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# Integrating Women's Rights and Climate Migrant Protection: Bridging Gaps in Vietnam

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## Abstract

Southeast Asia, a region at the forefront of the climate crisis, is experiencing a surge in climate-induced displacement, with projections indicating that 3.3 to 6.3 million internal displacements may occur in the lower Mekong sub-region by 2050. Climate migration in the Global South is not merely a matter of environmental survival but also a significant human rights concern—particularly for women. Female climate migrants are especially vulnerable to gender-based violence, trafficking, and restricted access to essential services such as sanitation, reproductive healthcare, and psychosocial support. Despite growing awareness, the intersectional vulnerabilities of these women remain insufficiently addressed in both academic literature and legal policy. While previous research has explored climate migration and women's rights separately, few studies have engaged with their intersection—particularly within Global South contexts. This study seeks to bridge that gap by examining the identity, legal recognition, and lived experiences of female climate migrants, with Vietnam serving as a representative case study. The research employs a comparative legal analysis of international and Vietnamese legal frameworks, evaluating how existing laws conceptualise and safeguard female climate migrants. Methodologically, it draws on interdisciplinary literature and human rights-based approaches to interrogate both normative and practical gaps in protection. The findings reveal that prevailing legal regimes tend to classify women either as victims of climate disasters or as migrants, without adequately accounting for the convergence of these identities. This oversight contributes to fragmented protections and critical policy blind spots. In response, the study proposes a holistic framework that incorporates gender-responsive and climate-specific considerations into migration law and policy. By foregrounding the voices and rights of female climate migrants in the Global South, this research contributes to the advancement of human rights scholarship and advocates for inclusive, intersectional, and contextually grounded legal reforms. It highlights the urgent need for policies that not only address environmental displacement but also uphold the dignity and rights of the most affected.

**Keywords:** Human Rights; Climate Change; Migration; Women's Rights; Southeast Asia.

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## INTRODUCTION

According to Lauren Nishimura, “climate migrants” are “those whose movement is triggered, in part or exclusively, by the effects of climate change.”<sup>1</sup> Climate change can interact with and potentially amplify pre-existing threats and other causes of instability, transforming it into a “threat multiplier” that increases security risks.<sup>2</sup> Hence, it is one of the major reasons people migrate. The IPCC was the first international entity to recognise the potential severity of climate change's impact on disaster-induced displacement and human mobility.<sup>3</sup> Predicting future trends, the IOM warned that the number of environmental migrants can range from 25 million to 1 billion by 2050.<sup>4</sup> In that context, Southeast Asia is considered a “hotspot” for severe weather outbreaks and persistent environmental degradation.<sup>5</sup> According to the 2021 World Bank's Groundswell Reports, the lower Mekong subregion of Southeast Asia is expected to experience internal displacement owing to climate-related reasons for 3.3 million to 6.3 million people between now and 2050.<sup>6</sup> Hence, Vietnam, with 70% of the population living in coastal areas and low-lying deltas exposed to regular typhoons, tropical storms, floods and rising sea levels, is especially at risk of being heavily impacted by this trend.

The IDMC has calculated that between 2008 and 2022, 5.4 million Vietnamese people have been internally displaced from their settlements due to the impact of natural disasters.<sup>7</sup> While less data is available on external displacement following disasters, given the physical geography of the Greater Mekong sub-region, human mobility is becoming Vietnam's next crisis. The 21st century is observing a trend increasingly known as the “feminisation of migration”.<sup>8</sup> This trend, unfortunately, aligns with the “feminisation of poverty”, where female migrants are often less empowered and more vulnerable to impoverishment compared to their male counterparts.<sup>9</sup>

This intersection of migration and gender vulnerability requires thorough exploration. Key factors contributing to the vulnerability of female migrants include the expansion of the global care chain and the recruitment of women into lower-paid, temporary positions—both major drivers behind the rising numbers of female migrants. Moreover, these dynamics are exacerbated by the broader impacts of climate change, which disproportionately affect women.<sup>10</sup> This paper will take a deeper look into how these issues intertwine, examining the complex ways in which climate change influences

<sup>1</sup> Lauren Nishimura, “Climate Change Migrants’: Impediments to a Protection Framework and the Need to Incorporate Migration into Climate Change Adaptation Strategies,” *International Journal of Refugee Law* 27, no. 1 (2015): 107–134.

<sup>2</sup> Shelly Goodman and Pauline Baudu, “Climate change as a “threat multiplier”: history, uses and future of the concept,” *Center for Climate and Security*, no.38 (2023): 1.

<sup>3</sup> Steve Loneran, “The Role of Environmental Degradation in Population Displacement,” *Environmental Change and Security Project Report* 4, no.5 (1998): 5-15.

<sup>4</sup> Frances Basetti, “Environmental Migrants: Up to 1 Billion by 2050,” *Climate Foresight*, May 29th, 2019.

<sup>5</sup> Kwan Soo-chen and David McCoy, “Climate displacement and Migration in South East Asia,” *IPP Media*, February 28th, 2023.

<sup>6</sup> Viviane Clement, Kanta Kumari Rigaud, et. al. “Groundswell part 2: Acting on internal climate migration,” *World Bank*, 2021.

<sup>7</sup> “Country Profile: Vietnam,” *Internal Displacement Monitoring Centre*, accessed June 27, 2024, <https://www.internal-displacement.org/countries/viet-nam/>.

<sup>8</sup> Donna R. Gabaccia, “Feminization of Migration,” *The Wiley Blackwell Encyclopedia of Gender and Sexuality Studies*, April 21st, 2016.

<sup>9</sup> “Experiencing Internal Displacement as a Woman,” *IOM Web Blog*, accessed at June 27, 2024 <https://weblog.iom.int/experiencing-internal-displacement-woman>.

