

### Submission to inform Chile Declaration and Action Plan in the context of the Cartagena +40 multi-stakeholder pledge

September 2024

1. Women in Refugee Law (WiRL)<sup>1</sup> is a global network of asylum claiming and refugee women, academics, researchers, practitioners, policymakers and activists. Our submission draws together recent evidence and knowledge from our members.<sup>2</sup> We have prioritised the most pressing issues identified by WiRL members, rather than addressing every possible topic.
2. The Cartagena Declaration has been praised for inspiring practices that have provided a lifeline for displaced people in Latin America and the Caribbean region. However, our members are concerned that the Cartagena Framework has failed to specifically consider the needs and experiences of displaced women and that, as a result, the Cartagena provisions have been underutilised in addressing the protection needs of women. To address this gap, we encourage States to explicitly recognise the specific experiences and needs of refugee women<sup>3</sup> when drafting the Chile Declaration and Action Plan.
3. Refugee women in the region often have specific experiences and needs, with corresponding human rights considerations, that are inadequately addressed.<sup>4</sup> The most urgent protection needs of women relate to discrimination, gender-based violence, poverty, unmet health needs, and vulnerability to criminal groups and trafficking networks.
4. Protection needs vary depending on whether a refugee woman is in their country of origin, in transit or has arrived in a destination country. Moreover, factors such as race and ethnicity can hinder access to human rights, especially when women belong to indigenous peoples or are Afro descendants.<sup>5</sup>

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<sup>1</sup> See <https://wirl.org.uk/> for information about WiRL's aims, activities and structure.

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<sup>3</sup> In the submission we include all asylum claiming and displaced women and girls in the category of 'refugee women'

<sup>4</sup> IACHR (2023). Human Mobility and the Obligation to Protect: Toward a Subregional Perspective. Press Release 28/09/23 [https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media\\_center/PReleases/2023/229.asp](https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2023/229.asp)

<sup>5</sup> Guimarães, A.S. (1999). "Raça e os estudos de relações raciais no Brasil". *Novos Estudos CEBRAP*. N° 54, São Paulo: Smith, A. (1997). *La identidad nacional*, Madrid, Trama Editorial: Bello, Á. y M. Rangel (2002). "La

5. As one of the regions with the greatest structural inequality in the world, affecting all areas of people's lives,<sup>6</sup> there are wide-ranging reasons why people flee within, into or outside the region. These include generalised violence, political instability, precarious living situations, the presence of transnational organized crime groups, corruption, and socio-environmental disasters.<sup>7</sup> These factors often affect women in specific ways, and in addition, women often leave their country of origin to escape sexual and gender-based violence (SGBV). Violence against women is common in countries where there are armed conflicts, including in this region.<sup>8</sup> Lingering effects of colonialism mean SGBV is also an inherent cultural issue, irrespective of a woman's country of origin.<sup>9</sup> Refugee women are often dependent on partners, spouses and family members, which creates power imbalances and can result in and exacerbate experiences of SGBV.<sup>10</sup>
6. Our members are concerned that there is a lack of sex-disaggregated data in this region. This means women and their needs remain effectively unseen. Globally, 46% of displaced people are women, adolescents and girls, and best estimates are that women constitute over 10 million of the 22.1 million people in the Americas that have been forced to move.<sup>11</sup>
7. We suggest **two key areas** for States to consider in their discussions about the Chile Declaration and Action Plan: **gender-sensitivity in the asylum application process and recognising refugees women's wider support needs**. This will contribute to strengthening the fairness, efficiency and integrity of national asylum systems, thereby subsequently promoting social inclusion and integration, and enhancing the lives and livelihoods of displaced women.

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equidad y la exclusión de los pueblos indígenas y afrodescendientes en América Latina y el Caribe". *Revista CEPAL*, N° 76 (LC/G.2175-P). Santiago. Comisión Económica para América Latina y el Caribe (CEPAL).

<sup>6</sup> Commission for Latin America and the Caribbean (2016). The matrix of social inequality in Latin America. Santiago de Chile <https://repositorio.cepal.org/server/api/core/bitstreams/c52907b3-a3dc-4866-8f4c-c19491c2b83a/content>

<sup>7</sup> UNHCR (2023). Increasing number of refugee and migrant women, adolescents and girls at risk of suffering gender violence in the Americas. Press release 12/5/2023. <https://www.acnur.org/noticias/comunicados-de-prensa/creciente-numero-de-mujeres-adolescentes-y-ninas-refugiadas-y>

<sup>8</sup> Brendel, C. and Wolf, C. (2012). 'Gender-based Violence in the Americas and Caribbean: A National Perspective'. ParlAmericas Annual Meeting <https://parlAmericas.org/uploads/documents/Panel1-Christine-Brendel-ENG.pdf>

