**The impact of climate change and the protection of the human rights of migrants**

**Report of the Special Rapporteur on the human rights of migrants**

*Submission by*

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***3. Please indicate how relevant State obligations under international human rights and refugee law are respected at the national level in addressing climate change-related international migration and providing protection to persons crossing international borders in response to the adverse effects of climate change. More specifically, please explain to what extent the impacts of climate change are recognized as a possible ground for admission and stay in national migration laws and policies, as well as asylum procedures and other procedures, including for temporary and long-term protection and return procedures. Please include information on any concrete mechanisms put in place to grant admission and stay and ensure protection to people fleeing the adverse effects of climate change.***

Italy is currently one of a handful of countries in the world, and the only EU Member State, to offer explicit and multiple protection statuses to migrants fleeing due to environmental and climate factors.

The first provision in Italian migration law that deals with the protection of migrants on environmental grounds is Article 20 of the Consolidated Act on Immigration (CAI), according to which the President of the Council of Ministers may adopt extraordinary and temporary protection measures for relevant humanitarian needs in case of conflicts, natural disasters, or other serious events in non-EU countries. Although it has never been activated on account of natural disasters, it remains a valid instrument of protection.

A second provision refers to the inclusion of environmental and climate factors in the assessment of humanitarian protection, which has been regulated under Article 5(6) CAI for over two decades. Although no longer into force, it still produces effects *ratione temporis* on pending cases. It operated as a safeguard clause to fully comply with the principle of non-refoulement as well as with Article 10(3) on asylum of the Italian Constitution. And it was conceived to be issued to people not eligible for international protection who nevertheless could not be expelled because of serious humanitarian reasons or resulting from constitutional or international obligations of the Italian State. Humanitarian protection was a flexible instrument to be granted to persons who suffered, or would be at risk of suffering upon removal, from an effective deprivation of human rights to be assessed in light of both the objective situation in the country of origin and the claimant’s personal conditions. These included vulnerability and exposure to famine, natural disasters, land grabbing as well as the general environmental and climate conditions of the country of origin, if able to jeopardize the core human rights of the individual.

**Pursuant to Article 5(6) CAI, the Ministry of the Interior repeatedly announced to temporarily suspend the expulsion of certain third country nationals due to serious natural disasters in their respective countries of origin (pp. 1-6 annex).** The dynamic approach endorsed by administrative and judicial authorities further consolidated the issuance of humanitarian protection on account of droughts, famine, and floods.

Over the last years, the Italian government has significatively intervened in the renovation of the institute of humanitarian protection. The Decree-Law of 4 October 2018 n. 113 substituted humanitarian protection with a fixed and exhaustive list of protection grounds and, in particular, introduced Article 20-bis CAI. This new provision provided protection to migrants whose country of origin was in a situation of contingent and exceptional calamity, which did not allow for a safe return. Accordingly, a six-month residence permit was issued that could be renewed for a further period of six months if unsafety persisted. The contingent and exceptional character of such a calamity clarified that only sudden and occasional events, such as earthquakes or floods, could be considered as eligible events under this provision, thus excluding slow-onset events.

The Decree-Law of 21 October 2020 n. 130, *inter alia*, amends Article 20-bis that currently provides for a residence permit owing to a *serious* calamity. This amendment seems to allow for a broader interpretation of the calamitous event based on the degree of severity rather than on its occurrence or progression over time. Additionally, the provision does no longer specify the duration of renewal for a maximum of six months, thus potentially suggesting that it can be renewed as long as the conditions of environmental insecurity in the country of origin persist.

This Decree-Law also amends the grounds on which removal is prohibited under Article 19 CAI, already modified by the former 2018 Decree-Law. Pursuant to the new formulation, refoulement is prohibited when there are reasonable grounds for believing that the applicant would be at risk of torture, inhuman or degrading treatment, or otherwise of systematic and gross violations of human rights. Before issuing an order of removal, therefore, competent authorities are required to assess whether the conditions in the country of origin, including environmental and climate circumstances, do not pose any substantial threat to the returnee’s human rights.

Most recently, on 8 February 2022, a constitutional reform has been adopted that introduces, as part of the fundamental principles of the Italian Constitution, the principle of environmental protection in the interest of present and future generations, potentially covering both Italian and non-Italian citizens. This hopefully adds further value to current provisions protecting against environmental causes of migration.

