

*Routledge Studies in Environmental Migration,  
Displacement and Resettlement*

# **NORDIC APPROACHES TO CLIMATE-RELATED HUMAN MOBILITY**

Edited by  
Miriam Cullen and Matthew Scott



# Nordic Approaches to Climate-Related Human Mobility

Academic discussion of climate-related human mobility has understandably focused on the places where people are especially vulnerable to climate-related harm: the Global South. Yet, the unique biophysical, legal and socio-political characteristics of the Nordic region, as well as its roles as both ‘home’ and ‘host’ to climate-related mobilities, justify its independent attention. Filling this lacuna, this collection is the first to address climate-related human mobility in the Nordic region. It is a timely and much needed collection, which brings together leading and emerging voices from both academia and practice in a single volume, spanning policy and geographical breadth. Its chapters cover both regional approaches to the global phenomenon of climate mobility, such as the traditional role of the Nordic states as norm entrepreneurs and their representation in multilateral fora, and on-the-ground climate impacts unique to this region and their localised responses. Case studies include judicial decision-making as it relates to climate-related migration, insights into the local communication of climate risk, changes to Nordic development and climate policy, as well as climate-related mobilities of Nordic Indigenous Peoples.

This volume will be of great interest to students and scholars of disaster and climate studies, as well as climate-related mobility, migration and displacement.

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# 1 Introduction

## Nordic approaches to climate-related human mobility

*Miriam Cullen and Matthew Scott*

This is the first volume to address climate-related human mobility in the Nordic region in a single thematic and interdisciplinary volume. It grew out of the first workshops of the Nordic Network on Climate-Related Displacement and Mobility (Nordic Network), founded in 2019 by the co-editors. The workshops and ongoing collaboration through the Nordic Network revealed that very limited academic research has focused expressly on the varieties of human mobility playing out in the Nordic region in the context of climate change. Rather, human mobility has tended to be incorporated, almost incidentally, within research into disaster risk reduction, climate change adaptation, and urban planning. In other words, research relevant to climate-related human mobility in the Nordics was not clearly in conversation with the wider body of climate-mobility literature being generated in other parts of the world. This was a puzzling state of affairs given the engagement of Nordic states in international initiatives addressing climate-related displacement and mobility, and one that the contributors here have sought to address.

The phrase ‘human mobility’ is used in this work to refer to the varieties of ways in which people move either within states or across international borders. The Cancun Adaptation Framework<sup>1</sup> identifies three forms of mobility, including migration (which tends to connote a degree of voluntariness), displacement (which is seen as movement closer to the involuntary end of the spectrum) and planned relocation (which involves a typically state-led process of moving people from an area exposed to hazards to one or more new locations).<sup>2</sup> Increasingly, the notion of climate-related immobility has also entered the discourse, including involuntary as well as voluntary immobility.<sup>3</sup> These varieties of human mobility are reflected in the chapters of this volume. In this way, researchers can perceive mobility as not only a reaction to immediate or imminent hazards but also a proactive response to projected impacts, as well as an option that is diminishing or somehow not achievable.

Academic discussion of climate-related human mobility has understandably focused on the places where people are especially vulnerable to climate-related harm. In Asia and the Pacific, annual displacements in the context of floods, cyclones, droughts, landslides and other climate-related hazard number in the millions.<sup>4</sup> It is apt that attention is focused where impacts are greatest. Yet, the unique biophysical, legal and socio-political characteristics of the Nordic region,

as well as its roles as both ‘home’ and ‘host’ to people experiencing various forms of climate-related mobility, justify its independent attention.

The Nordic region is typically framed as one in which the fortunate few might avoid the worst consequences of rising average global temperatures that render other parts of the planet uninhabitable. Indeed, the Notre Dame Global Adaptation Initiative ranks Norway, Finland, Denmark, Sweden and Iceland among the top-seven most climate-resilient countries in the world.<sup>5</sup> Yet, even against this backdrop, the impacts of climate change are evident. Across the region, increases in heat extremes and heavy precipitation are both observed and projected to rise.<sup>6</sup> An increase in pluvial flooding is expected to be high to very high across Northern Europe.<sup>7</sup> Summer wildfires in parts of the Nordic region are becoming the ‘new normal’.<sup>8</sup> Reflecting limited existing research, the IPCC reports some evidence that ‘small-scale climate-induced displacement within Europe occurs in the aftermath of flood and drought disasters and over short distances’.<sup>9</sup>

Although only a fraction of the global whole, climate-related mobility is already a reality in the Nordic region and there is scientific consensus that the frequency and intensity of relevant hazards will accelerate. Wildfires in 2018 forced the evacuation of hundreds of people in Sweden,<sup>10</sup> during what the government described as an extremely dry and an extremely hot summer.<sup>11</sup> Residents of Rauma municipality in Norway were evacuated because of the risk of mudslides caused by heavy rains.<sup>12</sup> People living in the shadow of the Svínafellsheiði slopes in south-east Iceland may have to relocate due to the impending ‘glacial tsunami’.<sup>13</sup> Yet, compared to some countries in other regions, particularly Asia and the Pacific, Nordic law, policy and practice relating to human mobility is not especially advanced. At the same time, resource-rich states with robust social safety nets function differently from those with more limited capacity.

It would be wrong to characterise the peoples of the Nordic region as homogeneous and uniformly shielded from climate-related harm by advanced social welfare provisioning. Indigenous Peoples face distinct challenges as climate change adds to existing pressures on traditional livelihoods owing to growing imbalance in biodiversity and weather cycles.<sup>14</sup> Changing ice and snow conditions have forced Northern Sámi reindeer herders to roundup later, meaning that reindeer weigh less, and so herders earn less. The changing climate has also caused softer snow, which has meant that herds more often fall victim to wolves and lynx, and the consequent diminishing reindeer stocks threaten the livelihoods of entire communities.<sup>15</sup> Softer sea ice and changing weather patterns and altered fish and animal conditions compromise Greenlandic Inuit hunters and fishers.<sup>16</sup> Undoubtedly, the continuation of these trends will have consequences for where, as well as how, Indigenous Peoples work and live. In this context, displacement can mean much more than being forced to move from one settlement to another, and contributions to this volume explore some of the non-physical dimensions of displacement experienced by Indigenous Peoples as the climate changes.

Movement into the region in the context of disasters and climate change is not on a scale comparable to scenarios playing out in the Horn of Africa<sup>17</sup> or Central

America's dry corridor.<sup>18</sup> Yet, there are concrete cases of individuals seeking to enter or remain in the Nordic region from outside it in the context of climate change-related impacts.<sup>19</sup> As with other parts of the world, a lack of data prevents accurate measurement of the scale of cross-border climate-related human mobility into the Nordic region. Nevertheless, the entrepreneurial role played by Nordic states in developing innovative legal provisions, as well as in supporting global processes, such as the Nansen Initiative on Disaster-Induced Cross-Border Displacement, also renders this region worthy of independent study.<sup>20</sup>

Nevertheless, we were aware of no initiatives examining the approaches of Nordic states to climate-related mobility at home and abroad in any systemic way.<sup>21</sup> Conscious of the emerging climate-related human mobility dynamics playing out in the region and engaged in research and policy work on this issue in other parts of the world, as well as internationally, we saw a clear impetus to convene a Nordic Network on Climate-Related Displacement and Mobility (the Nordic Network). The purpose of the Nordic Network is to advance Nordic research collaboration on the nexus between climate change and human mobility. To this end, in 2019, the co-authors of this volume, together with Prof. Magdalena Kmak (Åbo Akademi University) and Dr Isabel Borges (University of Oslo), received funding from the Joint Committee for Nordic Research Councils in the Humanities and Social Sciences to convene two interdisciplinary workshops under the auspices of the Nordic Network on the broad theme of Nordic approaches to climate-related human mobility.

The two workshops were held in 2021 and 2022.<sup>22</sup> The first was hosted by Copenhagen University Faculty of Law on 16 September 2021, and conducted entirely online due to ongoing COVID-19-related contingencies. The second was held in person at the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, in Lund, Sweden, on 8 and 9 December 2022. Together the workshops addressed key questions central to a preliminary understanding of the regional dynamic, including what does climate-related mobility mean in the Nordic region, and how have Nordic states responded? What is shifting for Nordic Indigenous Peoples' experiencing climate-related impacts, and how might policy need to evolve to effectively respond to planned relocation? Participants came from diverse fields, including anthropology, law, political science, international relations, engineering, sustainability science and sociology, and ranged in academic experience from masters students to professor. This diversity reflects the Nordic Network's broader goals towards both inclusivity and academic mentorship.

The first workshop of the Nordic Network focused on the rights of Indigenous Peoples in the context of climate change adaptation and mitigation initiatives, as well as practitioner interventions from other states with Indigenous populations, namely the United States and Aotearoa/New Zealand. In both the United States and New Zealand, work to respond to the human mobility dimensions of climate change is more advanced than in the Nordic region in terms of the breadth of scholarly, policy and government attention it has received. Community-led and rights-based approaches to Indigenous Peoples' relocation in the context of climate change has been championed and advanced by the Alaska Institute for Justice,

which was represented at the workshop.<sup>23</sup> In New Zealand, land use planning strategies such as managed retreat have been the subject of intense government scrutiny as part of the overhaul of the Resource Management Act, with a parliamentary committee inquiry into climate adaptation and ‘community-led retreat’ underway at the time of writing.<sup>24</sup> A representative from the NZ Ministry of the Environment described their work and associated challenges. The first workshop also included expertise on the Climate Adaptation by Managed Realignment project, Sweden’s first research-based foray into managed retreat, learning how local authorities were largely unwilling to consider an adaptation strategy that entailed moving homes away from exposed coastal or river bank areas, even as some authorities expressed openness to considering this strategy.<sup>25</sup> Research into coastal adaptation in Denmark was also presented, which included consideration of managed retreat.<sup>26</sup> The psychosocial impact of future evacuation or relocation was discussed in the context of landslide-triggered tsunami risk in Iceland.<sup>27</sup>

Recognising the extensive range of issues that could be explored, the co-editors agreed that a practical starting point would be to produce a volume that expressly addressed the human mobility dimension of climate change in the Nordic region. Our second workshop was designed for this purpose, and the contributions to the present volume reflect original work presented to that workshop and refined through subsequent collaboration. Whereas the first workshop focused exclusively on human mobility within the region, the second workshop also invited work that addressed the cross-border dimension.

The purpose of this collection is to generate discussions and highlight the need for further research on the breadth of climate-related human mobility with which Nordic policies engage, whether domestically or abroad. It is not intended to be exhaustive or complete, nor does it claim to represent the breadth of relevant research in the region. Rather it is a collection of ideas that initiates the filling of research gaps and can serve as a launching point for future research and collaboration. There is inherent value in advancing regional dialogue related to internal and cross-border mobility and academic research plays a critical role in supporting that conversation by defining the contours of a field and making under-examined issues more visible to policy and practice. There is also inherent value in expanding knowledge about how climate change is transforming our world, while acknowledging that well-resourced societies enjoy more capacity to catalyse transformation through investment in the production of knowledge, its integration in law and policy, and implementation in practice.

Among other things, this volume establishes that climate-related mobility, including displacement, relocation and immobility, are already realities for people in this region. We hope this collection will catalyse more concrete engagement by a broader network of academics, practitioners, public authorities and communities concerned with disaster risk reduction, climate change adaptation, and land use planning. Similarly, drawing attention to the varieties of contexts in which people seek to enter or remain in the Nordic region in the context of disasters and climate change represents the first of many steps towards adapting immigration systems to the kinds of realities reflected in these cases. In relation to both internal and

cross-border movement, the contributors all recognise the critical importance of timely, constructive and deliberative dialogue between a wide range of people concerned with and affected by the issues described in this volume. If such dialogues ensue, our project has been a success.

The volume begins with chapters that give a broad sense of the Nordic policy outlook when it comes to climate-related human mobility in this region. Accordingly, the first few chapters delineate Nordic legal and policy commitments in international fora and domestic policy, and also explain how Nordic positioning in this context has shifted over time. To this end in Chapter 2, Christina Daszkiewicz, Robin Neumann and Barbara Rijks provide a detailed overview of the international commitments and policy frameworks of Denmark, Sweden, Finland, Iceland and Norway in addressing human mobility in the context of disasters, climate change and environmental degradation. Their chapter pays particular attention to policies related to migration management, climate change and disaster risk reduction.

In Chapter 3, Anne Massari-Vaudé explores the shifting status of Nordic countries from ‘norm entrepreneurs’. Often idealised as the pinnacle of well-functioning polities, Nordic states are characterised by consensus politics, institutional stability and traditions of transparency and a lack of corruption. Nordic states used their position as ‘norm entrepreneurs’ to model commitments to humanitarian assistance and development cooperation, and to innovate responses to cross-border mobility. Sweden and Finland were among the first in the world to legislate the creation of legal protections for people displaced across borders in the context of disaster. Yet the direction of their norm leadership has shifted significantly, as exemplified through the repeal of legislation related to cross-border displacement in the context of disasters and climate change. Massari-Vaudé skilfully traces the political developments through which each Nordic state has diminished its more progressive leadership towards leading more populist and conservative norm entrepreneurial roles.

In Chapter 4, Matthew Scott and Charlotta Lahnelahti map legal and policy responses in Nordic countries to cross-border climate- and disaster-related displacement and migration and provide a detailed analysis of decisions taken by Swedish judicial authorities in this context. The chapter highlights the limited implementation of the innovative Swedish and Finnish provisions described by Massari-Vaudé and points to a range of other immigration categories that are relevant in this context. It also identifies disaster-specific provisions in other Nordic states and calls for further research on judicial decisions in these jurisdictions as a way of gaining unique insight into the current characteristics of cross-border human mobility into the region. The authors see research as providing a catalyst for a (sub)regional Nordic and/or European dialogue on how to adapt immigration systems to the varieties of cross-border movement foreshadowed by the small number of contemporary cases surveyed in the Swedish context.

In Chapter 5, Sarah Louise Nash traces the ‘developmentalisation’ of climate mobility policy in Denmark and Sweden. Nash contends that in policy discourse in Denmark and Sweden, the links between climate change and human mobility are framed predominantly as matters associated with development. In this context,

climate-related human mobility is perceived and framed as connected with climate adaptation. Although similar arguments are made at the international level, these Nordic domestic iterations stand apart due to their strategic orientation being guided by an ‘ever-present undertone’ of migration deterrence. That same policy priority also underpins their rejection of migration policy as a vehicle for responding to climate-related human mobility. This chapter reveals the disconnect between the expert-led policy making in the international sphere and the domestic policy priorities of Denmark and Sweden.

The volume then shifts to examine the ways in which human mobility can be, and is, framed in the context of disasters and climate change in relation to mobility *within* the Nordic region, including policy and local narratives and the experiences and perceptions of Nordic Indigenous Peoples. In Chapter 6, Miriam Cullen and Nivikka L. Witjes describe how for Inuit in Greenland, climate change compounds pre-existing colonialities such that people once again experience what it is to lose home, without moving anywhere. Cullen and Witjes adopt a decolonial perspective to challenge whether the existing international legal and policy regimes are adequate to protect the forms of dispossession and displacement experienced by Indigenous Peoples. For many Inuit, the physical consequences of climate change itself are less about the displacement of people from place, and more about the *displacement of place from people*, as the weather-related phenomena such as ice and permafrost, once relied upon for transport and hunting literally dissolves around them. Whereas, Inuit also face potential displacement by ‘green colonialism’ associated with the installation of climate change mitigation technologies and infrastructure in Greenland, and the extractive activities necessary for their creation. This chapter also reflects on collective and non-physical dimensions of displacement for Inuit incorporating a broad spectrum of psychological, cultural, spiritual and communal forms of harm associated with a continuum of displacement since colonialism.

In Chapter 7, Dave-Inder Comar examines how climate change impacts the mobility and self-determination of Indigenous Sámi people in the Nordic region. It describes the status of self-determination as a central principle of international law, underpinning formal processes of decolonisation as well as contemporary human rights regimes. Comar untangles the inter-relationship between the recognition of Sámi as ‘People’ under international law and the internal and external aspects of self-determination as applied in practice. Importantly, Comar emphasises the triadic link between self-determination, culture and land, and connects the loss of those things to a threat to the Sámi right to exist and survive, drawing on contemporary legal developments.

In Chapter 8, Mo Hamza, Reidar Staupe-Delgado and Kerstin Eriksson turn attention to ‘doomed’ or ‘futureless’ places, where climate-related hazards threaten the very existence of specific sites, rendering mobility high in the consciousness of residents. The authors suggest that a place-based approach to ‘futurelessness’ can enhance understanding of ‘the lived experience of anticipation’ in the context of climate change.<sup>28</sup> The researchers acknowledge that capacities and vulnerabilities exist alongside each other within a given population, and the extent of either is

largely a product of circumstance, often unevenly distributed. The chapter draws findings from three case studies, one in the Norwegian town of Lyngen which faces complete destruction due to an expected future landslide and subsequent tsunami. The other two case studies are based in Kiruna city and the Falsterbo peninsula, respectively, both in Sweden. Falsterbo is challenged by sea level rise, and Kiruna residents will be relocated as a mining project expands. The temporal aspects of climate change, displacement, and potential future relocation are drawn upon in this piece, in which, for example, relocation is both a part of daily life as a matter of consciousness, and also a future event, with years-long planning processes in place. Although the state and other actors are taking action, people living in these areas struggle with the tension between their attachment to place and its future destruction or transformation.

In Chapter 9, Suanne M. Segovia-Tzompa rounds out the volume by assessing how Sámi perceive the legitimacy of legislative, administrative and judicial decision-making that impact their own mobility capacities. The chapter interrogates the cultural, environmental and mobility consequences of green energy production for Sámi reindeer herders. The situation is paradoxical insofar as the very infrastructure that facilitates green energy production and enables greater global mobility, at the same time constrains and impedes mobility for Indigenous Sámi reindeer herders in some of the places where it is installed. Drawing on a normative sociological legitimacy approach, and utilising directed content analysis methodology, this chapter uses case studies to provide the indicia that scaling up green energy production seems not to be in line with a fair transition for all.

Although various disciplines in the humanities and social sciences are represented in this volume, several themes have emerged, cutting across disciplinary divides. Firstly, researchers find that there is a disconnect between the international and domestic policy priorities of some Nordic states. Whereas the global outlook is relatively humanitarian, championing human rights and exemplifying liberal norm entrepreneurship, domestic endeavours tend to sideline the international expertise that frames mobility as adaptation. Secondly, this collection illustrates that climate-related mobility in the Nordic region is much more than just more intense and frequent weather-related hazards. Several chapters are centrally focussed on the mobility impacts of mitigation technologies and histories of colonialism, particularly for Indigenous Peoples, and indeed in this region those two things are likely interrelated. Finally, this collection evidences that there is scope for *much* more research in this regional context.

If this project has revealed anything it is that Nordic approaches to climate-related human mobility is something of a misnomer, for it cannot be said that there are any approaches to climate-related human mobility that are spearheaded or coordinated regionally. Responses and perceptions of climate-related human mobility might be characterised by a particularly Nordic point of view, that is more a consequence of a certain history, culture, geography and sociopolitical norms than it is any part of a streamlined, rationalised plan. In fact, questions arise about opportunities for streamlining a regional approach, grounded in human rights as guiding principles, as has been advanced in other regions. At the same time, how ought states plan



for internal displacement and does it necessitate a whole-of-government approach because mobility concerns impact almost every branch? Planned relocation, for instance, has implications for housing, employment, tax, infrastructure, transport, social services, education, and the list goes on. In addition, how can Nordic states ensure that they meaningfully include the needs and voices of the people impacted at every stage of preparedness, planning and response, and align with the principle of free, prior and informed consent, when decisions concern Indigenous Peoples?<sup>29</sup> For all the ingenuity and wealth held within the Nordic region, the reality is that no matter the adaptation initiatives adopted, some people will move out of harm's way. And Nordic states ought to plan for it, both as it occurs within the region and outside it. We intend that this volume provides some initial contributions towards that endeavour and starts the process of more detailed policy discussions within and between Nordic states.

We dedicate this volume to the memory of our colleague Isabel M. Borges. Isabel was one of the four co-applicants of the grant that started this academic journey. Isabel passed away before she could see the work of the Nordic Network on Climate-Related Displacement and Mobility come to fruition. She was a kind and committed member of the team and an important contributor to the field of law governing climate-related human mobility.

## Notes

- 1 UNFCCC, Decision 1/CP.16: The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention (FCCC/CP/2010/7/Add.1) (2011).
- 2 Erica Bower and Sanjula Weerasinghe, *Leaving Place, Restoring Home: Enhancing the Evidence Base on Planned Relocation Cases in the Context of Hazards, Disasters, and Climate Change* (Platform on Disaster Displacement 2021), <<https://disasterdisplacement.org/news-events/leaving-place-restoring-home-enhancing-the-evidence-base-on-planned-relocation-cases-in-the-context-of-hazards-disasters-and-climate-change-2/>> accessed 4 December 2023.
- 3 Georgina Cundill and others, 'Toward a Climate Mobilities Research Agenda: Intersectionality, Immobility, and Policy Responses' (2021) 69 *Global Environmental Change* 102315.
- 4 Internal Displacement Monitoring Center, *Global Report on Internal Displacement 2023*, <<https://www.internal-displacement.org/global-report/grid2023>> accessed 4 December 2023.
- 5 University of Notre Dame Global Adaptation Initiative, *Country Index Technical Report (2023)*, <[https://gain.nd.edu/assets/522870/nd\\_gain\\_countryindextechreport\\_2023\\_01.pdf](https://gain.nd.edu/assets/522870/nd_gain_countryindextechreport_2023_01.pdf)> accessed 22 November 2023.
- 6 Hans-Otto Pörtner and others, *Climate Change 2022: Impacts, Adaptation and Vulnerability* (CUP 2022) 1824.
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## 2 Trends and policy perspectives of Nordic countries towards people on the move in a changing climate

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### Introduction

“We need to support people before they move, we need to support people while they move, and afterwards, it’s a chain of events,” stated Swedish climate justice activist, Greta Thunberg in early 2023, calling for immediate action and increased solidarity to tackle the impacts of climate change on human mobility.<sup>1</sup> Disasters, climate change and environmental degradation are reshaping human mobility patterns. In 2022 alone, 32.6 million new internal displacements took place in the context of disasters across the world.<sup>2</sup> Building on expanding evidence and research, there has been a growing recognition of the importance to address human mobility in the context of disasters, climate change and environmental degradation in the international community, through different policy fora. Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) have contributed to this recognition in relevant policy processes, thus paving the way to the identification and implementation of solutions: from the support to the Nansen Initiative for the protection of cross-border displaced persons in the context of disasters and climate change, to the latest pledges – of Denmark in particular – regarding loss and damage associated with climate change impacts.

The increase of recognition of these movements benefitted from a focus on countries most vulnerable to the impacts of disasters, climate change and environmental degradation, mostly in low- and lower-middle-income countries in the Southern hemisphere. There needs to be a focus on movements in the Southern hemisphere in relation to specific vulnerabilities and limited capacities of response to impacts. Nevertheless, there are within higher-income countries groups of people with different levels of vulnerabilities and capacities. The Nordic region also includes part of the Arctic, which is warming four times as fast as the global average.<sup>3</sup> In the Arctic part of the Nordic region, Arctic Indigenous Peoples include for example Saami in circumpolar areas of Finland, Sweden and Norway, and Inuit (Kalaallit) in Greenland.

Human mobility in the context of disasters, climate change and environmental degradation can also be found in the Nordic region, and impacts these groups differently. To name a few examples of human mobility in the region: in Iceland, repeated evacuations in the context of avalanche and landslide risk;<sup>4</sup> in Sweden,

migration routes of Sámi pastoralists are destabilized by weaker ice cover on water and weather events<sup>5</sup>; in Greenland, planned relocation in the context of landslide-triggered tsunami risk in recently deglaciated areas.<sup>6</sup>

This chapter provides an overview of Nordic countries' positions relevant to addressing human mobility in the context of disasters, climate change and environmental degradation based on recent examples international commitments and policy frameworks, more specifically in relation to migration management, climate change and disaster risk reduction. Commitments in the context of international policy forums are identified through the analysis of latest national statements in forums as of April 2023. The policy developments outlined in relation to these fields now compose the main threads of a woven landscape of international initiatives to address human mobility in the context of disasters, climate change and environmental degradation. Nordic countries have been active in relation to work on and with human mobility in these contexts globally through financial support, technical support and knowledge production.

This chapter is divided into three parts: the first part is dedicated to key concepts and framing for a comprehensive identification and analysis of the integration of different forms of human mobility, disasters, climate change and environmental degradation in selected statements and frameworks; the second part offers an overview at global, regional and national levels of selected statements, frameworks and bodies relevant to the countries in the Nordic region across various policy fields (namely, migration management, climate change and disaster risk reduction) and examples of integration (or lack of) of human mobility in the context of disasters, climate change and environmental degradation; the third part focuses on the findings and proposes six recommendations to support the implementation of Nordic countries commitments on the topic in a comprehensive and evidence-based manner. The analysis here shows the multiplicity of the positions of the Nordic countries, depending on the national context or policy forum considered, and whether the relevant policy relates to international or internal movements.

### **Key concepts on human mobility in the context of disasters, climate change and environmental degradation**

While this chapter focuses on human mobility, many are immobile in the contexts presently discussed: some do not want to leave their homes behind, while others do not have the means nor the opportunity to move. At the same time, it is essential not to build our understanding of movements on the presumption that mobility is an exception: for some people, such as transhumant communities, mobility is part of their traditional livelihoods, and it is impacts on these mobility patterns (including the fact that they might sedentarize) that should be considered. Human mobility in contexts of disasters, climate change and environmental degradation takes various forms: temporary or permanent; forced or voluntary; in proximity or at a longer distance; and international or internal.<sup>7</sup> While these distinctions are theoretically useful, they are not always representative of reality, as population movements occur on a continuum from temporary to permanent, and from forced to voluntary.<sup>8</sup>

Nevertheless, identifying the type of mobility determines the rights and obligations that people have, the actors interacting with them, and, sometimes, the level of their acceptance by the host community.

The understanding of human mobility in this chapter aligns with the 2010 Cancun Climate Change Adaptation Framework, which identifies in its paragraph 14(f) three types of human mobility for purposes of climate change adaptation: “climate change induced displacement, migration and planned relocation.”<sup>9</sup> “Displacement” refers to predominantly forced movements; “migration,” to predominantly voluntary movements; and “planned relocation,” to moving or assisting to move people to protect them from risks and impacts related to disasters and environmental change.<sup>10</sup>

Sudden-onset events tend to happen quickly, while slow-onset events and processes develop gradually, but both can have effects over a long period of time. Sudden-onset events can be linked to hydrometeorological hazards, including tropical cyclones, floods, drought, heat waves, cold spells and coastal storm surges, as well as geophysical hazards, including earthquakes, tsunamis and volcanic eruptions. Slow-onset events and processes can be linked to sea-level rise, increasing temperatures, ocean acidification, glacial retreat and related impacts, salinization, land and forest degradation, loss of biodiversity and desertification. Climate change and environmental degradation exacerbate such events and processes. While there are distinctions between sudden-onset and slow-onset hazards, these are often intertwined. The impacts of slow-onset events<sup>11</sup> can translate into sudden-onset disasters, as in the example of sea-level rise turning into flooding. In addition, multiple hazards can happen at the same time, as in the case of an earthquake resulting in landslides and flooding, or coastal erosion that leads to salinization.

Yet, environmental drivers are rarely the sole factors that determine whether people would move and there are often multiple context-specific drivers working together to shape mobility decisions. With this complex multicausality, it is not always possible to disentangle one driver from another. A combination of social, political, economic, environmental and demographic factors is often at the root of migration decision-making.<sup>12</sup> On top of these considerations, it is also essential to account for people’s perceptions of disasters, the adverse effects of climate change and environmental degradation, as they influence their decisions to move or to stay. It is essential that responses to human mobility in contexts of disasters, adverse effects of climate change and environmental degradation, at both the policy and operational levels, reflect this complexity.

### **Policy perspectives of Nordic countries towards people on the move in a changing climate**

This section looks at policy frameworks at different levels of governance relevant to human mobility in contexts of disasters, climate change and environmental degradation, including to and within the Nordic region. A complete systematic review and assessment of the implementation of these policies is outside of the scope of

this chapter, as are bilateral agreements and transnational cooperation. Rather, what is provided here is an overview, highlighting some key examples.

### *Identifying policy approaches*

While there is no single normative framework dedicated to human mobility in the context of disasters, climate change and environmental degradation, there has been significant progress over the past years visible through the multiplications of international frameworks integrating it. In the absence of a comprehensive framework, governments and others must draw on principles and standards from various policy and legal frameworks to address the different forms of mobilities and related protection needs. These include frameworks relating *inter alia* to migration management, climate change, disaster risk reduction, sustainable development, and human rights.

The overall objective is to increase the scope of options available to the individuals, households and communities affected by disasters, climate change, and environmental degradation including the most vulnerable. Under this chapter, the policy approaches of Nordic states are divided into international, regional and national-level initiatives. Within each of those three jurisdictional levels, policies tend to fall into one of three policy objectives: (1) to develop solutions for people *to move*; (2) to develop solutions for people *on the move*; and (3) to develop solutions for people *to stay*.<sup>13</sup>

Developing solutions for people *to move*, relates to facilitating orderly, safe, responsible and regular migration pathways in the context of disasters, climate change and environmental degradation. Such pathways are essential to ensure the safety and dignity of those moving at every stage of the migration cycle. It includes solutions that leverage the potential of migration for climate change adaptation and risk reduction and enhance the contributions of migrants, diasporas and communities to climate action and resilience building. It also includes the development and implementation of innovative migration policies and practices, including planned relocation, as an option of last resort.

Developing solutions for people *on the move* means assisting and protecting migrants and displaced persons, as well as reducing the vulnerability in migration, in the context of disasters, climate change and environmental degradation. For example, the development and implementation of life-saving aid, inclusive and rights-based approaches that ensure durable solutions.

Developing solutions for people *to stay* is about ensuring that communities affected by disasters, climate change, environmental degradation are not forced to leave their homes, while recognizing that displacement is first and foremost a life-saving strategy. This can be done by making migration a choice, through resilience building, and addressing the adverse climatic and environmental drivers that compel people to move. Efforts that aim to avert migration out of necessity in these contexts include the acceleration of climate action, risk reduction and enhanced adaptive capacities. It is also essential to address the needs of trapped and immobile populations.

These objectives are in line with the latest developments in international law and policy, which also provide a strategic framework to support their implementation. These will be elaborated in the next section.

### ***International policy frameworks and Nordic states' commitments***

Since 2015, there has been a growing recognition and integration of human mobility in the context of disasters, climate change and environmental degradation in several international policy frameworks addressing migration management, climate change action and disaster risk reduction. Those include the Global Compact for Safe, Orderly and Regular Migration, the Global Compact on Refugees, the Paris Agreement, the Sendai Framework for Disaster Risk Reduction 2015–2030 and the Nansen Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change. Overarching all these are the 2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDGs), which establishes the principle of leaving no one behind. The section will outline Nordic countries' roles and commitments in the recognition and integration of human mobility in the context of disasters, climate change and environmental degradation in these policy initiatives and processes.

In the area of migration management policy, the Global Compact for Safe Orderly and Regular Migration (GCM) and the Global Compact on Refugees guide the management of international population movements. The Global Compact for Migration is the first-ever negotiated, albeit non-binding, international framework on migration wherein, particularly in its Objectives 2 and 5, states recognize the impact of disasters, climate change and environmental degradation on migration.<sup>14</sup> It has been endorsed by Denmark, Finland, Iceland, Norway and Sweden. To support the implementation of the GCM, the Migration Multi-Partner Trust Fund (MPTF) was called for by Member States and launched in 2019. Denmark, Norway and Sweden are among the contributors to the MPTF, with Denmark being the second-biggest donor to the fund.<sup>15</sup> The MPTF has been supporting several projects on the human mobility in the context of disasters, climate change and environmental degradation across continents.<sup>16</sup>

The GCM established the International Migration Review Forum (IMRF) to serve as the primary intergovernmental platform to discuss and share progress on the implementation of the Global Compact. The first meeting of the IMRF took place in May 2022 and all Nordic States except Iceland participated. In its national statement to the IMRF, Finland recognized that “climate change is increasingly driving displacement as extreme weather and climate events become more frequent and more intense” with those already most vulnerable facing higher risks.<sup>17</sup> It highlighted the importance of disaster risk reduction. Similarly, Sweden emphasized that “adverse drivers of migration have worsened, compounded by global crises like the pandemic and climate change.”<sup>18</sup> While Norway did not make any reference to the interlinkages between human mobility and disasters, climate change and environmental degradation, Denmark stated that “climate change; increasing inequality and instability; food insecurity; and socio-economic challenges worsened



by COVID-19 are among the factors that will increase movement in the future.”<sup>19</sup> It committed 0.7% of its GDP to development assistance, as well as “doubling its annual support to fragile regions and their neighbors by 2025.”<sup>20</sup> All of the Nordic states’ interventions that acknowledged the connections between human mobility and disasters, climate change, and environmental degradation focused on climate change as a *driver* of movement, in alignment with the Objective 2 of the GCM. This reveals a gap in Nordic states’ recognition of the breadth of the various connections. No Nordic states acknowledged, for instance, the GCM commitment to enhance the availability of regular migration pathways in the context of disasters, climate change and environmental degradation.

The 2010 Cancun Climate Change Adaptation Framework was the first agreement under the auspices of the United Nations Framework Convention on Climate Change (UNFCCC) in which state parties expressly recognized migration, displacement and planned relocation in the context of climate change. In 2015, states adopted the Paris Agreement to strengthen action on climate change adaptation. Denmark (with territorial exclusion in respect of Greenland),<sup>21</sup> Finland, Iceland, Norway and Sweden are parties to the Treaty. When the Paris Agreement was adopted, states mandated the creation of a Task Force on Displacement (TFD – under the Executive Committee [ExCom] of the Warsaw International Mechanism for Loss and Damage [WIM]) to develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change. The task force delivered its recommendations at the Twenty-Fourth Conference of the Parties in 2018 (COP24) in Katowice, Poland, where state parties also renewed the TFD’s mandate. As of 2023, the TFD is implementing its third rolling plan of action supporting states’ implementation of its recommendations.<sup>22</sup> A representative from Denmark is co-chairing the Executive Committee of the WIM,<sup>23</sup> while a representative from Sweden is a WIM ExCom member and the co-chair for the Expert Group on Non-economic Losses.<sup>24</sup>

At COP27 (2022), none of the Nordic countries directly referred to human mobility in the context of climate change, environmental degradation and disasters in their public interventions. In its national statement, Norway recognized that the “livelihoods of millions of poor and vulnerable people are threatened by the loss of nature and the impacts of climate change.”<sup>25</sup> It committed to tripling its adaptation finance and highlighted the need for scaled-up efforts regarding the prevention of loss and damage. Denmark’s opening remarks stated that it “will continue to support the most vulnerable nations to adapt to the impacts of climate change,”<sup>26</sup> highlighting “green transformation” as an important area. Notably, Denmark was the first developed country to commit “loss and damage” funding, pledging 13 million dollars.<sup>27</sup> Finland and Iceland committed to increasing climate finance.

