

HUMAN MOBILITY IN THE CONTEXT OF
DISASTERS, CLIMATE CHANGE AND
ENVIRONMENTAL DEGRADATION IN
THE EURO-MEDITERRANEAN REGION:

CHALLENGES
AND INSIGHTS.



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EuroMed Rights
Vestergade 16, 2nd floor
DK-1456 Copenhagen K
Denmark

Tel: +45 32 64 17 00
information@euromedrights.net
www.euromedrights.org

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Author: Chiara Scissa¹

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ACRONYMS

CAI	Consolidated Act on Immigration
EMN	European Migration Network
ExCom	Executive Committee of the High Commissioner's Program
GCM	Global Compact for Safe, Orderly and Regular Migration
GCR	Global Compact for Refugees
IDMC	Internal Displacement Monitoring Centre
ILO	International Labour Organization
IOM	International Organization for Migration
IPCC	Intergovernmental Panel on Climate Change
LAS	League of Arab States
MENA	Middle East and North Africa
NDICI	Neighbourhood, Development and International Cooperation Instrument
SOGIESC	Sexual orientations, gender identities, gender expressions and sex characteristics
TPD	Temporary Protection Directive
UNDRR	UN Office for Disaster Risk Reduction
UNFCCC	UN Framework Convention of Climate Change
UNHCR	UN High Commissioner for Refugees

EXECUTIVE SUMMARY

The MENA region is increasingly affected by floods and droughts, while being the most water-scarce region in the world. Disasters, climate change and environmental degradation will have an impact on human mobility patterns. However, no comprehensive legal and political frameworks are available in the MENA region to prevent and protect from the adverse effects of disasters, climate change and environmental degradation.

Among others, women are more likely to be exposed to the impacts of disasters, climate change and environmental degradation because of unequal gender distribution of roles and responsibilities and unequal access to resources. The lack of data disaggregated by gender as well as gender-based policies limit the overall understanding of the particular impact of environmental threats on women and people with different sexual orientations, gender identities, gender expressions and sex characteristics (SOGIESC), while undermining the effectiveness of efforts in this regard.

The recognition of patterns of human mobility in the context of disasters, climate change and environmental degradation is feeble in the Euro-Mediterranean region. On the one hand, the European Green Deal and the New Pact on Migration and Asylum separately tackle climate change and migration, despite their inextricability. This stark separation weakens the level of policy coherence, undermines the possibility of creating policy synergies, and limits the efficacy of EU climate external actions, with repercussion for the whole Euro-Mediterranean region. On the other hand, negotiations for a regional refugee definition covering "natural disasters" in the MENA region has been in a deadlock for the past 30 years.

Conditional cooperation agreements, the securitization of migration and externalization practices between the EU or its Member States and Southern Mediterranean countries such as Morocco, Tunisia, and Libya are all obstacles to a human rights-based and inclusive EU common migration and asylum policy able to respond to human mobility in the context of disasters, climate change and environmental degradation.

There is a limited number of legal provisions concerning the protection of people displaced in the context of disasters, climate change and environmental degradation in the Euro-Mediterranean region. Not only there is no EU common protection status to deal with the phenomenon, but most MENA countries are not signatories to the 1951 Refugee Convention or its 1967 Protocol, thus undermining the applicability of such cornerstone instruments for refugee protection in the region.

The suppression of two of the very few national protection statuses concerning the protection of people displaced in the context of disasters, climate change and environmental degradation available in EU Member States (Sweden and Finland), the limited enforcement of the UN Global Compacts in the EU, the proposed repealing of the EU Temporary Protection Directive, and the lack of policies addressing the issue in MENA countries further put their recognition and protection in a normative limbo.

The below analysis, enriched through interviews with relevant stakeholders, urges the EU, its Member States, countries of the MENA regions and civil society organizations to take concrete steps towards the recognition and protection of human mobility in the context of disasters, climate change and environmental degradation. In particular,

EU INSTITUTIONS ARE ENCOURAGED TO:

- Stimulate the political dialogue among the Member States on the need to provide protection responses in addition to prevention, mitigation and resilience actions in third countries.
- Create synergies between the EU environmental policy and the EU migration policy with particular reference to the Green Deal and the New Pact on Migration and Asylum in order to enhance policy coherence.
- Mainstream considerations on human mobility in the context of disasters, climate change and environmental degradation in all relevant policy and law fields regulating family reunification, labour migration or visa regimes.
- Fully comply with EU legal standards and values when implementing cooperation agreements with third countries.

EU MEMBER STATES ARE ENCOURAGED TO:

- Implement the Global Compacts in a holistic manner in order to facilitate a comprehensive and equal achievement of their Objectives.
- Consider applying existing national provisions in a dynamic way in order to expand protection to people displaced in the context of disasters, climate change and environmental degradation.
- Consider all the circumstances of the case when applying and interpreting the 1951 Refugee Convention and the EU Qualification Directive in the context of international protection claims based on disasters, climate change and environmental degradation.

MENA COUNTRIES ARE ENCOURAGED TO:

- Endorse a gender-sensitive approach to relevant laws and policies that could deal with human mobility in the context of disasters, climate change and environmental degradation.
- Foster regional and international cooperation to tackle the adverse impacts of disasters, climate change and environmental degradation on human mobility.
- Swiftly proceed towards the adoption of a new version of the 1994 Arab Convention on regulating status of refugees in the Arab countries.
- Ensure the application of the extended refugee definition enshrined in the OAU Convention in a principled and consistent way.

CIVIL SOCIETY ORGANIZATIONS BASED IN THE EU AND MENA REGIONS ARE ENCOURAGED TO:

- Call for the need to gather updated and disaggregated data, including by gender, of people displaced in the context of disasters, climate change and environmental degradation.
- Advocate for the need of policy coherence, regional cooperation and common solutions.
- Raise awareness and build knowledge.

INTRODUCTION

That climatic and environmental stressors and human mobility have always been intertwined is nothing new. Rather, it traces back to the origin of the humankind, to the exact moment when unbearable climatic conditions led our ancestors to migrate for the very first time out of Africa.² That's the story of Homo Sapiens. That's our story.

To be more recent is the awareness surrounding the impacts of disasters, climate change, and environmental degradation on people's lives, livelihoods, opportunities, and choices, including on mobility.³

The availability of reliable data has surely supported this overdue acknowledgement. According to the Internal Displacement Monitoring Centre (IDMC), disasters trigger over three times more displacements than conflict and violence, and are one of the top drivers of displacement globally.⁴ Between 2009 and 2021, all 201 countries and territories in the world recorded internal disaster displacements, while only 83 recorded conflict-driven displacement.⁵ Both extreme weather events and processes of environmental degradation can put the life of millions at risk of harm. Recent examples include the devastating earthquakes occurred in Afghanistan (October 2023), Morocco (September 2023), Turkey and Syria (February 2023) as well as the deadly floods that destroyed the city of Derna in Libya (September 2023) or the four-decade long drought in Somalia that is causing massive displacement.⁶

In 2014, the Intergovernmental Panel on Climate Change (IPCC) foresaw that "climate change over the 21st century is projected to increase displacement of people".⁷ In its 2022 report, the IPCC confirmed that climate change is contributing to humanitarian crises and displacement where hazards interact with high vulnerability, whose factors encompass poverty, weak governance and limited access to basic services.⁸ In the future, climate change is expected to affect 3.3 to 3.6 billion people who live in such contexts of high vulnerability.⁹

The proliferation of international arrangements dealing with human mobility in the context of disasters, climate change, and environmental degradation is another relevant factor which has contributed to bringing the issue of protection against displacement up to the top of the political agenda.¹⁰

Despite these advancements, the recognition of such a nexus is feeble in the Euro-Mediterranean region.¹¹ On the one hand, a common protection status for people displaced in the context of disasters, climate change, and environmental degradation is missing at the EU level, while the European Green Deal and the New Pact on Migration and Asylum set forth by the European Commission separately tackle climate change and migration, despite their inextricability. In these instruments, references concerning the nexus are mostly declarative in nature with no specific commitment by the EU, as this report will show. On the other hand, the political tension between Arab and non-Arab States in the MENA region has so far put the negotiations for a sub-regional refugee definition, which would expressly cover “the occurrence of natural disasters” in its scope of application, in a deadlock for the past 30 years.¹²

Political resistance to the recognition of human mobility in the context of disasters, climate change, and environmental degradation is not the only challenge to be faced. Another crucial piece of this complicated puzzle concerns the limited number of legal provisions concerning the protection of people displaced in the context of disasters, climate change, and environmental degradation. However, relevant insights can be drawn from the experience of several countries of the Euro-Mediterranean region as well as by the interpretation of key regional refugee instruments, such as the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention).