<sup>10</sup> Nigel Clark and Giovanni Bettini, “Floods’ of Migrants, Flows of Care: Between Climate Displacement and Global Care Chains,” *The Sociological Review Monographs* 65, no. 2 (2017): 36–54.

migration and particularly heightens the challenges faced by women. In particular, climate migration puts the life, liberty, and security of the migrants at risk.<sup>11</sup> Accordingly, sudden disasters like floods and storms result in casualties and property damage for displaced individuals. At the same time, gradual effects like sea level rise, glacier melt, erosion, and desertification from global warming pose risks to their livelihoods. The destruction of homes and loss of land by the impacts of climate change also effectively affect their freedom of movement and deny their right to choose their place of residence.<sup>12</sup> It caused severe interference with the privacy and family life of those displaced.

Moreover, displaced people face heightened vulnerability due to the lack of essential amenities such as food, water, shelter, and medical support, exposing them to life-threatening risks and diseases, including scrub typhus, diarrheal and other mosquito-borne diseases.<sup>13</sup> Not only will their physical and mental health be damaged, but their rights to work, to education, to pursue freely their own economic, social and cultural development, and to participate in cultural life are inevitably violated to a greater or lesser degree when climate displacement occurs.<sup>14</sup> The effects of climate change as a “threat multiplier” are felt disproportionately by segments of the population that are already marginalised or in vulnerable situations owing to geography, gender, sexual orientation, age, Indigenous or minority status, disability, etc.<sup>15</sup> In particular, when disasters occur men tend to exhibit greater agency for mobility while women often encounter more obstacles in terms of relocation. Women’s capacity to adapt to climate-induced upheavals through migration is limited by gender-specific responsibilities tied to family and household care, compounded by lower financial independence and lack of property rights.<sup>16</sup> Moreover, women are also more marginalised and vulnerable after disasters since they are typically left out of the rehabilitation and reconstruction phases.<sup>17</sup>

Yet, those who move following disasters still face heightened risk in temporary camps and refugee camps where their critical services, including female hygiene and reproductive health care, cannot be met.<sup>18</sup> At the same time, women and girls in migration transit are at heightened risk of gender-based and sexual violence, human trafficking and some forms of modern-day slavery, as well as intersectional discrimination.<sup>19</sup> Factors such as inadequate provisions of food, sanitation, lighting, and privacy exacerbate their vulnerability to assault. The availability and accessibility of gender-based violence reporting mechanisms and recovery services also remain deficient for female migrants.

<sup>11</sup> World Bank, “Turn Down the Heat: Climate Extremes, Regional Impacts, and the case for Resilience”, *World Bank*, 2013.

<sup>12</sup> Filomina Chioma Steady, “Women, climate change and liberation in Africa,” *Race, Gender & Class Conference* (2014): 312-333.

<sup>13</sup> Abul Kalam Azad et al., “Flood-Induced Vulnerabilities and Problems Encountered by Women in Northern Bangladesh,” *Journal of Disaster Risk Science* 4, no. 4 (2013): 190–199.

<sup>14</sup> Briana Mawby and Anna Applebaum, “Addressing Future Fragility: Women, Climate Change and Migration,” in *New Directions in Women, Peace and Security*, ed. Basu Soumita (Bristol University Press, 2020).

<sup>15</sup> Namrata Chindarkar, “Gender and Climate Change-Induced Migration: Proposing a Framework for Analysis,” *Environmental Research Letters* 7, no. 2 (2012): 1–7.

<sup>16</sup> Susana Borràs-Pentinat, “Climate Migration: A Gendered Perspective,” *Environmental Policy and Law* 53, no. 5–6 (2023): 385-399.

<sup>17</sup> “Protection of and assistance to internally displaced persons: note / by the Secretary-General”, A/63/286, paragraph 60, UNGA.

<sup>18</sup> E. Pittaway and Susan Rees, “Multiple Jeopardy: Domestic Violence and the Notion of Cumulative risk for Women in Refugee Camps,” *Women Against Violence: An Australian Feminist Journal* 18 (2006): 18-25.

<sup>19</sup> Castañeda Camey et al., “Gender-Based Violence and Environment Linkages: The Violence of Inequality,” edited by J. Wen, *IUCN Publication* (Gland: International Union for Conservation of Nature, 2020).

Accordingly, female migrants exhibit greater vulnerability to trafficking and modern-day slavery compared to 71% of human trafficking victims, 66% of forced marriage cases, and 80% of commercial sexual exploitation victims.<sup>20</sup>

Vietnam's vulnerability to climate change presents extensive challenges, particularly affecting Vietnamese women who bear socio-economic disadvantages and are most impacted by climate effects. In rural areas, where the majority of Vietnam's agricultural work takes place, women are extensively involved in farming and local market activities. Despite their significant contributions to the economy and household, women often have limited access to resources, education, and land ownership compared to men. These disparities not only limit women's capacity to adapt to economic and environmental changes but also place them at a disadvantage when migration becomes a necessary response to climate change.<sup>21</sup>

Migration, both internal and international, is increasingly recognised as a viable strategy for many Vietnamese women contending with the dual pressures of economic necessity and environmental degradation. The participation of women in Vietnam's economy has garnered significant attention, influenced by socialist feminism and the evolving discourse around women's roles in the market. This shift is evident in the mobility patterns of women who are moving from rural areas to major urban centres in search of better opportunities. This migration is often characterised by gender-specific roles, with many women taking on jobs such as street vending in Hanoi—a role predominantly filled by women or domestic care labour in middle-class households.<sup>22</sup>

Data shows a rising trend of migration among Vietnamese women, driven by the promise of opportunities in urban environments and abroad. Looking from a gender dynamic perspective, women account for a higher share of men in the total migrant population, with female migrants making up 55,5% in 2019.<sup>23</sup> However, these migrations come with substantial risks. Women migrating internally often find themselves in urban areas ill-prepared for population surges, suffering from a lack of infrastructure, housing and essential services.<sup>24</sup> Those who migrate internationally frequently rely on informal channels for relocation, exposing them to greater risks of human trafficking and labour exploitation, especially in domestic work and other low-skilled sectors. Despite these risks and challenges, support for enhancing the safety of Vietnamese female migrants is found to be inadequate.<sup>25</sup> Cultural expectations in Vietnam dictate that women should possess the virtue of being 'flexible,' leading to the perception that a short-term, unstable lifestyle is not problematic for them. Consequently, it is unsurprising that efforts to improve the living standards of migrant women are lacking. A study from the Vietnam Woman Union's 2022 Conference on the topic of female migrants

<sup>20</sup> ILO et al., *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (Geneva: ILO Publications, 2022).

