

# **Contribution to Special Rapporteur on the human rights of migrants call for inputs**

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

Submitted by

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This contribution presents key findings from the research project *ClimMobil: Judicial and policy responses to climate change-related mobility in the European Union with a focus on Austria and Sweden*. The project, supported by the Austrian Climate and Energy Fund, analysed thousands of judicial decisions in Austria and hundreds of decisions in Sweden. The policy report is available here: <https://rwi.lu.se/wp-content/uploads/2022/04/ClimMobil-1.pdf>

The submission addresses, in particular, question 3 of the questionnaire accompanying the call for inputs. It provides key insights emerging from the research, as well as specific insights relating to how judges in Austria and Sweden determine claims for international protection in the context of disasters and climate change. A list of recommendations for national and regional actors is included.

### **Key insights**

- People seek to enter and/or remain in European countries as a consequence of environmental pressures, including disasters and climate change
- European countries do not have a harmonised approach to determining claims for international protection in the context of disasters and climate change
- Scope for addressing cross-border disaster- and climate-related displacement under humanitarian or managed migration categories exists but is an area requiring further research

### **Insights from Austria**

- In the Austrian asylum procedure, the impact of disasters, on particularly the supply situation, was considered mainly in relation to the assessment of subsidiary protection (real risk assessment and/or assessment of internal protection alternative). In some decisions relating to Somalia, the impact of disasters constituted even an important factor in the legal reasoning. Decisions indicated that different forms of inequality (for instance gender, wealth, family situation, age) were particularly important with regard to experiencing the consequences of disasters
- In Austria, subsidiary protection is granted when the *non-refoulement* principle, in particular under Article 3 ECHR, would be violated upon return. No ‘human actor’ of serious harm in the country of origin is necessary as required by the jurisprudence of the CJEU
- The country of origin information (COI) used showed considerable differences with regard to disaster-related information depending on the respective country of origin. While COI in relation to Somalia was usually very detailed with a huge variety of sources, COI in relation to other countries affected by similar disasters was less detailed.

In particular in decisions on Somalia, often detailed COI was integrated in the legal reasoning

## **Insights from Sweden**

- Executive and judicial decision-makers overwhelmingly failed to carefully consider claims for international protection relating to disasters. Decisions reflected a lack of engagement with emerging international jurisprudence and very limited use of country of origin information
- The non-harmonized provision extending international protection to people unable to return home as a result of an ‘environmental disaster’ was often not applied in cases where a fear of disaster-related harm was expressly articulated by the applicant. When the provision was applied, its interpretation was narrow and decisions rarely reflected individualised assessment against specific country of origin information
- People seek to enter and remain in Sweden using existing immigration law categories, but decision-makers rarely exercise discretion in recognition of the adversity engendered by the disaster. The kinds of effective practises identified in the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change do not appear to have been integrated into the Swedish legal and policy framework

## **Recommendations**

### **National level**

#### *Decision-makers*

- Develop guidance outlining legal doctrine relating to recognition of refugee status and subsidiary protection in the context of disasters and climate change, identifying relevant sources of country of origin information to assist decision-makers
- Pay attention to quality and comprehensiveness of COI on disasters (concerning in particular evidence of differential exposure, vulnerability and impacts) also in relation to countries of origin where it has not been taken into consideration so far
- Review relevant law and policy to determine how better to integrate the effective practices identified in the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change and raise awareness among those applying the law
- As disasters have different impacts on people depending on different forms of inequality regarding gender, age, wealth, health, profession, ethnicity and others, increase awareness concerning the relationship between inequalities and consequences of disasters among legal and other relevant stakeholders

#### *National governments*

- Review relevant law and policy to determine how better to integrate the effective practices identified in the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change. Consider forming an alliance of countries to develop and implement effective practices relating to cross-border displacement in the context of disasters and climate change
- Raise the issue at EU level, for instance in the context of Home Affairs and Climate Change Adaptation policy discussions

### *Legal representatives*

- Carefully explore individual risk profiles in all cases where individuals seek to enter or reside in a European host country in part owing to a fear of being exposed to disaster- or climate change-related harm in their country of origin and, where appropriate, develop legal arguments grounded in emerging jurisprudence and supported by the best available country of origin information; do not exclude the possibility of refugee protection if environmental factors are at issue
- Actively ask for country of origin information concerning the impact of disasters and climate change on the lives of persons

### **Regional level**

#### *The European Parliament and the Parliamentary Assembly of the Council of Europe*

- Promote a European dialogue focusing on identifying and developing effective practices for addressing cross-border human mobility into Europe in the context of disasters and climate change

#### *The European Commission*

- Acknowledge that environment- and disaster-related issues already play a role with regard to human movement towards Europe and there is a need to develop and adopt effective practices for addressing the phenomenon

#### *Platform on Disaster Displacement*

- Explore opportunities to include activities focusing on Europe in the post 2022 work plan

#### *Country of origin information services*

- Compile relevant country of origin information sources concerning the impacts of disasters and climate change on the lives of persons

#### *Academia and research funding bodies*

- Promote and conduct further research into the phenomenon of cross-border human mobility into Europe in the context of disasters and climate change
- Promote and conduct comprehensive further research into legal and policy responses to the phenomenon, taking into account the full range of immigration, humanitarian, and international protection responses

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