The scope of this report is to produce an analysis of the features and dynamics concerning human mobility in the context of disasters, climate change, and environmental degradation in the Euro-Mediterranean region. After having delineated the terminological choices at the core of this report, it illustrates three main challenges that people displaced in the context of disasters, climate change, and environmental degradation in and from this region are facing, namely a climate, political, and legal challenge. Each challenge will be addressed in a dedicated section with a focus on both the northern and southern shore of the Mediterranean Sea. A last section sheds light on legal and policy achievements in the Euro-Mediterranean region. National practices as well as innovative case-law and interpretation of existing protection instruments that led, or may lead, to the protection against displacement in the context of disasters, climate change, and environmental degradation will be presented. Finally, the report sets forth relevant policy and legal recommendations to EU institutions, EU Member States, MENA countries, and civil society organizations to advocate for more concrete commitments and advancements in the field of recognition and protection of human mobility in the context of disasters, climate change, and environmental degradation.

METHODOLOGY

The research study benefits from the analysis and elaboration of databases (World Bank, International Labour Organization, UNDESA) to create the climate and human mobility profile of the Euro-Mediterranean region shaping the first Section of this report. Literature review and desk-based research have been used to fill out the sections on the political and legal challenges, including analysis of relevant case law at the national level. A legal and policy perspective is endorsed together with a human rights-based and gender-sensitive approach. The study benefits from the views and recommendations shared by relevant stakeholders, including members of the European Parliament, judges, academics and members of civil society organizations. Interviewees who agreed to share their opinion on the subject of the present report are Dr. Jasmin Lilian Diab, Director, Institute for Migration Studies, Lebanese American University; Maria Giovanna Manieri, European Parliament - Greens/EFA; Cleo Hansen-Lohrey, Lecturer and PhD candidate at University of Tasmania; a Policy Assistant at the European Commission; and a Judge from an Administrative Court in Germany.

Data collected through the interviews are protected under confidentiality and data secrecy. Where requested, anonymization is used not to disclose any personally identifying information and instead, pseudonyms or non-identifiable descriptors in research output are used.

TERMINOLOGY BOX

At least 16 definitions have been over time suggested by UN Agencies, institutions, NGOs, and scholars to define human mobility in the context of disasters, climate change, and environmental degradation. Yet, all failed to reach international consensus. As of today, no agreed definition of such a nexus exists. This implies that legal gaps persist in the existing protection framework at the international and EU levels, something that in turn constrains the possibility to address the protection needs of people displaced in the context of disasters, climate change, and environmental degradation.

In particular there is a tension between ensuring a definition that is sufficiently confined as to be legally meaningful, and at the same time accounting for the complex causality and the heterogeneity of the phenomena it encompasses.¹³ What follows is a brief legal analysis of the most popular definitions currently in use.

ENVIRONMENTAL/ CLIMATE REFUGEES.

The term “environmental refugee” (or “climate refugee”) has initially been used by academics, the media and advocacy groups to draw attention to this issue and encourage the development of forms of international protection for persons obliged to leave their habitual homes because of environment or climate change related reasons. The UN High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM) and other organizations reject the use of the definition “environmental refugee” as misleading term, which does not take into account of the complexity and multidimensionality of the phenomenon, and that rises several concerns from a legal perspective.¹⁴

As the 2011 Foresight report clarifies, in fact, climate and environmental factors can affect mobility patterns but usually in combination with a complex set of other factors, which also intersect with the individual’s vulnerability, for which it is typically not be feasible to identify environmental or climate threats as the leading cause of mobility.¹⁵

ENVIRONMENTALLY- INDUCED MIGRATION.

Some authors, institutions and organizations have adopted a more prudent approach towards the climate change-migration nexus. For instance, in a 2009 Resolution the Parliamentary Assembly of the Council of Europe opted for the term “environmentally-induced migration”. Similarly, the same terminological choice has been taken by a 2020 European Parliament study.¹⁶ The latter defined the term “(more) voluntary migration where environmental factors somewhat play a role”.¹⁷ However, the utility of such a definition can be questioned as it might have little sense to expressly combine “environment” and “migration” in a definition, while simultaneously blurring the relevance that those same environmental changes have in shaping migration movements.

DISASTER DISPLACEMENT.

The definition of disaster displacement was adopted by the Nansen Initiative in 2015 and endorsed by 109 States.¹⁸ It generally implies

*“a situation where people are forced to leave their homes or places of habitual residence as a result of a disaster or in order to avoid the impact of an immediate and foreseeable natural hazard. Such displacement results from the fact that affected persons are (i) exposed to (ii) a natural hazard in a situation where (iii) they are too vulnerable and lack the resilience to withstand the impacts of that hazard”.*¹⁹

It therefore benefits from a broad policy consensus and promotes a well-established contemporary interpretation of disasters.²⁰ Moreover, as the definition is based on the UN Office for Disaster Risk Reduction (UNDRR) definition of disasters, it covers both natural hazards (including sudden-onset events, such as earthquakes or floods, and slow-onset events, such as drought), and man-made disasters.²¹

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This definition is in line with the language adopted in official documents of the UNFCCC, such as the Cancun Adaptation Framework and the documents related to the Warsaw International Mechanism for Loss and Damage, the Nansen Initiative Agenda, and the 2016 New York Declaration for Refugees and Migrants.²² It reflects the objectives enshrined in the Global Compact for Safe, Orderly and Regular Migration (GCM) and is also fairly similar to the notion endorsed by the EU Commission and the European Migration Network (EMN), namely “migration and displacement in the context of disasters, climate change, and environmental degradation”, which therefore focus on two out of three traditional mobility patterns.²³ Similarly, the latest UNHCR research report on the applicability of the OAU 1969 Convention in the context of climate change titled “Assessing serious disturbances to public order under the 1969 OAU Convention, including in the context of disasters, environmental degradation and the adverse effects of climate change”, thus resembling the definition at stake.²⁴

The focus on human mobility allows to encompass all traditional forms of human mobility (migration, displacement and relocation), thus including both internal and international movements of voluntary or forced nature. On the other hand, it emphasizes the major environmental triggers of mobility, namely disasters (which could be natural hazards or man-made disasters), climate change and environmental degradation. Because of these reasons, this research will employ this definition. This terminological choice in any way means to disregard the legal relevance of the definition of disaster displacement or other legally sound definitions to describe the phenomenon. When analyzing the specific protection needs stemming from forced movements in such contexts, the term “displacement” will be used.

CLIMATE CHALLENGE

The MENA region is the most water-scarce region in the world, with over 60% of its population living in areas with high water stress.²⁵ At the same time, it is vulnerable to droughts and floods, damaging agriculture and the overall economy. In 2021, the increasing temperatures have led to droughts and desertification affecting water supplies and food production systems, with over 12 million people affected in Iraq, Syria, Jordan and Iran.²⁶

According to the IDMC, 305.000 internal displacements due to disasters were recorded in the MENA region in 2021, mainly due to floods, earthquakes and storms.²⁷ The latest Groundswell report by the World Bank projects that over 216 million people worldwide may move within their own countries by 2050 due to environmental degradation, and indicates the Southern shore of the Mediterranean as one of the most hard-hit sub-regions.