<sup>21</sup> "Experiencing Internal Displacement As A Woman," IOM Web Blog, accessed June 27th, 2024, <https://weblog.iom.int/experiencing-internal-displacement-woman>.

<sup>22</sup> Binh An, "Economic Development Models of Migrant Women," Communist Party of Vietnam Electronic Newspaper, 2023, <https://dangcongsan.vn/binh-dang-gioi-trong-vung-dong-bao-dan-toc-thieu-so-va-mien-nui/nhung-mo-hinh-phat-trien-kinh-te-cua-phu-nu-di-cu-652167.html>.

<sup>23</sup> "Factsheet on Migration and Urbanisation in Vietnam" GSO and UNFPA, accessed June 25th, 2024, <https://vietnam.unfpa.org/en/publications/factsheet-migration-and-urbanization-viet-nam>.

<sup>24</sup> Khanh Duy, "Women in adapting to climate change in Vietnam", People Newspaper, 2022, <https://nhandan.vn/phu-nu-trong-thich-ung-voi-bien-doi-khi-hau-o-viet-nam-post682484.html>.

<sup>25</sup> Bang Tam, "Self-employed migrant women have very low average income", Ho Chi Minh City Specialized Government Electronic Newspaper, 2022, <https://tphcm.chinhphu.vn/phu-nu-di-cu-lao-dong-tu-do-co-thu-nhap-trung-binh-rat-thap-101220303175352872.htm>.

has pointed out that 67% of surveyed migrant women responded that they had not received any support from their host society because they did not know who to turn to, was not eligible for support/did not register for temporary residence.<sup>26</sup>

Thus, it is to say that although women's rights, climate crisis and human mobility are issues being paid close attention to by the global society and Vietnam as a nation, an integration between these issues to build up a consistent legal framework benefitting women whose habitat is being vulnerable to the instability of natural disaster is argued to be of tremendous vitality.

## METHODOLOGY

This research adopts a legal doctrinal approach to examine the current legal frameworks, treaties, and norms regarding the protection of female climate migrants. The study will primarily rely on conventional legal treatises, articles, and other scholarly sources, employing an expository method to analyse key developments within three relevant legal regimes: international human rights law, international environmental law, and international migration/refugee law.

The research aims to identify the significant gaps in international law to protect climate migrants, particularly women. While various frameworks, treaties, and norms connected to migration may have some relevance, there remain substantial deficiencies in addressing climate migrants comprehensively. Women who are climate migrants are especially marginalised, falling into a legislative gap between international agreements related to migration and regulations focused on gender, the environment, or climate change.<sup>27</sup> However, Borràs-Pentinat<sup>28</sup> views this gap as a potential opportunity for different international legal systems to develop provisions that are both climate-sensitive and gender-responsive.

The research will also review and analyse the gaps in Vietnam's local legal system concerning female climate migrants. It will compare Vietnam's domestic legal provisions with international norms to evaluate how effectively it addresses the issue. A key focus will be on the vernacularisation of European-centric legal frameworks on 'female climate migrants' in the localised contexts of Vietnam and the broader Southeast Asian region. By doing so, this research aims to offer insights into how the protection of female climate migrants can be strengthened both globally and nationally.

## INTERNATIONAL FRAMEWORK FOR THE PROTECTION OF FEMALE CLIMATE MIGRANTS' RIGHTS

Policies and resolutions encouraging global societies to state policies on right-based assistance through a gender perspective are not new. As pointed out above, the vulnerability of girls and women in climate crisis is well-recognised, yet attempts to recognise them as an independent group for policy-making have not been significant. In this discussion, the paper will identify such a status in 03 main interlinked systems: (1) general human rights, (2) environmental law, and (3) migrant and refugee law.

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<sup>26</sup> *Ibid.*

<sup>27</sup> Mawby and Applebaum, "Addressing Future."

<sup>28</sup> Borràs-Pentinat, "Climate Migration", 216-234.

### *A. The Universal Rights of Female Climate Migrants*

The most relevant and foundational frameworks to establish the general human rights of female climate migrants are the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) and the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Going back on a timeline, 2017 recorded the Human Rights Council's foundational Resolution on human rights and climate change, which directly urges states to integrate a gender perspective in climate strategies to ensure migrants and displaced people's full enjoyment of human rights in adverse effects of climate change. 2017 also witnessed the UNGA adopting a similar Resolution, which encouraged states to maintain a gender perspective in all international cooperation policies on humanitarian assistance following disaster-induced displacement.<sup>29</sup>

Following those efforts, in 2018, the CEDAW Committee issued General Recommendation No. 37 to discuss gender-related dimensions of disaster risk reduction in climate change. This recommendation reiterates states' obligations to prioritise the most marginalised groups of women and girls, including "[...] internally displaced, stateless, refugee, asylum-seeking, and migrant women," and 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".<sup>30</sup> This recommendation reading, together with CEDAW Committee's past General Recommendations No. 26 on women migrant workers<sup>31</sup> and No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women<sup>32</sup> can offer a human rights-based and gender-responsive approach to female climate migrants.

That same year, the Human Rights Committee issued General Comment No. 36, interpreting Article 6 on the right to life protected under the 1966 ICCPR to include environmental degradation and climate change as one of its threats. The Committee contends in this General Comment No. 36 that women and girls should receive special consideration when there is environmental degradation since it may endanger their lives or make it impossible for them to exercise their right to life with dignity.<sup>33</sup>

In 2020, under the framework of the ICCPR, the Human Rights Committee issued a Decision on *Teitiota v New Zealand*, which stated that no state may extradite, return or expel a person to another state if it means they will have to go through life-threatening climatic conditions.<sup>34</sup> In other words, this allows climate migrants a complementary protection based on the principle of non-refoulement under Article 7 of ICCPR. Putting a gendered lens to this argument is to argue that states shall not

<sup>29</sup> "Resolution on International cooperation on humanitarian assistance in the field of natural disasters, from relief to development", A/72/L.23, December 11st, 2017, UNGA.