<sup>9</sup>Segato, R. (2003). Las estructuras elementales de la violencia: contrato y status en la etiología de la violencia. Brasilia: Serie Antropología: Lugones, M. (2008). "Colonialidad y género". *Tabula Rasa*. N° 9, Bogotá. Universidad Colegio Mayor de Cundinamarca julio-diciembre: Herrera, G. (2013). Gender and International Migration: Contributions and Cross-Fertilizations. *The Annual Review of Sociology*. 39. 471–489: ACNUR, 2014. International protection and effective integration: recommendations from civil society regarding the current dimensions of asylum and statelessness in Latin America and the Caribbean. <https://www.acnur.org/fileadmin/Documentos/Publicaciones/2014/9793.pdf>

<sup>10</sup> Contributor's fieldwork observations in Mexico, Mexico-Guatemala border, Mexico City and Mexico-US Border; Vecchioni, S (2022). *Mujeres buscando refugio: Reflexiones y desafíos en la aplicación del enfoque de género en el procedimiento de asilo en Argentina*". Editorial Prometeo. Buenos Aires. Argentina.

<sup>11</sup> UNHCR (2023). Increasing number of refugee and migrant women, adolescents and girls at risk of suffering gender violence in the Americas. Press release. 12/5/2023 <https://www.acnur.org/noticias/comunicados-de-prensa/creciente-numero-de-mujeres-adolescentes-y-ninas-refugiadas-y>

## Gender-sensitivity in the asylum application process

8. Our members highlight that women are disproportionately disadvantaged when applying for asylum in the Americas. A key concern is that SGBV – and its multiple forms – are often disregarded in asylum cases. Furthermore, the work of human rights defenders is usually made invisible. In addition, gender stereotypes permeate state practices during asylum proceedings which means women do not receive a fair hearing.<sup>12</sup>
9. Our members are concerned that decision-makers do not take a gendered approach to considering specific information about a country or region of origin when determining women’s asylum claims.
10. One WiRL member notes, asylum claiming women are often treated as “economic migrants” even when they claim asylum on the basis of experiencing SGBV in their country of origin. For example, this occurs to women from the Dominican Republic when they claim asylum in Argentina. It is also problematic that women’s asylum claims are often analysed in connection with a male member of the family group and, if they flee alone, proof of persecution because of their gender is required.<sup>13</sup> These women are unable to provide necessary proof to substantiate their claims, such as documentation that shows they have previously brought a complaint of domestic violence to the Dominican authorities. Consequently, the chance of their asylum application being rejected is high.
11. WiRL recommends that States acknowledge and commit to addressing the following:
  - i) A risk of being exposed to SGBV in the absence of State protection can fulfil the criteria for refugee protection under Article 1A(2) of the Refugee Convention and its 1967 Protocol.
  - ii) In addition, SGBV in a woman’s country of origin may amount to a ‘massive violation of human rights’ under Conclusion III of the Cartagena Declaration leading to refugee protection under the extended definition.
  - iii) A precedent has been set in the region for adopting a gendered approach to considering grounds for refugee protection. Many States in Latin America have

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<sup>12</sup> Vecchioni, S (2022). *Mujeres buscando refugio: Reflexiones y desafíos en la aplicación del enfoque de género en el procedimiento de asilo en Argentina*. Editorial Prometeo. Buenos Aires. Argentina.

<sup>13</sup> Pacecca, M.I.; Liguori, G. y Carril, C. (2015) “La migración dominicana en Argentina. Trayectorias en el nuevo siglo (2000-2015)”, Comisión Argentina para los Refugiados y Migrantes, <https://caref.org.ar/wp-content/uploads/2022/09/La-migracion-dominicana-en-Argentina-2000-2015.pdf>

incorporated ‘persecution for reasons of gender’ into their domestic refugee laws.<sup>14</sup> Other States might wish to follow this approach.

12. We ask States to implement UNHCR Guidelines<sup>15</sup> and CEDAW Recommendations<sup>16</sup> when assessing and processing asylum applications of women who have experienced SGBV in their country of origin during armed conflicts. It may be appropriate to consider *prima facie* status determination for asylum applications by women from countries such as El Salvador, Honduras, Guatemala and Haiti where SGBV is used as a weapon of war.<sup>17</sup>
13. Our members also suggest actors involved in asylum processes, including administrative, immigration and security personnel, need to be trained to recognise and manage applications relating to SGBV sensitively and effectively. In our shared experience, consultations with migrants and refugees from countries of origin help better understand the protection needs of women in specific contexts.
14. We also suggest measures are put in place to assist women in understanding their rights and the asylum processes in their host country. Information campaigns need to be accessible to women who do not speak the local language and/or do not know how to read or write.

### **Recognition of women’s wider support needs in the refugee context**

15. In WiRL’s shared experience, women in the Americas continue to face gender-specific barriers to adequate protection. Key issues are that women often lack access to safe accommodation, appropriate healthcare, and safe and dignified paid work. Racial discrimination increases the barriers faced by refugee women.<sup>18</sup> This is a particular concern for women from Haiti, Africa, Afro-descendants and indigenous people.