In the Sendai Framework for Disaster Risk Reduction 2015–2030, states also recognized displacement as one of the impacts of disaster. Relevant targets within that Framework include reducing the number of people affected by disasters and substantially increasing the number of national and local disaster risk reduction (DRR) strategies adopted and implemented by 2030.<sup>28</sup> The Sendai Framework also encourages the inclusion of migrants in DRR and disaster management.

At the 2022 Global Platform for Disaster Risk Reduction, both Sweden and Norway expressly mentioned the connection between disasters, climate change, environmental degradation and human mobility.<sup>29</sup> Norway's statement refers to the fact that "disasters triggered more than three quarters ... of all new recorded internal displacements in 2020. 98 per cent of this resulted from climate-related events."<sup>30</sup> They encouraged investment in disaster risk reduction, the assessment of potential disaster displacement and preparatory work for movement "in a way that minimizes associated risk."<sup>31</sup> In line with this, Norway committed to doubling its climate finance and tripling its support for adaptation and building resilience.<sup>32</sup> The Swedish delegate acknowledged that "drivers of risk such as conflict and forced migration are mitigated and sometimes even prevented" when early warning systems are established, adaptation measures are implemented and resilience is localized.<sup>33</sup> They identified Somalia and the Horn of Africa as specific regions to support and reaffirmed Sweden's "intention to double climate finance to 1.5 billion dollars by 2025."<sup>34</sup>

The 'Nansen Agenda for the Protection of Persons Displaced Across Borders in the Context of Disasters and Climate Change' was the result of a state-led consultative process, predominantly funded by the governments of Norway and Switzerland, and published in 2015. The Agenda details measures states and other stakeholders can take to address the protection needs of persons displaced across international borders by disasters, including those linked to the adverse effects of climate change. The Agenda was endorsed by 109 states, including Denmark, Finland, Norway and Sweden. The implementation of the recommendations of the Agenda is now spearheaded by the Platform on Disaster Displacement (PDD). Norway is part of the Steering Group of the PDD and currently funding its Project to Avert, Minimize and Address Disaster Displacement (PAMAD).<sup>35</sup>

### ***Regional approaches***

As outlined above, all Nordic states endorsed the GCM which emphasizes the need for states to work at the regional and subregional levels to address and manage the multicausality of human mobility at all stages of the migration cycle. This commitment reiterates the importance of regional and subregional cooperation to achieve safe, orderly and regular population movements, including in the context of disasters, climate change and environmental degradation. Similarly, the TFD recommendations include a call for parties "to support and enhance regional, sub-regional and transboundary cooperation." To understand the trends, their framings and responses in the Nordic countries, and to place any further recommendations in context, it is also necessary to examine these issues through the prism of the different regional and subregional bodies and frameworks. This section therefore draws on the approaches of the Nordic Council for Ministers and the Nordic Council, the Council of the Baltic Sea States (CBSS), the Arctic Council and the European Union (EU) as examples of regional initiatives.

Regional cooperation between the Nordic countries is articulated through the Nordic Council of Ministers and the Nordic Council. The Nordic Council of

Ministers is the official body for intergovernmental cooperation in the Nordic region, while the Nordic Council is the official body for formal inter-parliamentary co-operation, with members from Denmark, Finland, Iceland, Norway, Sweden, the Faroe Islands, Greenland and Åland. Together, the Nordics have adopted numerous relevant laws and declarations across various topics, such as environment and the climate, civil security and development cooperation. In April 2023, the Nordic Conference on Climate Change Adaptation took place in Reykjavik, funded by the Nordic Council of Ministers. The outputs from the conference have been synthesized in a policy paper *Stronger together for a climate resilient north – Mainstreaming adaptation to climate change at the local level in the Nordic Countries*<sup>36</sup> as a leading document for further Nordic cooperation on adaptation, also in the context of COP28. The policy paper recognizes that relocating residents and industries in the context of sea level rise is an adaptation response, but one that is “disruptive and expensive.”<sup>37</sup> It advocates for “engaging local authorities early in the decision-making process” as “municipalities can build consensus about the tough social and financial decisions that need to be made regarding adaptation.”<sup>38</sup>

The CBSS is an intergovernmental political forum for regional cooperation. The Member States of the CBSS are: Denmark, Estonia, Finland, Germany, Iceland, Latvia, Lithuania, Norway, Poland and Sweden. The EU is also a member of the CBSS. The CBSS has three priorities, including on regional identity, safe and secure region and sustainable and prosperous region. Under the latter priority, the CBSS supports a climate dialogue, under which it has developed *Handbook for Local Climate Change Adaptation Planning in the Baltic Sea Region*. This Handbook refers inter alia to the need to integrate into local climate vulnerability assessments “the need to evacuate people, provide shelter, and ensure the supplies for the basic needs of people who have been evacuated.”<sup>39</sup> Under the second priority, CBSS focuses on civil security, including through building a common regional understanding of prevention, preparedness and response as well as recovery processes in connection with disasters.

The Arctic Council is the leading intergovernmental forum promoting cooperation in the Arctic. The Arctic Council consists of the eight Arctic states, namely Canada, Denmark, Finland, Iceland, Norway, the Russian Federation, Sweden and the United States, and six organizations representing the interests of Arctic Indigenous Peoples. Its work focuses on six topics: the Arctic peoples, biodiversity, climate, ocean, pollutants, and emergencies. Under the auspices of the Arctic Council, Arctic states have negotiated legally binding agreements that aim to enhance international cooperation on issues related to maritime search and rescue, marine oil pollution, and Arctic scientific cooperation. While there is no specific reference to human mobility in the context of disasters, climate change and environmental degradation, the increasing vulnerability of the Arctic, and the fundamental role of Indigenous Peoples and knowledge, positions this forum to further support and provide recommendations to ensure the empowerment and protection of people impacted.

The EU is a supranational political and economic union of 27 member states. Nordic countries have varying relations to the EU and its agreements. Norway

and Iceland are not members of the EU, though they are members of the European Economic Area agreement and Schengen Area. Denmark is an EU member, but it has specific opt-outs for the areas of single currency, EU citizenship, and justice and home affairs matters. Crucially, the opt-out of Justice and Home Affairs means that Denmark is not privy to nor does it take part in EU-level policies regarding immigration and asylum. Sweden is a member state of the EU, though it is not a part of the Eurozone. Finland is a full-fledged EU member state.

Within the EU context, there is no specific framework dedicated to human mobility in the context of disasters, climate change and environmental degradation.<sup>40</sup> The Temporary Protection Directive (2001/55/EC) establishes minimum standards for giving temporary protection to third country nationals who are not able to return to their country of origin.<sup>41</sup> EU institutions have been increasingly recognizing since 2013 the linkages between climate change, environmental degradation, disasters and human mobility. In the communication from the Commission on the European Green Deal, it is stated that “the EU will work with all partners to increase climate and environmental resilience to prevent these challenges from becoming sources of conflict, food insecurity, population displacement and forced migration, and support a just transition globally.”<sup>42</sup> Similarly, the 2020 EU New Pact on Migration and Asylum acknowledged that climate change has an impact on migration.<sup>43</sup> In 2022, the European Commission published a working document on *Addressing displacement and migration related to disasters, climate change and environmental degradation*, providing an overview and assessment of existing EU policies, instruments and practices.<sup>44</sup> In the European Parliament’s 2022 Resolution on human rights protection, and also the EU external migration policy, climate change and environmental degradation are recognized as drivers that amplify migration.<sup>45</sup> Since 1 July 2022, the EU took over the chairmanship of the PDD and will remain chair until 31 December 2023. During that period, Sweden held the Presidency of the Council of the EU from 1 January to 30 June 2023. As part of its presidency, Sweden held a presidency conference in May 2023 dedicated to displacement and migration related to disasters, climate change and environmental degradation.<sup>46</sup> The conference focused on the impacts of climate change on mobility patterns, on latest policy developments and on future policy action. The conference recognized on the one hand that “the negative perception of migration diffuses the potential of migration as a solution to some of the challenges of climate change”;<sup>47</sup> and on the other hand, “labour migration, creation of legal migration pathways, and circular migration could all be parts of the solution and essential in a green transition.”<sup>48</sup>

### *National level*

The present section provides examples of policies and legal frameworks relevant to human mobility in the context of disasters, climate change and environmental degradation from the different countries in the Nordic region. The sample chosen below is based on publicly available documents identified through desk review, including from the CLIMB database<sup>49</sup> and the Climate Policy Radar.<sup>50</sup>

In Sweden, the Swedish Aliens Act included the category that alternative protection could be considered when a “person otherwise in need of protection is an alien ... because he or she ... is unable to return to the country of origin because of an environmental disaster.”<sup>51</sup> However, the “protection category other persons in need of protection” was “suspended in 2016, and repealed in 2021.”<sup>52</sup> A Proposal of the Committee on the Future Swedish Migration Policy explained that the provision was repealed in order to eliminate overlap and align Swedish rules with international concepts.<sup>53</sup> Sweden’s Climate Policy framework indirectly mentions the human mobility nexus, stating that “coastal communities and small island states are threatened by sea level rise.”<sup>54</sup> The framework recognizes that adverse impacts of climate change can make “poverty reduction difficult ... and increase the risk of intensified conflicts.”<sup>55</sup> In the section “Changes in the world around us” in Sweden’s National Strategy for Adaptation to Climate Change, climate change is identified, albeit in a simplified manner, as an indirect driver for increased migration.<sup>56</sup> The strategy mentions that increased migration will lead to an increase in demand for integration measures and assistance. The Swedish International Development Cooperation Agency (SIDA) strategy for global development cooperation on sustainable economic development 2022–2026, reports that “involuntary migration and the number of displaced have continue to rise due to conflict, economic insecurity and climate change.”<sup>57</sup> SIDA also funds various programmes that undertake research and provide support for human mobility in the context of climate change, disaster and environmental degradation. Regarding DRR, the Swedish Civil Contingencies Agency (MSB) is the relevant agency. An MSB assessment report highlights that “migrants are considered in many aspects regarding translations and informal networks to provide risk communication.”<sup>58</sup> Similarly, while authorities are encouraged to consider migrants in their decision-making regarding recovery, rehabilitation and reconstruction, they are not actively invited to take part in the development of policies.<sup>59</sup>

In Denmark, the Aliens Act was amended under the ‘paradigm shift’ in which the Danish focus on migration moved towards temporary protection and early returns. The current Aliens Act states that residence permit decisions can take into account humanitarian considerations.<sup>60</sup> Denmark’s development cooperation strategy ‘The World we Share’ generally recognizes that millions of people can and will be displaced as a result of the impacts of climate change. It continues to state that “social tensions in developing countries increase when climate change causes soil degradation and increased pressure on water resources,” becoming possible triggers of displacement and irregular migration.<sup>61</sup> No mention of the human mobility nexus was found in Denmark’s 2020 Climate Act No. 965.<sup>62</sup> Similarly, the 2008 Danish strategy for adaptation to a changing climate does not acknowledge the nexus. Klimatilpasning, Denmark’s portal on climate adaptation from the Danish Environmental Protection Agency, announced that the government has recognized the need for a comprehensive climate adaptation plan and has initiated it.<sup>63</sup> As it currently stands, climate adaptation within Denmark remains the responsibility of municipalities. Although the 2020 Climate Act No. 965 did not mention it, the climate-human mobility nexus was, however, acknowledged in the 2020 Global

Climate Action Strategy. The strategy states that “climate change has the potential to roll back decades of development progress and intensify problems relating to poverty, inequality, migration and displacement.”<sup>64</sup> The strategy additionally claims that the green energy transition must occur in an equitable manner, to prevent further “climate-driven displacement and irregular migration.”<sup>65</sup> To ensure this, Denmark’s development cooperation is committed to specifically focusing on “ensuring access to clean energy and clean water for millions in Africa.”<sup>66</sup> Furthermore, the Strategy for Denmark’s engagement with International Organization for Migration 2023–2026 identified four areas of priority for engagement, one of them being “Addressing the linkages between climate change and irregular migration and forced displacement.”<sup>67</sup>

In Finland, the government generally recognizes climate change as a driver of human mobility. A 2020 government report on Finnish foreign and security policy recognizes that “climate change is also becoming a significant cause of migration forced by circumstance.”<sup>68</sup> In 2021, the government commissioned a study that led to the publication of the report ‘Climate Migration: Towards a better understanding and management.’<sup>69</sup> Critically, the report finds that more discussion of human mobility in the context of climate change, disaster and environmental degradation is warranted and action is necessary. Until 2016, Finland’s Aliens Act had a unique clause that allowed for “complementary protection based on climate change impacts.”<sup>70</sup> Despite that clause being repealed, there remain provisions that could be applied in these circumstances. For instance, Section 109 of the Aliens Act allows “temporary protection to a foreign national whose safe return to his or her home country is not possible due to ... an environmental disaster.”<sup>71</sup>

Finland’s 2022 National Climate Change Adaptation Plan acknowledges the non-linear linkage between climate change and human mobility. It recognizes that climate change, through “natural catastrophes” for example, does not only create but also reinforce human mobility. Additionally, it identifies that loss of livelihood opportunities due to decreased agricultural productivity can lead to human migration.<sup>72</sup> This recognition is negatively framed insofar as it connects migration to a decline in security conditions in Europe. Under Finland’s development policy and cooperation goals and principles it is identified that in the context of climate change “food insecurity, water shortage and poor sanitation are known to trigger migration.”<sup>73</sup> The nexus is acknowledged more specifically in a 2021 Ministry of Foreign Affairs of Finland ‘Report on Development Policy Across Parliamentary Terms.’ The report states that “climate change and biodiversity loss undermine the foundations of economic activity and have a significant impact on food and nutrition security as well as access to water and energy in many countries. They also increase forced and other migration.”<sup>74</sup>

In Iceland, Article 43 of the Foreign Nationals Act 2016 allows for discretionary measures for groups “who have not been deemed to be refugees but come from a country ... or from a region of natural disaster.”<sup>75</sup> Human mobility remains absent from Iceland’s 2021 Strategy on Adaptation to Climate Change<sup>76</sup> and Iceland’s Climate Action Plan for 2018–2030.<sup>77</sup> It is furthermore not included in a commissioned assessment on the “impacts of climate change on nature and society” as a

part of the Climate Action Plan.<sup>78</sup> Nor is it acknowledged in Iceland's policy for international development cooperation 2019–2023. It is stated that Iceland's government will “support local communities in areas suffering from emergencies.”<sup>79</sup>

In Norway, the Immigration Act does not include any specific clauses related to contexts of climate change, environmental degradation and disasters.<sup>80</sup> Despite this, the Norwegian Ministry of Immigration has acknowledged the importance of issuing “(possibly temporary) residence permits to applicants who come from an area affected by humanitarian disaster, including a natural disaster,” as stated in the proposition for a revised Aliens Act.<sup>81</sup> Norway's 2021 Climate Action Plan makes no mention of the nexus either. It is however generally referred to in Norway's climate adaptation plan, which states that “climate change also has a number of consequences such as poverty, hunger, resource conflicts and increased migration, which particularly affect vulnerable groups in developing countries and urban areas.”<sup>82</sup> The Norwegian Agency for Development Cooperation's (NORAD) strategy towards 2030 recognizes the complexity of the linkages between climate change and human mobility, highlighting that poor countries are affected disproportionately. NORAD's strategy states that “even today, far more people flee as a result of natural disasters and climate change than because of warfare and conflict.”<sup>83</sup> Furthermore, through NORCAP, global deployment roster funded by the Norwegian government, technical expertise including on disaster displacement and disaster risk reduction, has been provided.

## Findings

Recognition and integration throughout the different statements, frameworks and bodies varies based on the country and the policy forum, but remain general and limited and efforts insufficient. This chapter analysed statements across the latest international forums (that took place in 2022), latest regional communities frameworks and outputs, and national legal and policy frameworks. It finds that overall, the recognition of the interlinkages between human mobility and disaster, climate change and environmental degradation has increased throughout the years but remains limited. Most statements and frameworks analysed only include a partial reference, focusing mostly on only one of the many and varied interlinkages between human mobility and disasters, climate change and environmental degradation: the one understood as a driver of human mobility. This aligns with the findings of the baseline analysis report under the GCM for *Implementing the Commitments Related to Addressing Human Mobility in the Context of Disasters, Climate Change and Environmental Degradation*: “Efforts to address and minimize adverse drivers of human mobility have received greater attention as compared to other policy areas in relation to these issues, which also aligns with and reflects the current prevention-oriented priorities of international cooperation.”<sup>84</sup> In addition, in many cases, references to human mobility in the context of climate change are predominantly focused on movements outside the borders of the countries in the Nordic region.

Moreover, in the majority of statements, frameworks and bodies analysed, mobility was framed negatively, as being forced. The recognition of disaster displacement, sometimes referred to as “forced migration” in the context of climate change, is essential: these movements come with specific protection needs to highlight and address. Nevertheless, there is a gap in recognition on the one hand, in relation to the active role and integration of migrants and displaced persons in shaping and implementing solutions; and on the other hand, on recognition of other forms of mobilities in relation to disasters, climate change and environmental degradation (as seen for example with limited integration of planned relocation, labour migration and absence of references to transhumance and the role of diasporas). However, it is essential to recognize here the limitations of this chapter: the focus on migration management, disaster risk reduction and climate change policy fields based on international perspectives. At national level, further policy fields are of relevance to the integration of human mobility in such contexts that have not been considered here. However, this absence of recognition in the selected examples is at least a testimony to the limited policy coherence between the different policy fields. Furthermore, other levels of governance might be more appropriate to address these different forms of mobility, such as the municipal level as highlighted by the Nordic Conference on Climate Change Adaptation – which was also beyond the scope of this chapter.

References are general and not comprehensive in their framing and scope, constituting a barrier to addressing protection gaps of migrants and displaced persons and also a barrier to effective implementation of the commitments of countries from the Nordics region in relation to human mobility in the context of disasters, climate change and environmental degradation.

### **Conclusion and recommendations**

Nordic countries have contributed to the recognition of human mobility in the context of disasters, climate change and environmental degradation. Traditionally, Nordic countries have been important supporters of the recognition of these interlinkages and have contributed to putting it higher on the agenda of international policy forums. Recent developments following elections in several countries in the region might create changes that authors do not foresee yet.

It was beyond the scope of this chapter to undertake an exhaustive systematic analysis of all relevant policy and legal frameworks and their implementation. It has set some groundwork for a more exhaustive and systematic analysis, which the authors highly recommend. It was also beyond the scope of this chapter to describe the current and future patterns of human mobility within Nordic states, although it is well-known that climate change, disaster and environmental degradation are leading to various forms of human mobility within the region. Nevertheless, based on the present overview, first findings highlight that within Nordic countries policies, strategies and commitments, human mobility in the context of disasters, climate change and environmental degradation – both internationally and



internally – is on the one hand very limited in its integration, as a majority of the policies, strategies and statements analysed make a short reference to it, and on the other hand, very limited in its framing as it is mostly one that focuses on climate change as a driver of movement. Furthermore, its integration often perpetuates an understanding of human mobility that is mainly negative, both as it focuses on forms of human mobility that increase vulnerability and as it often tends to portray these movements through a securitization framing. In addition, there is a clear focus of addressing these movements only as they are external to their territories, rather than within them.

However, Nordic Countries are signatories to the GCM, the Paris Agreement, the Sendai Framework and other relevant instruments of politics and law, and as such, need to uphold their global commitments and support implementation of those frameworks. An essential action remains the reduction of greenhouse gas emissions. The below six recommendations propose examples of ways forward to support the implementation of these global commitments with a comprehensive integration of human mobility in the context of disasters, climate change and environmental degradation.

- On finance: To support people and communities most affected and effective interventions related to human mobility in these contexts, Nordic countries need to scale up sustainable and predictable finance through the diversity of financing instruments and mechanisms that exist. This diversity of instruments and mechanisms include development, humanitarian, risk reduction and climate funds – from adaptation and loss and damage.
- On national adaptation plans: as also in Nordic Countries, “national governments must have an updated national adaptation policy and action plan that takes a cross-sectoral approach to lead and ease decision making at national and sub-national levels of governance”<sup>85</sup> and as they are advancing their national adaptation plans, this provides an opportunity to integrate a more comprehensive understanding of human mobility in the context of disasters, climate change and environmental degradation. The implementation of the supplement to the UNFCCC Technical Guidelines on the National Adaptation Plan (NAP) Process on Addressing Human Mobility-Related Challenges and Opportunities in the Context of Climate Change can provide some support as they do so. Several countries are already piloting the supplement to support the integration of human mobility in their NAP.<sup>86</sup> This would provide a ground for cross-regional knowledge exchange and learning.
- On planned relocation: while examples of planned relocation can be found in Nordic countries, there still needs to develop national and local frameworks on planned relocation, ensuring community-based decision making to guide appropriate interventions.<sup>87</sup> Several countries,<sup>88</sup> including in the Pacific, have already developed policy frameworks dedicated to planned relocation processes at national level. This would also provide a ground for cross-regional knowledge exchange and learning.

- On safe and regular labour migration pathways: in the context of international movements, safe and regular labour migration pathways respectful of human rights provide a way to support migration as an adaptation strategy. It also provides an opportunity to address workforce shortage in the Nordic countries and could contribute to further remittances that could allow the development of climate adaptation strategies in the country of origin.
- On implementation with local level of governance: local authorities are “key to building a consensus around adaptation responses,”<sup>89</sup> including in relation to the movement of people in the context of disasters, climate change and environmental degradation. Further support local governments in designing inclusive urban policies, as well as to support to guide and accelerate local, national, regional and global responses in cities in line with initiatives at the international level, in particular the Mayors Migration Council (MMC), the C40 Cities Climate Leadership Group and the Intercultural Cities Programme (ICC) of the Council of Europe.
- On a whole-of society approach: as per the guiding principle (j) of the Global Compact on Migration on a whole-of-society approach, it is essential to promote broad multistakeholder partnerships to address migration in all its dimensions by including relevant stakeholders in migration governance. Amongst others, the implementation of global commitment needs to particularly take into account the inclusion of migrants, diasporas, youth organizations and Indigenous People of the region in decision-making processes and solutions.

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### 3 Shifting status

#### Nordic countries and norm entrepreneurship after the overturning of disaster-related mobility provisions

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##### **Introduction**

Nordic countries as a whole, and Scandinavian countries more particularly, have long served as an ‘aspirational model’ in international law and domestic politics alike, to such an extent that Francis Fukuyama coined the expression ‘getting to Denmark’ to refer to an idealised, well-functioning polity.<sup>1</sup> Four areas in particular set Nordic countries apart: (i) a geographic space steeped in peace which has bred generations of high-level diplomats and generally cultivated neutrality since Napoleonic times, (ii) a tendency towards consensus between opposing political and social forces, (iii) great institutional stability, backed by a tradition of transparency and little corruption, and (iv) an ability to reconcile capitalist models with egalitarian, high-functioning social security systems.<sup>2</sup> Within the international community, this has translated into a vision – both imposed upon and claimed by these countries – of the Nordics as ‘moral superpowers’, ‘norm entrepreneurs’, even ‘humanitarian activists’.<sup>3</sup> For decades, then, ‘[Nordic states] appear to have consistently given greater weight to overtly normative and ethical considerations in the formulation and conduct of their foreign and security policies than most other developed states’.<sup>4</sup>

This external side of Nordic normative engagement is the one under study here, with regard to disaster-related mobility. There are indeed several dimensions to disaster-related mobility in the Nordic region, including in regard to indigenous peoples, lands and resources, but also national perceptions of the effects of climate on mobility, both at home and abroad. This chapter builds on innovative policy provisions aimed at people displaced across borders in the context of disasters to take a broader look at Nordic foreign policy shifts and their consequences.

That Nordic countries would be the first to develop such provisions, after the notion of ‘environmental refugees’ first appeared in international literature in a 1985 United Nations Environment Programme (UNEP) report, does not come as a surprise based on the above.<sup>5</sup> What has been more surprising is their repeal, and the assorted hardening of immigration policies in a region which has been publicising itself as ‘humanitarian, pro-human rights and inclusive societies’.<sup>6</sup> Why overthrow innovative policy provisions which could at least provide an avenue for reflection on potential solutions to an issue the importance of which is slated

to grow? Why give up on attempts at standard-setting in order to fall in step with a supranational body – the European Union (EU) – the authority of which Nordic countries have always retained a measure of wariness towards? Why move so far from what these countries are ‘good at’, and which provides the basis for their nation brand? This chapter aims to address the above questions through the lens of foreign policy repertoires, on the one hand, and Scandinavian legal realism, on the other, in an attempt to understand recent evolutions of Nordic foreign policy, and to determine whether these signal a shift in the Nordics’ status as norm entrepreneurs.

### *Humanitarian assistance and development cooperation*

Nordic foreign policy has been characterised for the past decades by a commitment to internationalism, understood within the tenets of the English School of International Relations. In this acceptation, states are structured in an ‘international society’, bound by common values and a common sense of rules. According to political philosopher Peter Lawler, Nordic countries are more precisely embedded within the ‘solidarist’ wing of the English School, which considers

members of international society as having an ethical obligation to address questions of universal human rights, global economic and social injustices, and, most controversially, to contemplate breaching the principle of non-intervention — traditionally seen by the English School as a cornerstone of a pluralist international order — in the name of emerging universal norms.<sup>7</sup>

A demonstrated commitment to a rules-based world order, under the aegis of the United Nations (UN), sustained efforts towards conflict resolution and the steady provision of Overseas Development Assistance (ODA) have resulted. On this last point, Nordic efforts are particularly salient: Denmark, Norway and Sweden are some of the very few member states of the Organisation for Economic Co-operation and Development’s Development Assistance Committee (OECD-DAC) to have consistently reached and exceeded the target of 0.7% GDP in ODA since 2000, a contribution the quality of which was also noted,<sup>8</sup> and made all the more notable by the Nordics’ limited colonial history compared to Western Europe, which could have been used to shirk any associated moral obligations. They have, however, built their own moral obligations – steeped in the tenets of Protestantism – to such an extent that their ‘doctrine of aid’ acquired a status of ‘quasi-national ideology’.<sup>9</sup> Denmark, Norway and Sweden have all been members of the Executive Committee of the United Nations High Commissioner for Refugees (UNHCR) since the early 1950s; in 2011, the agency’s then High Commissioner, António Guterres, referred to Sweden’s asylum system as ‘one of the best and most stable (...) in the world’.<sup>10</sup> Furthermore, numerous non-governmental organisations (NGOs) benefitting from public subsidies have sprung up in the region in the first half of the twentieth century, including DanChurchAid and the Danish and Norwegian Refugee Councils. These organisations promote and widely share their home countries’



humanitarian stance and human rights principles, working in up to 40 countries worldwide throughout Africa, Asia, Europe, Latin America and the Middle East.<sup>11</sup>

### *Innovative responses to cross-border disaster displacement*

Beside their focus on humanitarian aid and development, the Nordics have also played a pioneering role in bringing environmental concerns to the fore at the international level: in the early 1960s, building on marine biologist Rachel Carson's book *Silent Spring* about the use of pesticides, Norwegian philosopher Arne Næss coined the term 'deep ecology', linking together the safeguarding of the environment with pacifism. By the late 1960s, the Nordic Council held the Nordic Conference on Soil and Water Pollution, and in 1970, the Liaison Committee on Environmental Issues (*Kontaktorgan för miljövårdsfrågor*) was created, with representatives from Denmark, Finland, Norway and Sweden. The first United Nations Conference on the Human Environment, which notably resulted in the creation of the UNEP, took place in Stockholm in 1972, while the Helsinki Treaty (1974)<sup>12</sup> established environmental cooperation as an essential area of Nordic cooperation.<sup>13</sup> Nordic countries also began to adopt triennial Environmental Action Plans in 2005.

It is therefore not surprising that when concerns about climate-related displacement began to emerge in the mid-1980s, as the link was made between population flows and human activity—climate change in particular—it was two Nordic countries, together with Italy, which pioneered innovative legal provisions aimed at protecting people displaced in the context of disasters and climate change: Sweden in 1989, Italy in 1998,<sup>14</sup> and Finland in 1999. The Finnish provision allowed for the issuance of a residence permit to non-citizens present in Finland, ineligible for asylum or subsidiary protection but unable to return to their country due to 'an environmental catastrophe or a bad security situation'.<sup>15</sup> The Swedish Aliens Act, for its part, considered a 'person otherwise in need of protection' to be, *inter alia*, someone 'unable to return to the country of origin because of an environmental disaster'.<sup>16</sup>

Denmark had also introduced the possibility for non-citizens who did not fall within the provisions of the 1951 Convention, or did not risk the death penalty, torture and other inhuman or degrading treatment upon return to their country of origin, to be granted asylum if 'essential considerations of a humanitarian nature conclusively [made] it appropriate'.<sup>17</sup> Furthermore, Denmark created a 'survival criterion' (*overlevelseskriteriet*) used to grant refugee status to single women and families with young children coming from areas where living circumstances were considered particularly precarious, for instance where there was famine.<sup>18</sup>

In 2007, the Norwegian Ministry of Immigration had recognised the necessity to be able to bestow a protection to asylum-seekers from an area hit by a humanitarian disaster, which encompassed natural disasters, although this was not explicitly integrated into Norwegian law.<sup>19</sup> Finally, in 2012, Norway teamed up with the Swiss government to launch the Nansen Initiative on Disaster-Induced Cross Border Displacement, a 'state-led, bottom-up consultative process intended to build

consensus on the development of a protection agenda addressing the needs of people displaced across international borders in the context of disasters and the effects of climate change'.<sup>20</sup> Following results from the consultative process in 2015, Nordic countries including Denmark, Finland, Norway and Sweden endorsed the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change (the Protection Agenda), aimed at bridging the gap between different policy areas to build international instruments fit for the future.<sup>21</sup>

Hence, Nordic countries have built a strong nation brand on this self-image of virtuous international actors. Researcher in Nordic Studies Carl Marklund defines the nation brand as 'the image of a given country's economic, political and social system', used both in relation to other countries and as a 'sense of orientation and direction of the citizenry in this country itself'.<sup>22</sup> As such, it has repercussions for domestic and geopolitical policies alike. In this perspective, Nordic innovative provisions pertaining to disaster displacement may be seen as part of a broader trend seeking to influence European – and international – policies. Further examples include Danish efforts on counter-piracy and the operationalisation of the Responsibility to Protect (R2P) doctrine,<sup>23</sup> or the Nordic Passport Union, formalised between 1954 and 1957, which largely predated the similar and larger-scale endeavour for the free movement of persons that is the Schengen Area.

### Foreign policy repertoires

Finland and Sweden's recent repeal of these innovative legal provisions<sup>24</sup> and the signature of Denmark's Memorandum of Understanding with Rwanda on asylum externalisation, which Danish authorities hope to strengthen with a diplomatic deal,<sup>25</sup> therefore illustrate a marked shift away from what has long been the core of Nordic foreign policy and identity. Such a shift is interesting to study from the angle of foreign policy repertoires.

The notion of repertoires originated in anthropology with the Swedish scholar Ulf Hannerz, but it was the American sociologist Charles Tilly who seized on the concept and brought it into common usage. Repertoires, he writes, 'vary from place to place, time to time (...). But on the whole, when people make collective claims they innovate within limits set by the repertoire already established for their place [and] time'.<sup>26</sup> Tilly mostly used repertoires within the field of contention and social movements but his definition of repertoires is broad and compelling enough to have been reused multiple times as a means of analysis. There are, for instance 'cultural repertoires',<sup>27</sup> 'interpretative repertoires',<sup>28</sup> 'collective village repertoires'.<sup>29</sup>

At its core, a repertoire is a 'toolkit',<sup>30</sup> 'ways of doing things',<sup>31</sup> which build identity through actions and performances, 'material and social' means available to populations and States alike.<sup>32</sup> Repertoires are largely contextual and time-bound in that they vary from place to place and incorporate diverse factors, such as historical and technological evolutions, which influence their course. Above all, they 'draw on the identities, social ties, and organizational forms that constitute everyday social life'.<sup>33</sup> As a result, a given state's policy choices are both informed and constrained by the way it has constructed, organised, and defined itself.

The positioning adopted by Nordic countries within the multilateral system is highly reminiscent of repertoires in its contextual nature. First, these countries' 'geographical marginality'<sup>34</sup> from Europe's core has required carefully crafted posturing allowing for more or less engagement from the margins inwards or outwards. Second, the power disparity affecting Nordic countries as small states, which, to be balanced, requires engagement with international fora, and, generally, 'support[ing] the drafting of binding international law as a means for international peace and cooperation'.<sup>35</sup> Third, there is a special approach to international relations focused on the adoption of a humanitarian lens to international law, human rights and peace promotion, which emerged after the Second World War. This approach can itself be linked back to the Nordics' marginality since, according to Wæver and Kristensen, 'the Scandinavian IR discipline started out with a strong focus on peace studies and a deep-felt criticism of power politics'.<sup>36</sup> In the early days of the twentieth century, building a posture of neutrality and having it recognised by great European powers, in exchange for territorial integrity, became something of a non-choice for the Nordic countries, largely excluded from the Concert of Europe.<sup>37</sup> Accordingly, Nordic countries have developed the foreign policy repertoires the tenets of which have previously been described. The following turns to their evolution.

#### *Variation within (Nordic) repertoires*

There is indeed room for variation within a repertoire, along a spectrum ranging from non-existent to rigid. It can be assumed that Nordic countries fall within the scope of rigid, or strong, repertoires, in that these prevail in 'routinely operating regimes with relatively stable governments'.<sup>38</sup> The degree of flexibility influences the probability of repetition: the stronger, or more rigid, a repertoire, the higher the probability of repetition. The relative political stability of Nordic regimes since the early twentieth century therefore goes some way towards explaining their deeply entrenched foreign policy positions and general international posture, which only Denmark departed from with its military involvement in the wars of Iraq and Afghanistan from 2001 onwards. Although Denmark was already militarily involved in the Balkans in the 1990s, Henriksen notes that its military activism was 'of a much more potent character'<sup>39</sup> post-2001, signalling an important shift in the repertoire. Granted, the decision to support the US-led intervention in Afghanistan was taken during the mandate of a government headed by the Social Democratic Party. However, in the 1998 general election, which brought that government to power, the new Danish People's Party made a successful electoral debut, winning the same number of seats as the 1959-founded Socialist People's Party. In November 2021, for the first time since the beginning of the modern Danish democratic system in 1901, a coalition of right-leaning parties secured an outright majority in an election that also saw the failure of the Social Democrats to win the most seats in parliament for the first time since 1924.<sup>40</sup>

This internal political shift was considerable enough to warrant a significant departure from a tried-and-tested approach to international relations and foreign

policy, to the extent that the decision to send Danish troops to Afghanistan was taken jointly by the incumbent and future governments a month prior to the general election. The United States was notified of Danish involvement two months before the Danish parliament was due to vote on it, and with minimum consultation from the Danish Foreign Policy Committee.<sup>41</sup> Securing public support for such a costly war, and such a break from a secular tradition, did require the Danish government to spin a narrative linking Denmark's interests with its longstanding values, as well as a rapid upgrading of its institutional capabilities where international law, and the law of armed conflict more particularly, were concerned.<sup>42</sup> This focus on international law was perhaps the only facet of this decision in keeping with the usual repertoire, although it served to justify an action that was far removed from it. According to Henriksen, this was Denmark signalling that 'the fulfilment of international obligations was a core priority' in order to 'preempt any harm that would be done to the strategic narrative that had been built to justify [its] wars'.<sup>43</sup> Such was the logic behind the country being one of only three states that publicly made a case for a right to humanitarian intervention without a UN mandate, or behind the concerted efforts to operationalise the R2P doctrine.