<sup>30</sup> "General recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, December 5th, 2008, CEDAW.

<sup>31</sup> *Ibid.*

<sup>32</sup> "General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women", CEDAW/C/GC/32, November 5th, 2014, CEDAW.

<sup>33</sup> "General recommendation No. 36 on the right of girls and women to education", CEDAW/C/GC/36, November 27th, 2017, CEDAW.

<sup>34</sup> "*Teitiota v New Zealand*, CCPR/C/127/D/2728/2016", January 7th, 2020, United Nations Human Rights Committee.



send a woman who has been displaced by natural catastrophes back home if it could be demonstrated that her life back home is in grave danger due to both the effects of the current climate and gender inequality. These efforts by the Committee offered female climate migrants complementary protection once they reached a host state while also ensuring they received a minimum standard of treatment.<sup>35</sup>

On the other hand, the interpretation of the ICESCR to accommodate issues related to female climate migrants is mostly led by scholars rather than treaty bodies. Accordingly, the 1966 ICESCR can be interpreted to offer female climate migrants two important scopes of rights: the right to an adequate standard of living and the right to health. Article 11 of ICESCR can provide female climate migrants the right to an adequate standard of living for themselves and their families.<sup>36</sup> Hence, this right creates duties for any relevant states in female climate migrants' journey to ensure their freedom from hunger, guarantee them access to water and medicine to satisfy basic needs, and access to minimum educational standards.<sup>37</sup>

The inclusion of gender concerns is more prominent in interpreting Article 12 of ICESCR on the right to health.<sup>38</sup> In particular, it highlights women's and girl's specific needs for adequate sexual and reproductive healthcare.<sup>39</sup> This is especially crucial for female climate migrants as they are more vulnerable to the lack of services and goods essential for sexual and reproductive health, including contraceptive methods, abortion services, and care. Concern for female climate migrants' health is further emphasised by the CESCR Committee in 2017 following its statement, which addresses how women and girls who are migrants or refugees are particularly vulnerable to human trafficking, other forms of gender-based abuse, and exploitation during disasters.<sup>40</sup>

Although most of this language on female climate migrants' rights is not new, it does indicate international human rights' capacity to offer universally true and non-discriminate protection to any relevant party regardless of their status. Hence, under these programs, female climate migrants' rights are protected throughout their travel, upon arrival, during their stays and potentially upon their return, at least in principle.

### *B. The Climate-sensitive Approach to Female Climate Migrants*

While individual rights and interests are not the focus of international environmental and climate regimes, they indirectly provide female climate migrants with precautionary safeguards through the regulation of states' commitment to mitigate and adapt to climate change. Accordingly, it addresses the root cause of climate migration by requiring states to mitigate climate change and its impacts.

<sup>35</sup> Jane McAdams, "Environmental Migration" in *Global Migration Governance* ed. A. Betts (Oxford University Press, 2011).

<sup>36</sup> Giovanni Sciacaluga, *International Law and the Protection of "Climate Refugees"* (Springer International Publishing, 2020).

<sup>37</sup> Mostafa Naser, "Climate Change and Forced Displacement: Obligation of States under International Human Rights Law," *Sri Lanka Journal of International Law* 22, no. 2 (2010): 117-164.

<sup>38</sup> "General Comment No. 14: The Right to the Highest Attainable Standard of Health," E/C.12/2000/4, August 11st, 2000, CESCR Committee.

<sup>39</sup> "General Comment No. 22 on the right to sexual and reproductive health," E/C.12/GC/22, May 2nd, 2016, CESCR Committee.

<sup>40</sup> "Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights," E/C.12/2017/1, March 13rd, 2017, CESCR Committee.

Most importantly, it creates a framework for the protection of the rights and interests of those women and girls migrating due to climate change as part of states' compulsory climate-adaptative measures. In other words, female climate migrants can benefit from this climate adaptation framework, which takes into account their specific needs and interests.

To start, unlike the late inclusion of gender perspective in the climate agenda, displacement brought on by climate change has been the topic of COP since 2010. The result of COP16 in Cancun was the 2010 Cancun Adaptation Framework, which urges states to act on migration, planned relocation, and displacement as a result of climate change.<sup>41</sup> Since then, the UNFCCC has taken gradual steps to incorporate considerations for migration into its framework for regulating climate change mitigation and adaptation.<sup>42</sup>

Within the scope of the temperature objectives outlined in the 2015 Paris Agreement, adaptation is formally established as a fundamental component of global climate policy, accompanied by a worldwide adaptation goal.<sup>43</sup> The Agreement mandates states to develop and implement National Adaptation Plans (NAPs), alongside regularly submitting adaptation communications detailing their objectives, requirements, plans, and initiatives. Consequently, within the framework of climate adaptation obligations, female climate migrants represent the impacts of climate change for which states must undertake adaptation measures.<sup>44</sup> Moreover, under the Paris regime, states are obliged to adopt Adaptation Communications (ACs) explicitly addressing climate justice, equity, food security, the right to health, participation, transparency, access to remedy, accountability, and migrant rights. These communications should highlight initiatives aimed at safeguarding the rights of individuals disproportionately vulnerable to climate change's adverse effects. In general, this includes impact assessments, protective measures, and procedures facilitating meaningful engagement of potentially affected persons in climate action.<sup>45</sup>

The 2015 Paris Agreement is also the first multilateral climate agreement to include gender equality and the empowerment of women in its preamble.<sup>46</sup> Accordingly, the Agreement requires that "adaptation action should follow a gender-sensitive approach" while capacity-building should be "a gender-sensitive process".<sup>47</sup> Between 2020 and 2021, 87 States Parties to the Paris Agreement included references to human mobility related to climate change and gender in their NAPs.<sup>48</sup>

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<sup>41</sup> Sumudu Atapattu, "Climate Change and Displacement: Protecting 'Climate Refugees' within a Framework of Justice and Human Rights," *Journal of Human Rights and the Environment* 11, no. 86 (2020).