In such a scenario, North African countries are projected to have the world's largest proportion of internal climate migrants relative to total population, reaching up 19.3 Million people (or 9% of the total population of the subregion).²⁸

In such a scenario, North African countries are projected to have the world's largest proportion of internal climate migrants relative to total population, reaching up to 19.3 Million people (or 9% of the total population of the subregion).



© Çağlar Oskay - Iskenderun, Hatay Turkey - February 2023: In Iskenderun, one of the places most affected by the 7.7 magnitude earthquake centered in Kahramanmaraş

In this sub-region, conflicts, economic crises and political instability are causing huge damage to populations already affected by disasters, climate change and environmental degradation. **Disasters, climate change, and environmental degradation can act as a threat multiplier.** It is not by chance that around 34% of people displaced by disasters and 58% of disaster-related deaths between 2004 and 2014 occurred in the top 30 countries listed in the Fragile States Index.²⁹ **These data further stress the role that political factors, along with socio-economic and cultural factors, have in turning natural hazards into disasters, as well as in exacerbating people's protection needs.**³⁰ This is particularly relevant for the MENA region, which is currently characterized by armed conflicts in Israel and Palestine, Libya, Syria, while political tensions are on the rise in Tunisia.³¹ On this point, it has been emphasized that in the MENA region

*“the outcomes of displacement in the context of climate change are not very different to the movement instigated by an armed conflict. So maybe the drivers and triggers are different but the outcomes for people particularly through a gender lens overlap a lot.”*³²

This gives further credit to the fact that, on a case-by-case analysis, harm stemming from disasters, climate change and environmental degradation may be similar to that arising in the context of well-recognized drivers of displacement.³³ The literature has emphasized that harm can stem not only from the devastating impacts of an armed conflict, but also from the instrumentalization of disasters and environmental degradation by parties in conflict in order to inflict harm against those populations under the enemy's control.³⁴



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A. CLIMATE PROFILE OF THE MENA REGION.

Water scarcity is a major concern in the sub-region with implications across all economic sectors, especially those climate-dependent, such as agriculture, which is prevalent across MENA countries.

More than 60% of the population in the region has very little or no access to potable water, and 70% of MENA's agricultural production is rain-fed.³⁵ Decreases in rainfall and higher temperature could further aggravate droughts, diminish freshwater resources for domestic and agricultural use, and reduce the already scarce availability of arable land.³⁶ Although in the MENA region agriculture is not the leading economic sector, it accounts for 22% of total employment, a share that increases to 31% among women, thus confirming its relevance for a considerable part of the population of the sub-region.³⁷ Climate change impacts are also set to exacerbate already slow-onset processes of environmental degradation, including soil degradation, desertification, and deforestation. As the Nile Valley and Delta and the Mediterranean coast are densely populated, exposure to impacts associated with sea-level rise is also increasing, including saltwater intrusion and limited access to freshwater.

The MENA region is heating up twice as fast as the earth.

Higher temperatures are expected to be accompanied by strong increases in heat waves. Precipitation is also expected to further decrease over large parts of the subregion, resulting in greater aridity. An International Labour Organisation (ILO) study estimated that, in a worsening climate, up to 618.000 jobs will be lost by 2030 in the MENA region.³⁸ Man-made disasters, such as the widespread construction of dams and unsustainable irrigation practices, are further contributing to the climate fragility of the sub-region.

Overall, people residing along the coastal shores of the Mediterranean as well as in rural coastal areas are expected to leave their home, mainly due to declining water availability and population growth, to head to large and mid-size urban areas of the sub-region, which are projected to have increased crop productivity and water availability. In this context, institutional, political, and socioeconomic factors (e.g. political instability, poor governance, low financial capitals, inequality, violence, and gender constructs, among others) pose stronger limits to adaptive capacity building.

B. HUMAN MOBILITY PROFILE OF THE MENA REGION.

Disasters, climate change and environmental degradation can influence different human mobility options that include internal and cross-border, voluntary and forced, temporary and permanent migration movements as well as forced displacement and planned relocation. When planned, migration can concretely serve as an effective coping and adaptation strategy to disasters, climate change and environmental degradation. In the MENA region, there is evidence of that, although the same factors have been found to lead to displacement.³⁹

That disasters, climate change and environmental degradation give rise to different mobility patterns is in line with the contemporary understanding of such a nexus, according to which social, economic, cultural, and political factors and the individual's vulnerability interact with environmental/climatic factors, thus shaping the mobility outcome.

Finally, relocation is recognized as a measure for disaster risk reduction and climate change adaptation. When adequately planned, and relocated persons are able to maintain similar livelihoods at sites of destination, relocation can both succeed in moving people out of disaster-prone areas and in providing them with the conditions for rebuilding their lives. This in turn would avoid the need to migrate to find better livelihoods. However, when this is not the case and/or when affected people are not sufficiently included in the decision-making, relocation can undermine economic opportunities, cultural practices and social connections, leading to secondary migration movements.⁴⁰

The MENA region has traditionally been a hub of emigration, immigration, and transit. In 2020, North African countries hosted more than 3 million international migrants, while more than 12 million have left their country.⁴¹ In particular, 6.9 million emigrants were male, while 5.2 million were female. Most immigrants in these countries are internal migrants, who move from rural to urban areas, as well as international migrants coming from Sub-Saharan Africa for job or protection purposes. Migration, in the form of pastoral nomadism in search of forage and water for livestock, has long been a part of traditional lifestyles in the MENA.⁴² Although the MENA region has a long history of internal and cross-border economic mobility, disasters, climate change and environmental degradation are projected to play a role in future movements.⁴³ Indeed, a 2014 World Bank study on climate change and migration in the MENA region - and specifically on Algeria, Egypt, Morocco, Syria, and Yemen - found that extreme weather events as well as slow-onset events led to a higher migration probability, both internal and cross-borders.⁴⁴ In particular, it argued that migration was linked to chronic droughts that ultimately led to declining agricultural productivity, with the highest migration rates in Syria and Yemen, and lowest in Algeria, while Egypt recorded the highest likelihood of cross-border migration.⁴⁵ Research studies confirm that migration in the MENA region has been also caused by water scarcity and sea-level rise.⁴⁶

The UN Framework Convention of Climate Change (UNFCCC) recognizes eight slow-onset effects of climate change (desertification, glacial retreat, increasing temperatures, land and forest degradation, loss of biodiversity, ocean acidification, salinization and sea level rise) that gravely impact on people's livelihood, access and enjoyment of human rights as well as to related services, facilities and opportunities. An emblematic example concerns poverty associated with environmental risks that can propel human mobility. Currently, approximately 80% of the world's poorest populations live in degraded rural areas affected by drought and desertification, which have been officially recognized as drivers of forced migration, while more than 2 billion people are estimated to be currently living in countries with high water stress, which could affect almost twice as many by 2050.⁴⁷ The 2022 report by the IPCC confirmed that when climate hazards interact with high vulnerability, these contribute to humanitarian crises, which encompasses poverty, weak governance and limited access to basic services and resources. Exacerbating factors of vulnerability include inequality and marginalization linked to gender, ethnicity, low income, colonialism, or combinations thereof.⁴⁸ The IPCC report also shed light on the role that climate change and extreme weather events can play not only in putting life and livelihood at risk, but also in exacerbating violence.