The Danish example is interesting to contrast with Tilly's claim that 'rapidly shifting threats and opportunities (...) generally move power-holders toward rigid repertoires and challengers toward more flexible repertoires'.<sup>44</sup> In this case, power-holders actually moved *away* from a rigid repertoire and *towards* a more flexible one, together with their challengers. It also contrasts with the perception of repertoires as 'relatively resistant to systemic changes' because of path-dependency on the one hand – that is to say, the ecosystem of ways of and instruments for doing things they have developed a certain expertise in – and because of the centrality of repertoires for States' ability to communicate their identity externally on the other hand.<sup>45</sup> In the case of Nordic countries, the departure from a shared repertoire by one of them is highly surprising in that these countries have consistently used Nordicness as a tool of differentiation in relation to other bigger international players, but also from one another. Indeed, falling back on Nordicness, or the Nordic repertoire, provides a strong backdrop against which to develop 'niche strategies' – and these are plentiful where the Nordics are concerned.

The Swedish Institute's *Sverigebylden 2.0*, a document aimed at redefining Sweden's image,<sup>46</sup> therefore puts forward 'Made in Sweden', 'Equality', 'The open society', 'Openness and engagement in the global village', 'Freedom and security', and 'Sustainability' as examples of Swedish progressivity. It highlights how 'Our positive experiences of change allow us to trust in the future and trust that development is fundamentally positive'. Finland surfs on its repeated ranking as 'the happiest country in the world' and has dedicated a significant share of the Ministry for Foreign Affairs website to pages such as 'this is FINLAND (things you should and shouldn't know)' and its regularly updated 'Finland Toolbox' of shareable multimedia material aimed at promoting the country.<sup>47</sup> Norway continues its active engagement in peace processes, lately in Afghanistan, Colombia and Venezuela, and Iceland regularly makes headlines by ranking first for gender equality.<sup>48</sup> Without the Nordic brand, it becomes much less easy for any of these countries to take a

significant stand on the world stage. So far, they have been able to stand out because they were part of a recognisable group in the first place.

For this reason, the repeal of both Finnish and Swedish disaster-related displacement provisions<sup>49</sup> is noteworthy. In Sweden, the provision was first suspended in 2016, a decision which came on the heels of a U-turn in immigration policy, but which can also be explained by the fact that it was hardly ever used: only 7 of the approximately 200 cases of individuals applying to enter or remain in Sweden on disaster-related grounds led to the grant of a residence permit, revealing ‘a pervasive lack of engagement by executive and judicial decision-makers with the disaster-related aspects of claims’ but also a very small number of applications.<sup>50</sup> Both countries had also previously expressed doubts about the appropriateness of such a provision, on the premise that humanitarian provisions could suffice in the case of disaster-related displacement. It may also be the case that these provisions did not constitute best practice, and that solutions to disaster-related displacement may be more effective if they are more clearly distinguished from other forms of international protection.<sup>51</sup> Their repeal, however, very much breaks with previous tradition.

Why, then, this sudden evolution of successful repertoires into previously uncharted territory? Part of it has to do with the very nature of repertoires: Tilly observes that these tend to weaken in ‘periods of rapid political change and clashes of previously insulated political traditions (...) as the ordinary preference for familiar (...) routines dissolves in spurts of innovation’.<sup>52</sup> Paradoxically, in the case of the disaster-related provisions at issue here, it is the innovations themselves which have dissolved along with familiar routines. This tension was also noted above, when discussing Tilly’s claim about the change in repertoires from power-holders and their challengers. Here, the paradox lies in that move from rigid repertoires, whose contents actually were on the innovative and flexible side, to a more flexible repertoire whose contents turns to rigidity.

### *Challengers and third wave populism*

The role of challengers then comes into full play: according to Tilly, they operate within Political Opportunity Structures (POS), that is to say, ‘a specific environment of political opportunities and threats’.<sup>53</sup> Within these, he includes:

- (a) the multiplicity of independent centers of power within the regime, (b) the openness of the regime to new actors, (c) the instability of current political alignments, (d) the availability of influential allies or supporters, (e) the extent to which the regime represses or facilitates collective claim-making, and (f) decisive changes in (a) to (e).<sup>54</sup>

Among these, points (b) and (c) in particular are relevant to Nordic countries. Regarding the openness of the regime to new actors, it is necessary to take a step back to the onset of democracy in the Nordic region, in Scandinavia specifically, in the nineteenth century. According to the Swedish historian Sven Lundkvist, it

was the combination of social and political trends which brought on the advent of democracy, through the free church movement (*frikyrkorörelse*) – including the temperance dimension (*nykterhetsrörelse*) – the national awakening (*väckelse*) – including the Grundtvigian movement in Denmark and the apparition of folk high schools (*folkhögskolor*) – and the labour movement (*arbetarrörelse*).<sup>55</sup> The latter were especially important in forming the liberal agrarian parties, which built lasting alliances with social democracy. The early political representation of peasants was crucial in shaping centrist parties, thereby limiting the radical left/right dichotomy structuring many other political systems and giving Scandinavian politics its colours for most of the twentieth century.<sup>56</sup> For the most part, indeed, the Danish, Norwegian and Swedish systems stabilised around five main types of parties: on the left, a social-democratic party and a more radical, minor formation; at the centre, a progressive party and a centrist party; and on the right, a conservative, liberal-leaning party. The situation of Finland and Iceland was different, with fewer parties competing for power, and much less space for social-democracy in both.<sup>57</sup> As a result of this state of play, the main new actors to emerge were the anti-establishment, disruptive forces of populism, in three waves.<sup>58</sup>

Interestingly, despite its differing profile, Finland was part of the first ‘agrarian populist’ wave, with the creation of the first Nordic populist party in 1959. The Finnish Rural Party (*Suomen Maaseudun Puolue*, SMP) leaned on a mostly rural voter base and campaigned on an anti-establishment platform with leftist socioeconomic policies and conservative values.

It was followed by Denmark, where the Progress Party (*Fremskridtspartiet*) was created in 1972, and Norway’s own Progress Party (*Fremskrittspartiet*, FrP) in 1973. Both iterations were borne of anti-taxation protests, and both entered Parliament less than a year after coming into being, gaining four seats in the *Storting* and 28 in the *Folketing*, making the Danish Progress Party the second-largest political force. The 1973 general election in Denmark earned the name ‘Landslide Election’ (*Jordskredsvalget*), in light of the five new or previously unrepresented parties that won seats in Parliament.<sup>59</sup> These examples therefore confirm point (b) of political opportunity structures, namely, that the Scandinavian regimes were open to new actors, or at least that their democracies were robust enough to make room for them, despite their lack of alignment with traditional, well-established forces. They also feed into point (c), that is to say, the instability of political alignments.

The breakthrough by the Danish Progress Party was the first instance of a sudden rise in electoral volatility, which, according to Aucante, signalled the entry into a new era of political instability in the country. In Norway, the FrP also went from strength to strength from the late 1990s onwards, becoming the country’s second-strongest party in 2001 with 22% of the vote, a result it obtained again in 2005.<sup>60</sup> It reached government in 2013, as part of a coalition with the Conservative Party.

Finally, Sweden, despite long being a European exception with no potent right-wing populist parties to speak of,<sup>61</sup> has in the past few years seen a significant breakthrough by the right-wing populist party Sweden Democrats (SD). SD was formed in 1988 but its background in neo-Nazi movements led to a ‘cordon

sanitaire’ approach to the party.<sup>62</sup> SD’s ‘de-demonisation’ took the better part of 15 years, starting with leader Mikael Jansson’s efforts to distance the party from its extremist elements, prior to its election to Parliament in 2010. It became Sweden’s third-largest party in 2018, the second in 2022. On this occasion, SD also defeated the incumbent Social Democratic Party, and made Prime Minister Ulf Kristersson the first Swedish head of state to depend on the support of a far-right party.<sup>63</sup> Furthermore, Sweden has navigated a period of political instability since 2021, with the resignation, re-election and new resignation of Prime Minister Stefan Löfven, followed by the appointment, resignation and re-election of his successor, Magdalena Andersson, in the span of five months, prior to the election of Kristersson less than a year later.

The current populist parties in the Nordic region are successors to the original anti-establishment parties described above: in Finland, the Finns Party replaced the SMP in 1995 as a radical right-wing party and entered government as part of a coalition in 2015. In Denmark, the Danish People’s Party (*Dansk Folkeparti*, DF) also took over the Progress Party in 1995, running on an anti-immigration and EU-sceptic platform. In Sweden, the new version of SD campaigns on socially conservative nationalist and anti-immigration issues since 2011. Norway’s FrP, with its 45-year lifespan and seven years in government, is the longest-surviving populist party in the Nordic countries.<sup>64</sup> Hence, not only do all four Scandinavian regimes face the same type of challenger in the guise of right-wing populist parties, these also have arisen within similar political opportunity structures, whereby strong democratic regimes allowed their emergence and participation in political life, with three of these parties becoming part of governmental coalitions since 2013.

Herkman and Jungar note that Nordic populist parties really became successful once they shifted their focus to a staunch anti-immigration stance in the 1990s, and even more so in the twenty-first century, though they did retain the socioeconomic centrist positions on which the Progress Parties were originally founded. As a result of their significant place in Nordic politics, these parties have been able to influence the issues under discussion, with immigration becoming increasingly salient, particularly in Scandinavia. Regardless of the ease (or lack thereof) with which these parties were able to insert themselves into their own national political landscapes, all four were eventually able to influence policy-making, or at least, agenda-setting.<sup>65</sup>

Denmark best illustrates this shift. During the two periods where the Danish People’s Party supported centre-right minority governments, immigration and migration policies ‘transformed radically’, to such an extent that even when they subsequently did not hold as much sway in Parliament, more mainstream parties had already shifted their position on such issues to be closer to the People’s Party’s.<sup>66</sup> When the liberal right party Venstre<sup>67</sup> was in power in the early 2000s, the granting of social welfare benefits to immigrants had been suspended. When Mette Fredriksen’s Social Democrat government was in power, the Prime Minister reached out to Kristian Thulesen Dahl<sup>68</sup> and proposed or avoided to oppose laws falling outside the remit of the traditional body of social-democratic ideology.<sup>69</sup>

Sweden has gone through a similar evolution, with the former Social Democrat Löfven government introducing major and swift changes in its immigration policies since 2015. Sociologist Grete Brochmann underlines how the government introduced border controls and aimed at converging towards the EU's most restrictive policies, although she saw such moves as temporary in the face of the so-called refugee crisis.<sup>70</sup> In June 2021, however, Löfven's government passed a new law hardening the conditions for obtaining permanent residence for asylum-seekers and their dependents.<sup>71</sup> A clearly stated aim of the 2015 Swedish U-turn, directed in the first place at giving the national asylum system 'a breathing space', was to pressure other EU Member States into assuming more responsibility for asylum-seekers, in a sort of 'negative' norm entrepreneurship, begging the question of why would 'more restrictive rules in Sweden (...) convince other countries to move in a more generous direction'.<sup>72</sup> This policy shift did result, however, in the adoption of further restrictive measures by Sweden's neighbours, which in turn were used to justify the U-turn,<sup>73</sup> illustrating the knock-on effect the third wave of populism had in the region.

Nordic countries certainly are not the only ones to have seen the emergence of right-wing populist electoral challengers in recent years, nor are they the only states for which mainstream parties instituted a shift towards more hardline policies as a result. What is peculiar is that Nordic countries' status and branding as norm entrepreneurs, as well as their citizens' longstanding attachment to social democratic values, would allow for such a shift, especially one aimed at aligning with the EU's policies. Indeed, integration in the Union has never ceased to be a contentious issue for the Nordics, eliciting 'a high level of public antipathy',<sup>74</sup> and they have always strived to retain a measure of independence: Iceland and Norway are part of the Schengen area but outside the EU; none of the countries is part of the Eurozone, save for Finland; Denmark holds opt-outs from EU policies – overall, Nordic approaches to the EU are marked by 'differentiation'.<sup>75</sup>

### **Scandinavian legal realism**

Another explanation for the evolution of successful and innovative repertoires, although an indirect one, can be found in the legal aspect of foreign policy, and in the Scandinavian realist approach to law. Nordic legal systems are founded on legal positivism, in which the law depends entirely on social facts, and has no systematic connection to morality. What is termed 'Scandinavian legal realism' is an added rejection of moral absolutism, where it is considered that moral values should not be part of legal thinking: a 'less formalistic and more pragmatic' approach.<sup>76</sup>

This school of thought has indeed repeatedly been used to explain Nordic countries' reluctance to 'domesticate' international law, to the point of 'almost completely revers[ing] their traditional pioneering role and becom[ing] instead reluctant or even outright obstructive vis-à-vis international law'.<sup>77</sup> More broadly, the phenomenon is known as 'Nordic exceptionalism', and encompasses a majoritarian conception of democratic government, whereby little judicial control is



exercised over the legislative branch of government.<sup>78</sup> Here, we will understand Nordic exceptionalism to reflect a particular approach to international law, which is seen to occupy an ‘elevated position’ as a ‘universal commitment to peace and international cooperation’,<sup>79</sup> but which results in a pervasive reluctance to embed international law in domestic legislation. The lack of domestication is clearly illustrated by the very low likelihood of Nordic countries referring to the European Court of Human Rights in national law, that is to say that the Nordics hardly ever rely on European human rights case law in their decisions. This in turn creates ‘confusion in [engagements] in the area of human rights’,<sup>80</sup> but also supposes a complicated relationship with supranational regulation in terms of international and European law.

Because Scandinavian realism is characterised by pragmatism, the natural law origins of international law sit uneasily with the matter-of-fact nature of national law, to the point of being irreconcilable.<sup>81</sup> Texts are taken to strictly limit interpretation, which in turn prohibits the introduction of moral values within legal thinking.<sup>82</sup> Clearly, then, Nordic countries assume a dual role with regard to international norms, where they are staunch promoters of these norms, albeit outside of their borders. They have long done so: they had joined the European Convention of Human Rights in the early 1950s, however, ‘it soon became clear that the Convention was mainly for external consumption and not directed at these countries themselves’.<sup>83</sup> Certainly, Nordic countries cannot be said to have a poor track record where human rights are concerned, as they consistently rank at the top of the Human Freedom Index.<sup>84</sup> However, Human Rights Watch notes that they remain ‘inconsistent in practice’, though the criticism is more targeted at their lack of country-specific leadership, rather than human rights shortcomings. The organisation sees signs of improvement in Iceland’s engagement with the Philippines and Saudi Arabia on human rights issues, and in Finnish support to the creation of an investigation in Libya by the Human Rights Council.<sup>85</sup> Furthermore, Norway awarded its Nobel Peace Prize to Chinese dissident Liu Xiaobo in 2010, and Sweden did the same with its PEN award to dissident Gui Minhai in 2019.<sup>86</sup> Nevertheless, the above constitute engagement with human rights issues externally rather than domestically.

Nordic ODA, discussed earlier, is an illustration of the Nordic preference to influence rather than be influenced, in that it is chiefly driven by ‘an ideological commitment to global welfare as a “logical extension” of the Nordic emphasis on “social solidarity at home”’, rather than by strategic and economic concerns.<sup>87</sup> Denmark’s justification of its restrictive immigration policies through a redistributive logic – the funds would be better spent helping individuals within their own countries, to avoid the necessity of migration in the first place – falls within that same logic of avoiding domesticating issues (and norms) and tackling them externally. This logic has led to Denmark’s attempt to externalise its asylum obligations to Rwanda, prompting a response from the UNHCR denouncing the country’s bid to ‘evade responsibility’.<sup>88</sup> Although Nordic countries had reservations about domesticating international norms for a while by then, such reservations had not previously stood in the way of their foreign policy repertoires, nor of their status as norm entrepreneurs. If anything, they had rather managed to build on their relative

distance from the multilateral normative order to carve out a niche for themselves, from which they emerged in a position of strength as ‘reliable, responsible and recognizable’ foreign policy actors.<sup>89</sup>

### *A pragmatic approach to norm entrepreneurship*

Norm entrepreneurs take on a key role within the process of ‘identifying issues and changing global moral conditions’. Importantly, political scientist Jeremy Moses highlights that norm entrepreneurs’ role is carried out within ‘a field in which nothing is permanent or secure’,<sup>90</sup> which is reminiscent of the ‘periods of rapid political change’ when, according to Tilly, repertoires tend to weaken. What is interesting here is that Nordic countries were able to develop their status as norm entrepreneurs, and maintain rigid foreign policy repertoires, within such an impermanent field for so long. This begs the question, then, of what changed for these countries previously so consistent in their nation branding. The answer might require a change of perspective: what matters is not so much what makes a norm, but who makes it. A principle, whatever its nature, can become a norm if ‘governors’, or figures of authority, make it so. In this case, norms do not have to be liberal as long as the governor obtains buy-in from their constituency; they could be populist racist, nationalist or sexist – arguably ‘bad norms’, but norms all the same. As Moses astutely points out:

why should we expect empathy and altruism from a norm entrepreneur? Why, indeed, could a norm entrepreneur not be self-seeking, or at least promote a norm that favours one group at the expense of another?<sup>91</sup>

He also highlights that normative theorists who espouse global norms provided that they rest on liberal principles ‘seek to abandon the controversies of a natural law foundation, but at the same time claim that there is a natural tendency to favour norms that are universal and empathetic’.<sup>92</sup> Viewed through this lens, perhaps the Nordic approach to norm entrepreneurship is the most coherent after all: following the Scandinavian realism school, they create their norms through a pragmatic approach, removed from those natural law controversies, and steeped in the authority derived from a sovereignty that they jealously guard, as we previously touched upon. The lawyer and philosopher Carl Schmitt further entrenches this logic when discussing actors who speak and act on behalf of ‘humanity’, and his demonstration that, in the words of philosopher Jacques Derrida, ‘imperialist states with a human or humanitarian face are still in the order of the political, are still doing politics in the service of their state interests’.<sup>93</sup> In this light, when a state’s interests change, so does its humanitarian face, which points to the conclusion that Nordic countries’ status as ‘humanitarian activists’, though it has been long lived, is not in fact part and parcel of their identity, but a tool which has served to establish their position in the multilateral order over a certain period, and which may well be abandoned in favour of another tool if it has stopped to serve its initial purpose. There might then be space for norm entrepreneurship to fit within a mindset

consistent with Scandinavian realism, in that norm entrepreneurs are portrayed as being ‘extremely rational’ and ‘sophisticated in their means-ends calculation’, with the important caveat that these rationality and calculations must further liberal principles.<sup>94</sup> In issuing norms which fall outside the scope of these principles, Nordic countries therefore risk being no longer considered rational actors, in an environment in which the formulation of ‘moral’ norms is favoured, with the correlation being made between ‘the normative order of law’ and ‘the order of reason itself’.<sup>95</sup> In turn, this could lead to Nordic norm entrepreneurship losing its wider influence and aspirational quality. Ultimately, this raises the question of whether Nordic countries could still be labelled norm entrepreneurs, if their norms are no longer being applied beyond the region.

## Conclusion

The implication of the above is that Nordic countries remain, in fact, norm entrepreneurs, albeit in a pragmatic, non-liberal normative way, and therefore shift their norms as their pragmatism adapts to circumstances. In the case of Nordic foreign policy repertoires, the shift has been most visibly operated with regard to migration, which has become highly politicised, especially over the past eight years since the increase in refugee and migratory movements into Europe in 2015. Arguably climate change, too, has become highly politicised of late, which leads us back to our initial questions: why pass up an opportunity to lead by example on this issue? Why align with EU norms instead of aiming to shape them? Why disrupt highly successful nation branding? Keeping within Schmitt’s argument, we can therefore conclude that the evolution of Nordic foreign policy repertoire within an area – immigration – has resulted in a shift, both in volume and nature, within another area – standard-setting – because their priorities have evolved.

On the one hand, the repeal of the disaster-related provisions in Finnish and Swedish law does not signal a complete abandonment of the Nordics’ status as norm entrepreneurs. Indeed, with climate drastically increasing in importance on the global stage, and shaping up to be both a domestic and an international priority in the years and decades to come, Denmark has recently made a lauded move. In the context of a stalemate regarding loss and damage funding by Western countries, it unveiled in 2022 what *The New Humanitarian* termed ‘a significant bit of climate policy’ by announcing it would become the first country to contribute to such funding.<sup>96</sup>

On the other hand, adapting to shifting circumstances does not necessarily mean pushing for disruptive norms. The cases of Finland and Sweden are a case in point: staying within the pragmatic Scandinavian approach, and considering the Russian invasion of Ukraine, both countries have applied for North Atlantic Treaty Organisation (NATO) membership.<sup>97</sup> This move not only broke with a decades-long tradition of neutrality, but it also ran counter to the ‘German-style’ multilateralist vision both countries had adopted, in contrast with Denmark’s, Iceland’s and Norway’s ‘British-style’ vision, which favours Atlanticist security solutions.<sup>98</sup>

In recent years, then, Nordic countries seem to not have abandoned their status as norm entrepreneurs so much as forgone the ‘key role’ at the heart of norm entrepreneurship – the shaping of global moral conditions – to focus on a less progressive approach. That this approach may result in negative nation branding might well be an intended by-product of the current Nordic stance, at a moment in which a particularly polarised international environment highly constrains the emergence of new global norms. The current (relative) instability of domestic politics, where right-wing populist challengers have become more established, has fostered the shift of Nordic foreign policy repertoires from rigid to flexible, towards alignment with those challengers’ stance. This is not to say that Nordic countries will not go back to more ‘positive’ norm entrepreneurship; at the moment, however, the overall context seems to favour their alignment with EU positions rather than their innovation.

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# 4 Climate-related mobility into the Nordic region

Law, policy and (limited) practice

*Matthew Scott and Charlotta Lahnahti*

## Introduction

From a review of publicly available migration statistics, none of the states in the Nordic region appear to collect data on the number of people whose applications to enter or remain on their territory is related to disasters or climate change. Although Finland and Iceland maintain specific legal provisions concerning people unable to return to their home countries in the event of disasters, and Sweden pioneered a bespoke category of international protection until it was repealed in 2021, the number of people applying to enter or remain in the country in the context of disasters and climate change is not disaggregated from broader international protection statistics. In its decision to repeal its bespoke provision, the Swedish government expressed the view that no permit had ever been granted under it,<sup>1</sup> and a similar perspective was articulated in relation to one of the Finnish provisions that was repealed in 2016.<sup>2</sup> However, as this chapter demonstrates, the fact that no permit has ever been granted does not establish that nobody has ever applied.

Informed by a detailed review of more than 200 decisions concerning applications to enter or remain in Sweden in the context of disasters and climate change, this chapter calls for further research in the other Nordic states in order to address the lack of baseline information on the number of applications that have been made, the kinds of scenarios they reflect, and how they have been determined. Such research could underpin a regional dialogue similar to the process that led to the endorsement by 109 states of the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change (the Protection Agenda).

The Protection Agenda resulted from a three-year state-led consultative process known as the Nansen Initiative,<sup>3</sup> which set out to identify ‘effective practices’ for addressing cross-border displacement in the context of disasters and climate change. Sub-regional consultations took place in Latin America, the Pacific, South Asia, Southeast Asia and the Horn of Africa. Insights were collected through research and consultative meetings, which examined how states were responding to the phenomenon in that particular sub-regional context. Drawing the insights

together, a catalogue of effective practices was compiled. Among a host of others, examples include:

- Enhancing the use of humanitarian protection measures for cross-border disaster-displaced persons
- Including cross-border displacement scenarios within bilateral or regional disaster contingency planning exercises
- Building the capacity of competent border and immigration authorities through training and technical support to apply relevant legal frameworks and policies for cross-border disaster-displaced persons
- Granting visas that authorize travel and entry upon arrival for people from disaster-affected countries, or temporarily suspending visa requirements
- Prioritizing and expediting the processing of regular migration categories for foreigners from affected countries following a disaster, or waiving certain admission requirements for such categories
- Granting entry and temporary stay for a group or ‘mass influx’ of cross-border disaster-displaced persons.<sup>4</sup>

Many of these ‘effective practices’ feature in immigration legislation in Nordic states, although insight from Sweden suggests a lack of express decision-making alignment with the Protection Agenda. This chapter opens with a survey of the most clearly relevant domestic legislative provisions in Finland, Iceland, Norway, Denmark and Sweden. It suggests that applications to enter or remain in each country are highly likely to have invoked these provisions in contexts relating to disasters and climate change, revealing a research gap to be filled. The chapter then moves into a more detailed treatment of how judges in Sweden have decided cases concerning applications to enter or remain in this context. Here, the argument is advanced that judgements do not reflect an awareness of or alignment with the Protection Agenda, notwithstanding that Sweden, along with Denmark, Finland, Norway and 105 other states and the European Union, endorsed it in 2015. Identifying how decision-making could align with the ‘effective practices’ described in the Protection Agenda leads to the suggestion that these states should consider developing policy guidance for decision-makers, informed by a regional consultative process similar to the Nansen Initiative.

### **Legal provisions across the Nordic region**

There are four types of legal provisions adopted by Nordic states that are relevant to climate- and disaster-related human mobility. The first category relates to provisions that incorporate international and European Union legal provisions relating to international refugee law and international human rights law. These provisions are collectively referred to as ‘international protection,’ and in the European Union, a person may be granted ‘subsidiary protection’ where they are unable to establish eligibility for refugee status but are still protected from being forcibly returned

home under international human rights law. Although relevant to the topic of this chapter, these provisions are not examined as the very limited application of international refugee law and international human rights law has been discussed extensively elsewhere.<sup>5</sup> The second category of provisions expressly refers to climate change or disasters. Examples from this category can be found in Sweden, Finland and Iceland. The third category relates to broader humanitarian provisions, which are similar across much of the world.<sup>6</sup> These provisions stipulate that a person may be permitted to remain on the territory of a host state in situations that can be characterised as being particularly compelling and compassionate, for instance having regard to a person's health status, ties to the host country or situation in the country of origin. The relevance of these provisions to cross-border climate- and disaster-related human mobility has been recognised but is not examined in depth in the academic literature.<sup>7</sup> The final category relates to exceptional grounds provisions within immigration provisions relating to family, student, visitor and other provisions. Exceptional grounds provisions exist to enable decision-makers to grant permission to enter or remain in the country in situations where an applicant falls short of the formal requirements provided for by a relevant immigration category, but for whom other reasons warrant the granting of a residence permit.

All four of these categories are reflected among the catalogue of 'effective practices' elaborated in the Protection Agenda. In the following sections, provisions falling into these four categories are highlighted. The aim is not to provide comprehensive treatment of all provisions, but rather to identify the varieties of categories that can be relevant to individuals seeking to enter or remain in Nordic states in the context of disasters and climate change.

### *Finland*

Until 2016, Section 88a of the 2004 Finnish Aliens Act contained a provision expressly extending humanitarian protection to a person unable to return home in the context of an 'environmental disaster.' The provision applied to a person who had been unable to establish eligibility for refugee status or subsidiary protection.<sup>8</sup> It read:

A foreigner who is present in the country shall be granted a residence permit on humanitarian protection grounds despite the requirements for asylum or subsidiary protection under 87 or 88 § not having been met, if the foreigner is unable to return to his/her home country or country of permanent residence owing to the occurrence of an environmental disaster or because the security situation in the country is poor owing to an international or internal armed conflict or a serious human rights situation.<sup>9</sup>

In its proposal to repeal the provision, the Finnish government observed:

In practice, to date, no residence permit has been granted under the second ground in the paragraph, namely environmental disaster, because none of the circumstances envisaged in the provision have arisen.<sup>10</sup>

In this regard, it is noteworthy that a survey conducted in Finland by Lahnahti found that environmental factors were primary or secondary factors in 62% of 76 survey responses from asylum seekers from Somalia, Iraq, Afghanistan and Nigeria, amongst other countries, highlighting the need for further research on the application of Finnish law in specific cases.<sup>11</sup>

A second provision extending expressly temporary protection to people displaced in the context of environmental disasters was not repealed in 2016. Section 109 provides:

Temporary protection may be granted to a foreigner in need of international protection and who is unable to safely return to his/her home country or his/her permanent residence on the grounds of an armed conflict or some other situation of violence or an environmental disaster has resulted in mass flight from the country or the region. For temporary protection to be available requires that the need for protection can be considered short-term. The temporary protection lasts a maximum of three years.

A third provision, Section 93 of the same legislation, provides a more general form of humanitarian protection which does not require a mass flight situation and which, unlike Section 109, does not require a political decision of the Council of State.

Prokkola et al., informed by an interview with the Head of Section at the Asylum Unit of the Finnish Immigration Service, identify two other potential sources of protection under the Finnish legal framework:

It is possible to give subsidiary protection... or a residence permit based on individual compassionate grounds... However, the interviewee admitted that climate change or environmental reasons do not create a strong claim, and it might well be that there are no cases that would have been decided favourably for the applicant based solely on those criteria (interview with Juho Repo, Finnish Immigration Service, 18.1.2021).<sup>12</sup>

No research appears to have been conducted to examine how these provisions have been applied by executive or judicial decision-makers, but Lahnahti's survey results strongly suggest that environmental factors are likely to have been raised in applications to enter or remain in Finland. The need for further research is evident.

### *Iceland*

Article 43 of the 2016 Icelandic Foreign Nationals Act addresses the 'arrival of refugee groups on government invitation.' It establishes an apparently flexible mechanism for addressing disaster-related displacement experienced by people not recognized as refugees:

The Directorate of Immigration may authorize groups of refugees to enter Iceland on a proposal from the Icelandic Refugee Board... and in cooperation

with the United Nations High Commissioner for Refugees. The same applies to groups of foreign nationals who have not been deemed to be refugees, but come from a country where armed conflict is taking place or from a region of natural disaster, and fulfil conditions laid down by the authorities at any time.

The Directorate of Immigration grants a foreign national who is authorised to enter Iceland on the basis of this provision the legal status of refugee. The Directorate may also decide whether other foreign nationals who enter the country on the basis of this provision are to be granted refugee status or a residence permit on humanitarian grounds.

Additionally, Article 44 addresses ‘Collective protection in a mass flight situation’ that could be interpreted to apply in the context of disasters, as the article does not define particular causes for the mass flight. Although Article 44 provides only for temporary protection up to a maximum of three years, it also opens a pathway to permanent residence through a bridging provision to Article 74. Article 74 provides for the grant of residence permits on humanitarian grounds broadly, without making express reference to disasters.

A range of exceptions across the Icelandic Foreign Nationals Act also establish points where discretion may be exercised, including in relation to expediting applications as well as in relation to specific substantive requirements for entry or stay.

The authors were not able to locate any research examining how these provisions have been applied in practice.

### ***Denmark***

Article 9b in the Aliens (Consolidation) Act 2019 provides for the grant of a Humanitarian Residence Permit where ‘substantial considerations of a humanitarian nature will decisively make it appropriate to grant the application.’ The application may only be submitted by people who are registered as asylum seekers under the Act.

In 2015, the Danish Ministry of Justice produced a ‘review of praxis for granting humanitarian residence permits.’<sup>13</sup> The document describes the ‘survival criterion’ (*Overlevelseskriteriet*):

In very special cases, a humanitarian residence permit can be granted to single women and families with small children from areas where, according to the Ministry of Justice, extremely difficult living conditions prevail, eg. as a result of famine or as a result of completely unpredictable conditions (the survival criterion).<sup>14</sup>

This document explains the narrow, exceptional scope of the provision and provides a number of examples from the Sudan, Afghanistan and Iraq, where the ‘survival criterion’ was found not to have been satisfied. Reference is made to the provision having been applied between 2001 and 2006 in relation to people from

particularly vulnerable groups from Afghanistan during a period when there prevailed ‘extremely difficult living conditions as a result of perennial drought in the country (the so-called drought praxis).’ The provision is not limited to strictly environmental pressures, but has also been applied in cases concerning single women without a support network returning to Afghanistan. In relation to Somalia, the document states:

The Ministry of Justice is also aware of the conditions in Somalia, and will, when the occasion arises, assess whether they are of such a nature that there are grounds for issuing a humanitarian residence permit with reference to the survival criterion.<sup>15</sup>

With no reference to the application of this provision during the 2011 drought- and conflict-related famine in Somalia, it would appear that the ‘drought praxis’ is somewhat dormant, although further research into the more general application of the ‘survival criterion’ is warranted.

As with the other Nordic states, the Danish Aliens Act is replete with exceptional grounds provisions, enabling decision makers to grant a residence permit in situations where formal requirements are not met but where circumstances nevertheless justify the grant of a residence permit.

The authors have identified no literature examining the application of these provisions in this practice.

### *Norway*

Section 38 of the Norwegian Immigration Act 2008<sup>16</sup> establishes a right of residence where there are strong humanitarian considerations or a particular connection with the Norwegian Realm, including where ‘there are social or humanitarian circumstances relating to the return situation that give grounds for granting a residence permit.’ The section further provides that, in cases concerning children, ‘the best interests of the child shall be a fundamental consideration. Children may be granted a residence permit... even if the situation is not so serious that a residence permit would have been granted to an adult.’

Writing in 2009, Kolmannskog and Myrstad<sup>17</sup> point to a then recent legislative proposal where the Norwegian Directorate of Immigration (UDI) identified that disasters warranted express reference in immigration law. The Ministry of Labour and Social Inclusion that prepared the legislative proposal reasoned against a new provision:

In principle, it could also be relevant to grant residence permits (possibly temporary) to applicants coming from an area affected by a humanitarian disaster situation, such as after a natural disaster. However, in practice, this has not emerged as a case category of any significant extent. Therefore, the Department does not believe there is reason to specifically mention these

types of situations in the law, as UDI [The Norwegian Directorate of Immigration] has suggested.