<sup>42</sup> Mariam Traore Chazalnoel and Dina Ionesco, "Advancing the Global Governance of Climate Migration Through the United Nations Framework Convention on Climate Change and the Global Compact on Migration: Perspectives from the International Organization for Migration," in *Climate Refugees: Beyond the Legal Impasse*, ed. S. Behrman and A. Kent (Routledge, 2018).

<sup>43</sup> Benoit Mayer, "Commitments", in B. Mayer, ed. *International Law Obligations on Climate Change Mitigation*, (Oxford University Press, 2022).

<sup>44</sup> Koko Warner, "Human Migration and Displacement in the Context of Adaptation to Climate Change: The Cancun Adaptation Framework and Potential for Future Action," *Environment and Planning C: Government and Policy* 30 (2012).

<sup>45</sup> Mariam Traore Chazalnoel and Dina Ionesco, "Advancing the Global Governance of Climate Migration", p. 109.

<sup>46</sup> Borràs-Pentinat, "Climate migration, gender", 231.

<sup>47</sup> Borràs-Pentinat, "Climate Migration", 394.

<sup>48</sup> "Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its third session, held in Glasgow from 31 October to 13 November 2021", FCCC/PA/CMA/2021/8/Rev.1, March 8th, 2022, UNFCCC.



The following year, in 2016, the UNFCCC made another foundational decision on women and gender perspective by requesting that the Subsidiary Body for Implementation prepare a gender action plan (GAPs) to support the implementation of gender-related resolutions and mandates.<sup>49</sup> The GAP, which was developed within the framework of the Lima Work Programme on Gender aims to facilitate women's full, effective, and equal participation, as well as the development of a climate policy that reflects gender issues and incorporates a gender perspective into the Convention's implementation and the work of the Parties, the Secretariat, UN entities, and all stakeholders.<sup>50</sup>

To note, subsequent gender action plans and amendments to the GAP were made in 2022 following COP27, it was also this year that the UN Special Rapporteur on Climate Change observed the establishment of a new Loss and Damage fund aimed at mitigating climate impacts in developing countries, including assistance for displaced populations.<sup>51</sup> Hence, the operationalisation of this fund was a significant agenda item for last year's human mobility dialogue at COP28. Despite their non-binding status, these advancements in the climate dialogue indicate a growing interest of the international community toward a common regulation for female climate migrants in future, highlighting their specific needs in both highly prioritised topics of gender and mobility at major global climate dialogues.

### *C. The Inclusion of Refugees and Migrants Approach to Female Climate Migrants*

Female climate migrants are not protected under the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol.<sup>52</sup> Nevertheless, the UNHCR issued that individuals crossing borders due to climate change or disasters may harbour a well-founded fear of persecution, satisfying the refugee nexus under the 1951 Refugee Convention. This is particularly evident when climate change exacerbates threats to human rights and when the state is incapable or unwilling to ensure protection.<sup>53</sup> Hence, female asylum seekers who suffer physical, sexual and mental violence, coercion or deprivation of liberty due to the increasing impacts of climate change are subjected to subsidiary protection status or other humanitarian protection measures, such as humanitarian or temporary protection permits.<sup>54</sup> In this context, climate change serves as one of the contributing factors rather than a direct cause that grants female climate asylum-seekers refugee status. While this argument is still very limited, any female climate migrant who satisfies the thresholds is given a certain degree of protection under the current international refugee regime when disasters interact with gender-based violence during and after their migration process.

<sup>49</sup> Borràs-Pentinat, "Climate migration, gender", 232.

<sup>50</sup> "20th Conference of Parties (COP 20) to the UNFCCC - the Lima Work Programme on Gender," Decision 18/CP.20, December 12nd, 2014, UNFCCC; and "22nd Conference of Parties (COP 22) to the UNFCCC - Decision on gender and climate change extending the 2014 Lima Work Programme on Gender," Decision 21/CP.22, November 18thm 2016, UNFCCC.

<sup>51</sup> "Submission by UNHCR: UN Special Rapporteur on Climate Change: Report on addressing the human rights implications of climate change displacement including legal protection of people displaced across international borders," January 2023, UNHCR.

<sup>52</sup> Tyler Bergeron, "No Refuge for 'Climate Refugees' in International Law", Environmental, Natural Resources, and Energy Law Blog, accessed June 27th, 2024. <https://www.lclark.edu/live/blogs/200-no-refuge-for-climate-refugees-in-international>.

<sup>53</sup> "Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters", October 1st, 2020, UNHCR.

<sup>54</sup> Borràs-Pentinat, "Climate Migration", 393.

While discussion on the applicability of refugee law, in this case, is still up for debate, the adoption of the 2016 New York Declaration for Refugees and Migrants marks a positive political-legal trend in the visibility of migrants in the context of climate change by calling out the complex reasons behind human mobility.<sup>55</sup> Accordingly, it stressed that people move “in response to the adverse effects of climate change, natural disasters or other environmental factors”.<sup>56</sup> Based on such a finding, the Global Migration Group Working Group on Human Rights and Gender Equality, co-chaired by the OHCHR, introduced the concept of a ‘migrant in a vulnerable situation’ which explicitly acknowledges the environment and climate change from a gender perspective as causes of involuntary migration.<sup>57</sup>

From that, the 2018 Global Compact on Refugees gives particular weight to the topic of gender in environmentally forced displacement. In particular, it calls for states to adopt and carry out policies and initiatives to empower women and girls in both origin and host countries, advance their equal access to opportunities and services, and ensure that they fully enjoy their human rights.<sup>58</sup> The 2018 Global Compact for Safe, Orderly and Regular Migration stated 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.<sup>59</sup> Additionally, the Global Compact promotes gender-responsive migration governance.<sup>60</sup> Specifically, it encourages states to adopt a gender-sensitive lens in examining their policies and practices to reduce vulnerability to gender-based violence.<sup>61</sup> Despite their non-legally binding status, these instruments play a pivotal role in supporting those individuals who fall outside the current protection framework by urging relevant states to act accordingly.