C. CLIMATE, MOBILITY AND GENDER

Authoritative research studies confirmed that gender is entangled with effects of disasters; has a role to play in shaping human mobility options, including immobility, in the context of disasters, climate change and environmental degradation as well as in shaping human mobility aspiration.⁴⁹ Disasters, climate change and environmental degradation exacerbate pre-existing gender vulnerabilities and exposes women and people with different SOGIESC to intersectional and multilayered discrimination.⁵⁰ As acknowledged by the 2022 IPCC report, the impacts of climate change are felt differently across society, and particularly heavily "[...] by women, children and elderly given the intersectionality with socio-economic and gender inequalities".⁵¹ **In particular, women are more likely to be exposed to the impacts of disasters, climate change and environmental degradation because of unequal gender distribution of roles and responsibilities and unequal access to resources.**⁵²

Moreover, and this seems to be the case for many MENA countries, gendered power relations, socio-cultural norms and values have limited women's agency and autonomy, thus including their adaptive capacity to climate stressors.⁵³ In many communities, cultural norms continue to restrict the freedom and/or movement of women, particularly in the absence of an adult male relative or caretaker, making it increasingly challenging for women to seek assistance or shelter when disasters occur.⁵⁴ This limited mobility has often been coupled with limited access to information during emergencies or leading up to them.⁵⁵

"Women do face heightened risk of exploitation during migration as a result of environmental degradation. A lot of the work on our region is around the risks of gender-based violence, trafficking and exploitation of women as well".⁵⁶

Still, evidence concerning the impact of human mobility in the context of disasters, climate change and environmental degradation from a gender perspective is largely absent in the MENA region:

"The MENA region really lacks the data to have climate change discussions. Disaggregated data by gender concerning human mobility in the context of disasters, climate change and environmental degradation are anecdotal".⁵⁷

A research study on migration and environmental changes in Morocco revealed that women were more likely to be aware of environmental changes over the years mainly due to gendered division of tasks in households, as working in the fields is considered a woman's job, illustrating the separate social worlds in which men and women live.⁵⁸ However, the same gendered division of tasks have led to inequalities within the household: "In relatively poorer families, and for those working in agriculture, the share of women's contributions in the household incomes decreases over time due to environmental degradation. As a consequence, the status of the women in the family decreases as their dependence on the other household members increases".⁵⁹ Another study found that migration of young Moroccan women from rural to urban areas increases their autonomy and emancipation and that, in some cases, they used migration to escape near-servitude conditions, domestic violence, and arranged marriages.⁶⁰

POLITICAL CHALLENGE

Human mobility in the context of disasters, climate change and environmental degradation is currently not a priority either for the EU and its Member States, or the MENA region. Not only there is no protection addressing the phenomenon at the EU level, but MENA countries themselves, which are more exposed to the effects of disasters, climate change and environmental degradation, dedicate very little attention to the issue.

A. THE SCANT IMPLEMENTATION OF THE GLOBAL COMPACTS.

The lack of political will is particularly evident in the scant implementation of relevant commitments enshrined in the GCM and the Global Compact for Refugees (GCR) by EU Member States and MENA countries. The GCM and the GCR in fact constituted a momentum in the global governance of migration and refugee movements, with their dedicated attention to human mobility in the context of disasters, climate change and environmental degradation particularly welcomed by UN Agencies, such as IOM, and relevant stakeholders.⁶¹

On the one hand, the GCM called for preventing and minimizing the related drivers of displacement (Objective 2), while advocating for the creation or extension of regular migration pathways, including labour mobility, education exchanges and humanitarian protection, to allow people displaced in the context of disasters, climate change and environmental degradation to safely and regularly move out of dire environmental and climatic conditions (Objective 5). On the other hand, the GCR recognized that “while not in themselves causes of refugee movements, climate, environmental degradation and natural disasters increasingly interact with the drivers of refugee movements”, and advocated for guidance and support to manage protection and humanitarian challenges for those displaced in such contexts.

Although a number of best practices in the field of human mobility in the context of disasters, climate change and environmental degradation are available in the Euro-mediterranean region, these remain fragmented in scope and practice.⁶² For instance, only two EU countries seem to have somehow acted towards the prevention of the causes of displacement in this field under the GCR.⁶³ In particular, Denmark pledged to strengthen resilience of communities and institutions in respect of climate change and conflict, thereby reducing displacement and irregular migration, in the Sahel and the Horn of Africa regions, while Sweden pledged to reduce the adverse impacts of climate change on the response to refugee situations.⁶⁴ At the same time, **although States have over time offered tools to protect people displaced in the context of disasters, climate change and environmental degradation, their use is “still limited, often random, hard to predict, and neither harmonized nor well-coordinated. In other words, implementation remains partial and unpredictable”.**⁶⁵

The scarce implementation of the Global Compacts is therefore a missed opportunity, as they could well contribute to advancing the prevention and protection of human mobility options in the context of disasters, climate change and environmental degradation.



© Julie Ricard - July 2020: Syrian refugee camp in the outskirts of Athens.



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B. THE LACK OF POLICY SYNERGIES IN THE EU.

The lack of political commitment by the EU is further emblematically illustrated by the adoption of two packages of legislative proposals, namely the European Green Deal and the New Pact on Migration and Asylum, set forth by the European Commission to separately tackle climate change and displacement. On the one hand, the Green Deal is a set of proposals aimed at making Europe the world's first climate-neutral continent by 2050.⁶⁶ **However, the Green Deal does not consider foreigners as part of the picture, and barely touches upon the relevant link between human mobility and disasters, climate change and environmental degradation,** simply arguing that environmental and climate challenges multiply the instability and vulnerability of individuals, but none of its arrangements adequately address the issue.⁶⁷ On the other hand, the New Pact on Migration and Asylum is a policy document that sets out a package of legislative proposals and recommendations with the purpose of "providing a comprehensive approach, bringing together policy in the areas of migration, asylum, integration and border management".⁶⁸ Akin to the Green Deal, **the New Pact mentions climate change among the major global challenges that will characterize present and future migration flows, however, references are characterized by a declarative tone, without any remarkable commitment from the EU.**⁶⁹

"The new policies of the New Pact set forth further restrictions and more severe border control procedures. However, they do not necessarily lead to a better migration governance [...] It is not easy to find possible synergies between the Green Deal and the New Pact because the former does not take into sufficient account the need to strengthen climate resilience in third countries through development and cooperation, while the latter has a limited scope which does not take into account migrant workers or legal admission pathways that could be applicable to migrants fleeing in the context of disasters, climate change and environmental degradation".⁷⁰

The commitment to discuss the possibility of shedding light on the need to provide a progressive solution to human mobility in the context of disasters, climate change and environmental degradation was already questioned in 2019, at the beginning of the Von Der Leyen Presidency of the Commission, as

"The Commission's attention is much more focused on border procedures that speed up the examination of asylum applications and then quickly return people to their country of origin, a country of transit, or a third country".⁷¹

According to a policy assistant at the European Commission, **one key reason behind such a stark separation and the lack of a Commission's legislative proposal to regulate the phenomenon lies in the absence of a political environment which would be in favor of such a commitment.**⁷² Given the lack of support by the Member States, a proposal on such a topic would easily end up in a deadlock. Interestingly, according to the interviewee, the EU Member States do not neglect the adverse impacts that disasters, climate change and environmental degradation have on human mobility and, in particular, on displacement. However, **while there is consensus on the need to enhance prevention, mitigation, and resilience actions in vulnerable third countries, this seems to disappear when dealing with the contextual need to provide protection to people displaced disasters, climate change and environmental degradation.**⁷³

Another reason may be linked to the absence of a definition and framework concerning human mobility in the context of disasters, climate change and environmental degradation at the international level. This gap does not stimulate neither the European Commission nor the Member States to start discussions and debates on such a pressing topic.

