respect, promote and consider their respective human rights obligations, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and persons in vulnerable situations and the right to development, as well as gender equality, women’s empowerment and intergenerational equity (§11, p. 21).

Likewise, Article 7.5 of the Paris Agreement “recognizes that adaptation action should follow a gender-sensitive approach” and Article 11.2 mentions “capacity-building should be [...] a gender-sensitive process”. This reference is aligned with other international instruments also adopted in 2015: the Sendai Framework for

78 Gottardo, Carolina, Cymment, Paola (2019), “The Global Compact for Migration: what could it mean for women and gender relations?” 27:1 *Gender & Development*, pp. 67-83.

79 UNGA (2011), Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante Res., A/HRC/17/33, 21 March 2011, paras. 47-62.

80 *Protection of and Assistance to Internally Displaced Persons*, UNGA (2011) Res. A/66/285, 9 August 2011.

81 UN General Assembly (2019), *Good Practices and Initiatives on Gender-Responsive Migration Legislation and Policies*, UNGA Res. A/74/191, 18 July 2019, para. 115 (g).

82 United Nations General Assembly, UNGA (2022), Res. A/77/189: *Report of the Special Rapporteur on the Human Rights of Migrants*, 77th session, 19 July 2022.

83 United Nations (2015) *Conference of Parties, Adoption of the Paris Agreement*, 12 December 2015, Paris; U.N. Doc. FCCC/CP/2015/L.9/Rev/1.

Disaster Risk Reduction⁸⁴ or the 2030 Agenda for Sustainable Development,⁸⁵ which address migration as a positive adaptation and development strategy.

All these international instruments recognise the need for cross-sectoral and coordinated action to address the diverse and region-specific challenges of human mobility in the context of disasters and climate change. In terms of gender and climate change, at COP 25 Parties agreed on a 5-year work programme on gender and its gender action plan.⁸⁶ 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.⁸⁷

In addition, the decision accompanying the Paris Agreement⁸⁸ established a Task Force on Displacement (TFD), under the “Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts”. Its main objective is to develop recommendations to avoid, minimise and address displacement related to the adverse impacts of climate change in accordance with Article 8 of the Paris Agreement. In its second work plan, the TFD includes, as one of 22 activities, the development of gender-disaggregated data collection on migration.

4.3. Advances in international human rights law

Two important UN resolutions were adopted in June 2017: ECOSOC Resolution on “Strengthening of the coordination of emergency humanitarian assistance of the United Nations”,⁸⁹ which encourages all relevant actors to strengthen efforts to address the needs of displaced persons in the context of disasters, including those induced by climate change. In addition, Human Rights Council Resolution,⁹⁰ which recognises that gender, among other factors such as geographical location, poverty, age, indigenous or minority status, national or social origin, place of birth or other status, and disability create situations of vulnerability for many people in the world. Considering these vulnerabilities, the resolutions also call for better and greater protection of migrants and people displaced across international borders in the context of the adverse effects of climate change, who are the most unprotected in relation to internally displaced persons. Emphasis is also placed on gender equality and women’s empowerment in these processes. Finally, the Human Rights Council

[...] calls upon States to integrate a gender perspective when devising mitigation and adaptation measures to address the adverse effects of climate change on the full and effective enjoyment of human rights, including those of migrants and persons displaced across international borders in the context of the adverse effects of climate change.’

In December 2017, the UN General Assembly (UNGA) adopted Resolution on “International cooperation on humanitarian assistance in the field of natural disasters, from relief to development”.⁹¹ The UNGA recognises disaster-related human displacement and encourages States to reduce the risks of disaster-related displacement

84 United Nations Office for Disaster Risk Reduction (UNISDR) (2015), *Sendai Framework for Disaster Risk Reduction 2015-2030*, 23 June 2015, Doc. A/RES/69/283, p. 32. See Yonetani, Michelle (2017). *Positioned for Action Displacement in the Sendai Framework for Disaster Risk Reduction*. Geneva: IDMC.