At the same time, the discussion on human mobility cannot leave out the relevancy of the growing popularity of internal displacement policies. Hence, some regard the frameworks guiding displacement as the most relevant platform to ensure the rights of female climate migrants.<sup>62</sup>

This is because the majority of climate migration often occurs internally.<sup>63</sup> In that context, the 1998 Guiding Principles on Internal Displacement serve as the primary international foundation for protecting internally displaced persons, applying to situations where people are forced to leave their homes but have not crossed international borders.<sup>64</sup> The Principles not only explicitly refer to migration from ‘natural or human-made disasters’ but also make various references to women’s role in displacement.<sup>65</sup> For example, Principle 4 recognises the entitlement of protection and assistance

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<sup>55</sup> Mawby and Applebaum, “Addressing Future”, 215.

<sup>56</sup> UNGA, 2016.

<sup>57</sup> OHCHR and Global Migration Group, 2017.

<sup>58</sup> Forced Migration Research Network, *The World’s Biggest Minority? Refugee Women and Girls in the Global Compact on Refugees* (UNSW Press, 2018).

<sup>59</sup> UNGA, 2019.

<sup>60</sup> Carolina Gottardo and Paola Cymet, “The Global Compact for Migration: What Could It Mean for Women and Gender Relations?,” *Gender & Development* 27, no. 1 (2019): 67–83.

<sup>61</sup> Borràs-Pentinat, “Climate Migration”, 394.

<sup>62</sup> Mawby and Applebaum, “Addressing Future”, 214.

<sup>63</sup> Huang, “Climate Migration”.

<sup>64</sup> Beatriz Felipe Perez, “Beyond the Shortcomings of International Law: A Proposal for the Legal Protection of Climate Migrants,” in *Climate Refugees*, ed. Simon Behrman and Avidan Kent (Routledge, 2018).

<sup>65</sup> IOM, “Experiencing”.

for the special needs of expectant mothers, mothers of young children, and female heads of households.<sup>66</sup>

To fill in the gap of potential female climate migrants who cross international borders, the Nansen Initiative on Disaster-Induced Cross-Border Displacement recognises and protects those subjected to transboundary displacement in the case of climate disasters.<sup>67</sup> The Sendai Framework for Disaster Risk Reduction 2015–2030 advances the gender dimension in climate migration by explicitly recognising the need to promote women's leadership through the 'Build Back Better' concept, which aims to increase the resilience of populations most exposed to climate disasters. It proposes promoting gender leadership through: (i) leading and promoting gender-equitable and universally accessible response, recovery, rehabilitation, and reconstruction approaches; (ii) designing, resourcing, and implementing gender-sensitive disaster risk reduction policies, plans, and programs; (iii) investing in warning systems, disaster risk, and emergency communications mechanisms through a participatory process, including social and cultural requirements, particularly gender. Thus, the framework recognises women's critical role in risk management and disaster response and emphasises the importance of empowering women via training and planning to secure alternate means of subsistence in post-disaster situations.<sup>68</sup> These programs outline potential actions by international governing bodies for female climate migrants. The question, however, is the extent to which these standards are met at the national level, as seen in the case of Vietnam in the following section.

## VIETNAM'S FRAMEWORK FOR THE PROTECTION OF FEMALE CLIMATE MIGRANTS' RIGHTS

Like the international legal framework, Vietnam's domestic law governing female climate migrants is also fragmented, embedding in various legal documents scattered across many different fields. Regarding their legal status, female climate migrants are not recognised as a distinctive vulnerable group under any instruments; they are protected either under their identity as female migrants or as women and girls in climate change situations. This paper will point out the extent to which Vietnam's (1) human rights framework, (2) climate change policies, and (3) migration/refugee regulations can adequately protect the rights of female climate migrants in the nation.

### *A. The Physical and Material Struggles in Learning Spaces*

Vietnam has ratified numerous international human rights treaties pertinent to the situation of female climate migrants, including the 1966 ICCPR, the 1966 ICESCR, and the 1981 CEDAW. As such, Vietnam is obligated to respect, protect, and fulfil its human rights commitments by strengthening climate efforts to prevent foreseeable harm to female climate migrants. Additionally, Vietnam must offer protection under the non-refoulement principle and ensure minimum standards of living and health for these migrants throughout their journey and settlement. However, not all of these recent developments in international human rights law are reflected in Vietnam's domestic legislation, even

<sup>66</sup> "Report of the Representative of the Secretary-General Mr. Francis M. Deng," E/CN.4/1998/53/Add.2, July 22nd, 1998, UN Commission on Human Rights.

<sup>67</sup> Mawby and Applebaum, "Addressing Future", 214–215.

<sup>68</sup> Borràs-Pentinat, "Climate migration, gender", 232.

when they are, only some regulations are relevant to the case of female climate migrants' rights.<sup>69</sup> In the case of relevancy, these instruments also do not recognise the specific characteristics of female climate migrants, they only provide a certain level of protection for those within their scope by regulating their rights as women, as migrants, or as women and girls who are vulnerable to climate change.

The foundational framework for human rights in Vietnam is the 2013 Constitution. Accordingly, Article 14 of the 2013 Constitution stipulates that human rights and civil rights in political, civil, economic, cultural, and social matters are to be recognised, respected, protected, and ensured according to the Constitution and the law. This provision forms the basis for all developments related to human rights across various aspects.

This applies to the case of "female migrants". Hence, to provide essential social security services and protect the rights of migrant workers, especially female migrants, Vietnam has recognised this specific group of workers as one of the main concerns under several laws. These laws include the 2006 Gender Equality Law, the 2014 Marriage and Family Law and the 2019 Labor Code. To take an example, Article 6 of the 2006 Gender Equality Law emphasises that men and women are equal in all areas of social and family life, which includes equality in enjoying political benefits, social policies, and social security. To implement this view, Vietnam issued a Social Security Strategy for the period 2012–2020 which identified female migrants as one of the vulnerable groups needing support, particularly as a group facing multidimensional poverty. These regulations and policies have significantly improved support for migrant workers, helping them find jobs and access social security services in their new locations. Following that success, the Social Security Strategy for the period 2021–2030 also emphasises that "every person has the right to social security" with a particular focus on migrant women.