Reference is made to the proposed law § 38 second paragraph letter c.<sup>18</sup>

As outlined above, Section 38 of the Norwegian Migration Act ‘second paragraph letter c,’ to which the last sentence refers, establishes a right of residence where ‘there are social or humanitarian circumstances relating to the return situation that give grounds for granting a residence permit.’ How the UDI has applied second paragraph letter c of Section 38 in relation to disasters and climate change does not appear to have been examined in the academic literature.

A broader provision at Section 34 extends ‘collective protection in a mass flight situation’:

Any foreign national who is caught up in a situation of mass flight as mentioned in the first paragraph, and who arrives in the realm or is here when this section becomes applicable, may upon application be granted a temporary residence permit on the basis of a group assessment (collective protection). Such a permit shall not provide the basis for a permanent residence permit.

Beyond the protection context, many provisions relating to the issuance of Schengen visas, employment visas, family visas, amongst others, expressly recognize that exceptions can be made to the established criteria.

### *Sweden*

Distinct from the other Nordic states, a detailed history of the evolution and application of Sweden’s ‘environmental disaster’ category has already been written.<sup>19</sup> The provision was introduced in the 1990s during an era when Swedish immigration law included innovations that only later became the norm across Europe, including express recognition that people fearing persecution on account of their gender identity or sexual orientation could be eligible for international protection. The environmental disaster provision was inspired by Sweden’s engagement with global processes<sup>20</sup> and the growing international concern that processes of environmental change could force some people to have to leave their country of origin or habitual residence.<sup>21</sup> This innovation was highlighted by the European Parliament as one warranting consideration by other EU Member States.<sup>22</sup> The provision was framed in the legislative proposal as being available to people who could not establish eligibility for international protection under the Refugee Convention or for subsidiary protection under EU law, as integrated into the Swedish Aliens Act.<sup>23</sup> The provision, which before its repeal could be found at Chapter 4, Section 2a(2), read:

2a § A person otherwise in need of protection in this law is a non-citizen who in other cases than those set out in 1 or 2 §§ finds herself outside the country that she is a citizen of because he or she

1. needs protection because of an external or internal armed conflict or because of other serious tensions in the home country feels a well-founded fear of being exposed to serious harm or
2. is unable to return to her home country because of an environmental disaster.

The provision was repealed in June 2021 on the basis of legislative proposal 2020/21:91. The legislative proposal explained the decision to repeal the ‘person generally in need of protection’ category, under which the environmental disaster provision was found, observing that: ‘As far as can be discerned from available statistics, there are also no cases where people have been granted a residence permit on the basis of an environmental disaster.’<sup>24</sup>

This decision followed the 2016 decision in Finland to remove its environmental disaster provision described above, reflecting the broad trend identified elsewhere of Nordic states ‘rebranding’ themselves as no longer pioneering norm entrepreneurs in the field of migration and asylum.<sup>25</sup>

Nevertheless, a residence permit may be granted in relation to applications made within Sweden in cases where a residence permit on other grounds cannot be granted. Chapter 5, Section 6 of the Swedish Aliens Act provides for the grant of a residence permit on the grounds of exceptionally compassionate circumstances, relating to the applicant’s health, strength of connections to Sweden and the situation in the country of origin.

In order to promote decision-making in alignment with the Convention on the Rights of the Child, a 2014 amendment introduced a lower threshold for children, requiring ‘particularly compassionate circumstances.’<sup>26</sup>

In its comprehensive review of the provision, the Swedish Justice Department explained why the term ‘exceptionally compassionate circumstances’ was preferred by the legislator over the earlier category of ‘humanitarian reasons’:

It was not always easy to appreciate that a person who had left a home country characterized by social and economic misery would not have the right to a residence permit in Sweden for humanitarian reasons. In order to clarify that much more than that is required, the committee, in alignment with the government, considered that the term ‘humanitarian reasons’ should be removed from the immigration law.<sup>27</sup>

The provision has consistently been interpreted restrictively in Swedish jurisprudence.<sup>28</sup> However, the Migration Court of Appeal has overturned decisions to refuse to grant a visa in situations where a person would not have access to adequate medical treatment in the country of origin<sup>29</sup> and where a single mother and child would face social exclusion in the country of origin.<sup>30</sup> The best interests of the child weigh heavily in cases concerning children, but the Migration Court of Appeal has asserted that other factors, such as the concern of the state not to incur significant costs for treating medical conditions, can weigh equally heavily.<sup>31</sup> Here, the public



policy considerations are clear. Sandesjö and Wikrén quote a judgement from the Swedish Migration Court of Appeal:

The humanitarian aspects must be weighed against the financial commitments that can be a direct or indirect result of a residence permit being granted. Sweden can in many areas offer a higher level of medical care than many other countries. At the same time, our resources are limited. We are unable, to any significant extent, to receive people who come here from other countries with the primary purpose of receiving better care here than in their countries of origin.<sup>32</sup>

Although reception of people displaced in the context of disasters and climate change does not automatically entail the same initial financial commitment as life-sustaining medical treatment, public policy considerations can be expected to weigh heavily in the event decision-makers ever actively apply this provision to relevant cases.

There are other avenues for entry and potential residence. Chapter 5, Section 19 of the Swedish Aliens Act makes it possible, where ‘compelling reason’ exist, to extend a person’s stay in the country. It provides an exception to the general requirement that people with temporary residence permits are not allowed to apply to change their immigration status from inside the country. This provision may be relied upon to extend the duration of stay in the event a disaster happens while the person is already in Sweden and is temporarily unable to return.

Chapter 5, Sections 3 and 3a of the Swedish Aliens Act provide for the grant of a residence permit under a range of family migration categories, including dependent relatives. Where the requirements under specific categories are not satisfied, an applicant may nevertheless be granted a residence permit where there are ‘exceptional reasons.’ However, the Migration Court of Appeal has explained that ‘the requirement for exceptional reasons means that cases leading to the grant of a residence permit will involve compassionate and unusual situations.’<sup>33</sup> Further, the Migration Court of Appeal has ruled that, in general, social problems in the country of origin normally would not constitute exceptional reasons for granting a residence permit.<sup>34</sup>

This section has presented a range of legal and policy measures that align well on paper with the catalogue of effective practices elaborated in the Protection Agenda. In what follows, Section 3 considers how the Swedish provisions outlined above have been applied in specific cases where individuals have sought to enter or remain in Sweden in the context of disasters and climate change. This section demonstrates a lack of conscious alignment of executive and judicial decision-making with the Protection Agenda, without attempting to challenge the validity of the individual decisions. In addition to providing insight into the Swedish experience, Section 3 also points to a research model that could be replicated in other Nordic states as a way of promoting regional academic and, ultimately, judicial and policy dialogue on the topic.

### **Application in specific cases: the Swedish experience**

Cross-border climate-related displacement into the Sweden does not appear to be happening on any noteworthy scale. Indeed, a review of judicial decisions from 2006 to 2019 revealed less than 200 cases in which claimants expressly connected environmental pressures to their reasons for seeking to enter or remain in the country. Since 2006, Sweden has received on average approximately 43,000 asylum applications every year, with a range between less than 25,000 in 2006 and almost 165,000 in 2015. During the same period, approximately 34,000 applications for family reunification were granted each year, together with an average of 10,000 study permits and 14,000 work permits.<sup>35</sup> On almost any analysis, those fewer than 200 cases relating to environmental pressures are statistically insignificant.

However, from a policy perspective, these cases are highly significant. First, they establish unequivocally that cross-border climate-related displacement into Sweden is happening. This evidence, together with similar evidence from Austria,<sup>36</sup> Germany,<sup>37</sup> and Italy,<sup>38</sup> enables scholarship to focus on actual cases, rather than hypothetical scenarios,<sup>39</sup> and provides a platform for discussing policy options. Second, they provide insight into how decision-makers apply legal frameworks in this context, enabling critical evaluation of the law and its application. Finally, these cases prompt reflection on broader questions about the scope of relevant legal principles.

Relevant cases were identified through a keyword search using the JP Infonet migration cases database.<sup>40</sup> This database captures only cases that have reached the migration court or higher instances and does not include cases decided by the Migration Agency that did not proceed to appeal. A total of 792 cases decided from 2006 (the year migration courts were established in Sweden) until the end of 2019 were identified by searching the database for hazard terms, including climate change, cyclone, drought, earthquake, famine, flood, hurricane, landslide, sea level and tsunami. Of these, just under 200 cases were directly related to disasters. Disasters were identified by claimants as being relevant to their applications in 181 cases, with the remainder relating to judicial references and background country of origin information. Content analysis was conducted on the 181 cases where individuals expressly relied on disasters as being directly relevant to their applications.

Of the 181 appeals reviewed, 140 concerned applications primarily for international protection and a further 41 were applications to enter or remain in Sweden under domestic visitor, family and student immigration categories. Ninety-one per cent of appeals were dismissed, and only one case, concerning a young woman displaced in the context of the 2010 earthquake in Haiti,<sup>41</sup> secured any form of a residence permit on the basis of risks directly connected to a disaster or other adverse impacts of climate change.

Applicants came from more than 30 countries, with Somalia and Afghanistan together representing 35% of all applications. Claims related to the following circumstances:

- drought-related food insecurity in Afghanistan, Palestine, Yemen, Somalia, Ethiopia, Nigeria, Mali, Senegal and Djibouti

- cities damaged or destroyed by earthquakes in Nepal, Iran, Albania, Chile, Colombia, Haiti, New Zealand, India, Japan, Iraq, Pakistan and the Philippines
- homes destroyed by flooding and related landslides in Albania, Kosovo, Macedonia, Bosnia-Herzegovina, Serbia, Georgia, the Philippines, Vietnam, Sri Lanka, Pakistan, India, El Salvador and Zimbabwe
- the aftermath of hurricanes, cyclones and typhoons in El Salvador and the Philippines
- landslides in Iran, Sierra Leone and the Philippines.<sup>42</sup>

Importantly, the Somalia caseload was not representative of the way most applications for international protection by individuals from that country were determined during at least part of the relevant period from 2006 to 2019. In 2011, the Migration Court of Appeal held that individuals who could establish that they came from southern or central Somalia were automatically eligible for international protection.<sup>43</sup> Consequently, most of the appeals concerning Somalia relate to challenges to the claimed place of origin or habitual residence of the claimant and the jurisprudence is of limited relevance to this research.

Exceptionality provisions were considered in relation to the international protection cases as well as some of the domestic visitor, family and student immigration categories. After very brief treatment of the application of Sweden's distinctive (and now repealed) 'environmental disaster' category of international protection, these 'exceptionality' categories are considered in turn.

#### *Sweden's 'environmental disaster' category*

As the provision was suspended in 2016 before its ultimate repeal in 2021, only 77 of the 140 international protection claims relating to disasters between 2006 and 2019 could have relied upon the provision. Of these 77 cases, not one was recognized as establishing an inability to return because of an environmental disaster. People facing drought-related food insecurity were automatically excluded from protection under the environmental disaster provision because the very limited guidance provided in the preparatory works suggested, somewhat incongruously in light of the motivation given there for the introduction of the provision, that only people affected by sudden-onset hazard events would be covered.<sup>44</sup> People facing return in the aftermath of earthquakes, floods, storms and landslides were denied residence permits because the disaster was not considered to have impacted the entire country, or because the authorities in the country should be able to deal with the challenges. In more than half of the cases, the Court did not address the relevance of the disaster to the claim at all. A typical decision by the Court in cases where the disaster was addressed reads:

According to the preparatory works... the case must concern a sudden onset disaster of a type that would make it contrary to the requirements of humanity to return a person to a country where the disaster happened. Against the

background of the relied upon earthquakes in April and May 2015 [in Nepal], they are not considered to constitute such sudden disasters as can give rise to a residence permit in Sweden.<sup>45</sup>

Similarly, in a case concerning flooding across the Balkan region in 2014, a family with a young child from Bosnia-Herzegovina sought international protection in Sweden one month after the onset of the flooding, claiming:

One third of the country has been affected by flooding and it amounts to an environmental disaster. Hundreds of thousands of people, including the applicants, have lost all they own in their homes and have been forced to move.<sup>46</sup>

The Court dismissed the appeal, explaining:

There is no reason to doubt the information [provided by the applicants] that they lost their home and work in the floods. According to their own information the authorities have offered them emergency assistance with food and clothing. That the authorities temporarily do not have the resources to repair buildings is not such a situation that established a need for international protection. No information has been provided to suggest that the authorities in Bosnia and Herzegovina, with international help, are unable to offer sufficient help to those affected. The prevailing situation in the region is not of such an extent that it is to be considered an environmental disaster under the Aliens Act.<sup>47</sup>

There is no indication that the decision was informed by an assessment of the best interests of the child, even though such a requirement entered into Swedish law in 1997. Chapter 1, Section 10 of the Aliens Act requires:

In cases concerning a child, particular attention shall be paid to what consideration of the child's health and development, together with the best interests of the child in general, require.

### ***Humanitarian grounds***

None of the 140 international protection cases considered for this chapter resulted in the grant of a residence permit under the exceptionally compassionate circumstances provision for reasons related to adverse environmental conditions in the country of origin.<sup>48</sup> Cases concerning adults rarely expressly considered the relevance of the disaster in relation to the 'situation in the country of origin' provision. When the disaster was considered, the treatment was never more than cursory. For instance, the court rejected the claim under Chapter 5, Section 6 in a case concerning a Roma woman who came to Sweden one week after losing her home in the

2014 outbreak of widespread flooding in Bosnia-Herzegovina,<sup>49</sup> on the following basis:

[The applicant] has submitted that she is homeless and struggles to support herself. Reasons of an economic nature, like being homeless or unemployed, do not constitute, on their own, a basis for granting a residence permit on grounds of exceptionally compassionate circumstances. Such problems should primarily be solved in collaboration with the authorities in the country of origin.<sup>50</sup>

In the context of the 2015 earthquakes in Nepal, the Court set a high threshold for an adult male seeking to avoid being returned in the aftermath:

As regards the earthquake in Nepal, the impact the disaster had on the humanitarian situation in the country is not doubted. However, it is not the case that the country is uninhabitable.<sup>51</sup>

In a case concerning children, an El Salvadorean family with a teenage son and infant daughter applied for international protection. The family argued that they could not be forcibly returned because of the damage caused by a recent hurricane. The Court records their evidence as follows:

Last month El Salvador was hit by a hurricane that caused flooding and landslides. 600,000 people in El Salvador were affected by the hurricane. El Salvador has declared a national emergency.<sup>52</sup>

The Court dismissed the international protection claim and did not consider the circumstances were exceptionally compassionate, without directly addressing the impact of the hurricane:

The Migration Court does not find, even having regard to the fact that the case concerns children and that it has been submitted that one child is deaf and therefore requires medical attention, that there exist such exceptionally compassionate circumstances that a residence permit can be granted under Chapter 5.6 § UtL.<sup>53</sup>

A similar decision was reached concerning the situation of a family with an infant child who left Vietnam in the context of recurring floods. The exclusive basis of claim was that recurrent flooding had made life difficult in Vietnam:

Every year the family's region is affected by flooding, and they therefore had difficulties supporting themselves. The family sold their land and their house and were advised by others to leave the country... If the family return to Vietnam they will not be able to support themselves and they have nowhere

to live. Without an ability to support themselves the daughter is particularly vulnerable and a return can expose her to a risk to her life and health.<sup>54</sup>

Dismissing the claim, the Migration Agency, whose decision was adopted in its entirety by the Court, explained: ‘The livelihood challenges in the country of origin that the family relies upon resulting from the environmental disaster are not of the type that can be considered exceptionally compassionate.’<sup>55</sup> In this case, there is no indication that the decision was informed by an assessment of the best interests of the child.

The assessment does not appear to have become more nuanced since the introduction of the reduced exceptionality threshold for children in 2014. An illustrative case concerned a Roma family from Serbia. Aware that the family had been living in a centre for disaster-displaced persons in Belgrade since their home was destroyed in a flood, the Court appeared to place no weight on the impact living in such conditions would have on the children, one of whom was only six years old at the time of the decision. In dismissing the claim, the Court found:

Even taking into account the family’s connection to Sweden and their situation in the country of origin, the Migration Court finds that there are not such exceptional or particularly compassionate circumstances that give rise to the granting of a residence permit. The Migration Court has taken into account in its assessment the fact that the case concerns children.<sup>56</sup>

In other words, a family with infant children belonging to a minority ethnic group that faces systemic discrimination that has been made homeless in the context of a large-scale multi-country flooding disaster is unable to demonstrate to the satisfaction of Swedish courts that their circumstances are exceptional, or even that they are ‘particularly compassionate.’ This is apparently so even having regard to Sweden’s obligations under the Convention on the Rights of the Child.

Numerous other cases concerning children also find that the lower threshold is not met in disaster situations. In a 2018 decision, the Court addressed the situation of a Kurdish child from Iran whose city was affected by an earthquake that happened in close temporal proximity to his application for asylum in Sweden. In relation to this part of the case, the Court observed:

A is a minor and is thus particularly vulnerable. As noted above, however, the Court does not consider that he has established that he does not have relatives who can help and support him in his country of origin. Even if the town he comes from was affected by an earthquake in 2017, little has been revealed besides the fact that his grandmother and grandfather live in temporary accommodation. Moreover, the country is not unfamiliar with earthquakes and should thus have resources to draw upon as necessary. Against this background the Court does not consider there to be such particularly compassionate circumstances that give rise to a residence permit.<sup>57</sup>

Several of these cases align well with the express policy goal of reserving a very narrow immigration category for cases that stand out from the ‘social and economic misery’ that might have provided grounds for the grant of a residence permit under the earlier ‘humanitarian grounds’ category. However, the decisions concerning children do not appear to be informed by a careful assessment of Sweden’s *non-refoulement obligations* under the Convention on the Rights of the Child.<sup>58</sup>

### ***Family migration***

In 2010, a young woman from Haiti applied for a residence permit to join her mother and sister in Sweden.<sup>59</sup> As the applicant had already reached legal adulthood, she was unable to satisfy the core requirement of belonging to the nuclear family of her mother. An exception to this core requirement provides an opportunity for a person to be granted a visa if it can be established that a relationship of particular dependency exists between the applicant and the Sweden-based family member. The Migration Agency was not satisfied that that relationship of particular dependency existed between the applicant and her mother and refused the application.

The Migration Court agreed with the Migration Agency, and also considered the applicant’s eligibility under the ‘exceptional reasons’ category described in Section 2 above. Central to this aspect of the application was the 2010 earthquake, which according to the UN Secretary General:

affected almost 3.5 million people, including the entire population of 2.8 million people living in Port-au-Prince. The Government of Haiti estimates that the earthquake killed 222,570 and injured another 300,572 people. Displacement peaked at close to 2.3 million people, including 302,000 children.<sup>60</sup>

The applicant explained to the Court:

She lives on the street and sleeps in a tent. Her home was destroyed in the earthquake and she has no relatives or other people to turn to. The neighbour she lived with before the disaster has disappeared and she receives no help. People around her have no capacity to share because the situation is extreme. She is afraid for her safety.<sup>61</sup>

The Court took note of the situation of the applicant, but concluded:

The Migration Court does not find that there are such compassionate and unusual circumstances that constitute exceptional reasons for granting a residence permit under Chapter 5.3a § third paragraph 3. [The applicant’s] situation in the country of origin appears compassionate but not unusual in the meaning of the Aliens Act.<sup>62</sup>

The ‘compassionate and unusual’ threshold required to secure an exception under the family migration category appears extremely high. The ‘effective practice’

of waiving certain requirements for family migration identified in the Protection Agenda is not well-reflected in the judicial approach to this ground of exception.

### ***Extension of a temporary residence permit***

In 2019, the Court considered an application by a Filipina woman to extend her visitor visa with reference to Chapter 5, Section 19 of the Aliens Act on grounds that her home had been destroyed by flooding.<sup>63</sup> She had been granted a two-month visa to visit her Swedish partner. An initial extension application, which appears not to have been determined, was based on the fact that the couple intended to marry. A follow-up email from the applicant highlighted the destruction of her home and requested a further extension of ‘at least three months more.’ The application was refused by the Migration Agency on the grounds that the decision-maker was not satisfied the applicant intended to leave Sweden given the lack of specificity concerning an intended return date, and the decision was upheld by the Court on appeal. Had the applicant been more precise about how long she needed to extend her stay in Sweden and were it not for the additional fact of having initially expressed an intention to get married in country, thereby at least indicating the possibility of an intention to stay in Sweden beyond a mere visit, the application may have turned out differently.

The Migration Court of Appeal provides guidance in a 2015 judgement:

In determining whether an extension of a visitor’s permit should be granted, the question whether there is a reasonable explanation for why the foreigner from the outset only applied for a shorter permit should be considered. A residence permit for a visit shall as a rule not be granted for longer than a total of one year, because the applicant after that point would have the right to register as a resident in Sweden and the stay would no longer have the character of a visit.<sup>64</sup>

Thus, although the applicant from the Philippines was ultimately unsuccessful in her application to extend her stay in Sweden, it appears that visitors who are temporarily unable to return home enjoy moderate prospects of remaining temporarily in Sweden, provided they can provide a ‘reasonable explanation’ why they did not apply for a longer visit in the first instance.

The ability to temporarily extend a lawful period of residence in Sweden provides an important legal protection for people who face temporary impediments to returning home in the context of disasters and may well have been successfully relied upon in applications to the Migration Agency. Further research is made difficult by data protection restrictions on access to decisions of the Migration Agency that are not appealed.

Securing permission to extend a visa that has already been granted is not subject to the same ‘exceptionality’ requirement as was described earlier in relation to the compelling and compassionate grounds category under Chapter 5, Section 6. Undoubtedly, the public policy considerations differ considerably between categories addressing what previously was framed as humanitarian circumstances, and categories relating to an extension of an existing permit. This latter category



is not incompatible with the increasingly negative nation branding described by Massari-Vaudé in this volume, as applicants already find themselves in Sweden for reasons other than humanitarian ones. The ability to extend a visa in the event a disaster arises in the country of origin does not create the same ‘pull factor’ as the prospect of securing a visa directly as a consequence of the disaster itself. However, considering how few people actually sought to rely on the express ‘environmental disaster’ provision before it was repealed, the existence of a relevant visa category on its own cannot be seen to constitute a powerful pull factor in all cases.

## **Conclusion**

Based on the insights from Section 3, it is clear that individuals who seek to enter or remain in Sweden in the context of disasters and climate change have options, but those options are extremely narrow. Claims under the environmental disaster category were rejected with reference to geographically contained disasters that do not affect the whole country, and the capacity of national authorities or international aid being able to handle the aftermath. Decisions regarding humanitarian grounds claims emphasized the very high ‘exceptionality’ threshold. Despite having a legal requirement to have regard to the best interests of the child, decision-makers rarely articulate reasons why other compelling reasons outweigh this primary consideration. Exceptional grounds and family migration are restrictively interpreted on public policy grounds. Visitors temporarily unable to return home in disaster-related circumstances have moderate prospects of a brief extension, upon providing a ‘reasonable explanation’ of their sought visa extension.

With international refugee law and international human rights law offering very limited pathways for people displaced in the context of disasters and climate change and following the repeal of the (never granted) ‘environmental disaster’ provision, the narrow ‘exceptional grounds’ categories surveyed in this chapter do little to extend the range of options to enter or remain in the country. Moreover, to the extent that the categories discussed in this chapter are distinct from international protection categories founded in Sweden’s international legal obligations, their scope reflects a policy decision that cannot be challenged with reference to international law.

Although the number of people affected by this state of affairs appears small considering the low number of relevant cases identified in this research, the conclusion is relevant when considered in wider Nordic and EU context. With at least 15 other EU Member States plus Norway operating humanitarian and/or exceptional grounds provisions,<sup>65</sup> the current and potential future application of such provisions should be examined when seeking to evaluate existing legal categories of relevance to people displaced into Europe in the context of disasters and climate change. Additional research on how the similar provisions in other Nordic states described in Section 2 above is needed.

Further research would reveal the contemporary baseline against which adjustments to law, policy and practice could be considered. The Swedish caseload

reveals that executive and judicial decision-makers do not expressly consider the fact that Sweden endorsed the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change. This finding is not surprising, but it does point to an inconsistency between what the Swedish government has identified as being an effective way of addressing the phenomenon, and how its executive agencies and judicial authorities take decisions in practice. With further research into executive and judicial decision-making in other Nordic countries, the ground will be set for a similar regional consultative process as was carried out as part of the Nansen Initiative.

## Notes

- 1 Proposition 2020/21:191 *Andrade Regler I Utlänningslagen*, 53.
- 2 Government legislative proposal HE 2/2016 Hallituksen Esitys Eduskunnalle Laiksi Ulkomaalaislain Muuttamisesta, 6.
- 3 Walter Kälin, “From the Nansen Principles to the Nansen Initiative” (2012) 41 *Forced Migration Review* 48.
- 4 The Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change* (2015) <<https://disasterdisplacement.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf>> accessed 18 October 2023.
- 5 Jane McAdam, *Climate Change, Forced Migration and International Law* (Oxford University Press 2012); Matthew Scott, *Climate Change, Disasters and the Refugee Convention* (Cambridge University Press 2020).
- 6 Liv Feijen, *The Evolution of Humanitarian Protection in the European Law and Practice* (Cambridge University Press 2021), 3.
- 7 David Cantor, ‘Environment, Mobility, and International Law: A New Approach in the Americas’ (2021) 21 *Chicago Journal of International Law* 263.
- 8 Subsidiary protection is the legal status available under EU law for people who can establish a real risk of being exposed to specified forms of serious harm in their countries of origin, but who cannot satisfy the narrower criteria for recognition of refugee status under the 1951 Convention Relating to the Status of Refugees.
- 9 Ulkomaalaislaki 30.4.2004/301, 88a §, repealed by Laki Ulkomaalaislain Muuttamisesta 332/2016. Author translation.
- 10 HE 2/2016 Hallituksen Esitys Eduskunnalle Laiksi Ulkomaalaislain Muuttamisesta, 6. Author translation.
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# 5 The developmentalisation of climate mobilities policy in Denmark and Sweden

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## Introduction

The Nordic countries, including Denmark and Sweden, have a reputation for generosity and altruism in international development cooperation, consistently hitting international targets to contribute 0.7% of Gross National Income (GNI).<sup>2</sup> Nevertheless national strategies for international development cooperation are part of foreign policy, and are also harnessed to further specific norms, values, and national interests. In Denmark, “from the very beginning, a concern for Danish economic interests was embedded in the aid policy”.<sup>3</sup> In Sweden, international development cooperation priorities have long been linked to an overarching security objective of peace and stability.<sup>4</sup> Norms such as environmental and climate protection, liberal political values, and democracy and human rights have also been key components of international development strategies.<sup>5</sup> In recent years, migration deterrence has also become a development policy priority across many European countries.<sup>6</sup>

Given this background, it is perhaps unsurprising that in both Denmark and Sweden, the links between climate change and human mobilities are being increasingly framed as an issue of development. In analysing this trend, I will not only illustrate the developmentalisation of climate change and human mobilities within Danish and Swedish policy discourses but also deconstruct this development-based approach to climate change and human mobilities, which I argue is anchored in a paradigm of migration deterrence and prevailing false assumptions about the links between migration and development more broadly. As such, the Danish and Swedish discourse on climate change and human mobilities is in danger of feeding into and being used to bolster increasingly restrictive migration policy.

In the following section, I briefly contextualise this analysis within the broader literature on governance of and policy discussions on climate change and human mobilities, before sketching the existing literature on how climate change and human mobilities have become considered as an issue of development internationally. In the central section, I then explore the specific policy discourse prevalent in Denmark and Sweden before concluding.

### **Climate change and human mobilities: governance and policy**

Since the mid-2000s, international policymaking on the links between climate change and human mobilities has developed rapidly, accompanied by research interest in these policy processes and the relevant institutions. In 2010, the links were recognised in an agreed-upon text of the United Nations Framework Convention on Climate Change (UNFCCC) for the first time<sup>7</sup> and in the decision accompanying the Paris Agreement, a Task Force on Displacement was established to continue work on climate change and displacement under the auspices of the Executive Committee of the Warsaw International Mechanism on Loss and Damage (WIM).<sup>8</sup> In international migration policy, the Global Compact for Safe, Orderly, and Regular Migration prominently recognises climate change as a driver of migration.<sup>9</sup> The security implications of climate change, including its impacts on human mobilities, have been a topic of discussion at the United Nations Security Council (UNSC),<sup>10</sup> and the United Nations High Commissioner for Human Rights has reported on the human rights protection gaps concerned with international displacement and migration due to climate change.<sup>11</sup> In 2015, 109 nation states endorsed the Nansen Initiative's Protection Agenda,<sup>12</sup> which included best-practices for preventing and preparing for cross-border displacement in the context of disasters, as well as for protecting people who have already been displaced. Researchers have therefore focussed on the UNFCCC,<sup>13</sup> expanding mandates of intergovernmental and international organisations,<sup>14</sup> securitisation of climate change and human mobilities,<sup>15</sup> and the human rights regime.<sup>16</sup>

While international policy initiatives, and the literature examining them, have burgeoned, comparatively little attention has been paid to policy discourses of individual nation-states, specifically those in the Global North. Although mirroring a relatively inactive policy landscape when compared with the international sphere, this gap also represents a bias in the literature, which has been dominated by researchers from the Global North, conducting case studies in countries and regions in the Global South.<sup>17</sup> Nevertheless, nation states are key to the more thoroughly researched international context, with official international negotiations in particular being conducted between state parties. Understanding their positions is therefore actually vital for understanding the larger international picture. Research that has emerged on legal practice, media representations, and public opinion surrounding climate change and human mobilities, suggests a complex, multi-layered discourse that is growing in relevance.

Although national governments have not yet become very active on climate change and human mobilities domestically, often citing lack of relevance for immigration policy, recent findings from Austria show that people whose mobilities have been impacted by climate change are applying for protective status in Austria, and are citing environmental reasons among their other grounds for applying for protection.<sup>18</sup> Analysis of relevant judicial decisions in Australia, New Zealand, Canada, the United States, and the United Kingdom has also identified individuals seeking refugee status related to disasters and climate change.<sup>19</sup> Nevertheless,

Sweden and Finland, two of the few European Union (EU) Members States to have had provisions in their migration legislation to provide people protection who cannot return home due to environmental disasters,<sup>20</sup> both removed these provisions in 2021 and 2016, respectively.<sup>21</sup> There is inherent tension between the politics of deterrence and the dismantling of existing provisions, and protection-based approaches such as the Nansen Initiative's Protection Agenda.<sup>22</sup> This ties in with the finding that the European mode of governing climate change and human mobilities is one of prevention of migration to Europe, drawing on technocratic tools of migration management to try to reduce potential migration to Europe from materialising.<sup>23</sup>

Media representations of the topic accord with and play a role in supporting this mode of governing, with meta-analysis of articles on media framing of climate change and migration in the Global North showing that framings of security, risk, and victimisation of people on the move are most widespread.<sup>24</sup> Equally, with the articles analysed only covering Australia, New Zealand, the United Kingdom, Germany, and United States within the Global North, it is also clear that there are still significant gaps in the literature, and a broader analysis, particularly beyond Anglophone settings, is needed.

Despite the at times dystopic narratives on climate change and human mobilities, surveys have indicated that the populations of Austria, Denmark, and Germany may be more receptive to people arriving from the Global South due to climate change, than for primarily economic motivations.<sup>25</sup> In a survey carried out in Aotearoa New Zealand the contributions of current immigrants in general were viewed more positively than those of future climate migrants. However, survey respondents with a stronger belief in anthropogenic climate change were also found to have more positive attitudes towards climate migrants.<sup>26</sup> Here the layers of and intertwining of perceptions start to come into focus, as well as emphasising the lack of homogeneity across the Global North, further strengthening the need for nation state-specific analyses.

### **Developmentalisation and discourses on climate and human mobilities**

In order to understand how climate mobilities have been framed as an issue of development in Denmark and Sweden, this section will first give a brief overview of how similar discourses on climate change and human mobilities have evolved at the international level. This normally brings to mind the shift that took place in the early to mid-2010s, with the growth in popularity of the 'migration as adaptation' discourse.<sup>27</sup> This well-documented move away from a more environmentally deterministic and securitised perspective on climate change and migration focussed on the (dangerous) figure of the climate refugee and the potential that large numbers of people would flee from the Global South to the Global North due to climate change.<sup>28</sup>

The 'migration as adaptation' discourse has at its core the assumption that people will not only flee due to climate impacts but also will utilise their mobility to allow

them to adapt. Five central purposes of migration as adaptation from a development perspective are identified in the literature as (1) allowing households to reduce exposure to climate hazards; (2) providing income diversification via migration of one household member; (3) increasing household assets; (4) reducing the number of household members to support; (5) bringing new skills and knowledge upon return.<sup>29</sup> The neo-liberal roots of this discourse are, however, well-documented,<sup>30</sup> with migrants relying on their labour to become more resilient individuals in the face of systemic challenges. The increase in agency that is attributed to migrants in this discourse is thus coupled with a transferring of responsibility onto the shoulders of migrants themselves to adapt to changing climatic conditions.<sup>31</sup> Therefore, there is an increasing recognition that “used irresponsibly, a broad conceptualization of migration as adaptation can be a fig leaf for governmental inaction rather than an effective strategy to minimize harm”.<sup>32</sup> As a result, an increased focus on maladaptation, or the limits of migration as adaptation, is emerging.<sup>33</sup>

However, as discussions on climate change and human mobilities have become more mainstream and the diversity of actors involved in the (policy) discourse has increased, the ways in which development is being linked to climate change and human mobilities is also diversifying. The triad of development, climate change, and human mobilities is therefore no longer restricted to the migration as adaptation concept and is taking on a number of complex forms. In their study of development cooperation actors’ engagement with climate change and human mobilities, Robert Stojanov and co-authors have identified four different approaches to development work on climate mobilities.<sup>34</sup> First, adaptation and resilience-building in place are undertaken, whereby “a first entry point for development cooperation actors is to use a displacement prevention lens on their adaptation and resilience-building programmes”.<sup>35</sup> Second, facilitation of mobility as climate adaptation is pursued. Third, organisations contribute to planned relocation or resettlement. Fourth, impacts of displacement are managed. As this analysis will show, in the Danish and Swedish policy discourse, there is a focus on this first approach, with climate adaptation activities constituting a tool of development programming that can help prevent undesired mobilities.

### **Danish and Swedish discourse and policy**

In the remainder of this chapter, I will focus on policy discourses in Denmark and Sweden in particular. On the one hand, these discourses are specific to their national contexts. They are closely intertwined with other policy discussions and sensitive to national events, for example parliamentary elections and changes in government. On the other hand, these discourses provide indications of how climate change and human mobilities are being understood and turned into subjects of policymaking in two EU Member States. It is therefore to be anticipated that parallels can be identified with further members of the Union in particular, and in other nation states of the Global North more broadly. As well as adding two case studies beyond the Anglophone nation states to the literature, Denmark and Sweden make for an interesting combination of case studies due to their geographical



proximity as neighbours, their positions as international leaders in climate policy,<sup>36</sup> and their differing migration policy. Sweden is known for its relatively welcoming migration policy in the past, while Denmark has taken a more restrictive stance. It is also important to note that these policy discourses are historically contingent and remain dynamic and shifting.