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<sup>14</sup> Foster, M (2012). The ‘Ground with the Least Clarity’: A Comparative Study of Jurisprudential Developments relating to ‘Membership of a Particular Social Group’. *Legal and Protection Policy Research Series*. UNHCR 21-22 <https://www.unhcr.org/uk/media/no-25-ground-least-clarity-comparative-study-jurisprudential-developments-relating-membership>

<sup>15</sup> UNHCR (2002). Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and /or its 1967 Protocol relating to the Status of Refugees <https://www.unhcr.org/sites/default/files/legacy-pdf/3d58ddef4.pdf>; UNHCR (2016). Guidelines on International Protection: Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions <https://www.unhcr.org/uk/media/unhcr-guidelines-international-protection-no-12-hcr-gip-16-12-02-december-2016>

<sup>16</sup> CEDAW (2014). General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women <https://www.refworld.org/legal/general/cedaw/2014/en/102146>; CEDAW (2013) General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations <https://www.ohchr.org/sites/default/files/Documents/HRBodies/CEDAW/GComments/CEDAW.C.CG.30.pdf>

<sup>17</sup> UNHCR (2015). Guidelines on International Protection No.11: Prima Facie Recognition of Refugee Status <https://www.refworld.org/policy/legalguidance/unhcr/2015/en/105663>

<sup>18</sup> CGRS (2024). How the Cartagena +40 Process Can Improve Protection for Cross-Border Climate Displacement. <https://cgrs.uclawsf.edu/our-work/publications/how-cartagena-40-process-can-improve-protection-cross-border-climate>; IACHR (2019). *Internal displacement in the Northern Triangle of Central America* <https://www.oas.org/en/iachr/reports/pdfs/InternalDisplac>; IACHR (2021), Economic, Social, Cultural

16. We ask States to consider a gender-informed and intersectional approach to designing and implementing protection programmes in this region. This might include adopting Cartagena-informed provisions, such as a multidimensional approach to protection (Conclusions II(h)) and committing to opportunities for self-sufficiency (Commitments (h) and (i) of the Cartagena Declaration).
17. One member notes that border externalisation policies, such as pushbacks at the US-Mexico border, are increasingly forcing displaced people to stay in dangerous situations in cities in transit countries. This makes women particularly vulnerable to destitution and exploitation by criminal groups and trafficking networks. WiRL recommends provisions such as safe accommodation, humanitarian assistance and legal advice are made accessible to all women as a matter of urgency.
18. Work programmes should be introduced that recognise women's particular circumstances. Employment opportunities are limited by precarious migratory status, irrespective of gender.<sup>19</sup> Women are further restricted by gender stereotypes that prevent them working in traditionally 'masculine' sectors such as construction and agriculture. Their capacity to participate in the labour market is often limited by the need to look after children and other dependants combined with a lack of free and appropriate care services. Women in this region may also face limited job opportunities if they have not had the same education opportunities as men.<sup>20</sup>
19. One member notes that refugee women often resort to employment where they risk being demeaned and exploited. Many have been pushed into the sex industry; working in bars, on the street and in other spaces that pose significant risks to their health and security. This work often comes with devastating long-term health problems and social stigma. For example, in Mexico, refugee women who become 'company ladies' are predisposed to alcoholism and substance abuse as consuming alcohol with clients is an essential component of their role.<sup>21</sup>
20. Our members are concerned that displaced women in this region face barriers to accessing healthcare. This is a particular issue for women who are pregnant.
21. One member notes that in Mexico, a lack of documentation is a barrier to refugee women having their health needs met. In addition, there is a lack of information about healthcare and a scarce availability of equipped health centres. WiRL recommends that States obtain expert guidance on how to address these challenges, for example through collaborating with the World Health Organisation and local organisations.

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and Environmental Rights of Persons of African Descent Inter-American Standards to Prevent, Combat and Eradicate Structural Racial Discrimination. <https://www.oas.org/en/iachr/reports/pdfs/DESCA-Afro-en.pdf>

<sup>19</sup> Koseoglu Ornek, O., Waibel, J., Wullinger, P., & Weinmann, T. (2022). Precarious employment and migrant workers' mental health: a systematic review of quantitative and qualitative studies. *Scandinavian journal of work, environment & health*. 48(5), 327–350.

<sup>20</sup> Contributor's fieldwork observations in Mexico, Mexico-Guatemala border, Mexico City and Mexico-US Border.

<sup>21</sup> *ibid.*

22. Our members emphasise that a gender-informed approach to protection can only be achieved in this region through empowering refugee women and strengthening their capabilities so they can contribute to decision-making that affects them.

### **Conclusion**

23. While refugee women continue to face barriers in accessing refugee protection and their human rights in the Latin America and the Caribbean region, this submission has made a number of recommendations within the areas of asylum application processes and support programmes that the the Chile Declaration and Action Plan might include.