85 United Nations General Assembly (2015), *Transforming Our World: The 2030 Agenda for Sustainable Development*, 25 September 2015, Doc. A/RES/70/1, §29.

86 *Gender Action Plan - Decision 3/CP.25 and amendments agreed in Decision 24/CP.27*.

87 United Nations Framework Convention on Climate Change (2021), *Nationally determined contributions under the Paris Agreement*, Conference of the Parties serving as the meeting of the Parties to the Paris Agreement Third session Glasgow, 31 October to 12 November 2021 FCCC/PA/CMA/2021/8/Rev.1. See also United Nations Development Programme (UNDP) (2016), *Gender Equality in National Climate Action: Planning for gender responsive Nationally Determined Contributions*.

88 UNFCCC (2015), Adoption of the Paris Agreement, Decision 1/CP.21, in COP Report No. 21, Addendum, at 2, U.N. Doc. FCCC/CP/2015/10/Add.1 (Jan. 29, 2016), FCCC/CP/2015/10/Add.1.

89 ECOSOC 2017: ECOSOC Resolution E/2017/L.24 on *Strengthening of the coordination of emergency humanitarian assistance of the United Nations*.

90 Human Rights Council (2017). *Human rights and climate change*, Thirty-fifth session, 19 June 2017, A/HRC/35/L.32.

91 United Nations General Assembly (2018), Resolution adopted on 11 December 2017 [without reference to a Main Committee (A/72/L.23 and A/72/L.23/Add.1)]. *International cooperation on humanitarian assistance in the field of natural disasters, from relief to development*, Seventy-second session, 15 January 2018, Res. A/RES/72/132.

and to mainstream a gender perspective in all policies, planning and funding, including all aspects of humanitarian responses.

In terms of international climate migration, it is pertinent to note the decision adopted in 2020 by the Human Rights Committee (CCPR) of the 1966 International Covenant on Civil and Political Rights (ICCPR).⁹² Although not legally binding per se and not particularly focused on gender issues, the CCPR decision has normative authority, as it is an interpretative extension of human rights and can contribute to broadening the scope of protection for climate migrants in general and women in particular.⁹³ The decision arose from an application by Mr Ioane Teitiota,⁹⁴ a citizen of the Kiribati Islands, seeking recognition of his right to political asylum in New Zealand. The rising sea levels in the Pacific caused by climate change endangered his survival and that of his family on the island of Tarawa, where the applicant lived with his family.

In this case, the CCPR uses the obligation of non-refoulement to argue that no State may expel, return or extradite a person to another State when climatic conditions are shown to be life-threatening,⁹⁵ creating a situation amounting to cruel, inhuman and/or degrading treatment. In this reasoning, the CCPR extends the meaning of the principle of non-refoulement in contexts of climate change impacts, where basic rights are compromised. The right to life, the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment (art. 6-7 ICCPR and the 1984 Convention against Torture)⁹⁶ and the right to a safe, clean, healthy and sustainable environment.⁹⁷

The same argument could also be used to encompass new legal avenues to protect women who are displaced by the impacts of climate change and face additional risks due to their gender. Under these circumstances, no State could return a woman who has been displaced due to disasters, if it is shown that her life is at extreme risk in her country of origin, not only because of existing climate impacts, but also because she experienced gender inequalities, which increased her vulnerability to climate change.⁹⁸ In particular, because evidence shows that different forms of gender-based violence tend to increase during and after disasters, including in the context of climate-related migration and displacement.⁹⁹ The extension of the obligation of non-refoulement, in the case of women climate migrants, would be more than justified when gender discrimination, as a form of gender-based violence, leads to differential exposure to the effects of climate change, reducing resilience capacities and compromising the right to life at origin and throughout the migration process.¹⁰⁰