This chapter draws on documentary analysis and 13 semi-structured interviews conducted with civil society representatives in Denmark and Sweden in 2021 and 2022 as part of a larger project that ran between 2020 and 2022 and also included Austria and Germany, to analyse how climate change and human mobilities and potential policy interventions in this area are being discursively produced in European nation states. The documents analysed are all from the post-Paris era having been published since the adoption of the 2015 Paris Agreement. While in the broader project, there was a cut-off for adding new documents at the end of 2021, newer more recent documents from Sweden have been added to the analysis for this chapter, to reflect the importance of the shifting migration policy context in Sweden since the 2022 parliamentary elections and change in government.

### *Governmental development strategies and migration deterrence*

One key way in which Denmark and Sweden are beginning to consider climate change and human mobilities is within international development cooperation. The 2022–2026 Swedish strategy for sustainable economic development articulates the connection as follows: “Involuntary migration and the number of displaced people have continued to rise due to conflict, economic insecurity and climate change”.<sup>37</sup> The current Danish development strategy connects the two phenomena more explicitly and in more detail. Drawing on an analysis by the World Bank, the strategy quotes the finding that “more than 143 million people in Africa, South Asia and South America will be displaced due to climate change by 2050”.<sup>38</sup> Furthermore, the strategy draws a line between fragile states, poverty, climate change, displacement and migration, conflict, prosperity, rights, and security, setting the whole relation up as a reason for irregular migration to Europe:

Within the framework of the Refugee Convention, we must take action to help people in fragile countries and in regions of origin. This is where poverty is increasingly concentrated. And this is where the climate crisis has the hardest impact. Displacement and irregular migration stem from the inability of fragile and conflict-affected societies to provide their citizens prosperity, jobs, rights, democracy and security. Fighting poverty and creating new opportunities for people in regions of origin and in fragile countries helps to prevent irregular migration towards Europe.<sup>39</sup>

Despite this wording being included in the development strategy, other government departments have not been actively recognising the links between climate change and human mobilities. The former Danish Minister of Immigration and Integration, Mattias Tesfaye, was quoted as stating in a media interview during his time in the

ministerial post that he is not particularly interested in climate change.<sup>40</sup> Instead, the minister was widely recognised as stating that he would give whatever answers the climate minister gives on climate topics.<sup>41</sup> While this standpoint may be beneficial for government cohesion between ministries, it nevertheless also highlights a lack of interest in climate change and a dismissal of the issue as something that could potentially come under the Ministry's remit. Indeed, the policy silo of international development can be described as the central node of Danish government interaction with the links between climate change and human mobilities.

The 2016 Swedish development policy framework established a link between climate change and migration as part of work on “environmentally and climate-related sustainable development and sustainable use of natural resources”.<sup>42</sup> Set against this background, the document emphasised both the humanitarian aspects of and links between conflict and climate change and human mobilities: “climate change increases the risk of conflicts, poverty and hunger, undermines human rights and is a growing cause of forced migration”.<sup>43</sup> The government at the time also showed signs of this strategy filtering through into Swedish international development practice. For example, on a visit to climate adaptation projects, the Development Minister praised the fact that “climate-adaptive livelihoods are reducing climate migration which will have long term positive impacts on the country”,<sup>44</sup> while announcing a continuation of Swedish funding. As in Denmark, in Sweden, the policy silo of international development cooperation has long been central for government approaches to climate change and human mobilities.

This has continued to be the case since the 2022 change of government in Sweden towards a more centre-right coalition government of the Moderate Party, the Christian Democrats and the Liberals that is also supported by the far-right Sweden Democrats, which has been accompanied by a “paradigm shift” in Swedish migration policy.<sup>45</sup> This is after elections were dominated by debates around crime, where the link was frequently made to migration, not just from the far-right but also by the Social Democrats, who “showed no compunctions about connecting criminality with immigration”.<sup>46</sup> However, although the same policy silo is being evoked, how human mobilities are being conceptualised within this international development cooperation policy is shifting towards a more express commitment to reducing irregular migration. According to the statement of government policy outlining governmental priorities, “development assistance policy will also be focussed as a tool to counteract irregular migration, increase repatriation and effectively contribute to voluntary returns. Development assistance will also encompass effective measures to reduce the root causes of migration”.<sup>47</sup>

### *Migration deterrence as the new status quo?*

Migration deterrence, the attempt to either block or deter migration, has become a mainstay in nation states across the Global North. In fact, “today the ‘deterrence paradigm’ arguably constitutes the dominant policy framework through which States in the Global North approach refugees”.<sup>48</sup> In his analysis, Matthew Scott has also highlighted how this approach has become interwoven through European

approaches to climate change and human mobilities, quite at odds with the protection paradigm, which nation states purport to support.<sup>49</sup>

Given the prevalence of migration deterrence, it is therefore unsurprising that it is not a new feature of international development cooperation strategies in the Global North. Increasingly, international development assistance is being tied to specific markers, such as cooperation on returns of people who have been refused protection status. On the other hand, a link is being made between international development cooperation and a reduction in migration, based on the (false) assumption that increases in levels of development will reduce emigration from communities and nation states. This narrative runs counter to mounting evidence from the migration studies literature that “development initially tends to *increase* internal and international migration”.<sup>50</sup> Nevertheless, “the use of development policy as a tool of migration control is implicit in most donor states, often in discussions to address ‘root causes’ of migration, and is becoming increasingly explicit”.<sup>51</sup> Labelled by Michael Collyer as “‘disingenuous’ development”, it is clear that such development is conducted to align with the (often implicit) interests of the states that are providing funding.<sup>52</sup> These funders are also today increasingly approaching the climate change and human mobilities nexus from the perspective of displacement prevention and using international development cooperation strategies to do so.<sup>53</sup> While the prevention of displacement is rarely controversial, the focus does not necessarily remain on displacement but also on the prevention of irregular or illicit (often termed *illegal*) migration, based on the premise that migration can be reduced or suppressed by increasing development in sending communities.

These developments in strategic orientation suggest that migration deterrence has become the status quo policy response to not only climate change and human mobilities but any phenomena that can be considered as the so-called root causes of unwanted immigration to Sweden and Denmark. In Sweden, this rhetoric has become more explicit since the 2022 change in government, and constitutes a continuation of rhetoric that began when Sweden experienced a high number of new arrivals in 2015/2016, including from people fleeing the Syrian civil war. In 2016, the existing migration legislation from 2005 was suspended, and subsequently permanently amended in 2021.<sup>54</sup> Set against a background of a political rhetoric that has lamented failing integration measures and a rise in right-wing populist anti-migrant backlash,<sup>55</sup> the permanent legislative amendments were restrictive and aimed at curtailing migration to Sweden. Amongst the upheavals, a little-known paragraph on environmental disasters that had given the possibility to provide protection to foreign citizens already in Sweden unable to return home due to environmental disasters<sup>56</sup> was also removed from the legislation. Although this paragraph had been granted very little practical relevance by civil society as it was not utilised in practice,<sup>57</sup> and was certainly overshadowed by the reversal of other protections, the amendments nevertheless removed one possibility for responding to climate-related mobility from Sweden’s legal books.

As outlined above, the current focus on migration deterrence, including when linked to climate change impacts, can be charted back to shifts that occurred before the election of a more right-wing migration critical government. This dynamic

has been mirrored in Denmark, which has had a social democratic government since 2019 but nevertheless also an increasingly restrictive migration policy context. This orientation in migration policy has been developing in Denmark for some years,<sup>58</sup> and “the centre and especially the right-wing migration politics of [...] the centre-right wing government were pretty much taken over and continued, and in some forms more entrenched and deepened by the Social Democratic Government”.<sup>59</sup> Indeed, “in the eyes of the Social Democrats, a tight immigration policy is supported by a majority of Danes and hence is a condition for getting into office”.<sup>60</sup> Perhaps counterintuitively, this meant that migration featured relatively little in the 2019 elections, with scant room left for contestation on core migration policy between the largest parties.<sup>61</sup> Climate change was a key topic of the elections<sup>62</sup> after the introduction of a new Climate Change Act became a central discussion during the campaign.<sup>63</sup>

As in Sweden, migration deterrence informs the Danish perspective on climate change and human mobilities, which is part of a broader migration policy context that prioritises migration prevention and has become deeply embedded in the policy landscape. In international development cooperation, this is concretely reflected in Denmark’s strategic orientation. For example the Danish Development Cooperation Strategy is founded on the dual priorities of firstly “prevent[ing] and fight[ing] poverty and inequality, conflict and displacement, irregular migration and fragility” and secondly “lead[ing] the fight to stop climate change and restore balance to the planet”.<sup>64</sup> The development ministry’s 2022 announcement of 100 million kroner (13.4 million Euros) of additional funding for climate adaptation and climate-related damage, including for strategic partnerships on loss and damage in the Sahel in the run-up to the 2022 climate negotiations,<sup>65</sup> suggests implementation of these strategies has begun.

In some cases, this migration policy context has been cited as a reason why civil society organisations in Denmark have been reluctant to articulate the links between climate change and human mobilities in migration policy terms. This is based on fears that “the general public has become very critical towards migrants and if climate change is linked to migration streams, then maybe people would be even more exclusive or [...] they would want to have more restrictive policies”.<sup>66</sup> For others, the migration policy context is an opportunity

because we have a lot of [...] right-wing political parties, where we live in fear of immigrants and we just try to turn it around [...] to say that okay, if you are really this afraid of having immigrants coming to Denmark, [...] it should be in your interest to deal with the climate crisis.<sup>67</sup>

### ***Development, securitisation, and adaptation***

This landscape of restrictiveness and reticence in migration policy therefore sets the scene for the ways in which the links between climate change and human mobilities can be conceptualised and articulated in policy discourses. Whilst at the international level, the developmentalisation of the climate change and human

mobilities discourse has led to an increased focus on the concept of migration as adaptation, and a more positive outlook on the potentials of migration, this cannot be mirrored at the nation state level whilst international development cooperation strategies are so infused with migration deterrence logics. Instead, migration deterrence and international development cooperation policy are being combined to conceptualise the links between climate change and human mobilities in ways that are more reminiscent of securitised understandings of mass forced displacement, which the migration as adaptation discourse had been an attempt to shift away from. By securitisation I refer, quite simply, to the construction of climate mobilities or people (potentially) on the move as threats to international security. The most prominent narratives draw the links between climate change, conflicts, and displacement, or utilise prognoses for unimaginably high numbers of people who will move in the future due to climate change. Crucially, just because a speaker employs securitised narratives, they do not necessarily position themselves in opposition to people on the move or to protection-based policy responses. Indeed, apocalyptic narratives about climate change and migration have long been employed by civil society actors to draw attention to the urgency of climate change.<sup>68</sup> However, regardless of intention, such narratives still play into and buttress perceptions of people on the move as a problem of international security that demands security-infused responses.

For example, in a 2030 strategy document published in September 2022, the Danish government focuses on security concerns related to the links between climate change and migration: “Climate change can cause new climate refugees. And conflicts over resources can increase”.<sup>69</sup> The strategy document goes on to set out the links in a more detailed way:

Climate change, natural disasters and competition for resources also challenge global security and stability. Extreme weather phenomena such as drought are putting increasing pressure on people’s livelihoods in ever more parts of the world. When people’s livelihoods disappear, it contributes to humanitarian crises, instability and increased migration.<sup>70</sup>

In articulating their priorities surrounding climate adaptation and how it relates to human mobilities, civil society actors are therefore approaching politicians with messaging that concentrates on the potential of adaptation to relieve migration pressures:

We want to show that we can do something about this, we can hinder all this displacement, we can reduce the pressure on migration if we invest in adaptation, if we help local communities to adapt and to live with the effects of climate change then the risk for conflicts will be reduced.<sup>71</sup>

From this perspective therefore, “adaptation is [...] actually a good investment if you want to create stability and reduce the pressure on migration. And this is clearly a political priority for Western governments”.<sup>72</sup>

These narratives are not limited to the right-wing and individual political parties from the left of the political spectrum have shared similar narratives in both Denmark and Sweden. For example, the Swedish Green Party's election manifesto from 2018 raised the protection implications of climate change and increased refugee flows by arguing that "climate change will mean new refugee flows in the future and Europe needs to be ready to create long-term sustainable ways of receiving both asylum seekers and climate refugees".<sup>73</sup> The Swedish Left Party also emphasised the scale of the problem: "Today there are more people on the run in our part of the world than ever before in history. War, oppression, climate change, and poverty drive people to flee or seek a better life".<sup>74</sup> From the centre of the political spectrum, the Moderate Party also placed climate change alongside war and conflict as an increasing migration driver: "In the Middle East, instability and civil war are showing no signs of abating, with major consequences for the region but also for Europe. Climate change will contribute to increased migration".<sup>75</sup> The Swedish Centre Party has also shared a similar conceptualisation of the links between climate change and human mobilities:

The climate issue is the fateful issue of our time. The effects of climate change are affecting all of humanity with more extreme weather events and natural disasters. Droughts, floods and famines are forcing people around the world to flee their homes.<sup>76</sup>

Similarly in an election manifesto document, the Danish Red-Green Alliance articulated the connections in much more dramatic terms, pointing to the "doomsday-like consequences" for future generations with global temperature rises of over 3°C, which would involve "a changed world, with devastating storms, floods, droughts, famines, and climate refugees in the millions. It will drastically change life as we know it, also in Denmark".<sup>77</sup> The Alternative went further by specifying a role for Denmark, with it "imperative that Denmark contributes to dealing with the global refugee situation by receiving and helping people fleeing war, torture, persecution and people fleeing climate change".<sup>78</sup> From many of these quotes, it is clear that the central motivation of linking climate change and human mobilities in election manifesto documents is to put emphasis on the importance of climate policy. However, the result is a heavily securitised understanding of human mobilities, which plays strongly into migration deterrence narratives elsewhere.

This means that at the national level in Denmark and Sweden, the inclusion of climate change and human mobilities in international development cooperation strategies is not necessarily accompanied by the positive connotations that are attributed to it in the international climate change and human mobilities discourse (more agency for migrants, a less securitised formulation, and a move away from conceptualisations of people on the move as a threat to nation states in the Global North). Instead, the idea of climate change adaptation, when used in connection with human mobilities, is being understood as a strategy for preventing potential mobilities to the Global North from materialising.

*Opportunities and limitations of a developmentalised policy discourse on climate change and human mobilities*

Despite the securitised discourse, civil society actors have been able to utilise the connection that is being made between international development cooperation, climate change, and human mobilities to draw attention to the issue, and to call for increased climate adaptation finance for the Global South. For many it is seen as being an automatic progression of their humanitarian or development work, and civil society organisations working

in the humanitarian sector and in the nexus between humanitarian aid and development and peace building [...] automatically also have a focus on those root causes [of displacement] and there is a tendency now [...] to link it to a climate context.<sup>79</sup>

Danish civil society actors have published weighty reports<sup>80</sup> that approach climate change and migration from the perspective of climate adaptation. Recommendations related to finance are also being highlighted in dissemination activities connected to these publications. For example, in a press release for CARE Denmark's report, "Fleeing Climate Change", it is set out that the report was launched during climate negotiations in 2016, "to give impetus to concrete plans for how we help those who have to flee from climate change – and to ensure that the rich countries contribute to the billions bill for climate adaptation in developing countries".<sup>81</sup> DanChurchAid also emphasised that "rich countries have not been prioritising climate adaptation abroad highly enough".<sup>82</sup> Similarly to international development cooperation strategies of governments, the impetus is on actions that Global North governments can take to assist communities and nation states in the Global South, although with much less emphasis on migration deterrence, and a strong climate justice framing.

It is therefore clear that a discourse rooted in international development cooperation has the potential to advance lobbying for increased climate adaptation finance flowing from the Global North to nation states and communities feeling the brunt of climate impacts in the Global South, a call that has been a key feature of climate negotiations for decades.<sup>83</sup> Furthermore, with the connections between climate change and its impacts on development markers coming more into focus, synergies between international development cooperation and climate adaptation could gain more focus, not only from international development agencies, but from a broader range of government agencies. Policies such as in Sweden, where "when it comes to development aid that climate and environment should be perspectives considered", can help push a variety of actors "to take this seriously".<sup>84</sup>

However, the more pessimistic viewpoint has also been articulated, that the greater consideration of climate change adaptation within development paradigms could lead to either a syphoning of development funding into climate adaptation projects, or a double counting of existing international development cooperation projects as also working under the umbrella of climate adaptation.<sup>85</sup> Danish civil

society has criticised the Danish government's approach to international climate adaptation finance, as "they just combine climate aid with the general ODA [Overseas Development Assistance]",<sup>86</sup> "all the money comes from the aid budget".<sup>87</sup> Both of these fears have contributed to renewed calls from civil society for climate adaptation to be funded by "new and additional" funds.<sup>88</sup>

Furthermore, with the underlying narrative of the necessity to prevent displacement and (irregular) migration flowing through the policy discourse on climate change and human mobilities, there is also a valid concern that the articulation of this in development terms could further entrench the migration deterrence paradigm within development policy. Given the weight of the evidence that disputes the link between increased levels of development and decreased emigration, founding international development cooperation policies upon this premise seems both misplaced and harmful. Furthermore, there is a fundamental ethical question surrounding to what extent international development cooperation should be contingent upon the priorities of the sending state, in this case to implement migration deterrence and control.

## **Conclusion**

In both Denmark and Sweden, climate change and human mobilities are being viewed predominantly as issues of international development cooperation and policy initiatives are being correspondingly located in this policy silo. Civil society organisations are seizing the opportunity to also articulate their positions concerning climate justice, adaptation, and increasing Denmark and Sweden's financial contributions in international development cooperation terms. The civil society articulations of the development–climate change–human mobilities triad are similar to those frequently used in the international policy sphere, which do not necessarily pathologise migration but rather increasingly frequently view it as an additional tool through which individuals can adapt to climate change.

However, governmental strategies articulate the connections between climate change and human mobilities in very different terms, and the ever-present undertone of migration deterrence runs through the strategic orientation of both Denmark and Sweden, especially since Sweden's recent change in government. Therefore, developmentalisation of the climate change and human mobilities discourse at the nation state level in these cases is very different from its international cousin. Although containing the key shared element of climate adaptation, this policy discourse is much more closely related to securitised 'climate refugee' discourses that highlighted the disruptive and threatening potential of large numbers of people being forced to flee from the Global South to the Global North as an inevitable consequence of climate change.<sup>89</sup> Whereas in the international 'migration as adaptation' discourse, migration can itself constitute an adaptation strategy – the combination of a development perspective with migration deterrence means that in situ adaptation policies become a means by which migration can be prevented.

Migration policy as a potential avenue for reacting to changing human mobilities in the context of climate change is firmly rejected by Sweden and Denmark,



either explicitly by interview partners or tacitly due to its absence in key policy documents. There is a twofold reasoning behind this rejection of migration policy. First, migration policy is seen as only being relevant once migration to Denmark and Sweden (usually from the Global South) is a reality, and in the case of climate change, this is not perceived as being the case. However, given that governments are explicitly pursuing a policy of migration deterrence, this is a rather flawed reasoning. Following this logic, not only is migration policy currently irrelevant, but governments are striving to ensure that it remains so. Therefore, second, migration policy itself has become a toxic area of policy that is always negatively connoted. From a governmental perspective, this manifests in increasingly restrictive policy and an emerging consensus around a restrictive status quo focussed on migration deterrence. From a civil society perspective, some actors have cited a resulting fear or reluctance to address climate change and human mobilities in migration policy terms due to the migration policy situation and that doing so might lead to negative developments rather than improvements in policy.

These findings highlight a disconnect between the elite, rather technocratic and expert-led policymaking taking place in the much more heavily researched international sphere, and the policy discourses of individual nation states in the Global North, in this case Denmark and Sweden. Here, the dynamics of everyday politics, and the status quo surrounding migration deterrence, shuts off many policy alternatives that have become beyond contention for many experts, civil society representatives, and technocrats. However, the incompatibility of policies such as migration as adaptation with the migration deterrence paradigm will erect significant barriers to a broader political consensus emerging.

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## 6 Losing home without going anywhere

### Reconceptualising climate-related displacement in international law and policy in ways relevant to Inuit in Greenland

*Miriam Cullen and Nivikka L. Witjes*

#### Introduction

This chapter contends that interpretation of contemporary approaches to climate and disaster-related mobilities adopted in law and policy are inadequate to address the diverse forms of dispossession and displacement that Indigenous Peoples continue to endure, and of which the effects of climate change are a contemporary manifestation. In doing so, it contributes to the small and evolving decolonial scholarly praxis in climate adaptation discussions,<sup>1</sup> and follows the lead of scholars such as Yamagulova et al.<sup>2</sup> to champion ‘Indigenous peoples’ role in directing adaptation research, action and decision-making in line with their capacities and aspirations for self-determination and cultural continuity,<sup>3</sup> and their broader human rights. In doing so, it intentionally seeks to avoid damage-centred research, which tends to highlight the symptoms of a problem rather than the root cause. Accordingly, this chapter focuses less on the disproportionate impact of climate change on Indigenous Peoples, but more on the mechanisms of constraint and extraction that contribute both to climate change and to Indigenous exclusion, discrimination, and erasure.<sup>4</sup>

The central focus of this chapter is the displacement experiences of Inuit in Greenland, for whom colonization altered the way Inuit viewed the world and understood themselves within it. As the UN Special Rapporteur on the Rights of Indigenous Peoples recently wrote, by ‘trying to limit the population growth of Greenland and imposing Danish culture, language and social and legal structures and through forced urbanization and discrimination, [some Danish] policies have threatened Inuit culture, identity and institutions,’<sup>5</sup> aspects of which continue to this day.<sup>6</sup> Although there is a burgeoning body of research in which the nexuses between identities, climate, and mobility are interrogated, particularly, though not exclusively, from the Pacific region,<sup>7</sup> very little of that has centred on the experiences and knowledges of Inuit.<sup>8</sup> Even more broadly, it was not until 2022 that the Intergovernmental Panel on Climate Change (IPCC) expressly recognized colonialism as a driver of climate change as well as a factor which exacerbates one’s vulnerability to its impacts. The IPCC found with high confidence that ‘vulnerability of

ecosystems and people to climate change [is] driven by patterns of intersecting socio-economic development, unsustainable ocean and land use, inequity, marginalisation, historical and ongoing patterns of inequity such as colonialism, and governance.<sup>9</sup>

This chapter acknowledges that the written format in which academic work is typically produced, and indeed in which the law of the sovereign state is embedded, has serious limitations. As one PhD scholar wrote ‘I am confident that you cannot come to a full understanding of Indigenous concepts of relationality in this [written] format, even if I were to produce here the best academic paper ever written.’<sup>10</sup> This student’s reflections mirror those of critical legal scholars who acknowledge that in law, the structural bias inherent in legal institutions means that even the most ‘impeccable legal argument’ serves ‘deeply embedded preferences...’<sup>11</sup> Accordingly, this chapter elevates Inuit epistemologies and experience to understand the forms of displacement that climate change imposes for Inuit, and at the same time accepts the tension with undertaking that task in this format. That tension does not, in the authors’ view, completely negate the value of writing these words, though it does highlight their limitations.

It is also important to acknowledge that the breadth of displacements Indigenous Peoples have experienced and continue to withstand cannot be decoupled from the ongoing coloniality that relevant formal systems of law, academia, and even climate change itself, each form part. As such, this chapter adopts the broad definition of “coloniality” put forward by Liboiron, which refers to a set of practices ‘characterized by a unique combination of remoteness, infrastructural sparseness, Indigenous erasure, and settler homogeneity that shapes everyday lived experience, politics and intellectual production.’<sup>12</sup> Climate change adds to pre-existing coloniality, not (only) through the direct weather and environmental-related effects exacted upon Peoples who have hardly caused it but also through the way those things are perceived and responded to.

This chapter begins by elaborating the context within which Inuit were originally dispossessed and displaced as a People: colonialism, which is fundamental to understanding contemporary displacement and associated responses. The remainder of the chapter is then dedicated to interrogating existing legal regimes, in this context.

### **First displacement: colonialism and coloniality in Greenland**

The vast majority of scholarship on climate and disaster-related mobilities, and for that matter refugee and migration studies more generally, ignore that refugee and migrant concepts are steeped in the colonial project, which ‘actively denied sovereignty to much of the world, and imposed borders that did not meaningfully map onto people’s lives.’<sup>13</sup> Yet, colonialism is ‘fundamental to contemporary migrations, mobilities, immobilities, receptions and social dynamics.’<sup>14</sup> This is readily apparent in the Arctic Region, in which Inuit exist across four nation states (Denmark, Canada, the United States, and Russia) but cannot move freely between them. As a matter of law, territory itself is a European legal construct that dictates a certain

relationship between community, authority, time, and place.<sup>15</sup> To the colonizing authority, a legal interest in land was typically signalled through European-style infrastructural markers such as churches, roads, fences and houses. As such, it was not difficult for them to ignore Indigenous Peoples' custodianship because 'the lighter the ecological footprint of the Indigenous peoples in question, the less likely they were likely to see the land as "inhabited" or "owned."' <sup>16</sup>

For Greenlandic Inuit, original dispossession and displacement was formalized in international law through a 1933 decision of the Permanent Court of International Justice, which declared Greenland *terra nullius* ('land belonging to no one') prior to 1814, and confirmed Greenland was part of the Danish state, ignoring millennia of human occupation before European arrivals.<sup>17</sup> Application of the doctrine of *terra nullius* not only legitimized the colonial project within the dominant international legal system but also affirmed a "colonial mindset" in which Danish engagement in Greenland and with Inuit continued without any interrogation of otherwise obvious questions of jurisdiction and the misappropriation of land and resources.<sup>18</sup> Relevantly, the doctrine of *terra nullius* continues to evoke 'a sense of misappropriation and *displacement*' for the Indigenous Peoples today.<sup>19</sup>

When it joined the UN in 1945, Denmark listed Greenland as a non-self-governing territory. This meant that Denmark was obligated under the terms of the UN Charter to promote the wellbeing of the inhabitants of Greenland and advance the development of self-governance<sup>20</sup> as part of a multilateral system of UN oversight 'geared towards eventual independence' of those territories.<sup>21</sup> Denmark was reluctant to relinquish its control of Greenland which constituted a significant buffer zone between the Soviet Union and the North America, and bestowed Denmark with a degree of diplomatic leverage it would otherwise not possess. In contrast with the spirit of the arrangements under the UN Charter,<sup>22</sup> Greenland was *subsumed into* the Danish state by an amendment to the Danish Constitution in 1953,<sup>23</sup> notably, without the free, prior, and informed consent of Inuit.<sup>24</sup> Although integration into the colonizer state was possible as a matter of legal technicality,<sup>25</sup> it was a suspicious conclusion to non-self-governing status given the purpose of the arrangement under the Charter.<sup>26</sup> Denmark needed to persuade the UN that integration was valid including by showcasing an adequate degree of economic, social, and cultural alignment between Greenland and Denmark.<sup>27</sup> Through legislation passed in 1950 (the Greenland Acts) Denmark advanced a policy of intense industrialization in Greenland, which led to the rapid expansion of cod fishing and mining especially, and the forced eviction and relocation of Inuit in line with those policy priorities. It saw the implementation of compulsory education that banned the use of any of the Greenlandic languages in schools, and removed some Greenlandic children to Danish families. In 1954, the UN General Assembly voted in favour of incorporation of Greenland into Denmark, partly on the basis of a report prepared by the Committee on Information from Non-Self-Governing Territories which had been persuaded by the Danish assimilation efforts, and was under a misapprehension that self-determination had been properly exercised by the Greenlandic People.<sup>28</sup>



As the policies of other governments did for Inuit elsewhere, these ‘colonial strategies sought to missionize, educate and render sedentary Indigenous peoples in the Arctic, replacing Indigenous institutions with settler ones... [and] ... facilitated resource extractive industries.’<sup>29</sup> The consequence of which was, among other things, to have effectively ‘ended high mobility as an adaptation strategy to climate variability and extreme weather, without replacing it with other readily identifiable adaptation strategies.’<sup>30</sup> Long before the impacts of climate change were a measured aspect of daily life, Inuit had already been repeatedly uprooted, relocated, and dispossessed not so much “of territory” insofar as territorial ownership of land was not part of an Inuit way of thinking, but of a relationship with that territory through forced assimilation and the removal of the language, culture, and identity that supported it. As will be further elaborated in the sections which follow, to be displaced is about more than simply physical relocation from one place to another.

### **The desire for legal certainty**

A central struggle in the literature on mobility in the context of climate change and disasters is how to define exactly what is being discussed. Dominant systems of law demand certainty, definitions, and clarity about who and what is included or excluded from regulatory concern. Many scholars have undertaken detailed legal analysis to declare, define, and assess just who enjoys which legal protection, and who falls within and outside state-based legal recognition and associated entitlements.<sup>31</sup> There exist a variety of legal and policy categories into which people on the move in the context of climate change or disaster might fall, with no one-size-fits-all classification. Today, scholars generally prefer to speak of mobilities and immobilities in the context of climate change and disaster. The word “mobility” is favoured because it recognizes the individual agency in decisions to move, such as those who move in advance of foreseeable climate-related hazards or potential disaster. To move “in the context of” climate change and disaster acknowledges the multiple reasons that people might relocate, which is rarely, if ever, a single-issue decision. There have also been those who have debated the utility of mobility at all as a frame of reference for the impacts of climate change.<sup>32</sup>

Most early legal scholarship on this theme focused on the law that would, could, or should apply if people cross from one state into another, notwithstanding most people displaced in the context of climate change and disaster will not cross an international border. However thoughtfully conceived, that scholarly focus risked reproducing colonial imperatives insofar as it situates analysis within a legal framework that prioritizes the inwards migration concerns of some states, over the lived experience of the people within them.<sup>33</sup> More recently, recognition that most people on the move in the context of climate change and disaster remain within the boundaries of the same state has led to a growing body of literature on “internal displacement.” This is the legal guidance most relevant to the present case study insofar as the relevant mobility paradigm is one predominantly within the Kingdom of Denmark.

The Guiding Principles on Internal Displacement (GPID) are arguably the pre-eminent instrument for steering approaches to internal displacement in line

with extant binding human rights obligations. Article 1(2) of the GPID provides that ‘internally displaced persons’ (IDPs) are those who have been forced to leave their ‘homes or places of habitual residence’ as a result of armed conflict, generalized violence, violations of human rights, or natural or human-made disasters ‘and who have not crossed an internationally recognized State border.’ Useful though such a conceptualization has been in advancing legal protections (as evidenced by its incorporation into regional frameworks for instance),<sup>34</sup> the GPID were drafted more than two decades ago. They did not expressly incorporate considerations of either climate change or empire in framing what, to whom, and how existing international law applied, and did not purport to critique those norms, nor anticipate how they could or should shift or progress. Nevertheless the GPID remain a grounding tool for addressing internal displacement based on important norms of international law.

### **What is “displacement” from “home” for Greenlandic Inuit and how does it manifest?**

Neither the word “homes” nor the phrase “places of habitual residence” are defined in the GPID, or elaborated in the commentaries that followed their adoption.<sup>35</sup> The concept of “home” as conceptualized by Western Europeans and applied to others (both physically and philosophically) has long been critiqued, and so too displacement from it. Bhabha writing in 1992 averred that to be unhomed ‘has less to do with forcible eviction and more to do with ... enforced social accommodation, or historical migrations and cultural relocations.’<sup>36</sup> Bhabha and scholars since have grounded their work in the idea that to be displaced from one’s home does not necessarily require movement from one geographical location to another.

Indeed, to limit climate and disaster-related displacement and mobility to only its physical manifestation ignores the ways in which climate-related displacement is a social, cultural, economic, and spiritual phenomenon that compounds pre-existing displacement processes.<sup>37</sup> Inuit have experienced, and continue to experience, displacement in ways that cannot be adequately accounted for through notions of physical residence, and indeed occurs without necessarily being physically relocated at all. Rather, ‘the ground itself [has been] redefined beneath their feet.’<sup>38</sup> That redefining began with colonization, the invocation of the doctrine of discovery, the implementation of colonial systems of law, capitalism, land management and governance, as well as the structured dispossession of language, land, and family. Now, it occurs through climate change, which itself is the result of the very ‘standards of civilization’ to which those policies aspired.<sup>39</sup> For ‘what initially appears to be the imperatives of capitalism and modernity turn out to be the culturally and historically specific characteristics that the modern capitalist state assumed in the West.’<sup>40</sup> Whereas for Inuit, physical and beyond physical understandings cannot be easily separated. Humans are a *part* of the environment in which they exist, and nature is also part of them. As much is now expressly acknowledged in the Preamble to the 2023 draft Greenland Constitution.<sup>41</sup> That interconnectedness itself is part of a broader and interdependent ecosystem. This is a core part of being Inuit.

Not in the stereotyped way manifested in tourist brochures, but in very practical respects that cannot be detached from place.

In contrast to conceptualizations of climate-related mobility on one end of a spectrum, and immobility on the other, Bhabha's notion of "unhoming" describes a phenomenon of displacement without physical relocation, in which 'to be unhomed is not to be homeless.'<sup>42</sup> This notion of being "unhomed" aligns well with notions of "solastalgia," a term coined over a decade later and often used in the context of describing more-than-physical losses from climate change and environmental destruction.<sup>43</sup> It refers to the grief that follows the transformation and degradation 'of the biophysical spaces and landscapes within which people live and which they call "home."<sup>44</sup> As Albrecht explained in coining the term, solastalgia 'is manifest in an attack on one's sense of place, in the erosion of the sense of belonging (identity) to a particular place and a feeling of distress (psychological desolation) about its transformation.'<sup>45</sup> These are the facets that give rise to recognition of 'Peoples' under international law, and their loss thus also diminishes access to an realization of self-determination.