In a 2021 Communication, the Commission reported that humanitarian needs are dramatically rising worldwide because of armed conflicts, combined with the impact of climate change and environmental degradation, which seems to be the case of some MENA countries.⁷⁴ Although the Commission notes the need to further mainstream climate change impacts into humanitarian aid policy and practice, this does not seem the case in practice. For instance, the European Fund for Sustainable Development, which is part of the EU's investment framework for external action, does consider financial operations in the field of climate change, but with no remarkable reference to human mobility. Similarly, the new Neighbourhood, Development and International Cooperation Instrument (NDICI) - Global Europe envisages a new long-term budget for achieving the external policy objectives of the EU in third countries, including the MENA region. Here, significant yet separated funds are foreseen to tackle climate change and to tackle the management and governance of (irregular) migration and forced displacement.⁷⁵

Not only are these two priorities not tied together, but the NDICI has been harshly criticized for externalizing migration control to African and MENA countries, such as Niger, Libya and Tunisia.⁷⁶ NDICI and the EU humanitarian and development policy have been criticized for allegedly being more focused on deterring migration rather than promoting development and eradicating poverty. More aid is reportedly directed towards activities that hinder migration, including push-backs, and pose potential risks to people's human rights, including rape and violence against women and girls.⁷⁷ In other words, at least part of EU development and cooperation funds seems to promote more the EU's own political objectives rather than follow "a coherent process of policy development".⁷⁸ As noted, making development and cooperation funding conditional on the EU's externalization interests has drastic legal, economic and geopolitical repercussions.⁷⁹ **This includes people displaced in the context of disasters, climate change and environmental degradation, whose enjoyment of their fundamental right to asylum is hindered by securitization externalization policies between the EU or its Member States and Southern Mediterranean countries, which concur in preventing their arrival in the EU.**⁸⁰

This includes people displaced in the context of disasters, climate change and environmental degradation, whose enjoyment of their fundamental right to asylum is hindered by securitization externalization policies between the EU or its Member States and Southern Mediterranean countries, which concur in preventing their arrival in the EU.

C. THE LACK OF POLICIES CONCERNING HUMAN MOBILITY IN THE CONTEXT OF DISASTERS, CLIMATE CHANGE AND ENVIRONMENTAL DEGRADATION IN THE MENA REGION.

Finally, the legal protection of people displaced in the context of disasters, climate change and environmental degradation is not usually included in MENA countries' national policies dealing with human mobility. The only exceptions are Egypt and Morocco, where disasters, climate change and environmental degradation are seen as factors triggering irregular migration. As for the former, Egypt's National Coordinating Committee for Combating and Preventing Illegal Migration and Trafficking in Persons noted that irregular migration comprises that due to "a consequence of environmental factors, drought and desertification as push factors in Africa".⁸¹ As for the latter, in its 2019 Climate Change Policy, Morocco states that the country "[...] is suffering from the regional consequences of climate change, which are inducing an upsurge in migratory flows, in this case from Sub-Saharan Africa. In this context, Morocco is working to regularize the situation of more than 52.000 illegal immigrants through the adoption of an integrated and proactive strategy that accompanies the socio-economic evolution of the country".⁸² More recently, however, Morocco has acknowledged that displacement may arise from disasters, climate change and environmental degradation, stating that "In developing countries, drought has rendered large tracts of land unfit for cultivation and unproductive, forcing people to migrate. The same is true for small island countries where the risk of sea level rise is forcing populations to migrate. Thus, the problems associated with climate change have prompted increased international migration".⁸³



© Rostyslav Savchyn - December 2018: Syrian Woman carrying her child in one of the streets of Istanbul.

LEGAL CHALLENGE

Multiple legal challenges persist towards the recognition and protection of people displaced in the context of disasters, climate change and environmental degradation.⁸⁴ Such challenges are multilevel - as they are present in the international, regional and national legal domains – and refer to both the content and the purpose of alleged mechanisms which ought to provide protection in this particular field. This section engages with a selection of legal challenges, by no means exhaustive, that are particularly relevant for the Euro-Mediterranean region. These are: the legal impasse concerning the applicability of the 1951 Refugee Convention to protection claims based on disasters, climate change and environmental degradation; the lack of regional protection frameworks dealing with the issue; the limited and fragmented responses provided at the national level.



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A. THE 1951 REFUGEE CONVENTION.

In early 2000s, UNHCR rejected the use of the notion environmental or climate refugee.⁸⁵ It argued that the term “refugee” is a legal term that should be reserved to refugees expressly protected under the main refugee instruments, namely the 1951 Convention Relating to the Status of Refugees (1951 Refugee Convention) and its 1967 Protocol (1967 New York Protocol).⁸⁶ In doing so, UNHCR echoed the hesitant position already endorsed by several outstanding scholars who consider environmental threats as hardly fitting in refugee protection standards, as they do not seem to meet their requirements under the 1951 Refugee Convention. Main concerns referred to the fact that the well-founded fear of being persecuted arising in the context of climate change can hardly be linked to one or more protected grounds; the claimant usually lacks evidence regarding the individual adverse impact of such factors; climate change does not have a persecutory intent per se; it unlikely qualifies as actor of persecution or serious harm. Thus, in absence of other relevant grounds, dire environmental or climatic conditions do not give entitlement to refugee protection.⁸⁷

As a Judge from an Administrative Court in Germany said

“There is not much for a judge to do. The 1951 Refugee Convention requires an actor of persecution and a well-founded fear of being persecuted linked to reasons of political opinion, religion, race, nationality, or membership of a particular social group. Climate change and disasters as such in general simply do not meet these requirements. It’s not a matter of interpretation of the 1951 Refugee Convention, it’s a matter of how the Convention is built.”⁸⁸

Yet, as the Judge acknowledged, there may be some exceptions, which have been also recognized internationally. In recent years, in fact, UNHCR seems to have opened the door to the possibility that, in certain and very specific cases, climate change and disasters may be a relevant factor substantiating the need for refugee protection. In 2017, UNHCR specified that risks giving rise to protection needs go beyond threats to life and freedom, and also include disasters such as famine and drought linked to situations of armed conflict, which are often interlinked and manifest in displacement.⁸⁹

In its landmark 2020 legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters, UNHCR acknowledged that

“People fleeing in the context of the adverse effects of climate change and disasters may have valid claims for refugee status under the 1951 Convention.”⁹⁰

UNHCR presented a non-exhaustive list of situations in which climate change may substantiate the need for refugee protection. These include: when a government deliberately fails to protect against the effects of disasters affecting a discriminated or marginalized group; when environmental defenders, activists or journalists are targeted for defending, conserving and reporting on ecosystems and resources; when environmental degradation (desertification, drought, famine etc) is instrumentalized/weaponized as an instrument of repression against a segment of the population; or when the State or a non-State actor denies, obstructs, diverts humanitarian assistance in a discriminatory manner in the aftermath of disasters.⁹¹ Relevant interconnections also exist when the adverse effects of climate change or disasters interact with conflict and violence.

Finally, disasters, climate change and environmental degradation can play, in every refugee protection case, a role when assessing whether the claimant can reasonably be expected to settle in another part of the country (internal protection). Here an assessment of the humanitarian situation in that part of the country is necessary.⁹²

Still, the dynamic and evolutive approach endorsed by UNHCR arguably has very limited effects in the MENA region, given that very few countries of the region are parties to the 1951 Refugee Convention and its Protocol.⁹³ Within the region, there is “a clear bifurcation between Arab States”, when acting as the League of Arab States (LAS), and the non-Arab States of the region.⁹⁴ In fact, Arab States reveal a preference for inter-Arab State instruments and regional principles, as opposed to international refugee law which rather inspires national asylum provisions of non-Arab States, such as Turkey. The most common reason for that is that Arab States, such as Lebanon and Jordan that are hosting the largest number of refugees in the region, do not wish to offer permanent residence.⁹⁵ Still, **the low rate of ratification of the main international refugee law instruments is not compensated by a strong regional protection framework. In fact, there are no binding regional instruments concretely addressing refugee issues in the MENA region.**⁹⁶