In this sense, while climate change is the main driver of migration, gender discrimination and gender-based violence increase vulnerabilities and expose women differently from other migrants, constituting, on the Geneva grounds, a particular social group affected by a gender-based act of persecution. Although the Committee does not introduce the issue of gender, it affirms that the right to life must be interpreted broadly, in accordance with its General Comment No. 6 (1982) on the right to life, which according to the Human Rights Council (HRC)

92 United Nations General Assembly (1966), *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171

93 Human Rights Committee (2020), *Teitiota v New Zealand*, Communication No 2728/2016, UNCCPROR, 127th Sess, UN Doc CCPR/C/127/D/2728/2016. On the decision see Sinclair-Blakemore, Adeana (2020), “Teitiota v New Zealand: A Step Forward in the Protection of Climate Refugees under International Human Rights Law?”, *Oxford Human Rights Hub*: (<https://ohrh.law.ox.ac.uk/teitiota-v-new-zealand-a-step-forward-in-the-protection-of-climate-refugees-under-international-human-rights-law/>) (accessed on 21 September 2023).

94 Case no. 2727/2016, Judgment of 24 October 2019.

95 Human Rights Committee, 2020, *cit. supra*.

96 UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85.

97 Human Rights Council (2021). Resolution adopted by the Human Rights Council on 8 October 2021. *The human right to a clean, healthy and sustainable environment*, Forty-eighth session, Res. A/HRC/RES/48/13. See also United Nations General Assembly Resolution adopted on 28 July 2022 [without reference to a Main Committee (A/76/L.75 and A/76/L.75/Add.1)]. *The human right to a clean, healthy and sustainable environment*, Seventy-sixth session, 1 August 2022 Res. A/RES/76/300.

98 Human Rights Council (2009). *Human Rights and Climate Change*, Tenth Session, 25 March 2009, Res. A/HRC/RES/10/4.

99 Le Masson, Virgine, Sheri Lim, Mirianna Budimir, Jasna Selih Podboj (2016), *Disasters and Violence Against Women And Girls: Can Disasters Shake Social Norms And Power Relations?*, London: Overseas Development Institute. See also Fothergill, Alice. (1996). “Gender, Risk and Disaster”, *cit. supra*, 33–56.

100 Human Rights Council (2009). *Human Rights and Climate Change*, A/HRC/RES/10/4, *cit. supra*.

depends on the right to a safe, clean, healthy and sustainable environment.¹⁰¹ The CCPR, based on an earlier case “Portillo Cáceres et al v. Paraguay”,¹⁰² states that “[...] a restrictive interpretation does not adequately convey the full concept of the right to life”. Likewise, the CCPR stated in the case “Warda Osman Jasin v. Denmark”,¹⁰³ that the right to life includes considering those circumstances that compromise basic human standards and give rise to the prohibition of non-refoulement, in accordance with Article 7 of the International Covenant on Civil and Political Rights. The ultimate aim is effectively protect the personal integrity and dignity of the person affected by a refoulement order. Moreover, this interpretation follows CCPR General Comment No. 36 (2018) on the right to life, according to which “[...] environmental 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”. Therefore, “[...] [t]he obligations of States parties under international environmental law must 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 result in direct threats to life or prevent them from enjoying their right to life with dignity under Article 6 of the International Covenant on Civil and Political Rights. In particular, it states “Legal protections of the right to life must apply equally to all persons and provide effective guarantees against all forms of discrimination, including multiple and intersectional forms of discrimination”.

In terms of a gender perspective, this is connected to the Committee on the Elimination of Discrimination against Women’s General Recommendation No. 37, entitled “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, laws, plans, programmes, budgets and other activities related to disaster risk reduction and climate change are gender-sensitive and guided by human rights-based principles”, prioritising the most marginalised groups of women and girls, “[...] such as internally displaced, stateless, refugee, asylum-seeking and migrant women”, as requested by the Human Rights Council.¹⁰⁴ Under this obligation, states could promote and strengthen the extension of the non-refoulement obligation to climate migration from a gender perspective, considering the real risk of climate harm and gender-based violence on return, where women face particularly vulnerable situations, constituting a social group affected by gender-based persecution and rape.