Although the English language is imperfectly placed to represent or convey Inuit understandings of the world, the anthropological notion of sentient ecology also provides a useful tool. Sentient ecology describes knowledge that is neither formal nor authorized within the annals or context of "science" but rather is only transmissible within the context of its practical application 'it is based in feeling, consisting in the skills, sensitivities and orientations that have developed through long experience of conducting one's life in a particular environment.'<sup>46</sup> In Greenland, over 80% of households rely on wild or caught foods for at least a portion of their diet.<sup>47</sup> Although the nomadic lifestyle has by and large become a thing of the past, many people continue to maintain seasonal residences or camps.<sup>48</sup> As such, capability in nature is an important part of daily life for a People who have always been ecologically mobile (capable of moving across ecological systems for sustenance),<sup>49</sup> and adept at waiting for the right moment, for weather, tides, and animals. Crucially, the way Inuit perceive the world and themselves in it is not transferrable to other places. Identity is inherently connected to one's capabilities in *this specific* environment. As the world dissolves at a rapidly increasing pace, the applicability and relevance of highly developed skills begin to dissolve with it. A person's sensitivity to the environment struggles to interpret signals not heard or seen before. In this way, climate change has added a new dimension to pre-existing colonialities and amplified feelings of being homesick in one's home, homeless in one's homeland.<sup>50</sup> Thus, as the ice dissolves with the changing climate, aspects of the Inuit sense of capability and capacity to provide dissolves too. The personal and collective sense of connectedness to nature and overall wellbeing also diminishes.<sup>51</sup>

In Greenland, displacement associated with climate change is not only about displacement of people from place<sup>52</sup> but also about *displacement of place from people*. Place itself is physically disappearing as sea ice becomes "absent" in locations at which it could once be relied.<sup>53</sup> For instance, during the winters of 2016 and 2018, surface temperatures in the central Arctic measured 6 degrees (Celsius)

above the 1981–2010 average, ‘contributing to unprecedented regional sea ice absence.’<sup>54</sup> Arctic sea ice extent is now declining in all months of the year. Even when it has not disappeared entirely, it has often thinned to such an extent that it is not reliable to bear weight,<sup>55</sup> making passage across the ice often inaccessible, or unsafe. Permafrost melt also contributes to a loss of reliable hunting grounds, shelter, and food storage. In addition, changes in Arctic hydrology, wildfire and abrupt thaw have altered ‘the abundance and distribution of animals including reindeer and salmon... these impact access to (and food availability within) herding, hunting, fishing, forage and gathering areas, affecting the livelihood, health and cultural identity of residents including Indigenous peoples.’<sup>56</sup> All of which impinges upon life for both hunter and prey (human and animal) in substantial respects.

Climate change adds to pre-existing coloniality, not (only) through the direct weather and environmental-related effects exacted upon Peoples who have hardly caused it, but also through the way those things are perceived and responded to. The Arctic, and Greenland in particular, is subject to significant scientific attention because of the consequences for the rest of the world of climate impacts in this region. The melting of the Greenlandic ice sheet holds profound and undeniable significance for planetary health. Concerted efforts to slow or reverse that process include geoengineering and solar radiation modification projects which, when implemented at scale, manipulate the climate system itself, and run the risk of ‘deleterious effects that are widespread, long lasting or severe.’<sup>57</sup> Much of this work takes place without the input, knowledge, meaningful consultation, or consent of the Inuit whose daily lives will or could be directly impacted by such interventions,<sup>58</sup> notwithstanding that their knowledge could well improve the projects themselves.<sup>59</sup>

Indeed, according to a report of the UN Human Rights Council Advisory Committee on the impact of new technologies intended for climate protection on the enjoyment of human rights, Indigenous Peoples are not *systematically* included in the design or planning of new technologies for climate protection at all.<sup>60</sup> Indeed, as the world feels the urgency and importance of responding to climate change, the installation of geoengineering or mitigation technologies has at times ridden roughshod over the rights of the Peoples directly impacted by them. There is also a concern that projects claiming to address or mitigate climate change could serve as a Trojan horse for other policy or commercial objectives, as has already occurred elsewhere.<sup>61</sup> The 2023 Statement of the Arctic Peoples’ Conference provides, relevantly, ‘climate change cannot be used as an excuse to infringe our distinct rights as Indigenous Peoples.’<sup>62</sup> It objects to the “green colonialism” being experienced in the Arctic which it defines as ‘land encroachment, resource extraction, renewable energy production, and protectionist conservation that is undertaken at the expense of Indigenous Peoples’ reality ... [and] without our consent.’

Infrastructure, mining, and energy companies have their eyes turned to Greenland as the melting of the ice sheet and other climate impacts permits better access to deposits, and new business opportunities. In the past month, Greenland both acceded to the Paris Agreement and signed a strategic partnership on sustainable raw materials value chains with the EU which they will now put into action.<sup>63</sup>

The corporate and material objectives of the latter arrangements come with inherent risk that potentially undermines the realization of environmental protections. At the time of writing, Greenland Minerals—a conspicuously named Australian-domiciled company—has initiated investor state dispute settlement (ISDS) to force its perceived right to exploit rare earth elements deposits near the South-Greenland settlement of Narsaq, after a licence to exploit the region was declined by the Greenland Government.<sup>64</sup>

ISDS was recently critiqued by the UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment precisely because it inhibits a state's capacity to meet its environmental protection and human rights obligations.<sup>65</sup> Indigenous Peoples have no right to participate in proceedings, and when they have requested participation, it has been routinely denied by the arbitral tribunal.<sup>66</sup> ISDS is part of many international investment agreements between states and private companies. It permits the settlement of disputes 'not by independent judges but by arbitration lawyers, many of whom work for law firms that represent investors.'<sup>67</sup> The ISDS system creates rights for private companies without any associated responsibilities, and is a platform within which companies can bring claims against governments without any reciprocal possibility for claims in the other direction. Decision-makers can order crippling amounts in damages, sometimes several times more than the state's GDP.<sup>68</sup>

In relation to Greenland Minerals' proposed open pit mine near Narsaq, three UN special procedures mandate holders wrote to the company to express concern over 'potential human rights violations and environmental damaging consequences.'<sup>69</sup> The letter explained among other things:

Concerns have been raised over the lack of access to adequate information, failure to consult and seek the free, prior, and informed consent of local indigenous community, insufficient documentation and recognition of environmental risks of toxic and radioactive pollution and waste and damage to the nearby UNESCO heritage listed site, Kujaata [*sic*].<sup>70</sup>

Other potential impacts include the disturbance of habitat for terrestrial, freshwater, and marine fauna and flora, including the endangerment of vulnerable or near threatened species.<sup>71</sup> It is alleged that the environmental impact assessment downplayed the risks and the assessment was presented by the company in a way that was not culturally appropriate, nor in a language understood by those impacted.<sup>72</sup> Even if Narsaq residents are not displaced physically, the damage to the surrounding area has the potential to displace them from their knowledge and inhibit access to fishing and hunting. An ISDS award is decided in confidence and with no obligation to consider either environmental protection or human rights.

### **Adding the collective dimension to mobility and rights**

In Greenland, the way Inuit people feel capable is associated with their capacity to navigate place, and subjective individual wellbeing is inherently connected

to broader ‘collective wellbeing in social groups, regions, and countries.’<sup>73</sup> That understanding of mobility stands in contrast to the legal frameworks for governing human mobility in national and international law, which is often framed in a regulatory sense in terms of the *individual* alone. Article 14 of the 1948 Universal Declaration of Human Rights, for instance, provides for the right of every ‘individual person’ to seek asylum. The 1951 Refugee Convention applies to ‘any person’ who owing to a well-founded fear of persecution on specific grounds is outside their country of nationality and, owing to that persecution is unable or unwilling to avail themselves of its protection. The GPID also focus on internally displaced ‘persons.’ This focus on the individual continued into studies and initiatives dealing specifically with climate and disaster-related displacement and mobility. The terms of reference for the Nansen Initiative ‘Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change,’ for instance, also fell squarely within the traditional human rights and migration law regime.<sup>74</sup>

To focus on the protection of the individual is not inherently problematic, but it has the effect of potentially overlooking other relevant considerations. Centring the individual does not allow for consideration of the collective elements of mobility that are so relevant for Greenlandic Inuit and other Indigenous Peoples. Indeed, to date no regulatory initiatives related to climate mobilities in the Nordic Region (be it planned relocation, disaster risk management, or migration) take into account the specific rights of Indigenous Peoples and the responsibilities of states with respect to them. Nor do they venture to incorporate Indigenous epistemologies in developing an appropriate response. This is so notwithstanding that the specific connection of Indigenous Peoples, as a collective, to their land, territories, and resources is recognized in international law and endorsed by Nordic states, including, relevantly here, Denmark.

The collective rights of Indigenous Peoples are recognized and enshrined in the 1989 International Labour Organization’s Indigenous and Tribal Peoples Convention (ILO 169) and the 2007 UN Declaration on the Rights of Indigenous Peoples (the Declaration). The latter took decades to negotiate, but eventually the initial disquiet held by some governments that recognition of Indigenous rights to land would be a threat to state sovereignty was set aside,<sup>75</sup> aided by the express acknowledgement in Article 46 that nothing in the Declaration authorizes actions that ‘would dismember or impair ... the territorial integrity or political unity of sovereign and independent states.’ Indigenous representatives insisted that the ‘profound spiritual, cultural, traditional and economic relationship indigenous peoples have to their total environment’ and their ownership and control of their territories and resources was essential to realizing their rights to self-determination and public health.<sup>76</sup> The Declaration recognizes that the inseparability between person and place, and connectedness to land, often goes ‘to the very identity of Indigenous Peoples’ themselves,<sup>77</sup> that the collective rights of Indigenous Peoples ‘are indispensable for their existence, well-being and integral development as peoples,’<sup>78</sup> and that ‘Indigenous Peoples have the collective right to live in freedom, peace and security as distinct peoples ...’<sup>79</sup> In this way, it acknowledges the inherent relativity of Indigenous Sovereignties, in which all elements of the natural world are recognized

as being in relationship with each other,<sup>80</sup> rather than dissected and dichotomized in the ways usual within dominant systems of law.

The Declaration is not, strictly speaking, a “binding” instrument of international law, and there remains some debate about the status of the rules it contains.<sup>81</sup> Most academic literature supports the view adopted by the then UN Special Rapporteur for the Rights of Indigenous People, James Anaya, that the Declaration represents ‘a contextualized elaboration of general human rights principles and rights as they relate to the specific historical, cultural and social circumstances of Indigenous peoples.’<sup>82</sup> As others have noted, ‘regardless of the fears about its legal strength, national courts have begun to make use of the Declaration as adopted.’<sup>83</sup> Relevantly, Denmark voted in favour of the adoption of the Declaration in the General Assembly in 2007 and has since repeatedly endorsed it both in multilateral fora and national policy,<sup>84</sup> so too the Government of Greenland.<sup>85</sup>

Denmark ratified and accepted ILO 169 in 1996, and in so doing, declared that the original inhabitants of Greenland were the only Indigenous People in the Danish Realm.<sup>86</sup> Having specifically accepted that Greenland Inuit are Indigenous People under international law left it undoubtable that the rights enjoyed by Indigenous Peoples would apply to Denmark in its governance of Greenland. ILO 169 relevantly provides that

governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.<sup>87</sup>

There is precedent for the incorporation of Indigenous epistemologies into Danish understanding of its international legal obligations, including recognition of collective rights. Denmark added a declaration to its ratification of ILO 169, which provided that it was not possible ‘for either natural or legal persons, to acquire rights of ownership to lands in Greenland,’<sup>88</sup> on the basis that this interpretation was more ‘faithful to the traditional ways of the Greenlanders.’<sup>89</sup> It is notable that no other aspects of Inuit philosophy was expressly mentioned, and that this particular interpretation left the legal interest in land squarely in the hands of the Danish state by default,<sup>90</sup> notwithstanding obligations to consult Indigenous Peoples under the ILO Convention.<sup>91</sup> Although this declaration does not have binding force,<sup>92</sup> it continues to govern land management in Greenland today.

## **Conclusion**

Greenlandic Inuit are often treated as either passive victims of colonization, climate change, or other forms of exploitation in need of “help,” or as resilient innovators capable of adapting to changing circumstances. Such labelling can create oversimplified, dichotomized notions of Inuit as a People, and contributes to racist stereotyping. Although Greenlandic Inuit are well-versed in adapting to changing circumstances, there are obvious questions about whether the need for that

adaptability extent is really equitable in all the circumstances. Decolonial climate adaptation scholarship ‘calls for exploration of multiple objectives, identities, subjectivities, and power dynamics within Indigenous societies that produce unique vulnerabilities, capacities, and encounters with adaptation policy.’<sup>93</sup> At the same time, Greenlandic Inuit share in the research fatigue that commonly exists among Indigenous Peoples as a result ‘of being overresearched yet, ironically, made invisible.’<sup>94</sup> To the extent that dominant legal systems continue to be those imposed by the colonial encounter, then the incorporation of Inuit epistemology into those (Danish or Greenlandic) legal frameworks ought to be both encouraged and led by Inuit themselves.

This chapter has evidenced that law and scholarship on human mobility in the context of climate change and disaster, and its central focus on physical movement of people from place, does not adequately account for the Inuit experience of it. Overall, regulatory approaches effectively ignore worldviews outside the dominant (Western European) paradigm, and therefore also invalidate the various forms of displacement actually occurring. A re-evaluation of notions of mobility and displacement through the perspectives and realities of peoples subject to this consequence of climate change is essential.<sup>95</sup>

## Notes

- 1 Danielle Emma Johnson, Meg Parsons, and Karen Fisher, ‘Indigenous Climate Change Adaptation: New Directions for Emerging Scholarship’ (2022) 5 *Environment and Planning E: Nature and Space* 1541, 1542.
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- 3 Yumagulova and others, *Ibid.*
- 4 On climate change constituting a contemporary manifestation of colonialism, see: Kyle Whyte, ‘Is it Colonial Déjà Vu? Indigenous Peoples and Climate Injustice’ in Joni Adamson and Michael Davis (eds), *Humanities for the Environment: Integrating Knowledge, Forging New Constellations of Practice* (Routledge 2016) 88. On climate change as threat to the Indigenous right to exist, see Comar, this volume.
- 5 Human Rights Council, *Visit to Denmark and Greenland: Report of the Special Rapporteur on the Rights of Indigenous Peoples*, José Francisco Calí Tzay, UN Doc A/HRC/54/31/Add.1 (3 August 2023) 5.
- 6 *Ibid.* Urbanization for instance, continues to rise: Statistics Greenland, ‘Population’ <<https://stat.gl/dialog/topmain.asp?lang=en&subject=Population&sc=BE>> accessed 2 October 2023. See also Miriam Cullen, Benedicte Sofie Holm, and Céline Brassart-Olsen, ‘A Human Rights-Based Approach to Disaster Risk Management in Greenland: Displacement, Relocation, and the Legacies of Colonialism’ (2024) *Yearbook of International Disaster Law* (Thematic Issue: Human Rights) (forthcoming).
- 7 Fleur Ramsay, ‘Keynote Address: Decolonizing Climate Displacement’ (University of New South Wales Law Journal Launch of Issue 45(4), University of New South Wales, Sydney 22 December 2022) (on file with author); Lucas Lixinski, Jane McAdam, and Patricia Tupou, ‘Ocean Cultures, the Anthropocene and International Law: Cultural Heritage and Mobility Law as Imaginative Gateways’ (2022) 23 *Melbourne Journal of International Law* 1, 5; Yumagulova and others (n 2).
- 8 cf Cullen, Holm, and Brassart-Olsen (n 6).



- 9 'Summary for Policymakers' in Hoesung Lee, J. Romero and others, *Climate Change 2023: Synthesis Report. Contributions of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2023) 31 (hereafter IPCC Synthesis Report).
- 10 Edward Allen cited in Max Liboiron, *Pollution is Colonialism* (Duke University Press, 2021) 22.
- 11 Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (CUP, 2005) 607.
- 12 Liboiron (n 10) 29.
- 13 Rebecca Hamlin, *Crossing: How We Label and React to People on the Move* (Stanford University Press 2021) 30. With notable exceptions: Thomas Spijkerboer, 'The Global Mobility Infrastructure: Reconceptualising the Externalisation of Migration Control' (2018) 20 *European Journal of Migration and the Law* 452; Karin de Vries and Thomas Spijkerboer, 'Race and the Regulation of International Migration. The Ongoing Impact of Colonialism in the Case Law of The European Court of Human Rights' (2021) 39 *NQHR* 291.
- 14 Lucy Mayblin and Joe B. Turner, *Migration Studies and Colonialism* (Polity Press 2021) 2.
- 15 Usha Natarajan and Julia Dehm, 'Introduction: Where is the Environment? Locating Nature in International Law' in Usha Natarajan and Julia Dehm (eds), *Locating Nature in International Law* (CUP 2022) 1, 14.
- 16 Karin Mickelson, 'The Maps of International Law: Perceptions of Nature in the Classification of Territory Beyond the State' in Usha Natarajan and Julia Dehm (eds), *Locating Nature: Making and Unmaking International Law* (CUP 2022) 159, 165.
- 17 Sara Olsvig and Miriam Cullen, 'Arctic Indigenous Peoples and International Law' (2024) *Nordic Journal of International Law* (forthcoming).
- 18 Mickelson (n 16) 163.
- 19 *Ibid* 164 (emphasis added).
- 20 Charter of the United Nations, 26 June 1945, art. 73.
- 21 Miriam Cullen, 'Climate Change, Colonialism, and Human Rights in Greenland' in Petra Butler and Jean-Pierre Gauci (eds), *Human Rights in Small States* (Springer 2024) (forthcoming) pre-publication draft accessible <[https://research.ku.dk/search/result/?pure=en%2Fpublications%2Fclimate-change-colonialism-and-human-rights-in-greenland\(15b2a7c8-5b4c-4dd3-abfb-56c34f54ce2c\).html](https://research.ku.dk/search/result/?pure=en%2Fpublications%2Fclimate-change-colonialism-and-human-rights-in-greenland(15b2a7c8-5b4c-4dd3-abfb-56c34f54ce2c).html)> accessed 5 December 2023.
- 22 Cullen, Holm, and Brassart-Olsen (n 6).
- 23 Confirmed by the UN General Assembly with the adoption of resolution 849(IX) on 22 November 1954.
- 24 Gudmundur Alfredsson, 'Greenland and the Law of Political Decolonization' (1982) *German Yearbook of International Law* 302; Gudmundur S. Alfredsson, 'Greenland and the Right to Self-Determination' (1982) 15(1) *Acta Scandinavica Juris Gentis* 39–43; Anne Kristine Hermann, *Imperiets Børn: Da Danmark Vildledte FN Og Grønland for at Beholde Sin Sidste Koloni* (Lindhardt og Ringhof 2021) 74–78; Cullen (n 21) 6–7.
- 25 Chapter XI of the UN Charter.
- 26 James Crawford, *The Creation of States in International Law* (OUP 2007 2nd edn) 283.
- 27 Since early 1952 the UN General Assembly had been engaged in a formal process of identifying a list of factors which should be taken into account in deciding whether a Territory has or has not attained a full measure of self-government: 'Future procedure for the continuation of the study of factors which should be taken into account in deciding whether a territory is or is not a territory whose people have not yet attained a full measure of self-government' (18 January 1925) UN Doc A/RES/567(VI) 361st plen mtg. The several years of deliberations led to a resolution adopted just five months after the Constitutional amendment incorporating Greenland into Denmark was passed:

- 'Factors which should be taken into account in deciding whether a Territory is or is not a Territory whose people have not yet attained a full measure of self-government' (27 November 1953) UN Doc A/RES/742(VIII), 459th plen mtg.
- 28 In fact it was a decision made by exclusively by the Greenlandic Provincial Council, which was chaired by a Dane. There was no referendum held, and the expertise and advice was provided by Denmark, and all of the options for the conclusion of non-self-governing status were not presented: Alfredsson (n 24) 40.
- 29 Whyte (n 4) 101.
- 30 Elizabeth Marino, 'The Long History of Environmental Migration: Assessing Vulnerability Construction and Obstacles to Successful Relocation in Shishmaref, Alaska' (2012) *Global Environmental Change* 274, 278.
- 31 E.g. Jane McAdam, *Climate Change, Forced Migration and International Law* (OUP 2012); Matthew Scott, *Climate Change, Disasters and the Refugee Convention* (CUP 2020); Simon Behrman and Avidan Kent (eds), "*Climate Refugees*": *Beyond the Legal Impasse* (Routledge 2018); Simon Behrman and Avidan Kent (eds), *Climate Refugees: Global, Local and Critical Approaches* (CUP 2022).
- 32 Benoit Mayer, 'Constructing Climate Migration as a Global Governance Issue: Essential Flaws in the Contemporary Literature' (2013) 9 *McGill International Journal of Sustainable Development Law and Policy* 87; Calum T. Nicholson, "'Climate Mobility' is Not a Proper Subject of Research and Governance" in Benoit Mayer and Alexander Zahar (eds), *Debating Climate Law* (CUP 2022); Benoit Mayer, 'Who Are "Climate Refugees"? Academic Engagement in the Post-Truth Era' in Behrman and Kent *Ibid* (2018) 89; Benoit Mayer, 'Critical Perspective on the Identification of "Environmental Refugees" as a Category of Human Rights Concern' in Dimitra Manou and others (eds), *Climate Change, Migration and Human Rights* (Routledge 2017).
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- 36 Homi Bhabha, 'The World and the Home' (1992) *Social Text* 141, 141.
- 37 Yumagulova and others (n 2) 1.
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- 39 Ntina Tzouvala, *Capitalism as Civilization: A History of International Law* (CUP 2020) 219.
- 40 *Ibid* 212.
- 41 Which provides "the Greenlandic People are a part of nature": authors' translation from Danish "det grøndlankse folk er en del af naturen": Constitution of Greenland (draft) (2023).
- 42 *Ibid*.
- 43 Glenn Albrecht, 'Solastalgia: A New Concept in Human Health and Identity' (2005) 41(3) *Philosophy, Activism, Nature* 44.
- 44 Glenn Albrecht, 'Negating Solastalgia: An Emotional Revolution from the Anthropocene to the Symbiocene' (2020) 77(1) *American Imago* 9.

- 45 Albrecht (n 43) 44.
- 46 Tim Ingold, *The Perception of the Environment* (2nd ed, Routledge 2022) 29.
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- 49 Whyte (n 4) 88.
- 50 Yumagulova and others (n 2); *Ibid*.
- 51 In interpreting the human right to health, the UN Committee on Economic, Social and Cultural Rights has acknowledged that displacing Indigenous Peoples “against their will from their traditional territories and environment ... and breaking their symbiotic relationship with their lands, has a deleterious effect on their health”: UN Committee on Economic, Social, and Cultural Rights, ‘General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)’, (11 August 2000) UN Doc. E/C.12/2000/4, para. 27. And in Greenland, the Greenlandic Board of Food and Environment has advised that the dietary *context* including the social and cultural context, is important to overall health: Gert Mulvad, ‘Food Security in Greenland’ in Heather Exner-Pirot, Bente Norbye and Lorna Butler (eds), *Northern and Indigenous Healthcare* (Open Press University of Saskatchewan 2018) 40; Peter Bjerregaard and Gert Mulvad, ‘The Best of Two Worlds: How the Greenland Board of Nutrition has Handled Conflicting Evidence about Diet and Health’ (2012) 71(1) *International Journal of Circumpolar Health* 1, 3.
- 52 See Cullen, Holm, and Brassart-Olsen (n 6).
- 53 Michael Meredith and others, ‘Polar Regions’ in IPCC Special Report on the Oceans and Cryosphere in a Changing Climate (Intergovernmental Panel on Climate Change 2019) 261; IPCC Synthesis Report (n 9) 46.
- 54 Meredith and others, *Ibid* 205.
- 55 *Ibid*.
- 56 *Ibid* 206.
- 57 UN Human Rights Council, *Impact of New Technologies Intended for Climate Protection on the Enjoyment of Human Rights* UN Doc A/HRC/54/47 (10 August 2023) paras. 14, 55, annex.
- 58 *Ibid*.
- 59 See, e.g., Magali Houde and others, ‘Contributions and Perspectives of Indigenous Peoples to the Study of Mercury in the Arctic’ (2022) 841 *Science of the Total Environment* 156566.
- 60 *Ibid*, para. 55.
- 61 See, e.g., Hamza Hamouchene and Katie Sandwell (eds), *Dismantling Green Colonialism: Energy and Climate Justice in the Arab Region* (Pluto Press 2023).
- 62 ‘Statement of the Arctic Peoples’ Conference 2023 – Inuiaat Issittormiut Ataatsimeersuarnerat 2023’ at the 50th Anniversary of the first circumpolar meeting of Arctic Indigenous Peoples <<https://www.inuitcircumpolar.com/news/statement-of-the-arctic-peoples-conference-2023-inuiaat-issittormiut-ataatsimeersuarnerat-2023/>> accessed 5 December 2023.
- 63 European Commission, ‘EU and Greenland Sign Strategic Partnership on Sustainable Raw Materials Value Chains’ (Press release, 30 November 2023).
- 64 Claimant’s Statement of Claim, *Greenland Minerals A/S v Government of Greenland (Naalakkersuisut) and the Government of the Kingdom of Denmark* (19 July 2023) <<https://www.italaw.com/sites/default/files/case-documents/180123.pdf>> accessed 13 November 2023. These rare earth elements are increasingly in demand to facilitate the production of certain green technologies.

- 65 Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment, David R. Boyd, *Paying polluters: the catastrophic consequences of investor-State dispute settlement for climate and environment action and human rights*, UN Doc A/78/168 (13 July 2023) paras. 6, 7, 14, 33, 40–48.
- 66 *Ibid* 9–10, paras. 24–26.
- 67 *Ibid* para. 1.
- 68 *Ibid* 3, 32.
- 69 Letter from the Mandates of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; the Working Group on the issue of human rights and transnational corporations and other business enterprises; and the Special Rapporteur on the Rights of Indigenous Peoples (19 April 2021) (copies on file with author).
- 70 *Ibid* 1.
- 71 *Ibid* 2.
- 72 *Ibid*.
- 73 Steenholdt (n 48) 68 citing Birger Poppel, ‘Living Conditions and Perceived Quality of Life Among Indigenous Peoples in the Arctic’ in Wolfgang Glatzer and others (eds), *Global Handbook of Quality of Life: Exploration of Well-Being of Nations and Continents* (Springer 2015).
- 74 Notwithstanding it was mandated to examine cross-border mobility, the Nansen Initiative nevertheless also addressed internal displacement on the grounds that any effective response to cross-border displacement warrants addressing the internal mobility that invariably occurs as a precursor. Nansen Initiative, ‘Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change’ (The Nansen Initiative 2015) 39 <[https://disasterdisplacement.org/wp-content/uploads/2014/08/EN\\_Protection\\_Agenda\\_Volume\\_I\\_-\\_low\\_res.pdf](https://disasterdisplacement.org/wp-content/uploads/2014/08/EN_Protection_Agenda_Volume_I_-_low_res.pdf)> accessed 5 December 2023.
- 75 UN Commission on Human Rights, Report of the Working Group Established in Accordance with Commission on Human Rights Resolution 1995/32 of 3 March 1995, UN Doc E/CN.4/1996/84 17 (4 January 1996) 17, para. 83.
- 76 UN Commission on Human Rights, *Report of the Working Group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995*, UN Doc E/CN.4/1996/84 (4 January 1996) 18, para. 84.
- 77 Claire Charters, ‘Indigenous Peoples’ Rights to Lands, Territories and Resources in the UNDRIP: Articles 10, 25, 26, and 27’ in Jessie Hohmann and Marc Weller (eds), *The UN Declaration on the Rights of Indigenous Peoples: A Commentary* (OUP 2018) 397.
- 78 Declaration, Preamble.
- 79 Declaration, art 7.
- 80 *Ibid* 301 citing Aileen Moreton-Robinson, ‘Incommensurable Sovereignties’ in Brendan Hokowithu and others (eds), *Routledge Handbook of Critical Indigenous Studies* (Routledge 2020).
- 81 Megan Davis, ‘To Bind or Not to Bind: The United Nations Declaration on the Rights of Indigenous Peoples Five Years On’ (2012) 19 *Australian International Law Journal* 17.
- 82 James Anaya, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, UN Doc A/HRC/9/9 (11 August 2008) 24.
- 83 Willem van Genugten, ‘Protection of Indigenous Peoples on the African Continent: Concepts, Position-Seeking, and the Interaction of Legal Systems’ (2010) 104 *AJIL* 29 cited in Davis (n 81) 28.
- 84 Danish Ministry of Foreign Affairs, ‘Danmarks Menneskerettighedspolitik’ <<https://um.dk/udenrigspolitik/folkeretten/menneskerettigheder/danmarks-menneskerettighedspolitik>> accessed 13 November 2023.

- 85 See, e.g., *Study on Indigenous Peoples and the Right to Participate in Decision-Making: Response from the Government of Greenland and the Danish Government*, which states, *inter alia*, “The Government of Denmark and the Naalakkersuisut strongly endorse the United Nations Declaration on the Rights of Indigenous Peoples” <<https://www2.ohchr.org/english/issues/indigenous/ExpertMechanism/3rd/docs/contributions/Denmark.doc>> accessed 5 December 2023.
- 86 Cullen, Holm, and Brassart-Olsen (n 6) citing Declaration in Relation to Convention No. 169, Order no. 97 of 19 October 1997 of the ILO Convention no. 169 of 28 June 1989 (BKI nr 97 af 09/10/1997 Erklæring i forbindelse med ratifikation af ILO-Konventionen Nr. 169 af Oprindelige Folk og Stammefolk i Selvstændige Stater), para. 1; reproduced in English in: International Labour Organization (ILO), Report of the Committee set up to examine the representation alleging non-observance by Denmark of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), made under article 24 of the ILO Constitution by the National Confederation of Trade Unions of Greenland (Sulinermik Inuussutissarsiuqartut Kattuffiat-SIK) (SIK), Decision (2001) para. 25.
- 87 ILO 169 art 13 (emphasis added).
- 88 Declaration in Relation to Convention No. 169 (n 86) para 25.
- 89 *Ibid.*
- 90 And this approach to land management has led to instances in which Greenlandic Inuit People have been excluded from the land they traditionally occupied precisely because there is “no private right to ownership of land in Greenland”: Cullen, Holm, and Brassart-Olsen (n 6).
- 91 ILO 169 Art 15(2); 17(2).
- 92 Declaration in Relation to Convention No. 169 (n 86) para. 27.
- 93 Yumagulova and others citing Johnson, Parsons, and Fisher (n 1).
- 94 Eve Tuck, ‘Suspending Damage: A Letter to Communities’ (2009) 79 *Harvard Educational Review* 409, 411–412.
- 95 Ideas within the evolving scholarship of Fourth World Approaches to International Law (FWAIL) could serve as a useful starting point through which ‘to correct centuries-long framing of Indigenous peoples’ identities, geographies, and histories’: Armi Beatriz E. Bayot, ‘Indigenous People in International Law: Resistance, Refusal, Revolution’ (2023) 15(1) *European Journal of Legal Studies* 293, 299.

## 7 Displaced from the cold

Threats to the self-determination,  
including the cultural self-determination,  
of Sámi Indigenous Peoples  
in the Nordic region from climate  
change impacts

*Dave-Inder Comar*

### Introduction

This chapter analyzes climate change impacts on the self-determination of Sámi Indigenous Peoples in the Nordic region. Governments, Indigenous Peoples, and the UN Office of High Commissioner of Human Rights have identified that climate change impacts will implicate the human right and legal principle of self-determination and threaten the ability of peoples to exercise and enjoy their self-determination in a rapidly changing climate system.<sup>1</sup> Climate change impacts are leading to the destruction and loss of territory,<sup>2</sup> culture,<sup>3</sup> and economic resources and living standards,<sup>4</sup> including on Indigenous Peoples,<sup>5</sup> and are threatening the enjoyment of a variety of human rights. While displacement of Indigenous Peoples from climate change impacts can and will be physical, this chapter argues that “displacement” in the context of Indigenous self-determination must be seen from a broader perspective. Specifically, this chapter argues that Indigenous Peoples can also be “displaced” even in the absence of physical mobility through loss of culture, particularly as environmental conditions change and as Nordic regions continue to warm. Rising average temperatures, along with other environmental changes, will sever the triadic link between the self-determination of Indigenous Peoples, the maintenance of their culture, and their connection to their traditional lands, territories, and resources. The implementation of green energy projects by Nordic States is also threatening cultural loss and cultural displacement for Nordic Indigenous Peoples. This chapter argues that this destruction of culture can be seen as an infringement on the cultural self-determination of Nordic Indigenous Peoples and also threatens their ability to exist and survive as discrete “peoples” in international law. This chapter will conclude by investigating the legal responsibility associated with the breach of such self-determination and the displacement from culture now taking place from climate change impacts.

### The status of self-determination in international law

The right of self-determination is “one of the essential principles of contemporary international law,”<sup>6</sup> and a “fundamental human right”<sup>7</sup> with *erga omnes*

status,<sup>8</sup> meaning that States owe an obligation to the international community as a whole with respect to the norm, and that all States have a legal interest in its protection.<sup>9</sup> Included as a purpose of the UN Charter,<sup>10</sup> self-determination became the primary vehicle for decolonization efforts and it is now well settled that UN General Assembly resolution 1514 (XV) provides the legal foundation for the right of peoples in colonial territories to enter the international legal order as independent States premised on the right of self-determination.<sup>11</sup> The adoption of the Friendly Relations Declaration in 1970<sup>12</sup> further strengthened a broadened conception of self-determination in defining additional forms of “alien subjugation, domination and exploitation” beyond that of colonialism, including foreign occupation,<sup>13</sup> while other frameworks such as the Helsinki Final Act have shifted the definitional emphasis of self-determination toward a continuing, permanent right of all peoples to determine their “internal and external political status” “when and as they wish,” in order to perfect and protect their legal, political, economic, social, and cultural sovereignty.<sup>14</sup> Self-determination was further articulated as a human right in common Article 1 of the two primary international covenants that protect and uphold fundamental human rights—the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in the late 1960s and coming into force in 1976. Article 1 of both the ICCPR and ICESCR (“Common Article 1”) guarantees, among other things, that, “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”<sup>15</sup>

### **Indigenous Peoples as “peoples” under international law**

Self-determination protects the rights of “peoples,” but there is little consensus as to the scope of human collectives that comprise “peoples” under international law.<sup>16</sup> The question is critical because “peoples” are entitled to various kinds of political choices in the international system as a matter of legal right, which may not be afforded to other communities, groups, or collectives.<sup>17</sup> While again noting the ambiguities regarding the international legal definition of “peoples,” the literature nonetheless increasingly recognizes that at least some Indigenous Peoples are “peoples” under international law.<sup>18</sup> This recognition is based in part on the substantive protections of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), as well as guidance and decisions from human rights mechanisms, including the UN Human Rights Committee (HRC) and Inter-American regional mechanisms.