With "women and girls who are vulnerable to climate change", Vietnam recognised their distinctive rights under the framework of the environmental protection program.<sup>70</sup> In particular, Article 4 of the 2020 Law on Environmental Protection stipulates that environmental protection harmonises with the promotion of gender equality and the protection of the human right to live in a healthy environment. Recognising the interconnected relationship between the environment, gender, and human rights creates opportunities for further regulation by governing bodies. This approach paves the way for more aspects of climate change law to be integrated with a focus on human rights and gender.

A recent development in Vietnam's environmental protection legislation and national reaction plans adopted the international interest in integrating human rights into both climate change and gender concerns. Yet, it has only stopped at recognising that the full enjoyment of the right to a healthy environment is affected by specific vulnerable identities like gender.

Looking at these developments, it is clear that the protection of their rights can fall within the scope of Vietnam's human rights legal system due to its non-discriminatory and broad nature. While this is a promising aspect, the current human rights agenda in Vietnam has only been focused on either the

<sup>69</sup> Nguyen T. T. Hoai, "Ensuring Housing Rights for Migrant Women According to Current Legal Regulations," *State Management Journal*, no. 311 (2022): 69–73.

<sup>70</sup> "Vietnam prioritises promoting human rights in the context of climate change", *VOV World*, accessed June 24th, 2024 at <https://vovworld.vn/vi-VN/viet-nam-con-duong-da-chon/viet-nam-uu-tien-thuc-day-quyen-con-nguoi-trong-boi-can-hien-doi-khi-hau-1043319.vov>.

identity of women and girls in climate change or the role of female labour in potential cross-border scenarios. Notwithstanding the current regulation's pros and cons, the incentive of Vietnam to protect female climate migrants is also reflected in its enforcement aspect. To demonstrate such a commitment, it is valuable to examine the country's national treaty reports to relevant human rights bodies, such as the CCPR, CESC, and CEDAW Committee.

Taking one example from the 2023 Fourth periodic report submitted by Viet Nam to the Human Rights Committee, no mention of either migration or displacement is made. Yet, the topic of labour rights is a particular focus throughout the report, especially recognising the interrelated relationship between labour, environment and human rights. The report also referred to the topic of gender equality. However, they only focus on gender concerns within particular topics like literacy, employment, political participation, and gender-based violence.<sup>71</sup> This further supports the argument that, within the core framework of human rights, climate migration and displacement, particularly concerning female climate migrants, are not currently prioritised on Vietnam's human rights agenda. At the same time, even the new 'right to a healthy environment' star also lacks proficient enforcement mechanisms. There have not been any follow-up documents to implement the provision that recognised this right.

In that sense, at least for now, Vietnam's human rights framework appears to lack specific provisions or focus within its existing domestic regulations and its international human rights agenda to address the unique challenges and needs faced by female climate migrants.

### *B. Vietnam's Climate Policies for Female Climate Migrants*

Vietnam is an active member of international climate dialogues. Hence, by being party to the 1922 UNFCCC and having ratified both the 1997 Kyoto Protocol and the 2015 Paris Agreement, Vietnam has obligations to protect the rights and interests of female climate migrants according to their respective commitments under climate mitigation and climate adaptation obligations. In particular, Vietnam is required to mitigate climate change and its impacts as the root cause of climate migration and adopt adaptive measures that protect the rights and interests of female climate migrants.

Similar to human rights obligations, not all of this language of either human mobility due to climate change as well as female climate migrants at the international level has been translated and internalised in Vietnam's domestic law. This is not to say Vietnam's environmental and climate change system is not already amber-responsive to natural crises and promptly includes vulnerable groups in national action plans.

One aspect relevant to the protection of female climate migrants is policies that consider gender equality and climate action. In the case of Vietnam, this commitment is represented in the country's top environmental agenda. Accordingly, in 2022, the Prime Minister approved the National Strategy on Climate Change for the period up to 2050. The tasks and solutions outlined in the Strategy include ensuring social security and gender equality, enhancing awareness, knowledge, and capacity to manage natural disaster risks and adapt to climate change for women officials and members, particularly in high-risk areas. Additionally, the Strategy focuses on developing sustainable livelihood models,

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<sup>71</sup> Human Rights Committee, 2023, para. 27-28.

emphasising training, career transitions, technology support, and access to capital for women in areas exposed to significant risks and vulnerable to the impacts of climate change. At the same time, the Strategy aims to strengthen the role, capacity and participation of women in climate change adaptation and natural disaster risk management by raising awareness of both climate change and gender equality through education and propaganda. In addition, the policy also aims to ensure that women's activities in disaster risk reduction and climate change adaptation, as well as in the development of natural disaster prevention and mitigation laws, must be combined with all aspects and indicators related to gender equality.<sup>72</sup>

As such, there seems to be a positive outlook regarding environmental frameworks. On one hand, Vietnam's current environmental policies and international climate change agenda are well-aligned with the guidelines issued by the UNFCCC on human mobility, gender, and climate change. On the other, Vietnam's longstanding disaster response and prevention programs, which now emphasise gender issues, provide a strong foundation for supporting female climate migrants. While the language of human rights has not yet been incorporated into specific documents in this regard, future efforts will likely address this gap as more actions toward integration are undertaken.