Indeed, as evidenced by the HRC, the implication of this reality and its lack of protection for human rights is very important. For this reason, since 2008, the HRC has addressed the relationship between climate change and human rights,¹⁰⁵ in particular those impacts that affect the population already in a situation of vulnerability.¹⁰⁶ It is therefore significant to highlight that, at its 50th ordinary session, held from 13 June to 8 July 2022, the HRC has addressed climate change as a phenomenon that increases violations of the rights of women and girls. In particular, it addressed climate migration as a situation that exposes women and girls to an even greater risk of violence.

After this session of the HRC, the new Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change submitted his first report to the Council in accordance with Council Resolution 48/14.¹⁰⁷ The Special Rapporteur assumed his mandate on 1 May 2022 and in this first report, climate displacement

101 Human Rights Council (2021). Resolution adopted by the Human Rights Council on 8 October 2021 48/13. *The Human Right to a Clean, Healthy and Sustainable Environment*, Forty-eighth session 13 September–11 October 2021, Res. A/HRC/RES/48/13. Also, see United Nations General Assembly (2022). *The Human Right to a Clean, Healthy and Sustainable Environment*, 26 July 2022, Res. A/76/L.75.

102 Human Rights Committee (2019). *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2751/2016*, 20 September 2019, CCPR/C/126/D/2751/2016.

103 Human Rights Committee (2015). Communication No. 2360/2014 *Views adopted by the Committee at its 114th session* (29 June-24 July 2015), 25 September 2015, CCPR/C/114/D/2360/2014.

104 Human Rights Council (HRC) (2018). *Human rights and climate change, cit. supra*.

105 Human Rights Council (HRC) (2009). *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights*, Tenth session, 15 January 2009, Res. A/HRC/10/61 and its Res. A/HRC/10/4, *Human rights and climate change*, Tenth Session, 25 March 2009.

106 Human Rights Council (HRC) (2008). *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*, Report of the independent expert on minority issues, Gay McDougall, Seventh session, 28 February 2008, Res. A/HRC/7/23.

107 Human Rights Council (HRC) (2022). *Initial planning and vision for the mandate Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change*, Ian Fry, Fiftieth session, 24 June 2022, Res. A/HRC/50/39.

is presented as one of the priorities of his mandate. Specifically, the Special Rapporteur mentions that the priority will be to address “[...] the human rights implications of climate change displacement, including the legal protection of persons displaced across international borders”. This work has presented to the 53rd session of the Human Rights Council in June 2023.¹⁰⁸ In this report, the rapporteur recognises that gender, along with other personal characteristics such as age, disability or health status; pose an added risk of human rights violations when crossing international borders. In addition, the rapporteur also proposes a legal response to the reality of climate migrants who lack access to regular migration options but are forced to leave their countries of origin due to disasters and the adverse effects of climate change. Thus, the recommendation is the elaboration of an optional protocol to the Convention relating to the Status of Refugees in order to protect the human rights of people displaced across international borders due to climate change.

This is a welcome announcement in response to the current normative vacuum that leaves so many people around the world facing the effects of climate change, particularly women and girls, among other vulnerable groups, unprotected. Indeed, in this report, the Special Rapporteur mentions that there are currently 84 million forcibly displaced people worldwide, and that lesbian, gay, bisexual, transgender and gender-diverse people are particularly vulnerable and marginalised.¹⁰⁹ In these cases, the impacts of climate change add another layer of intersectional fragility.