Substantively, the UNDRIP represents the first “explicit and widespread” recognition by States that the right of self-determination applies to Indigenous Peoples as at least one other category of “peoples” with rights under international law.<sup>19</sup> The UNDRIP expressly states that Indigenous Peoples “have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms” under international law (Article 1), “are free and equal to all other peoples and individuals” (Article 2), and “have the right to self-determination”

(Article 3). So-called “internal” aspects of self-determination, which relate to the ability of peoples to freely pursue their economic, social, and cultural development without outside interference,<sup>20</sup> are captured, *inter alia*, by Articles 4 and 5 of the UNDRIP, which protect the right to autonomy and self-government of Indigenous Peoples and the right to maintain and strengthen their own distinct institutions.<sup>21</sup> The ability of Indigenous Peoples to exercise “external” self-determination, which relates to the right of peoples to determine freely their political status and their place in the international community based upon the principle of equal rights,<sup>22</sup> remains contested, with some authors taking the position that the “internal” aspect of self-determination is the primary or even exclusive component of Indigenous self-determination as captured by the UNDRIP.<sup>23</sup> The UN Expert Mechanism on the Rights of Indigenous Peoples argues that the “external” self-determination of Indigenous Peoples is expressed in part by Article 36 of the UNDRIP, which recognizes the right of Indigenous Peoples to cultivate relationships and connections with their own members across borders and to participate in global fora based on the principle of equal rights.<sup>24</sup> To the extent that at least some Indigenous Peoples constitute “peoples” under international law—a conclusion doctrinally supported by both HRC and Inter-American jurisprudence, as discussed below—the UNDRIP should not be interpreted to limit applicable rights whether rooted in Common Article 1 or elsewhere, including a right to the “internal” and “external” dimensions of self-determination which comprise essential aspects of self-determination.<sup>25</sup> The uncertainty of whether such rights extend to the hard case of secession in the case of Indigenous Peoples—a position argued by some scholarship<sup>26</sup>—should not detract from the more basic recognition of an “inward (domestic) and outward (international) dimension”<sup>27</sup> that applies to Indigenous Peoples on an equal basis<sup>28</sup> with other “peoples.”

The HRC, which is the treaty body charged with monitoring the implementation of the ICCPR, has also taken the perspective that at least some Indigenous Peoples are both “minorities” entitled to protection under Article 27 of the ICCPR, as well as “peoples” for the purposes of Common Article 1 and thus beneficiaries of the right of self-determination in its human right formulation.<sup>29</sup> The right of the Sámi to their self-determination as a “people” has been expressly affirmed by the HRC. For example, in its 2021 Concluding Observations to Finland as part of its periodic country assessment under the ICCPR, the HRC expressed concern that the Finnish government had not yet taken steps to guarantee the “Sami people’s right of self-determination.” It recommended that Finland should “speed up the process of revising the Sami Parliament Act ... with a view to respecting the Sami people’s right of self-determination, in accordance with article 25, read alone and in conjunction with article 27, as interpreted in the light of article 1 of the Covenant.”<sup>30</sup>

In 2016, the HRC expressed similar concerns to Sweden about the difficulties faced by the Sámi in securing rights over land and resources, even as it welcomed Sweden’s commitment to “advancing the interests of the Sami people and to realizing their right to self-determination.”<sup>31</sup>

Separately, in its jurisprudence under the Optional Protocol to the ICCPR,<sup>32</sup> the HRC references the protection under Common Article 1 of the right of self-determination, along with the UNDRIP, in interpreting communications brought



by Indigenous Peoples.<sup>33</sup> Here, again, the Sámi have received express acknowledgment of their right of self-determination protected by the ICCPR. In the *Tiina Sanila-Aikio* decision, the HRC examined the actions of the Finnish Administrative Court, which had placed persons on the electoral roll for elections to the Sámi Parliament, even after those persons had been found ineligible to vote by the Sámi Parliament.<sup>34</sup> The HRC found a breach of Article 25 (public participation) “read alone and in conjunction with article 27, as interpreted in the light of article 1 of the Covenant.”<sup>35</sup> The HRC concluded that this conduct “infringed on the capacity of the Sami people to exercise, through the Sami Parliament, a key dimension of Sami self-determination in determining who is Sami,” which was necessary for the “internal self-determination” of the Sámi.<sup>36</sup> The UN Committee on Economic, Cultural and Social Rights (CESCR), as well as the UN Committee on the Elimination of Racial Discrimination, have also expressed similar concerns about human rights infringements on the Sámi in the Nordic region pursuant to their mandates.<sup>37</sup>

### **The triadic link between (i) self-determination with (ii) culture and with (iii) lands, territories, and resources**

A primary characteristic of Indigenous sovereignty reflected in international law is a triadic link between (i) Indigenous self-determination with (ii) Indigenous culture and with (iii) Indigenous lands, territories, and resources<sup>38</sup>—a connection which is reaffirmed and strengthened in the UNDRIP. For example, the UNDRIP prohibits forced assimilation or destruction of culture (Article 8); forcible removal of Indigenous Peoples from their lands and territories (Article 10); and it requires that Indigenous Peoples have the right to “maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources” (Article 25) and be granted “the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired” (Article 26(1)). This triadic link has been acknowledged by the UN Expert Mechanism on the Rights of Indigenous Peoples, which has concluded that “there is a direct link between self-determination and indigenous peoples’ rights over their own lands and resources.”<sup>39</sup> Land, in turn, “is the defining element of [Indigenous Peoples’] identity and culture and their relationship to their ancestors and future generations.”<sup>40</sup> This triadic link has also been recognized by the HRC and the CESCR through general comments, including the HRC’s General Comment on the Rights of Minorities,<sup>41</sup> and the CESCR’s General Comments on rights to cultural life<sup>42</sup> and on land and economic, social, and cultural rights.<sup>43</sup>

### **An Indigenous Peoples’ right to existence and survival**

In the Inter-American and African regional human rights systems, recognition of the triadic link between self-determination with culture and with lands, territories, and resources underpins a doctrinal conclusion that Indigenous Peoples have a right of existence and survival as discrete peoples<sup>44</sup> and to the land, resources,

and subsistence necessary to maintain the integrity of the Indigenous community.<sup>45</sup> In the Inter-American system, the right of self-determination in interpreting Indigenous rights to lands, territories, and resources was first applied in the 2007 case *Saramaka People v. Suriname*.<sup>46</sup> In that case, the Inter-American Court of Human Rights (IACtHR) held that the relationship between Indigenous Peoples and their territory and resources, their way of life, and their physical and cultural survival were protected interests under Article 21 (the right to property) of the American Convention on Human Rights.<sup>47</sup> The IACtHR observed that “members of indigenous and tribal communities require special measures that guarantee the full exercise of their rights, particularly with regards to their enjoyment of property rights, in order to safeguard their physical and cultural survival.”<sup>48</sup> In 2012, the IACtHR again emphasized that States must protect the link between communal ownership of the land and Indigenous culture “in order to guarantee [Indigenous communities’] social, cultural and economic survival,”<sup>49</sup> and further held that cultural identity was a “fundamental” and collective right for Indigenous communities.<sup>50</sup> In a 2018 decision, the IACtHR reiterated that the rights protected by Article 21 included “the close ties that the indigenous peoples have with their lands, as well as the natural resources and incorporeal elements derived from them” and that disregarding this right “could adversely impact other basic rights such as the right to cultural identity and the very survival of the indigenous communities and their members.”<sup>51</sup>

Similarly, in the African regional system, the 2010 *Endorois* decision from the African Commission on Human and Peoples’ Rights (the “African Commission”) found multiple breaches of the African Charter on Human and Peoples’ Rights in reviewing alleged displacement of the Endorois peoples from the Lake Bogoria area of Kenya. The African Commission quoted its own Working Group on Indigenous Populations/Communities in noting that dispossession from land threatens “the economic, social and cultural survival of indigenous pastoralist and hunter-gatherer communities.”<sup>52</sup> It furthermore held that States have a “higher duty in terms of taking positive steps to protect groups and communities like the Endorois,” which include the promotion of “cultural rights including the creation of opportunities, policies, institutions, or other mechanisms that allow for different cultures and ways of life to exist” and to avoid “the danger of extinction.”<sup>53</sup> In 2022, the African Court on Human and Peoples’ Rights (ACtHPR) affirmed this approach through its award of reparations to the Indigenous Ogiek community in Kenya on account of their displacement from their ancestral home in the Mau Forest.<sup>54</sup> In its reparations order, the ACtHPR took “special notice” that the “protection of rights to land and natural resources remains fundamental for the survival of indigenous peoples” and that the close ties between Indigenous Peoples with their land “must be recognized and understood as the fundamental basis of their cultures, spiritual life, integrity and economic survival.”<sup>55</sup>

In contrast to the approaches adopted in the Inter-American and African regional contexts, the European Court of Human Rights (ECtHR) has interpreted the European Convention on Human Rights in a restrictive way in addressing the connection of Indigenous Peoples to their territories and the cultural link

associated with those places,<sup>56</sup> without considering the triadic connection between self-determination, culture, and lands, territories, and resources.<sup>57</sup> This restrictive interpretation ignores that destruction of culture—including from climate change impacts—can act as an existential threat for Indigenous Peoples and an infringement on their self-determination.

### **Challenges to the self-determination of the Sámi in the context of climate change impacts**

The Sámi are a People under international law, Indigenous to Sápmi, a region that consists of lands and territories that span the northern parts of Norway, Sweden, and Finland, as well as the Russian Kola Peninsula.<sup>58</sup> The culture and traditions of the Sámi maintain a close connection to nature, including a reliance on hunting, trapping, gathering, fishing, and reindeer herding (reindeer herding being of particular importance).<sup>59</sup> Settlers into Sápmi from other parts of the Nordic region changed the composition of the Sámi homeland and reduced the Sámi to a numerical minority,<sup>60</sup> which the Sámi describe as constituting State programs of colonization.<sup>61</sup> At present, Nordic States have provided different levels of legal protection to the Sámi, but in each case, their rights over their lands, territories, and resources are not “sufficiently established, implemented or judicially protected,” resulting in “perpetual insecurity and instability.”<sup>62</sup> The Sámi have themselves identified that addressing the combined challenges of climate change and biodiversity loss in Sápmi will require “supporting Indigenous self-determination” and the “self-determination of the Sámi people in ownership and management of lands, territories, and resources” in order to build resilience.<sup>63</sup>

The Sámi are facing two main, and interrelated, challenges associated with climate change. The first are the impacts and damage deriving from rising average temperatures.<sup>64</sup> As observed by the then UN Special Rapporteur on the rights of Indigenous Peoples, James Anaya, changing weather patterns from climate change have had “particular adverse effects” on the Sámi, who depend on the colder Arctic climate for their way of life, with substantial impacts on reindeer herding.<sup>65</sup> A second challenge faced by the Sámi stems from the installation of State infrastructure projects designed to mitigate emissions, which members of the Sámi frequently label as constituting “green colonialism”<sup>66</sup> posing risks to the Sámi way of life. Windmill construction in Norway has affected reindeer calving grounds, and in Sweden, 35% of the identified locations for wind power are within core reindeer herding areas.<sup>67</sup> In October 2021, the Supreme Court of Norway ruled that wind power development on the Fosen Peninsula pursuant to licenses issued in 2010 by the Norwegian Water Resources and Energy Directorate interfered with Sámi reindeer herders’ rights under Article 27 of the ICCPR.<sup>68</sup> The Supreme Court of Norway held that the two windfarms, “part of the largest onshore wind power project in Europe,” would “ultimately eradicate the grazing resources” of the reindeer herders to such an extent that reindeer numbers would be reduced, producing a substantive negative effect on the ability of the reindeer herders to enjoy their own culture on Fosen.<sup>69</sup> Consequently, the license decision with respect to Fosen was found to have violated cultural protections under Article 27 of the ICCPR

and was therefore declared invalid.<sup>70</sup> In March 2023, after protests by Sámi activists, the Norwegian government apologized to reindeer herders even as the wind farms continued to operate after the Supreme Court's decision (and which remain in operation as of this writing).<sup>71</sup> The Fosen litigation underscores the challenges in preserving Sámi culture, as even with a court order in their favor, the decision has been poorly enforced. Warming average temperatures of the magnitude expected this century could not only prompt further "green" development in historic lands and territories of the Sámi<sup>72</sup> but also, from the Sámi perspective, represent "continued extraction of resources in Sámi areas" that "will lead to Sámi culture balancing on the verge of extinction in many areas," and amount to "being colonized a third time by responses to climate change."<sup>73</sup>

As climate impacts worsen, loss of culture for the Sámi is thus foreseeable and would sever the triadic link between self-determination with culture and with lands, territories, and resources. Altered environmental conditions could destroy the cultural connection between the Sámi and their lands and territories, repeating the historical experiences whereby marginalization, dispossession, and environmental destruction of ancestral lands and territories resulted in denial of the right of self-determination.<sup>74</sup> A connection through time and tradition to a particular set of lands and natural environment is the foundation of the "ethic of place" that is central to the identity of Indigenous Peoples.<sup>75</sup> A loss of the "right to be cold" as described by Inuit author Sheila Watt-Cloutier<sup>76</sup>—and Indigenous culture attached to such a right to be cold—could thus amount to a form of "displacement," and specifically, a form of displacement from Indigenous cultures that will be irrevocably lost or transformed from a warming climate system.

Destruction of the triadic links between self-determination with culture and with lands, territories, and resources will, in turn, threaten the ability of Indigenous Peoples to exist and survive as discrete peoples.<sup>77</sup> While concepts of "cultural self-determination" remain controversial in the literature,<sup>78</sup> the disruption of Indigenous culture due to climate change impacts and the threats to Indigenous existence and survival from such cultural loss suggest that cultural self-determination may be a relevant concept in understanding the impacts of climate change on Indigenous Peoples, including the Sámi. In other words, infringements on cultural self-determination from climate change impacts—and "displacement" from culture, even in the absence of physical displacement—are as pernicious on Indigenous Peoples as other kinds of infringements of Indigenous self-determination, including infringements on "internal" or "political" self-determination that affect Indigenous autonomy or a relationship to lands, territories, and resources. The disruption to Indigenous culture already taking place from climate change, and the related threats to Indigenous cultural and physical survival, can thus arguably be viewed as threatened or actual breaches of the self-determination of Nordic Indigenous Peoples.

### **International responsibility for cultural displacement from climate change impacts—including threats to cultural self-determination**

Who bears the international legal responsibility in the event that Indigenous Peoples become displaced from their own cultures, exposed to cultural extinction,

and/or suffer infringements on their self-determination, including cultural self-determination? Under principles of State responsibility, every internationally wrongful act of a State entails the international responsibility of that State.<sup>79</sup> An internationally wrongful act consists of an action or omission that is (a) attributable to a State under international law, and which (b) constitutes a breach of an international obligation.<sup>80</sup> A breach of any such “primary obligation” then gives rise to secondary obligations of cessation and reparation.<sup>81</sup>

The 2022 *Billy* decision from the HRC provides an example of these principles at work in the context of climate change impacts and attendant obligations imposed by the ICCPR.<sup>82</sup> In *Billy*, the authors—Indigenous Peoples of the Torres Strait Islands—alleged that climate change threatened partial or total loss of territory<sup>83</sup> as well as loss of “marine and coastal ecosystems and resources, and therefore the life, livelihoods and unique culture of Torres Strait Islanders.”<sup>84</sup> These effects had “severe impacts” on their traditional ways of life, their subsistence, and their culturally important living resources.<sup>85</sup> The HRC determined that the delay by Australia in implementing adaptation measures such as seawalls was a breach of Articles 17 (protection of private, family and home life), and 27 (protection of minority culture). Specifically, the HRC stated that the identified delays amounted to a failure by Australia to discharge positive obligations to protect the Indigenous authors from climate change impacts, including environmental degradation, that were negatively affecting the authors’ home, private life, and family<sup>86</sup> as well as their ability to enjoy their minority culture.<sup>87</sup> The HRC concluded that Australia was under an obligation to make “full reparation” to the Indigenous authors and to take the measures “necessary to secure the communities’ continued safe existence” on their respective islands.<sup>88</sup>

This reasoning in *Billy* could similarly provide claims to members of Sámi Indigenous Peoples under human rights law (e.g., Articles 17 and 27 of the ICCPR) to the extent that Nordic States delay in adopting adaptation measures to protect the culture of the Sámi and/or their ability to subsist from their lands, territories, and resources through their traditional way of life. In highlighting the connection between Indigenous survival with Indigenous culture and with subsistence, territory, and environmental degradation, the *Billy* decision also provides a framework for a legal claim or claims based on Indigenous self-determination. State activity that is negatively impacting Sámi culture and threatening existence and survival—for example, windmill construction, but perhaps even the continued exploitation of fossil fuels by high-developed, high-emitting Nordic States—could constitute attributable State conduct and possibly a breach of self-determination and/or the human rights obligations outlined in *Billy*.<sup>89</sup> The failure to discharge the positive obligation on States to promote the self-determination of all peoples<sup>90</sup>—in this case, through positive adaptation or mitigation measures designed to protect Nordic Indigenous culture and Indigenous existence and survival<sup>91</sup>—may also provide possible claims of breach.

Principles related to the existence and survival of Indigenous Peoples from the Inter-American and African regional systems are also relevant to the question of legal responsibility, particularly the obligation of States to implement “special

measures” to protect the physical and cultural survival of Indigenous Peoples. While the ECtHR has not adopted the same approach to the protection of Indigenous Peoples, the failure to adopt special measures to protect the Sámi, including their cultural practices, could amount to a breach of such obligations if viewed from the perspective of Inter-American and African regional jurisprudence—something perhaps worthy of consideration by the ECtHR.

Yet, even successful litigation of international legal principles may not be sufficient to promote the self-determination, including the cultural self-determination, of Indigenous Peoples.<sup>92</sup> Nordic States may therefore need to reflect more deeply on the kinds of policies and governance needed to protect the existence and survival of Nordic Indigenous Peoples who are not responsible for the climate crisis.

## Conclusion

This chapter has argued that Indigenous Peoples such as the Sámi can face “displacement” even when they are not physically displaced, insomuch as they stand to lose their cultural life and practices from climate change. Such cultural displacement could threaten Sámi existence and survival. The failure of States to protect the culture of Indigenous Peoples from climate change impacts may constitute a breach of self-determination under applicable international law, including their cultural self-determination, on account of the disruption of the triadic relationship between Indigenous self-determination with culture and with lands, territories, and resources.

## Notes

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- 23 Timo Koivurova, 'Sovereign States and Self-Determining Peoples: Carving Out a Place for Transnational Indigenous Peoples in a World of Sovereign States' (2010) 12 *International Community Law Review* 191, 203 (arguing that Articles 4 and 46(1) of the UNDRIP limit indigenous self-determination to internal self-determination within existing States); Quane (n 18) 269, 285 (concluding that UNDRIP Article 41's prohibition on any action that would impair the territorial integrity of states "effectively precludes a right to external self-determination for indigenous peoples and in its place asserts a more limited right to internal self-determination").
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- 25 CERD (n 20) para. 4; Helsinki Final Act (n 14) Principle VIII ("all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status...").
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- 34 *Ibid.*, paras 6.11, 7.
- 35 *Ibid.*, para 6.11.
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- 70 *Ibid.*, paras. 151, 153.
- 71 Reuters, 'Norway wind farms at heart of Sami protest violate human rights, minister says' (2 March 2023) <<https://www.reuters.com/world/europe/norway-wind-farms-heart-sami-protest-violate-human-rights-minister-says-2023-03-02/>> accessed 6 November 2023; Al Jazeera, 'Sami activist protests in front of Norwegian parliament over wind turbines' (11 September 2023) <<https://www.aljazeera.com/news/2023/9/11/sami-activist-protests-in-front-of-norwegian-parliament-over-wind-turbines>> accessed 6 November 2023.
- 72 *Statnett SF v. Sør-Fosen sijte et al* (n 68) para. 143 (the Supreme Court of Norway observing that further "green" development of renewable energy may be "crucial").
- 73 Sámiraddi (n 59) 63. The Sámiraddi describes the first form of colonialism as being outside settlement; the second form of colonialism is described as climate change itself. *Ibid.*
- 74 Tauli-Corpuz Report (n 1) para. 41; Sámiraddi (n 59) 31 (noting that "IPCC (2022) has for the first time addressed patterns of historical and ongoing colonialism in relation to climate change—factors that exacerbate Indigenous Peoples' vulnerability to climate change.").

- 75 Rebecca Tsosie, 'Climate Change and Indigenous Peoples: Comparative Models of Sovereignty' (2013) 26(2) *Tulane Environmental Law Journal* 239, 255.
- 76 Sheila Watt-Cloutier, *The Right to Be Cold: One Woman's Fight to Protect the Arctic and Save the Planet from Climate Change* (University of Minnesota Press 2015), Chapter 7 ["The Right to Be Cold"].
- 77 Hohmann (n 44); Summers (n 44); *Sarayaku* (n 49) para. 217; *Ogiek case* (n 54) paras. 109, 112.
- 78 Xanthaki (n 18) 88; see also Expert Mechanism (2021) (n 24) para. 10.
- 79 ILC (n 9) art. 1.
- 80 ILC (n 9) arts. 1, 2; Wewerinke-Singh (n 13) 60, 69; Thomas Weatherall, *Duality of Responsibility in International Law: The Individual, the State, and International Crimes* (Koninklijke Brill NV 2022) 76–77.
- 81 James Crawford, 'The ILC's Articles on Responsibility of States for Internationally Wrongful Acts: A Retrospect' (2002) 96(4) *American Journal of International Law* 874, 876–877; ILC (n 9) arts 28 comment (2), 30, 31.
- 82 Wewerinke-Singh (n 13) 66 (arguing that it is "justified to conclude that international human rights law can be interpreted in accordance with the general law of State responsibility" with the additional understanding that human rights law carries its own substantive and procedural caveats).
- 83 *Billy* (n 5) para. 2.2.
- 84 *Ibid.*, para. 2.1.
- 85 *Ibid.*, para. 2.6.
- 86 *Ibid.*, para. 8.12.
- 87 *Ibid.*, para. 8.14.
- 88 *Ibid.*, para. 11.
- 89 Wewerinke-Singh (n 13) 90–92; *Billy* (n 5) para. 7.8 (suggesting that a State party producing "large amounts of greenhouse gas emissions" and which "ranks high on world economic and human development indicators" can have its mitigation measures examined under the ICCPR Optional Protocol).
- 90 Wewerinke-Singh (n 13) 104; ICCPR (n 15) art 1(3); ICESCR (n 15) art 1(3); UN Human Rights Committee, 'CCPR General Comment No. 12: Article 1 (Right to Self-determination) The Right to Self-determination of Peoples' adopted at the Twenty-first Session of the Human Rights Committee, on 13 March 1984 para. 6 ("all States parties to the Covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination"); CERD Committee (n 20) para. 3 ("it is the duty of States to promote the Self-determination of peoples").
- 91 *Billy* (n 5) paras. 7.6–7.8.
- 92 See, e.g., *Statnett SF v. Sør-Fosen sjite et al* (n 68).

# 8 Futureless futures

## Reflections on life in doomed places in Nordic countries

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### Introduction

Social commentators increasingly note that people's stance towards the future is characterised by dread or a sense of futurelessness.<sup>1</sup> According to one such commentary, a sense of dread and futurelessness 'has emerged as the driving social sensibility in our times'.<sup>2</sup> It is perhaps unsurprising that such conclusions are being reached as people alive today live with a number of intersecting crises, ranging from climate change, biodiversity collapse, the prospect of a post-antibiotic future, a protracted pandemic and financial and geopolitical turmoil. Senses of future and what has been labelled 'the lived experience of anticipation'<sup>3</sup> also brings such futures into existence as part of concrete actions,<sup>4</sup> for example by sparking processes like relocation or migration. As we posit in this chapter, however, a place-based approach to senses of futurelessness can shine light on the nature of anticipatory experience more generally.

We all know that communities throughout the ages have disappeared. Communities like Pompeii and the Minoans are well-known examples but there are also many others.<sup>5</sup> A major difference between then and now is perhaps that modern technology provides tools for detecting catastrophic risks pre-emptively, enabling a sense of anticipatory dread directed at future potentialities and scenarios before they rupture into view and direct experience. To understand this wider phenomenon of futurelessness better, we posit, it is necessary to probe how people living in communities deal with existential risks in their immediate environment and contest notions of doom, whether attributable to impending sea-level rise, imminent landslide risk or other extreme hazards.

The future is necessarily uncertain and scenarios are not deterministic. Many people in the world inhabit places with uncertain futures, places overshadowed by expected future disaster. People inhabiting exposed or 'disaster prone' sites are often portrayed as vulnerable and at risk, although existing research questions such portrayals as this could potentially discount people's own agency.<sup>6</sup> Advances in monitoring and early warning systems have enabled us to detect and prognose the continued development of an ever-growing number of disasters 'waiting to happen'. Monitoring systems enable life at the mercy of otherwise fatal hazards by producing warning signals,<sup>7</sup> but will rarely be able to prevent the destruction of a

place. Some of these disastrous prognoses effectively doom places by casting into doubt their continued future existence, potentially destroying investment in that place and in other cases inspiring a sense of awe directed at ideas of what might come to pass there at some future point in time. This chapter concerns the insights that potentially futureless places can teach us about capacities to endure, and forms of existential insecurity in the face of doom.

In this chapter, we take as our point of departure that capacities and vulnerabilities exist alongside one another in populations. The degree to which people are vulnerable or capable of managing stressors is largely a matter of circumstance. It is also important to point out that capacities are not necessarily evenly distributed in a population.

In this chapter, we engage three case studies to shine light on this topic. First, we have the case of Lyngen in the Norwegian Arctic, whose inhabitants live with the prospect of complete future destruction due to an expected rock avalanche and fjord tsunami. At the time of writing, the rock avalanche is slowly moving into the fjord, with models suggesting that it can fail catastrophically someday, giving rise to a tidal wave of enormous proportions. It is one of the most closely monitored slow-onset mass movements in the world with '70 instruments' taking more than '300,000 measurements a day'.<sup>8</sup> Frequent updates about the continued onset and trajectory of the mass movement serve to render the resulting sense of potential doom socially real. Second, we have the case of Falsterbo peninsula, southern Sweden, which is significantly exposed to sea level rise and authorities are taking measures in an attempt to buy time and guard against a sense of encroaching futurelessness. The municipality has just received permission to build a levee that is designed to protect the land against the threat from the sea until 2065. Lastly, people in Kiruna city, northern Sweden, are being relocated due to the Kirunavaara mine which rendered parts of the old town uninhabitable. But Kiruna is a case that challenges the sense of doom due to circumstances and conditions unrelated to the physical impact of a hazard, and in the case of Kiruna, the hazard is anything but natural.

In combination, these cases allowed us to probe the complexities of decisions on planned relocation or staying in place, as well as to explore ideas on how living with the knowledge of a threatened future impacts ontological security and everyday life in the present. It connects to emerging literatures on doom, slow calamity and futurelessness.<sup>9</sup> This chapter challenges what we take to be unrealistic and overly neat distinctions between forced and voluntary mobility in the face of natural hazards and notions of futurelessness. In the context of risk communication and community work, for example, this flags a need for grasping how warnings and catastrophic prognoses unsettle local lifeworlds. Initial observations suggest that complex and oftentimes strained forms of trust emerge between safety regimes and local populations living in such environments. After all, trust at one and the same time enables life in the face of existential hazards but is also fragile. Issues of centralisation and decentralisation often emerge as the stakes are high for setting accurate thresholds that can be lived with. At the same time, a place that is widely seen as doomed or futureless is prone to be forgotten and subject to underinvestment in

its future, which can potentially signify a premature end to a place before disaster has even materialised. In this chapter, we grapple with a number of themes that the notion of overshadowing disasters opens up, including questions of place survival, relocation, resistance and local defiance of doom.

The chapter is structured as follows. In the next section, we outline our conceptual approach on living with catastrophic prognoses and the notion of doomed places. In the third section, we then briefly elaborate on our cases, which are mainly intended to illustrate how places can come to be seen as futureless in very diverse ways and with different kinds of responses. In the fourth section, we reflect on the wider relevance of these cases for emerging views on threatened futures, potential futurelessness and local resistance to notions of doom. Finally, in the last and concluding section, we restate the salient points of the chapter and reflect further on their wider implications for research and practice.

### **On futures, futuring and futurelessness**

Disaster is often articulated through reference to sudden rupture, although root causes can often be traced back centuries.<sup>10</sup> Contestation amongst structuralist approaches, on the one hand, and functionalist and operational research on the other, has produced a long-standing controversy surrounding whether disasters are best approached as events or processes (calamity as prefigured in the form of accumulated disaster potential).<sup>11</sup> While critical work drawing on structuralism traces many of the largest calamities in history back to centuries-long processes of disaster risk creation,<sup>12</sup> it is not uncommon to emphasise the disaster itself in terms of rapid destruction with a subsequent need for swift recovery. However, some disasters do not rupture but loom, lingering over communities as ever-present menaces that live in anticipation of their future rupture. When catastrophic risk is uncovered in a place, for example, life in the present will be shaped in performative ways by a disaster that has not yet happened but that still encroaches on everyday life in the present.

According to a Weberian viewpoint, a sense of futurelessness implies a sense of 'being ill at ease, unsettled, in the face of desanctification and disenchantment'.<sup>13</sup> In the context of local communities facing existential risks uncovered in their immediate environment, the connection to Weberian ideas on how science disenchant the world is clear; it is precisely the technical ability to uncover looming potential catastrophe that brings the future of a place into question. Without such knowledge, life would simply continue until disaster happens 'unexpectedly', without any sense of waiting for catastrophe in the present. Thus, climate science, geology and other fields producing knowledge on the hazardousness of a place also bring the future of a place into question in cases where extreme risk is uncovered by risk surveys. A commonly cited problem is that of experience, where lack of prior experience with hazards raises distrust or scepticism in the population towards such scenarios.<sup>14</sup> After all, a sense of home and living in a place where one feels at home and where prior experience suggests that life is safe and predictable can make it difficult to accept catastrophic risk scenarios,<sup>15</sup> a major barrier to mitigating action.



When mitigative actions introduce questions of migration or planned relocation, questions of hazardousness become all the more complex.

In this chapter, we refer to a doomed place as a place whose existence is cast into jeopardy by a known looming calamity that local people know may someday destroy their community, or at least the physical site of that community. Catastrophic prognoses that are sustained by round-the-clock monitoring and warning regimes become palpable in the lifeworld through their anticipation, triggering various imaginings and practices, including discussions of how to mitigate, whether to relocate, and the responsibilities of the state and of individuals.

The chapter explores the three cases from two contrasting vantage points and asks a number of questions into which disaster studies rarely delve. The first is the future as foreclosed, in absolute terms or as a scenario in some cases. The cases will attempt to show the different ways that futurelessness manifests, questioning whether some places are actually doomed and according to whom the future maybe foreclosed. And if this is the case, then why do some locations continue to attract people and population due to various reasons (e.g. tourism and job opportunities, especially when there are resources to continue to bolster and protect the place from doom). This begs the question: foreclosed for whom?

In contrast and in some cases co-existent with a sense of doom in the same location, the future can be seen as open and contested through people's agency. In the cases below and later in the discussion, we will question perceptions and experience of people to any sense of doom. Is there an element of choice and agency in ignoring an impending catastrophe? How do people normalise doom and get used to it and why? Is doom open to interpretation even when there is a glaring risk and an impending event? And is time a factor in normalising doom in some cases? The three cases—Lyngen, Falsterbo and Kiruna—have little in common except for the applicability and relevance of the questions above. Geographically, demographically and what constitutes reasons for futurelessness are quite different between the three. What connects them is the interpretation and normalisation of futurelessness and the ways both the population and the formal governmental structures perceive and deal with it. In that sense, we do not distinguish between 'futurelessness' and 'doomed places' where both terms encompass a 'sense of dread' tangible or perceived as will be elaborated in the case studies.

The following discussion of the three case studies will put these two critical notions to the test (future as foreclosed or open). It examines how risk is formulated, who formulates it, how it is presented to the public and consequently how the public responds with their own time stories, and the extent to which futurelessness is a foregone conclusion or a performative imagined future.

### **Lyngen – wait and see**

Nordnes is a 900-metre high unstable mountain area on the banks of the Lyngen fjord in Northern Norway. More than ten million cubic metres of mass is in movement and considered unstable in Nordnesfjellet (the Nordnes mountain), moving several centimetres each year and thus threatening the future of the small

community of Lyngseidet (one of the most exposed towns in the fjord of landscape of Lyngen) and other nearby settlements.<sup>16</sup> According to the worst-case scenario, a release of these ten million cubic metres of mass could trigger a tidal wave that would be between 35 and 45 metres in height.<sup>17</sup> Nordnesfjellet is continuously monitored using satellite technology and local monitoring equipment.<sup>18</sup> Accelerations in the mass movement has been attributed to rising average temperatures and melting permafrost, as the permafrost is believed to play an important role in stabilising the mountain. As the area is continuously monitored, responsible authorities are confident that they can provide early warnings at least several days before a potential landslide and associated tidal wave. In other words, the future of Lyngen is cast into jeopardy by this slow-onset natural hazard. Authorities do not expect lives to be lost, as people would be evacuated if the hazard accelerates in speed. Nevertheless, a sense of potential futurelessness looms large as people live with these scenarios and the idea of potentially losing one's home, assets, livelihoods, or damage to critical infrastructure on which a community depends, is a distressing thought for the inhabitants to be living with.

In the everyday lives of locals in Lyngen, a sense of futurelessness is both proximate and distant at the same time. Risk perception research reveals that the presence of the hazard is not a major part of the lived experience of locals, existing more as a backdrop to everyday life.<sup>19</sup> The continuous availability of monitoring data and the physical presence of monitoring and warning infrastructure around the fjord serve as daily reminders of the catastrophe that one day may come to pass, and where people would have to evacuate their homes. At night, it is possible to observe a faint light emitted from the monitoring instruments atop the Nordnes mountain from the settlement at Lyngseidet, which some locals have referred to as the 'death eye',<sup>20</sup> although perhaps with a sense of dark humour. At the same time, inhabitants have known about this catastrophic risk for a long time and, in the near term, there is no imminent risk of the mountainside collapsing into the fjord. In this way, a sense of doom lingers but is also not sufficiently strong to disrupt everyday life routines in any way. Conversations that one of the authors has had with locals reveal that this feeling of potential futurelessness is instead something that exists as an idea, as a potentiality, but not as something that produces a direct experience of fear or dread in the present.

Trust in public authority is what essentially makes life in Lyngseidet possible. The authorities guarantee in their risk assessments that they can provide at least 72 hours prior warning in the case of a major landslide, although likely much longer. Trust is in this way essential for residents to continue living in the region as this trust in the ability of authorities to warn and evacuate in the event of elevated risk is what keeps this sense of doom at bay. It is likely that trust in the authorities is a precondition for leading normal lives in the shadow of such a catastrophic risk scenario, where authorities communicate a confidence in being able to provide considerable forewarning if a landslide-induced tsunami should become immediately imminent. However, since the authorities are confident that no lives will be lost and that surprises will not occur, everyday life in the communities surrounding the fjord can continue despite these disastrous anticipations.

**Falsterbo peninsula – incremental adaptation vs. managed retreat**

‘We enjoy it here and will not move from Falsterbo peninsula!’.<sup>21</sup> Futurelessness is not seen as an option by the Municipality of Vellinge, which is convinced that it will save the Falsterbo peninsula from flooding by gradually increasing protection against the sea. In a first step, the municipality will build a levee to protect against flood risk in the shorter term (an inner protection). Later, as sea level rise increases, they plan to add more layers of protection (an outer protection). The outer protection is planned to be placed closer to the waterline, probably also some type of levee.<sup>22</sup>

Falsterbo peninsula is located in the southernmost part of Sweden and consists of five villages; Skanör, Falsterbo, Ljunghusen, Höllviken and Kämpinge. Around 21,000 inhabitants live in the area, with 7,500 in the outermost part (Skanör and Falsterbo).<sup>23</sup> There are around 10,000 buildings and 7,500 households.<sup>24</sup> It is an attractive region of Sweden, and the house prices are high, despite its exposure to sea level rise.