### *C. Vietnam's Refugees and Migrants Policies for Female Climate Migrants*

In contrast to Vietnam's positive and open attitude towards human rights and environmental regulation at the international level, the topics of refugees and migrants remain sensitive issues in the region. Hence, Vietnam is not a party to both the 1951 Refugee Convention and its 1967 Protocol. Accordingly, while the right to asylum and the provision of protection for refugees are enshrined in various Vietnam Constitutions, and despite having relatively comprehensive regulations on the management of foreigners related to entry, residence, and exit, there remains a significant gap in Vietnamese law.<sup>73</sup> Specifically, there are no explicit regulations or legal frameworks that address the unique status and needs of refugees.<sup>74</sup> This absence of specific regulations means that while the general legal infrastructure for managing foreign nationals is well-developed, the particular protections and rights that should be afforded to refugees are not adequately covered, leaving this vulnerable group without clear legal recourse or protection. In that sense, female climate migrants coming to Vietnam cannot benefit from those arguments made by UNHCR to acquire refugee status in Vietnam.

This appears to be a comparable case to that of migration. Vietnam is likewise not a signatory to the 1990 Migrant Convention. While hard-law duties in this regard are not relevant in the case of Vietnam, the country has actively participated in many international soft-law talks involving migration. The Global Compact for Safe, Orderly and Regular Migration is one of the examples. There, Vietnam has made statements to commit to reducing statelessness, preventing illegal migration and human trafficking, safeguarding migrants against unsafe migration traps, minimising vulnerability and

<sup>72</sup> Nhat Ha, 'Climate change and the special relationship with gender inequality', *Financial magazine*, accessed June 27th, 2024 at <https://tapchitaichinh.vn/bien-doi-khi-hau-va-moi-quan-he-dac-biet-voi-bat-binh-dang-gioi.html>.

<sup>73</sup> Nguyen T. Quyen, "International Law on Accepting Refugees and Some Suggestions for Vietnam," *Journal of Democracy and Law*, 2022, <https://danchuphapluat.vn/phap-luat-quoc-te-ve-tiep-nhan-nguoi-ti-nan-va-mot-so-goi-mo-cho-viet-nam>.

<sup>74</sup> Hoa, "Vietnamese Law Does Not Have Specific Regulations on Refugees," *Law Newspaper*, 2018, <https://baophapluat.vn/phap-luat-viet-nam-chua-co-quy-dinh-cu-the-ve-nguoi-ti-nan-post291451.html>.



protecting the rights and legitimating interests of migrants in the context of the alarming trend of online fraud.<sup>75</sup> Notwithstanding these noble commitments, it is clear that climate change isn't on Vietnam's international migration agenda.

Yet, Vietnam's foreign labour migrant legal regime includes various gender-sensitive concerns. To note, Vietnam now has the 2020 Law on Vietnamese Workers Working Abroad, the 2019 Labor Code, and the 2019 Law on Social Insurance as well as the 2017 Law on Representative Agencies of the Socialist Republic of Vietnam Abroad and their guiding documents for implementation.<sup>76</sup> Take an example, Article 4 of the 2020 Law on Vietnamese Workers Working Abroad stimulates that any national policy on Vietnamese workers working abroad under contract must ensure gender equality, employment opportunities, and non-discrimination in selection, vocational skills training, foreign languages, and education for Vietnamese workers working abroad under contract. In addition, the policy must also have measures to support the protection of Vietnamese female workers abroad following specific gender characteristics.<sup>77</sup> In a sense, any female climate migrants who fall under the scope of labour worker can benefit from this regime; however, considering the current context where climate-induced migrants are often not labourers, the chance for them to be protected under the scope of this agreement is very thin.

In that sense, migrant and refugee policies are not currently designed to support female climate migrants in Vietnam. This is partly because the country views migrants and refugees as a sensitive issue. Despite some positive developments in Vietnam's participation in various migration and refugee dialogues, gender and climate change are not currently priorities. Although there are some indirect references to these issues, they are insufficient. Furthermore, Vietnam's regulations on migrants are primarily focused on highly skilled labour migrants with specific contracts for work in other countries. This creates a dilemma, as only a small fraction of female climate migrants might fall within this scope of protection, leaving the majority unprotected.

## CONCLUSION

Climate migration, or human mobility due to climate change, is a defining issue of the decade. In Vietnam, women and girls suffer tremendously due to systemic discrimination and their particular vulnerability to climate impacts. Despite the rapid development of international legal and political frameworks addressing this issue, Vietnam has not kept pace. As long as female climate migrants are not recognised as a distinct vulnerable group under any Vietnamese instruments, they will not fully enjoy their human rights and related benefits. With climate change worsening in Vietnam and Southeast Asia, an increasing number of female climate migrants will be left unprotected.

<sup>75</sup> VNA, "Implementation of Global Compact for Safe, Orderly and Regular Migration Reviewed," *Vietnam Plus*, accessed June 24th, 2024, <https://en.vietnamplus.vn/implementation-of-global-compact-for-safe-orderly-and-regular-migration-reviewed-post274869.vnp>.

<sup>76</sup> Pham Hong Nhat, "Current Status of International Migration Law in Vietnam and Some Suggested Recommendations," *Industry and Trade Magazine*, 2023, <https://tapchicongthuong.vn/thuc-trang-phap-luat-di-cu-quoc-te-tai-viet-nam-va-mot-so-kien-nghi-goi-mo-115432.htm>.

<sup>77</sup> Kim Thanh, "Protecting Legal Rights and Interests for Female Workers Working Abroad," *VOV Vietnam*, 2023, <https://vov.vn/xa-hoi/bao-ve-quyen-loi-ich-hop-phap-cho-lao-dong-nu-lam-viec-o-nuoc-ngoai-post1019890.vov>.



However, while Vietnam has not widely recognised or focused on this group in global dialogues, its domestic disaster response and prevention framework does offer timely and long-term protection for female climate migrants. The main issue is that this framework has not incorporated the language of human rights, which has led to its omission from various literature and research on this issue.

Therefore, the topic of female climate migrants in Vietnam should not be framed as a call for legal reform but rather as a call for the more widespread use of human rights language in existing disaster prevention programs. Additionally, Vietnam should integrate climate migration, particularly concerning female climate migrants, into its diplomatic policies on climate and human rights at the global level. This step would acknowledge this distinct group's struggles amidst climate change, paving the way for a brighter future.

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## COMPETING INTEREST

The authors declared that they do not have a conflict of interest.

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