Overall, both the contribution of the CCPR and the HRC are highly relevant to the protection of climate migration from a gender-sensitive perspective and may have several potential legal consequences. First, at the international level, through their replicability in the different regional human rights protection systems, namely African, American and European. Secondly, at the domestic level, with the possibility for states to extend the scope of protection of the Geneva Convention, applying the reinterpretation of the obligation of non-refoulement to protect the right to life by considering the existence of gender-based discrimination in a context of climate change, where general living conditions are far below minimum international human rights standards. These conditions characterise the possibility of extending the protection provided by refugee status, without amending the Geneva Convention, through an expansive interpretation by granting, for example, protection permits or humanitarian visas, such as those being granted by Argentina. This interpretation has been applied, for example, in Cyprus, Finland, Sweden, Denmark and Italy, including the possible adoption of gender-sensitive policies and laws.

However, the possible adoption of gender-sensitive policies and laws requires a change in the perception of the inherent vulnerability of migrant women and girls, recognising the situation of inequality and discrimination, but also their knowledge and capacities in disaster situations.

5. Conclusion

The protection of human rights against systemic discrimination, multidimensional inequality and gender-based violence, particularly of women and girls, is critical at all times, but most particularly in situations of forced displacement, including those occurring in a context of severe climate impacts that exacerbate violations of women’s rights. Existing gender discrimination situates women differently in the face of forced climate migration processes, intersecting with other vulnerabilities.

Thus, it is important to address the migratory consequences of climate change, but with the understanding that these people are not only fleeing climate change, but the climatic conditions that determine or are determined by persecution and socio-economic exclusion, in territories where there is a worrying weakening of human rights, mainly based on discrimination based on sexual orientation and gender identity. It is therefore essential to insert gender-sensitive measures in policies and legislation in general, but particularly in those related to climate change (mitigation, adaptation and loss and damage) and the movement of people.

108 Human Rights Council (2023). *Providing legal options to protect the human rights of persons displaced across international borders due to climate change*. Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry, Fifty-third session, 18 April 2023, Res. A/HRC/53/34.

109 Care International (2020), *Evicted By Climate Change: Confronting the Gendered Impacts of Climate-Induced Displacement*. See at (<https://careclimatechange.org/wp-content/uploads/2020/07/CARE-Climate-Migration-Report-v0.4.pdf>) (accessed on 15 August 2023).

The CCPR decision, while not legally binding, has opened up the possibility of interpreting the scope of international protection according to the circumstances faced by climate migrants, as it recognises that countries cannot deport people facing climate change-induced conditions that violate their right to life. This decision must be read in conjunction with the reasoning of the HRC and the recommendations of the CEDAW Committee, which strengthened the obligation of non-refoulement in situations where discrimination against women undermines their ability to cope with climate change impacts and compromises the right to life. These arguments alone, without amending the Geneva Convention, would be sufficient to extend humanitarian protection to climate migrants, integrating gender-sensitive responses through implementation of the principle of non-refoulement.

As a result, the assessment of individual situation, vulnerability, climate risks and impacts, and general living conditions, considering in particular those of women, are relevant in determining whether the right to freedom from cruel, inhuman or degrading treatment and the right to life are sufficiently guaranteed. As the impacts of climate change induce more people to migrate (especially as populations in the Global North are affected), the normative development of the Geneva Convention and the application of the principle of non-refoulement to protect climate migrants is likely to play a relevant role. This will undoubtedly require innovative legal-policy responses that adapt existing refugee and migration-related legal frameworks to the humanitarian challenges generated by climate change, integrating recognition of the contexts of intersectional vulnerabilities faced by various social groups, as well as gender-sensitive measures, in order to protect adequately the rights of migrant women and girls.

In accordance with international law, strengthening a gender-sensitive approach to migration governance is the responsibility of States. For this reason, it is very important that States take on board the developments that are taking place at the international level to protect human rights in the face of the effects of climate change by integrating gender-sensitive and gender-responsive measures. Accordingly, legal responses must integrate, first, the recognition of climate change as a migration driver. Second, the articulation of gender-sensitive protection measures. This means preventive responses that ensure that mitigation and adaptation efforts address gender-based sources of vulnerability, gender inequality and poverty, and reactive responses adequate to protect the rights of migrant women, who face the disruptions generated by the effects of climate change in an unequal manner.