B. THE LACK OF REGIONAL PROTECTION FRAMEWORKS AND NATIONAL FRAGMENTATION.

An emblematic example of how the political tension between Arab and non-Arab MENA countries and the lack of an effective regional protection framework may undermine also the legal protection that people displaced disasters, climate change and environmental degradation could receive is the 1994 Arab Convention on regulating status of refugees in the Arab countries.⁹⁷ Despite this treaty has been officially adopted by LAS members, it has never entered into force as it has not been ratified by any Member States.⁹⁸ However, it would have constituted a remarkable step in advancing the regional refugee definition so to cover environmental causes of migration. In fact, the refugee definition in the text expressly mentioned those who fled “because of sustained aggression against, occupation and foreign domination of such country or because of the occurrence of natural disasters or grave events resulting in major disruption of public order in the whole country or any part thereof”.⁹⁹ The inclusion of “natural disasters” would have well provided a basis for refugee protection on environmental grounds, in addition to non-refoulement protection to be no less than for other foreign residents. Still, in recent years, the League has started to redraft the Arab Convention and, in 2018, the LAS announced that a final version should be adopted in the near future.¹⁰⁰ The new Arab Convention is said to endorse an extended refugee definition contained in the OAU Convention, and to include persons fleeing disasters or grave events disrupting public order.¹⁰¹

Lastly, some MENA countries (Algeria, Egypt, Jordan, Israel, Lebanon, Morocco, Turkey, Tunisia) are members of the Executive Committee of the High Commissioner’s Program (ExCom), which adopts non-binding resolutions called Conclusions on International Protection. Despite the lack of legal force, they have strong political authority especially for those States that are neither parties to the 1951 Refugee Convention nor the OAU Convention.¹⁰² In several Conclusions adopted by ExCom, Member States recognize that the underlying causes of displacement are complex, interrelated, including environmental degradation. However, such Conclusions have so far not produced any commitments by MENA countries, which only requested UNHCR to mobilize assistance from the international community to address environmental degradation in refugee-hosting areas.¹⁰³

At the EU level, references on human mobility in the context of disasters, climate change and environmental degradation are scant. In 2013, the European Commission issued a Commission Staff Working Document on climate change, environmental degradation, and migration, and called for greater knowledge, dialogue and cooperation in addressing the intersection of environmental and migration issues.¹⁰⁴ Here, it also recognized that

*“migration in the context of environmental change is a complex issue that requires comprehensive responses involving a broad range of issues and policies: climate change mitigation, disaster risk reduction, urban planning, education, social policy, asylum and migration policies, development policies and humanitarian and civil protection policies”.*¹⁰⁵

Moreover, in July 2022 the Commission released a new Staff Working Document on addressing displacement and migration related to disasters, climate change and environmental degradation, where it outlines the priority actions it will pursue to complement ongoing efforts “to address this truly global challenge”.¹⁰⁶ Finally, the European Parliament issued a report examining legal and policy responses to migration in the context of climate and environmental changes and displacement.¹⁰⁷ The report recommended the European Parliament to gather “evidence on the effects of climate change and environmental change more generally on migration and displacement. It should do this in cooperation with third countries and regions that are facing mobility issues in the context of climate change and environmental degradation”.¹⁰⁸ However, despite these studies demonstrate the EU’s attention towards human mobility in the context of disasters, climate change and environmental degradation, so far they have not led to any significant achievement, either in encouraging a dynamic application and interpretation of existing provisions, or in negotiating a new protection status/arrangement.¹⁰⁹

And although some EU existing protection provisions may implicitly or hypothetically provide protection to people displaced in the context of disasters, climate change and environmental degradation, the legislative or revision proposals advanced under the New Pact make such a possibility even more remote. This is the case of Directive 2001/55/EU (or Temporary Protection Directive - TPD).¹¹⁰ TPD applies in the case of a mass movement of third country nationals, who are unable to return due to, in particular, armed conflict or endemic violence; serious risk of systematic or generalized violations of their human rights (Article 2 TPD). As the fact that disasters, climate change and environmental degradation may lead or contribute to human rights violations is established by the literature, it could be argued that there might be cases where displacement linked to such factors may qualify under this Directive. Furthermore, its scope might be extended to additional causes and categories of mass influxes, given the presence of the idiom “in particular” in Article 2 and the content of Article 7, such as those associated to disasters, climate change and environmental degradation. Yet, beyond key procedural and scoping shortcomings which have notably weakened its possible applicability, the New Pact aims to abrogate TPD and to substitute it with a new instrument.¹¹¹ Therefore, its very existence is currently under discussion. Similarly, although a considerable part of the scholarship agrees that, on a case-by-case analysis, subsidiary protection may cover protection claims based on disasters, climate change and environmental degradation, as confirmed by several judgements in Italy and Austria, the proposal for a revision of Directive 2011/95/EU (or Qualification Directive) does not make such possibility explicit.¹¹²

The lack of a common EU protection status means that the protection of people displaced disasters, climate change and environmental degradation is mostly left to national competence, which may be susceptible to significant variation across the EU. Not only does this open up to legal fragmentation across EU Member States, but also conditions national protection to radical changes or even to repeal according to the priorities of the government in power in a particular moment.

Until 2015, for instance, Sweden and Finland foresaw protection due to “environmental disasters” in their domestic law.¹¹³ However, both statuses were suspended during the so-called “refugee crisis” and in 2021 have been repealed.¹¹⁴



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INSIGHTS FROM THE EURO- MEDITERRANEAN REGION.

Despite the persisting and interconnected climate, political and legal challenges to the recognition of human mobility in the context of disasters, climate change and environmental degradation, the Euro-Mediterranean region offers notable insights into the dynamic application and interpretation of existing protection instruments, while hosting relevant legal and judicial advancements into the protection of people displaced in the context of disasters, climate change and environmental degradation. The availability of such practices reveals an emerging consensus on the need to provide protection in such contexts. Further reflection on such achievements is needed for them to be leveraged at the supranational level.

A. NATIONAL RESPONSES TO HUMAN MOBILITY IN THE CONTEXT OF DISASTERS, CLIMATE CHANGE AND ENVIRONMENTAL DEGRADATION.

In the EU, a few countries have adopted ad hoc programs in case of emergencies. Among these,

ITALY ordered the temporary suspension of removal of Bangladeshi citizens back to their country of origin due to devastation caused by cyclone Sidr in 2008, and to Nepal after the 2015 earthquake.¹¹⁵

Similarly, after the 2004 Indian Ocean tsunami, **SWITZERLAND** and the **UK** suspended deportations to Sri Lanka, India, Somalia, Maldives, Seychelles, Indonesia and Thailand due to unsafe environmental conditions.¹¹⁶

From 2001 to 2006, **DENMARK** stopped returning young children to Afghanistan due to drought. Such an exception was later extended to vulnerable groups, such as landless people, from areas where there was a lack of food. Denmark also provided humanitarian asylum to single women and families with young children who would otherwise be returned to dire living conditions, such as because of famine.¹¹⁷

In one case, a **NORWEGIAN COURT** recognized drought as a significant factor precluding the internal flight alternative in a case concerning a person from Somalia who sought international protection in the context of the 2011 famine.¹¹⁸ For its part, **FRANCE** has recognized the refugee status and subsidiary protection to 111 and 41 Haitians respectively, in light of the economic, social and security consequences of the devastating earthquake that hit the island in 2010.¹¹⁹

Beyond ad hoc and temporary arrangements, only two countries in the EU have explicit forms of protection against disasters, climate change and environmental degradation, namely Cyprus and Italy. Since 2000, **CYPRUS** bans the deportation of refugees and beneficiaries of subsidiary protection to any country where their life or freedom will be endangered or risk being subjected to torture or inhuman or degrading treatment or punishment or persecution because of “environmental destruction”.¹²⁰

ITALY, despite being so overlooked in the literature, is the only State that provides four protection statuses that deal with disasters, climate change and environmental degradation. Of these, one status implicitly covers such factors, while the other three statuses provide explicit protection.

Beyond ad hoc and temporary arrangements, only two countries in the EU have explicit forms of protection against disasters, climate change and environmental degradation, namely Cyprus and Italy.