As for national jurisprudence, the Supreme Court of Cassation, the highest court of appeal in Italy, has promoted a human rights-based and extensive interpretation of these domestic norms in light of the effects of climate change and environmental degradation, which contributed to unveiling their full potential. **In early 2020, the Court found that the destruction of the claimant’s home due to a flood that hit large parts of Bangladesh in 2012 and again in 2017 may ‘affect the vulnerability of the applicant if accompanied by adequate allegations and evidence relating to the possible violation of primary human rights, which may expose the applicant to the risk of living conditions that do not respect the core of fundamental rights that complement the dignity’**. **In this case, the Court argued that natural disasters can amount to compelling drivers of migration, insofar as they are able to exacerbate people’s vulnerability and to violate core human rights.** In February 2021, the Court of Cassation issued another order of crucial importance for a future interpretation of the EU status of subsidiary protection due to environmental stressors (pp. 7-15 annex). In this case, the Court noted that the right to life is not susceptible to violation only in case of armed conflict but also when ‘conditions of social, environmental or climatic degradation, or contexts of unsustainable exploitation of natural resources […] entail a serious risk for the survival of the individual’, emphasizing the role of human misconduct in creating an unbearable environment. This evolutionary reasoning, if pursued in future judgments, may pave the way to the recognition of subsidiary protection when environmental disasters, stemming from intentional human misconduct or overexploitation of natural resources, may expose the claimant to the risk of irreparable harm, as already found by the UN Human Rights Committee in the case *Teitiota v New Zealand*.

***4. Please share examples of national and regional solutions to expand and facilitate pathways for safe and regular migration for people who are compelled to leave their countries in the context of climate change. Please indicate whether your country has adopted any bilateral, subregional, regional, international mechanisms, agreements, frameworks or programs, to facilitate safe, orderly and regular movements for migrants in the context of climate change.***

Within the EU legal order, environmental and climate threats are usually sought to be a further, not the main, reason to issue international protection. Indeed, **Directive 2011/95/EU** (pp. 16-30 annex), which **regulates the qualification of the refugee status and of subsidiary protection**, requires an actor of persecution or of serious harm that intentionally threatens or damages the life and liberty of an individual, including due to their race, nationality, political opinion, religion and membership of a particular social group.

Beyond international protection, **Directive 2001/55/EC** (pp. 34-46 annex) applies in case of a mass movement of foreigners, who are unable to return because of, *in particular*, armed conflict or endemic violence; serious risk of systematic or generalised violations of their human rights. In light of growing scientific evidence, literature, and relevant jurisprudence supporting the establishment of a link between environmental threats and human rights violations, it could be argued that there might be cases where people displaced because of environmental disasters may qualify as beneficiaries of temporary protection pursuant to the Directive. Furthermore, its scope might be extended to additional causes of migration given the presence of the idiom ‘in particular’, such as those associated to an adverse environment. Besides, Article 7 allows the Member States to discretionally extend temporary protection to additional categories of displaced persons, including those affected by environmental factors. Yet, some key procedural and scoping shortcomings notably weakens its possible applicability. Indeed, it has been activated only once since its adoption in 2001, in the context of the ongoing Russian-Ukrainian conflict, primarily because of a cumbersome activation and highly politicized process involving the absolute discretion of the Council in determining the actual existence of a mass influx of displaced people. Moreover, Directive 2001/55/EC applies only in case of mass inflows coming from the same geographical area and displaced for the same reason. Arguably, there might be few cases where mass inflows to the EU can be generated primarily by climate change or environmental disasters. Finally, the Commission expressed its intention to abrogate it and to substitute it with a crisis management mechanism. Therefore, its very existence is currently under discussion.

Finally, **Directive 2008/115/EC (Return Directive)** might prevent the removal of a third-country national affected by environmental and climate changes in light of *non-refoulement* obligations (pp. 46-55 annex). It states that the implementation of return must respect this principle (Article 5) and that removal shall be postponed if it would violate it (Article 9). Moreover, Article 6(6) allows the Member States to decide at any moment to grant a right to stay for compassionate, humanitarian or other reasons. When a return decision has already been issued, it shall be withdrawn or suspended for the duration of validity of the residence permit or other authorization offering a right to stay. Therefore, this Directive distinguishes between legal (*non-refoulement* and effective remedy) and other obstacles that may postpone or suspend removal (mental and physical state of the individual, humanitarian grounds, technical reasons). In this framework, both *non-refoulement* and humanitarian clauses may well apply to cases where removal in climate change-affected countries would be unsafe, although the latter on a discretional basis.

The New Pact on Migration and Asylum could constitute a significant opportunity to provide protection against the environmental causes of migration. In particular, the Commission’s pending proposal for a Union Resettlement Framework, adopted in 2016 and re-proposed under the New Pact, aims to provide safe and legal pathways to vulnerable international protection-seekers displaced within or beyond national borders, including people with socio-economic vulnerability and those with family links in the EU (p.80 annex). Not only do these categories widen the classical resettlement beneficiaries but may cover different categories of people hit by environmental threats. The proposal might, indeed, apply to those internally or internationally displaced on environmental grounds, those whose vulnerability is linked to the impact of climate and environmental factors on their livelihood and wealth, as well as those who may count on family links to flee from dire environmental conditions. If made explicit, this proposal may constitute a relevant protection instrument also in the environmental context. Still, this proposal has been in a deadlock for the past six years and its adoption remains uncertain.

In sum, the EU institutions should acknowledge that, as the Common European Asylum System stands, it is not equipped to deal with movements triggered by environmental drivers from an operational viewpoint. From a legal perspective, moreover, it seems inconsistent with the authoritative interpretation of international human rights standards given in ***Teitiota v New Zealand***, where it reaffirms that **‘environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life’**.