B. AN OVERLOOKED CASE-STUDY: ITALY.

The first provision that deals with the protection of people displaced by disasters is Article 20 of the Consolidated Act on Immigration (CAI).¹²¹ It is very similar to the TPD, however, the national disposition provides temporary protection in case of mass influxes of people displaced not only by armed conflict, but also by “natural disasters” or other serious events in non-EU countries. Although this provision, into force since 1998, has never found application in the context of “natural disasters”, this does not mean it will never be applied in the future.

The second national protection status is humanitarian protection that, together with the refugee status and subsidiary protection, fulfilled the Constitutional right to asylum as prescribed by Article 10(3) of the Italian Constitution until 2018.¹²² Humanitarian protection applied when serious reasons existed, particularly of a humanitarian character or resulting from constitutional or international obligations of the State, to believe that the claimant would be exposed to violations of human rights and fundamental freedoms upon return.¹²³ On this basis, humanitarian protection has been over time issued to protect against disasters, climate change and environmental degradation if able to jeopardize human dignity.

In 2018 humanitarian protection was repealed and substituted with “special protection”.¹²⁴ Accordingly, “special protection” is issued to those persons who, although not qualifying for international protection, cannot be expelled because of a risk to being exposed to persecution, torture, inhuman and degrading treatment or gross and systemic violations of human rights. Although this provision does not explicitly refer to disasters, climate change and environmental degradation, special protection has been provided in very specific cases where severe forms of vulnerability combined with the occurrence of a disaster.

Among these, **special protection has been given to some Turkish Kurd citizens due to the devastating earthquake that hit several parts of Turkey and Syria in February 2023 as well as to Bangladeshi citizens fleeing recurrent floods.**

These decisions were justified given that the disaster created a situation of insecurity that, in combination with other compelling factors of vulnerability, impeded a safe return.

Similarly, **special protection has been provided to Nigerians fleeing oil violence in the Niger Delta.**¹²⁵ Special protection corresponds therefore to the third national protection status which implicitly may protect against disasters, climate change and environmental degradation in presence of severe factors of vulnerability.

When humanitarian protection was repealed, it was substituted with special protection along with other specific cases where removal was not allowed. Among these, Article 20-bis CAI has been introduced to offer protection to foreigners whose country of origin was in a situation of “contingent and exceptional calamity” that did not allow for a safe return, which corresponds to the fourth and last national protection status offered by Italy to people displaced by disasters, climate change and environmental degradation.¹²⁶

Although the legislator did not define the nature of calamity, the requirement for it to be “contingent and exceptional” probably meant that only sudden and isolated events, such as earthquakes or floods, could be considered as eligible events in opposition to slow-onset processes, such as coastal erosion or environmental degradation. Originally, this provision provided for a six-month permit, renewable for a further six months if unsafe conditions persisted. Access to the labour market was allowed but protection was not convertible into a work residence permit.

In 2020, Article 20-bis CAI has been amended and provided for the issuance of residence permits in the context of a “serious” calamity. This amendment allowed for a broader coverage of the types of calamity based on the degree of severity rather than on its progression over time. Additionally, the provision no longer specified the maximum duration of renewal, thus potentially suggesting that the initial six-month permit could be renewed for as long as the conditions of environmental insecurity in the country of origin persist. Finally, protection was convertible into a work residence permit, thus enhancing the socio-economic integration of the beneficiary.

However, in May 2023 Article 20-bis CAI has been amended once again.¹²⁷ Currently, its formulation is exactly like the original version of 2018, thus requiring a “contingent and exceptional calamity”. From 2018 to March 2023, a total number of 153 residence permits on calamity have been issued in Italy.¹²⁸



© Çağlar Oskay - İskenderun, Hatay Turkey - February 2023: In İskenderun, one of the places most affected by the 7.7 magnitude earthquake centered in Kahramanmaraş

C. SUCCESSFUL PROTECTION CLAIMS IN THE CONTEXT OF DISASTERS, CLIMATE CHANGE AND ENVIRONMENTAL DEGRADATION: A SELECTION FROM ITALY, AUSTRIA, AND GERMANY.

DISASTERS AND TRAFFICKING IN HUMAN BEINGS.

The refugee status was unprecedentedly recognized in the context of disasters (floods) and trafficking in persons.¹²⁹ The case, decided by the Tribunal of Florence, concerns a Bangladeshi citizen living in conditions of extreme poverty and precarity, particularly because of recurrent floods which have destroyed his home twice, forcing his family to stay homeless for a very long time. Fields were lost over the floods and the fragile economy of subsistence of his family was gravely damaged. Despite working as a farmer, the claimant could provide neither for himself nor for his family.

*“The original position of vulnerability of the claimant, an adult man not a member of an ethnic or religious minority, from a suburban rural background, is to be found in the situation of extreme poverty and social marginalization in which he and his family, dependent on him, found themselves, aggravated by recurrent floods, extreme events due to climate change, and the inability of the State to mitigate the consequences of such events or to remedy the damage produced”.*¹³⁰

The Tribunal considered that the claimant’s climate vulnerability, the condition of poverty and the lack of State support particularly exposed him, more than other groups in Bangladesh, to trafficking in persons and subsequent labour exploitation in Romania and then Italy, thus substantiating a violation of fundamental rights, which have been interpreted as persecutory acts.

DROUGHT.

The Austrian Supreme Administrative Court has granted subsidiary protection to persons particularly affected by the impacts of severe droughts in Somalia given their personal circumstances, such as the lack of a family support network, their profession as a farmer, gender, or affiliation to a minority clan.¹³¹ According to the Austrian Supreme Administrative Court, the return to the country of origin can constitute a violation of the prohibition of torture, inhuman and degrading treatment if the person affected does not have a livelihood there, i.e. the basic needs of human existence of the particular individual person cannot be met. In this context the impacts of disasters may play a role.

In another case, concerning a claimant who had lived from farming in Southern Somalia, which was among the worst affected areas by the drought and food insecurity in Somalia, the Austrian Federal Court links subsidiary protection to the right to life:

*“Due to the prevailing and established drought disaster and the very precarious supply situation, especially in southern and central Somalia, it must be assumed that the complainant’s life and physical integrity would be threatened if he were to return to his home state of Somalia, so that the preconditions for granting subsidiary protection are met”.*¹³²

The Administrative Court of Freiburg in Germany granted a ban on deportation to a claimant from Somalia, where severe droughts have increased the number of internally displaced to approximately 2.1 million.¹³³ The Court found that the grave famine caused by the drought and the plague of locusts have likely aggravated the already dramatic humanitarian situation in Somalia. The objective circumstances of the country of origin together with the personal conditions of the claimant, who suffered from post-traumatic stress disorder, led the court to argue that the applicant’s removal to Somalia would amount to a breach of the prohibition of torture, inhuman and degrading treatment.

MAN-MADE DISASTERS.

Italian Courts and Tribunals have already dealt with serious harm arising in the context of man-made disasters. Subsidiary protection has been provided to claimants from the Niger Delta, particularly rich of oil resources, who have been forcibly evicted from their land, and have been the target of excessive use of force, repression, and homicides in order to take control over oil. Oil spills have caused the displacement of these communities, and provoked irreparable environmental harm.¹³⁴

At the same time, the climate of “generalized” violence of the Niger Delta (political insecurity, social violence, terrorist attacks, presence of non-State armed groups, gender violence, oil violence) was deemed enough to substantiate the need for subsidiary protection.¹³⁵

FLOODS

In 2019, the Italian Supreme Court explained that, for the purposes of humanitarian protection, it is essential to assess whether the objective situation of the country of origin allows at least the minimum level capable of “ensuring respect for human dignity”.¹³⁶ Hence, the link between disasters, climate change and environmental degradation and the respect for human dignity needs to be appropriately assessed, especially when, as in the present case, recurrent floods first constrained the claimant to the minimum level of survival and then placed them below the level of survival forcing them to leave in order to survive:

*“The flood is referred to as the final event that destabilized an economy of mere survival, taking away the plaintiff and his family’s home and the minimal means on which he relied (animals)”.*¹³⁷

D. THE RELEVANCE OF THE OAU CONVENTION IN THE MENA REGION.

The OAU Convention provides for the regional refugee protection framework in Africa and complements the 1951 Refugee Convention. So far, it has been ratified by 46 out of 55 AU Member States, including five MENA countries (Algeria, Egypt, Libya, Morocco, and Tunisia).¹³⁸ The OAU Convention’s expanded refugee definition includes also

*“[...] every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality”.*¹³⁹

The legal concept of events seriously disturbing public order is particularly relevant for refugee claims related to disasters, climate change and environmental degradation.

In its 2020 legal considerations, UNHCR has called for a more dynamic and evolutionary approach towards the interpretation of the OAU Convention so to reflect the ongoing developments in international law more broadly:

*“This is particularly important for the interpretation of the concept of ‘events seriously disturbing public order’ if the changing realities for people in need of international protection are to be accommodated where they are affected by the adverse effects of climate change and disasters. In line with this approach, people displaced by the adverse effects of climate change and disasters can be refugees under regional refugee criteria”.*¹⁴⁰

In a 2021 resolution, the African Commission on Human and People’s Rights has echoed UNHCR’s position insofar as it reminded States of their treaty obligations and the commitments they have made by embracing the OAU Convention, thus linking displacement in the context of disasters, climate change and environmental degradation to refugee protection.¹⁴¹ Similarly, most scholarship on the OAU refugee definition supports the view that the phrase “events seriously disturbing public order” applies to disasters, climate change and environmental degradation.¹⁴² Finally, in her recent research study on the applicability of the OAU Convention in this context for UNHCR, Hansen-Lohrey has identified three main criteria in order to substantiate the events seriously disturbing public order item. According to the author, the definition is met when:

1. The disturbance to public order involves a threat to the rights to life, physical integrity and/or liberty of individuals;
2. The disturbance affects society at large, for example by being widespread and/or generalized. The disturbance need not affect the majority of a society insofar as it creates a general sense of instability by undermining public peace, public safety or public security; and
3. The State is unable or unwilling to restore public order.¹⁴³

Concrete examples of serious disturbance to public order may include both extreme weather events and slow processes of environmental degradation, whereby the former can provoke widespread damage, loss and destruction of essential services, properties, and infrastructure, while affecting the availability of fresh water and food. If the State is unable or unwilling to provide adequate protection and relief, these impacts may contribute to instability and result in a denial of fundamental rights.

For its part, slow-onset disasters and environmental degradation can cause widespread environmental harm which impacts on public safety and human security, which the State may be unable or unwilling to address, thus substantiating Article 1(2).

MENA States bound by the OAU Convention should take into duly account these developments when applying and interpreting the regional refugee definition.

RECOMMENDATIONS



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The Euro-Mediterranean region is facing multiple challenges which hinder the recognition, prevention and protection against the adverse effects of disasters, climate change and environmental degradation on human mobility. Not only are policies and legal protection provisions in this field scarce in the region, but the level of implementation of specific commitments undertaken at the international level is equally feeble. Meanwhile, climate change constitutes one of the most pressing challenges to the right to life of present and future generations, with particularly severe impacts foreseen in the MENA, the most water scarce region in the world. A number of insights are however available at the regional and national levels, which could be leveraged to provide coherent and comprehensive responses to the phenomenon. The above analysis of challenges and insights shapes the following recommendations to key stakeholders (EU institutions, EU Member States, MENA countries, and civil society organizations).



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TO EU INSTITUTIONS:

To stimulate the political dialogue among the Member States on the need to provide protection responses in addition to prevention, mitigation and resilience actions in third countries. Prevention measures cannot be the sole answer to the global challenges posed by disasters, climate change and environmental degradation. Protection is key to address harm triggered by related displacement when it outperforms the effects of prevention measures. Moreover, prevention measures are often tailored to mitigate solely the effects of hazardous events and not the factors of vulnerability. The lack of focus on the wider social context (i.e., social, economic, political, cultural and historical factors) in which natural hazards occur, inevitably limit the effectiveness of prevention measures and make protection solutions all the more relevant.¹⁴⁴

To create synergies between the EU environmental policy and the EU migration policy with particular reference to the Green Deal and the New Pact on Migration and Asylum in order to enhance policy coherence. Policy synergies would bring several benefits, including providing comprehensive responses to the global challenges posed by climate change, including on human mobility; recognizing the essential role that non-EU citizens can play in fostering the green transition; and stressing the relevance of job and education opportunities to alleviate their vulnerability to environmental stressors in their country of origin and in destination countries.

To mainstream considerations on human mobility in the context of disasters, climate change and environmental degradation in all relevant policy and law fields regulating family reunification, labour migration or visa regimes. Beyond protection instruments available at the international and regional levels, other fields of law can in fact apply to people displaced in the context of disasters, climate change and environmental degradation, depending on the particular circumstances of the case. At the same time, particular attention should be given to **gender-based considerations** when dealing with prevention, mitigation, adaptation and protection measures in the context of disasters, climate change and environmental degradation in order to adequately address people's vulnerability, resilience and capacity in light of their SOGIESC.

To fully comply with EU legal standards and values when implementing cooperation agreements with third countries in order to promote sustainable and durable projects, actions and plans capable of improving the living conditions of households and local communities in third countries, by preventing and mitigating the adverse effects of disasters, climate change and environmental degradation on their lives. To this end, the Union shall avoid turning cooperation instruments into arrangements facilitating externalization policies, conditionality, and human rights breaches, as reported.

TO EU MEMBER STATES:

To implement the Global Compacts in a holistic manner in order to facilitate a comprehensive and equal achievement of their Objectives. States should therefore actively give effect to those commitments speaking to human mobility in the context of disasters, climate change and environmental degradation (Objectives 2, 5, 7 among others), in turn complying with previous commitments undertaken at the international level.

To consider applying existing national provisions in a dynamic way in order to expand protection to people displaced in the context of disasters, climate change and environmental degradation to leverage Member States' national and international obligations in the field of human rights, as shown by the case law in Italy, Austria and Germany.

To consider all the circumstances of the case when applying and interpreting the 1951 Refugee Convention and the EU Qualification Directive in the context of international protection claims based on disasters, climate change and environmental degradation These include their socio-economic, cultural and political impacts on the person's vulnerability and resilience as well as the interactions of such factors with dynamics of discrimination, marginalization or exclusion, violence, and conflict as emphasized by UNHCR.

TO MENA COUNTRIES:

To endorse a gender-sensitive approach to relevant laws and policies that could deal with human mobility in the context of disasters, climate change and environmental degradation, including considerations on women's rights and empowerment, as well as to ensure women's participation in the design, evaluation and implementation of such policies.

To foster regional and international cooperation to tackle the adverse impacts of disasters, climate change and environmental degradation on human mobility.

To swiftly proceed towards the adoption of a new version of the 1994 Arab Convention on regulating status of refugees in the Arab countries and to promote the adoption of an extended regional definition of the refugee that includes "natural disasters" among the eligible causes for the refugee status.

To ensure the application of the extended refugee definition enshrined in the OAU Convention in a principled and consistent way so to protect against the effects of disasters, when amounting to events seriously disturbing public order. This can be done by, inter alia, drawing on UNHCR's guidance, by relying on evidence-based and reliable sources of information and by making an objective assessment of all circumstances of the case.

TO CIVIL SOCIETY ORGANIZATIONS: BASED IN THE EU AND MENA REGIONS

To call for the need of gathering updated and disaggregated data, including by gender, of people displaced in the context of disasters, climate change and environmental degradation at the national and supranational levels in order to fill the information gap.

To advocate for the need of policy coherence, regional cooperation and common solutions to such a pressing issue and to promote advocacy actions to keep this topic high in the political agenda of relevant fora.

To raise awareness and build knowledge to counteract the limited understanding of the features, nature and impacts of disasters, climate change and environmental degradation on human mobility in the respective regions.

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