The peninsula is very low-lying, with periodically high groundwater and short-term coastal flooding during winter storms. In the outermost parts of the peninsula, Skanör and Falsterbo, approximately 95% of the residential buildings are less than three metres above sea level, and 60% less than two metres above sea level.<sup>25</sup> Furthermore, the outermost part of the peninsula is vulnerable as it only has one road that can be cut off during a flooding. With climate change and associated sea level rise, the area will become increasingly prone to flooding.<sup>26</sup> This is one of 25 areas in Sweden where the Swedish Civil Contingencies Agency (MSB) has identified that a significant flood risk exists or can be expected to occur.<sup>27</sup> If nothing is done to protect the area from a continued risk of flooding, there is an exposure of 10,781 buildings of which 3,024 are residential.<sup>28</sup>

Prior to the municipality’s application for a permit for the construction of flood defences, the levee, a consultation was held inviting different actors. The consultation report summarises public views, both written opinions and oral viewpoints, from the open consultation meetings.<sup>29</sup> It concluded that the public has different and sometimes conflicting views about where and how the levee should best be designed. Most of the views that were given orally at the open consultation meetings were basically positive. The levee was perceived by many as necessary and urgent. Others were positive that levee should be built, but were critical of the trade-offs. They argued that the trade-offs were disproportionate or do not sufficiently consider the site-specific conditions of their own property. There were also some people who considered it unnecessary to build protection at all.<sup>30</sup>

The most severe storm surge in the area occurred in 1872. Backafloden caused flooding in the southern Baltic Sea and great devastation in the Falsterbo region. At its peak, the storm surge was estimated to have been 2.4 metres above normal. The road connection to the outermost part of the peninsula was cut off, the lighthouse was flooded and several boats were lost. In analyses of Backafloden, it is argued that it was an extreme but not unique situation. In historical data, similar water levels have been recorded in 1320, 1625 and 1694.<sup>31</sup> If the same event were

to occur today, almost all of Skanör-Falsterbo, as well as the coastal areas along Ljunghusen, Höllviken and Kämpinge, would be flooded. In many areas, the water depth would be more than one metre above existing ground level.<sup>32</sup> In 2017, the area was affected by a flood, the highest since the regular measurements began in the 1960s. The sea level rose by 1.5 metres above normal and houses were flooded.<sup>33</sup> One family had to be evacuated, streets were closed and there was a power outage during the evening.<sup>34</sup>

Planned relocation is not seen as an option by the municipality. Instead, the plan is to build an inner protection, a levee. This levee is designed to protect the area from future floods up to three metres above sea level, until 2065. After a legal process that started in 2018, in 2022, the municipality received permission to build the levee. From a longer-term perspective, and in addition to the inner protection, the municipality discusses the possibility of supplementing that with an outer protection (i.e. sea wall) closer to the waterfront dimensioned from a 100-year perspective. This protection is intended to protect the area until year 2100.<sup>35</sup>

Permission to build the inner protection has been delayed because levees have a negative environmental impact and large parts of Falsterbo peninsula are subject to environmental protection. In addition, the County Administrative Board argues that also building an outer protection closer to the waterfront would entail an even larger negative environmental impact. Because of this, the County Administrative Board has raised planned relocation as a possible option for the future.<sup>36</sup> It is argued that today, planned relocation is not economically justifiable as the values of the houses in Falsterbo are so high. In Sweden, planned relocation has not been used as a response to sea level rise, but rather in relation to large infrastructure projects associated with the establishment of a mine or a hydroelectric dam. When planned relocation has been used, there has been financial compensation (e.g. a company paying) for the move.<sup>37</sup> When it comes to Falsterbo peninsula, the municipality argues that alternative methods such as planned relocation are not justifiable economically, ecologically or socially.<sup>38</sup> The County Administrative Board in Skåne argues that today it is much more cost-effective to build protection,<sup>39</sup> while relocation may not be currently considered and seen only as an option in a distant future. The damage cost if an extreme weather event would occur today (two metres) is estimated to amount to SEK 633.2 million. By the year 2100 (three metres), the damage costs is expected to have increased to SEK 2,189 million.<sup>40</sup> This is much more than the estimated cost of SEK 160 million to build the levee.<sup>41</sup> Still, in a report from the County Administrative Board in Skåne, the question is posed: at what point will it be reasonable to move residents due to possible flooding?<sup>42</sup>

### **Kiruna – planned relocation**

As others have argued, Kiruna's futurelessness or doom is not an inevitability.<sup>43</sup> The perception of futurelessness has more to do with the economic drivers of the mine expansion and with the narrative the city and the mining company LKAB (Luossavaara-Kiirunavaara Aktiebolag) have created of the town being a primarily mining community and consequently how they continue to manage the process of

planned relocation. Kiruna is also an interesting case that questions the notions of voluntary and forced mobility and immobility both for its inhabitants and for the Sámi population in its vicinity.

Kiruna is located about 90 miles north of the Arctic Circle and was established at the turn of the twentieth century for the opening of the iron ore mine in the area. The iron ore mine is the largest in the world with 250 miles of roads, an ore body that is 2.5 miles long and 0.05 miles wide, reaching a depth of 1.25 miles. The current expansion of the mine, and the fact that the ore-body slopes 60 degrees towards the city, causes deformations in the land and cracks underneath the city buildings.<sup>44</sup> If mining continues, the town will collapse.<sup>45</sup> That is, the town's location is becoming a hindrance to the mine's expansion and further development. Accordingly, further expansion of the mine will demand new housing and infrastructure as people are moved out of harm's way. A shortage of available land due to restrictions, user rights and preservation impedes such construction, notwithstanding that Kiruna municipality is the largest municipality in Sweden in terms of total land area.<sup>46</sup> The mine expansion and the town relocation is controversial, in part due to the historical narrative the mining company had created that Kiruna is only a mining town and nothing much else, and therefore the town itself lives and dies with the mine. Nilsson argues that 'the relocation plans are part of an ideological fantasy rooted in the social structure, of which the mining company has historically been a creator'.<sup>47</sup>

Procedurally, Kiruna municipality has already acquired permission from the Swedish Government to use state-owned land to establish a new city centre.<sup>48</sup> But the problem in Kiruna is that a mix of assets, activities and values to different groups (e.g. deposits of minerals, energy generation, mountainous areas, water supply, and particularly reindeer husbandry, fishing, nature and culture that are central to the Sámi peoples way of life), and which are all considered interests of national value, compete and overlap in the area surrounding Kiruna to which the relocation of its residents is planned.<sup>49</sup>

The narrative in the media, partly created by the municipality and the mining company, does not match the scale of the actual relocation. As the expansion of the mine is going ahead, approximately 1,800 persons (around 10% of the population) must be relocated in the next 30 years, and 960 apartments rebuilt on other sites along with the relocation of parts of the city centre<sup>50</sup> because the current site and location are already unstable. This has been somewhat misreported in the media creating a perception that the whole town is to be moved, as well as supporting the view that the move is inevitable. 'A Mining Town on the Move' reads some headlines.<sup>51</sup> Nilsson analyses that narrative with different stories and different representations of truths about the town's planned relocation and its inevitability, where the scale of the planned relocation being produced and reproduced favouring certain stakeholders (i.e. the mining company) and the effects of that on the views of the inhabitants and beyond.<sup>52</sup>

LKAB is the main employer in Kiruna and most inhabitants are connected to the mining industry with dependent livelihoods one way or the other making the company the dominant voice in the ideology and identity of the town as a 'mining town' and residents as 'miners'. Ideology is a system of beliefs within a society

or community, which are widely recognised, not always conscious, and contain aspects of power and dominance.<sup>53</sup> Ideology also has concrete political effects. Ideological fantasy, on the other hand, as Nilsson, argues, obscures other identities, identifications and alternatives to plans as in the case of the inevitability of the expansion of the mine and the town relocation.<sup>54</sup>

A consultation process for a planned relocation assumes that everyone can equally take part in such a process with equal voices and balance of power. However, this was not necessarily the case in Kiruna as will be seen below, nor that the consultation process addressed the important question of whether the relocation, or the expansion of the mine, should happen or was inevitable, in the first place. In Nilsson's extended research in the town, residents reacted with either indifference to the whole process or expressed mistrust, helplessness, disempowerment, and fatalistic attitudes in the face of the perceived hegemony of LKAB and the municipality, and that it ultimately did not matter what they thought about it.<sup>55</sup> At the same time, it is the hard risks (material or technical) that were always at the centre of the relocation consultation process focusing on collapsing houses, damage to the railway, or further infrastructure collapse. Soft risks such as emigration, dissatisfaction or segregation commanded far less attention.<sup>56</sup> This results in a Catch 22 situation borne out of dependence on the mining industry and subordination to LKAB. 'If the mine cannot expand and develop, the future of the town is at risk',<sup>57</sup> and by consequence if the relocation of residents does not happen, then the town is 'doomed' and 'futureless'.

Kiruna's relocation plans have had a ripple effect that extends beyond the town's boundaries, affecting the mobility and entire livelihoods of the indigenous Sámi people. Out of Kiruna's nearly 24,000 population in 2022, the Sámi number around 10% by 2019 count (2,500 people). This makes them the largest concentration of Sámi in Sweden.<sup>58</sup> The new site assigned for the relocation of Kiruna sits 3 km to the east of Kiruna, and right in the Sámi reindeer herding land. The relocated railway will slice across Sámi's reindeer pastureland, limiting potential movement, migration routes and grazing in the area. On the other hand, some Sámi work in the mine and therefore its expansion and development could benefit them.<sup>59</sup>

Sámi populations' rights, even in developed and wealthy states, are not always respected and their inclusion in processes that radically affect their way of life and livelihoods is not always compliant with standards of indigenous rights set by international law. Even in states, such as Norway, Sweden and Finland, economic development, green energy projects and environmental protection initiatives have violated Sámi rights in contravention of human rights obligations, including those within the *Indigenous and Tribal Peoples' Convention 1989* (ILO Convention 169) and principles enshrined in the *UN Declaration on the Rights of Indigenous Peoples*.<sup>60</sup>

It is unclear whether the Sámi community in Kiruna has been consulted, or compensated for their participation in consultation, on the aspects of relocation that would affect their reindeer herding land. The Gabna and Laevas Sámi communities in Kiruna state that they have not been adequately consulted and that the option of objecting to the scheme was not even on the table, nor have they been compensated

by LKAB.<sup>61</sup> The Swedish Government maintains that it has fulfilled its obligations under Swedish Law and international law by following due process that covered the cumulative effects on reindeer herding.<sup>62</sup>

However, the obligation to consult is the burden and responsibility of the state and cannot be avoided, handed over or delegated to a private entity such as a mining company.<sup>63</sup> While it is common practice that a private or a commercial company would carry out hazard mapping, risk assessment or environmental impact assessment along with consultation processes with affected communities, what matters is the outcome of such assessments and consultations and who stands to benefit from any given outcome. In the Kiruna case, there is a clear conflict of interest when that very same company (LKAB) has a clear and big stake in what is being consulted on and the outcome of the consultation process. Khazaleh notes that the Swedish Government had minimal input in the management of the relocation and consultation process.<sup>64</sup>

At the time of writing, LKAB had announced the discovery of at least one million tonnes of rare earth oxides which is a vital material for electric cars production.<sup>65</sup> If this deposit is exploited, which is likely given its high commercial viability, it will further confirm and reinforce the contradictory and paradoxical trends in Swedish, or Nordic rhetoric. The contradiction lies, on the one hand, in support for upholding Sámi and their indigenous rights to land and preservation of culture, and, on the other hand, on projects and developments that significantly disrupt their ways of life and livelihoods. This dynamic reflects a paradox, in that climate change is at once a major disruptor of the Sámi way of life, changing pasture resources and grazing land, and at the same time, green energy projects to combat it have also become a threat to the natural resources and ecosystems the Sámi depend on for their survival.<sup>66</sup>

The Kiruna case is one rich with contradictions and insights into mobility processes challenging the notions of voluntariness versus forced mobility in the case of the inhabitants of the town when consultation never included alternatives to the expansion of the mine and relocation of its residents. As far as Sámi are concerned, there is a contradiction between the Swedish Government's increasing recognition of indigenous rights, land, preservation of tradition and culture and survival of reindeer herding, and its concurrent support of development projects. Mining, and, green energy whether hydropower or the wind farm in Markbygden for example, cut across, fragment and totally disrupt indigenous ways of life and livelihoods.<sup>67</sup>

### **Reflections on place, doom and futurelessness**

Interest in the future or futurelessness is not new or novel. What is new is the emergence of ways of imagining futures and linking them to pasts and presents (e.g. modelling, planning, etc.) and in ways that rework the relationships between states, corporations and the public.<sup>68</sup> And it is not only climate change or the impending environmental collapse associated with it from sea-level rise, ocean acidification, ecosystems degradation, biodiversity loss, water scarcity or societal conflict over resources that introduced the notion of futurelessness or doom. Feelings of the

future being foreclosed and an unavoidable catastrophe that cannot be stopped goes back to the start of the century<sup>69</sup> when the looming threat of a nuclear holocaust was, and may still be for some, the ultimate doom. A lot of this now has been transposed to, and manifest in, the threat of young people not having a future and the emergence of movements such as Extinction Rebellion or Youth without a Future.<sup>70</sup> In other words, a sense of doom or futurelessness might be situational or place based for those living with an impending cataclysmic hazard or a general feeling and ‘worry’ among the public observing and perceiving ‘either the futility of planning for the future (e.g. it’s silly and useless), or the foreclosure of future opportunities (e.g. not getting to do things, not wanting to have a family, and the like)’.<sup>71</sup>

As our three case examples vividly demonstrate, places can be exposed to different kinds of futurelessness. These can stem from differences in the hazardous phenomena that cast the futures of these places into question, or because the people who live there react differently to catastrophic predictions. It may feel natural to question ‘are these places actually doomed?’, and if one had conducted a survey including all the people inhabiting these communities one would get very different answers, even from people living in the same place. The crux of the matter is that futurelessness manifests in a diversity of ways and that disastrous futures are also related to in different ways by different people.

The threat that Lyngen faces could qualify it as a ‘doomed’ place because it risks total destruction in a tsunami. For Falsterbo and Kiruna, on the other hand, there is less certainty about the hazard or threat compared to Lyngen, and more capabilities to adapt. In Lyngen, it is a question of evacuate if and when a hazard strikes. In Falsterbo, building a levee and a sea wall buys time and delays that sense of doom. In Kiruna, the threat is not generated from outside the community. If the mine does not expand, livelihoods will be affected or disappear altogether according to the city and the mining company’s narrative. In that sense, the notion of doom is present in both scenarios, expand the mine and parts of the city has to relocate (doomed); or do not expand the mine and risk economic collapse (another kind of doom). What makes a place ‘doomed’ or the qualifying ideas about doom and futurelessness are different in the three cases. What is clear is how authorities used different narratives in each case to frame the futurelessness of the place, when is a place doomed and when it is not, and the state’s obligations, and consequent actions and plans.

Part of this is due to social circumstance. We saw that the wealthy community of Falsterbo peninsula is determined to stay in place, relying on costly mitigative measures to be able to do so. The mining community of Kiruna is in a planned relocation, a process that is paid for by the local mining industrial complex (owned by the Swedish state). In Lyngen, trust in the authority’s ability to provide sufficient forewarning for an organised and orderly evacuation process enables life there, as it produces a sense of safety. One commonality between all cases, however, is that everyday life will in different ways be shaped by a sense of the future being foreclosed, of a sense that future generations may not be able to experience the places in question in the same way that past generations have experienced them. Despite major differences in the nature of the hazards in question and the timescales at



which they manifest, all of these places are to different extents exposed to a sense of life in that place being threatened. Among our cases here, Kiruna is an outlier in that it is in the process of moving to an alternative site. Kiruna's residents have already been through at least some of the emotionally charged place loss and begun a process of connecting to a different site, including ideas and plans for how a new site can be made theirs by, for example, moving significant buildings such as the church. In Falsterbo peninsula, the levee creates debate because, among other things, the area will look different when it is built. For some, the sea view will disappear, while for others, there will be greater obstacles (a levee to climb) to get to the beach or to the golf course. Even if it is not an entirely new place, the changes will still affect the sense of it.

There are different views on the continued existence of the town or settlement, and in all cases, time seems important. In the Kiruna case, the relocation process is already a part of daily life, but since it will continue for the next 30 years, it is also a part of the future. In Falsterbo peninsula, the future is clearly viewed as hopeful, the municipality declares 'We enjoy it here and will not move from Falsterbo peninsula!'. But even if building a levee is universally regarded as the most suitable solution today, the County Administrative Board (unlike the municipality) still accepts the possibility of a future relocation. In Lyngen, the communities surrounding the fjord will need to move at some point in the future, but today everyday life remains largely the same.

There are also differences in how the future is perceived. One important question is whether the doom of the specific physical place also results in a futurelessness for the community. For example, the planned relocation process in Kiruna is argued to be the solution for Kiruna's survival where the identity of the town is framed as a 'mining town' and residents as 'miners'. Thus, the best solution for the mine is also framed as the best solution for the community. While this is the dominant narrative, the further development of the mine and the relocation of the town is probably a scenario of some doom for the Sámi population in the area. The Kiruna case illustrates that even where futurelessness is already there, a new future might exist, but not for everyone.

Futurelessness is also a matter of resources, especially who has the resources. Comparing Kiruna with Falsterbo peninsula, what is considered important to protect differs between the cases. In Kiruna, the mine and minerals that the mine will provide are central, while in Falsterbo peninsula, what is important is that the people who live there will be able to stay. Thus, the perspective from which any of this is viewed is relevant to the outcome, and so too is the point in time at which those views are assessed. Resource-rich inhabitants in Falsterbo could elect to and support staying while the municipality invests in further protection. The question is would these views change if and when relocation becomes an inevitability and futurelessness becomes more prominent in people's minds. In Kiruna, that futurelessness has been associated with the mine not expanding thus rendering relocation inevitable.

What is common between the three cases is that the 'future may be anticipated, forecast, predicted, projected, prognosticated, divined, speculated, imagined,

narrated, promised, revealed, augured, foreseen, or fantasised about'.<sup>72</sup> But who does that and how is it done?

Oomen et al. question how some imagined futures become performative and who renders them so,<sup>73</sup> while Latour contends that the future depends on how and who composes it.<sup>74</sup> In Oomen et al.'s work, the authors view the future as imaginative work and practices that create and negotiate meanings, legitimacy and relations of trust. But when the future can be narrated as a story or is speculated on, Tutton (citing Jasanoff) argues that not all actors are positioned to either anticipate the future or benefit from it, and so some depend on others in having a future and must put an enormous amount of trust in them.<sup>75</sup> Several authors confirm that those who lack the social standing and power are unable to 'render their visions performative'.<sup>76</sup> It is not just the materially wealthy or those with cultural resources who have more capacity to explore the future and share their knowledge among themselves but also those who have more political influence and clout as in the cases of Kiruna and Falsterbo. These future predictions or narratives move between unstable and messy institutions and the public,<sup>77</sup> especially when the actors shaping and disseminating vision of the future are powerful and the public is either passive and disinterested or ignorant.<sup>78</sup> Hence, catastrophic scenarios may produce a diverse set of responses in exposed populations.

This in turn highlights the issue of trust in the future, or the lack of, and the dynamics between the public and the experts or those who are in a position of power and authority. In a study on risk communication and worried publics because of rockslide and tsunamis in Norway, Kjetil Rød et al. found that those who trusted the experts and maintained a dialogue with them worried more; those who were concerned about other issues than the impending disaster worried less, and those who lived in areas or communities with significant assets worried the most. The same study adds that facts and figures were not the only, or the most important, factor in determining people's responses. Risk communication and the ways in which it addressed people's worries was important.<sup>79</sup> It is therefore important to take into account the different ways that people react to information about catastrophic risks.

How people deal with future worries especially in extreme cases of doom has a lot to do with how they perceive and understand risk. Whether it is the analytical system of calculating probability or the experiential system of intuition,<sup>80</sup> coping with worry takes one of five forms according to Macgregor – 'do nothing; continue to worry; accept discomfort; escape from the source of the worry and/or take direct action to reduce the consequences'.<sup>81</sup> How people respond to an impending doom depends on which system they lean more towards and whether their emotions are aroused by images (connection to a place, familial ties and history etc.) or facts and figures and scientific information. Bass argues that people are more affected by images than facts and maths or formal logic of risk assessment and that images strike more powerfully and deeply than numbers. Whether this applies to people's sense of doom and futurelessness remains to be seen in the exploration in future research of the case studies in this chapter.<sup>82</sup>

Imagined futures, or futurelessness in some cases, emerge from people linking futures with present and pasts in unique ways and in what Fincher et al call 'time

stories' in their study exploring people's lived experiences of time, and environmental changes that occurred in their lifetime and that of their families in a small low-lying coastal community in south-eastern Australia.<sup>83</sup> The kind of futureless or doomed places this chapter explores sits in the grey area between the uncertain and the indeterminate – the former is the probability of an event whose nature is known and the latter is an event whose nature is unknown.<sup>84</sup> A major caveat is that exposed populations may not be as well informed about the risk as the experts who produce the models about the uncertainties and parameters considered. This opens up the potential for contestation about how catastrophic prognoses should be dealt with locally. What is clear is that notions of doom and futurelessness can impact places and people in diverse ways that research is only beginning to unravel.

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## 9 Mobility paradox

### “Green” energy production and Sámi perceptions of national decision-making legitimacy

*Suanne M. Segovia-Tzompa*

#### Introduction

The Nordic region is one of the European sub-regions experiencing challenges in the midst of the green transition. It is a target zone for green energy production to which civil society has responded with demonstrations, questioning the role of the European Union as an environmental champion and the legitimacy of Nordic states leading Arctic energy governance. Sámi People, the only Indigenous group in mainland Europe,<sup>1</sup> are amongst the populations and non-state actors contesting their governments’ decisions. The cultural and environmental repercussions of “green” energy production have the effect of limiting mobility for the reindeer herds and the people who work with them. From a sociological standpoint, this contestation suggests that from a Sámi perspective, the legitimacy of Nordic governments’ decisions on the green transition is at stake.

In an era of the legal and policy transformation to “green” energy production in the EU, assessing the legitimacy of political institutions is important to validate the extent to which these institutions work rightfully towards achieving the European Green Deal (EGD) goals.<sup>2</sup> Research on global governance institutions, including those related to the EU and its regional effects, has studied the legitimacy of those institutions using normative parameters.<sup>3</sup> Sociological legitimacy, a burgeoning field concerned with the empirical study of legitimacy, proposes that social perspectives also matter, given the increased participation and contestation engaged in by civil society and other non-state actors as political decisions affect these social groups, which in turn has potential implications for the effectiveness of global and regional governance.<sup>4</sup> Normative-sociological legitimacy, a combined approach, proposes that these two perspectives can be simultaneously addressed when focus is on understanding a group’s perspectives through theoretical standards in legitimacy studies.<sup>5</sup>

This chapter focuses on Sámi People’s perception of the legitimacy of Norwegian and Swedish governments’ decision-making in light of the mobility paradox. The mobility paradox originates when green energy production – the set of mining of critical raw materials, windmill parks and hydropower activities – enables mobility for the broader society under the auspices of the EGD, whilst constraining the

traditional mobility of Sámi People to carry out their reindeer herding activities, which are paramount for their cultural and economic development.<sup>6</sup> It builds on Arctic environmental justice studies and normative-sociological legitimacy scholarship, which together provide a framework to understand Sámi perceptions of the legitimacy of relevant law and policy and how it is implemented. Perceived legitimacy suggests that political institutions address justice, alongside other normative standards. In contrast, lack of social legitimacy signals the lack of practical justice for local populations and less confidence in the political institutions involved. Perceptions of (il)legitimacy are important because they signal Sámi People's potential unwillingness to collaborate with relevant governments, which will have some bearing on both the future of green energy projects and the future of the Sámi People.

The chapter also discusses Sámi territories as sacrifice zones – land areas that are chosen to concentrate economic activities that likely lead to environmental degradation<sup>7</sup> – for hosting green energy production as climate mitigation strategies that lead to forced adaptation plans for Sámi communities.<sup>8</sup> To conclude, the chapter discusses the implications of the mobility paradox on the effectiveness of mobility and energy governance and Sámi environmental justice.

This chapter is an empirical-based contribution to the studies of Nordic mobility in the context of normative and sociological legitimacy, and other broader discussions related to global and regional climate governance. As such, this chapter first conceptualises the mobility paradox in Sámi lands. It then describes relevant legislation at the international, regional and national levels, as well as relevant institutions. Thereafter, it analyses four cases—two in Sweden and two in Norway—using directed content analysis (DCA) and scrutinises the relevant Sámi perceptions of legitimacy in those cases. Whereas further research is required to render a final assessment of Sámi People's legitimacy perceptions, the empirical analysis suggests that perceived (il)legitimacy in the agreement (or contestation) of green energy production might have serious implications for future mobility, both as a matter for Sámi People and in the creation of new mobility pathways.

### **Contextualising and conceptualising the mobility paradox in Sámi lands**

The EGD requires energy transitions<sup>9</sup> but the resurgence of war in Europe has added to pre-existing pressures, including climate change and social injustice.<sup>10</sup> In this context, Sámi People are facing threats to their landscapes, livelihoods and cultural practices due to their lands being co-opted for energy production through mining of critical raw materials, windmill parks and hydropower activities, all of which are associated with the EU green energy transition.<sup>11</sup> These competing pressures underline the tensions between Sámi traditional forms of mobility that predated colonisation and the contemporary dynamics that affect those ancient mobility forms. For this reason, reaffirming their self-determination is paramount for Sámi People, apropos international, regional and national political institutions and mobility legislation.<sup>12</sup>



***Sámi mobility***

Sámi People live in Fennoscandia region, which corresponds to the settler states of Norway, Sweden, Finland and the Russian Kola peninsula.<sup>13</sup> Traditionally, their subsistence and economic practices were hunting, fishing and reindeer herding, all of which are linked to land use and rights.<sup>14</sup> Focusing on reindeer herding, Sámi People have nomadic practices that have been affected by climate change<sup>15</sup> but also by energy transformation.<sup>16</sup> Sámi reindeer herding practices are also associated with constant mobility, especially as a form of subsistence.<sup>17</sup>

Sámi mobility then entails their mobility for reindeer herding that is both an economic and a cultural practice around which Sámi People have developed values and environmental knowledge systems.<sup>18</sup> This form of mobility matters because energy transitions occur both in the territories inhabited by Sámi, and also in spaces they might not permanently inhabit but take their herds through to graze. Moreover, energy issues might not affect Sámi People directly, although do so indirectly by threatening reindeer herding opportunities, which is not only a form of subsistence but also an important element of their culture.<sup>19</sup>

In the context of the green transition, the mobility paradox is a form of “green” colonialism, which refers to the exploitation of Sámi (or other Indigenous) lands for economic (e.g., energy) production justified on the basis of the importance of mitigating climate change.<sup>20</sup> Energy production is argued to transform Sámi territories into sacrifice zones, which are the designated areas where public and private actors intend to locate these activities, knowing the environmental and health risks that those represent for the local people and the natural environment.<sup>21</sup>

***Sámi actors***

Sámi are a People, which is a collective noun, but it is imperative to recognise the individualities within that group too. Sámi People have different ways to live their indigeneity that can vary across generations, levels and forms of education, gender, sexual preferences, and physical capacities and individual identities. It is from all these angles that they might form their individual perceptions. But they might come to agreements or common conclusions by their shared history and environmental identities.<sup>22</sup> This chapter considers both the individual and collective features of Sámi that potentially shape their perceptions of the legitimacy of relevant law, policy, and government decision-making.

Furthermore, there are institutions organised by or for Sámi People, such as the Sámi Parliamentary Council (SPC), which is a representative body where representatives from Finnish, Swedish and Norwegian Sámi parliaments, and observers from Russian organisations cooperate.<sup>23</sup> However, Sámi parliaments in Norway and Sweden have distinct features. The Norwegian Sámi Parliament was created by Sámi People in 1989 and is relatively independent from the Norwegian government.<sup>24</sup> Whereas, the Swedish Sámi Parliament was established in 1993 and is ingrained in the Swedish government.<sup>25</sup> That Sweden is not party to the only binding treaty addressing the rights of Indigenous Peoples (Indigenous and Tribal Peoples

Convention 1989, hereafter “ILO 169”) has meant that the Swedish Sámi Parliament has more limitations compared to its Norwegian counterpart.<sup>26</sup>

An older Sámi organisation, the Sámi Council, dates back to 1956. Unlike the Sámi parliaments, the Council is a non-governmental organisation with nine Sámi member organisations from the four settler states that Sámi People inhabit. It advocates for Sámi rights by defending the economic, political and cultural interests of Sámi People in the governmental processes of the settler states inhabited by Sámi.<sup>27</sup>

### *Mobility-related law and policy*

Mobility-related law and policy refers to the breadth of those laws, policies and institutions within the state apparatus that impact various forms of mobility, including Sámi reindeer herding,<sup>28</sup> among other forms. Thus, energy production policies might fall within this research focus because they impact mobility and land-rights for Sámi People. Since all such law and policy and its implementation might affect Sámi People’s mobility, they might in turn affect Sámi People’s perceptions of the legitimacy of the responsible government institutions. It is not possible within the confines of this book chapter to cover all potentially relevant policies or regulatory frameworks. Therefore the focus here is on those particularly significant to Sámi rights.

ILO 169 is a legally binding instrument that, among other things, calls for the respect of the customary practices of Indigenous Peoples, which would include Sámi reindeer herding.<sup>29</sup> It has been ratified by Norway, but not Sweden. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is a resolution of the UN General Assembly that emphasises the need to respect Indigenous Peoples’ culture throughout, and particularly in Articles 5, 8, 11, 12, 14 and 15. Article 10 provides that Indigenous Peoples shall not be forcibly removed from their lands, and that no relocation shall take place without the free, prior and informed consent (FPIC) of the Indigenous Peoples concerned. Article 32 provides that Indigenous Peoples have the right to determine and develop priorities for the development and use of their lands, and that states should consult and cooperate with Indigenous Peoples to obtain their FPIC prior to the approval of any project affecting their lands or territories.<sup>30</sup> UNDRIP is not legally binding but is grounded in binding principles of human rights law. Finally, the Convention on Biological Diversity (CBD), which governs aspects of the use of natural resources, provides in Article 8(j) that each contracting party will respect, maintain and preserve Indigenous practices relevant for the conservation and sustainable use of biological diversity and, indirectly, also refers to consultation by requiring that such practices be promoted with the approval and involvement of Indigenous knowledge holders. However, Article 8(j) also contains the caveat that these endeavours are subject to each state’s national legislation.<sup>31</sup>

At the regional level, the EGD is an effort “to integrate the United Nations’ sustainable development goals” into the region, with an emphasis on issue areas like “clean, affordable and secure energy”.<sup>32</sup> Two aspects of the EGD are of interest

for this research. First, the EGD aims at striking a just transition for all. Second, the European Commission proposed a Critical Raw Materials Act within the EGD framework,<sup>33</sup> which requires the extraction of raw materials for powering wind turbines and solar panels. The inclusion of mining within the EGD framework provoked reactions from within civil society and Sámi People, entrenching opposition to existing and prospective mining projects in Sweden and Norway.

Within the Nordics, rather than the broader EU region, the Nordic Sámi Convention elaborates the general rights of the Sámi People, recognises that Sámi are one People residing across national borders, and establishes cooperation between the Nordic states within which Sámi live: Finland, Norway and Sweden (Russia is not a party). It provides that the states shall respect and consult Sámi representative bodies “when necessary” in Article 21, and acknowledges that “the Saami parliaments make independent decisions on all matters where they have the mandate to do so under national or international law” in Article 15. The Convention also references the affirmation and strengthening of Sámi culture in Articles 1, 6, 9, 11, and the entirety of chapter III.<sup>34</sup> Relevantly, Article 34 provides “If the Sámi have traditionally used certain land or water areas for reindeer husbandry, hunting, fishing or in other ways, they shall have the right to continue to occupy and use these areas to the same extent as before”, although with due regard for other users. The Convention expressly requires negotiations with Sámi in advance of any government decision granting a permit for the utilisation of land otherwise used by Sámi (Article 35) that the Saami Parliament has the right to co-manage the land (Article 39), and that reindeer husbandry shall enjoy special legal protection (Article 42). Finally, national legislation and judicial decisions affect Sámi mobility. In Norway, the Sámi Act (1987), the Finnmark Act (2005) and the Reindeer Husbandry Act (2007) support Sámi rights. In Sweden, Article 2 of the Swedish Instrument of government (which forms part of its constitution) provides that Sweden shall promote opportunities for Sámi People to preserve their cultural life, and Article 17 expressly recognises the right of the Sámi population to practise reindeer husbandry and that this shall be regulated by law. Accordingly, Sámi People inhabiting settler Sweden are subject to the Swedish Reindeer Herding Act (1971) which governs the right of Sámi to use land and water to maintain reindeer herds in certain parts of Sweden.

The Indigenous status of Sámi is not recognised in Swedish or Norwegian constitutions,<sup>35</sup> notwithstanding their recognition as such under EU and international law. The absence of the Indigenous status enshrined in the constitution is important because it might impair Sámi People from asserting certain rights, and might contribute to the formation, or not, of perceptions of legitimacy. On the other hand, the Swedish government adopted in January 2022 the “Lag (2022:66) om konsultation i frågor som rör det samiska folket”,<sup>36</sup> a law to support the consultation rights of Sámi People in relevant situations for their development. Both the Sámi parliament and other Sámi representatives ought to be consulted by the Swedish government and associated agencies from January 2022, whilst local governments must carry out consultation from March 2024. Along the same lines, the Norwegian government has similar obligations under international law, since it has ratified ILO 169 that emphasises in its Article 6 that signatory countries shall implement consultations with Indigenous Peoples that might be affected by governmental decisions.<sup>37</sup>

## **A normative-sociological legitimacy framework to understand Sámi perspectives**

### *Legitimacy beyond normative standards*

Under a normative legitimacy perspective, an institution that is considered legitimate lives up to given normative standards such as institutional integrity,<sup>38</sup> accountability, transparency, inclusiveness and openness.<sup>39</sup> The sociological legitimacy approach is instead interested in the perceptions held by relevant audiences of whether a political institution is legitimate.<sup>40</sup> These perceptions might or might not be grounded on normative standards. When the analysis is focused on legitimacy perceptions of certain actors based upon normative values, then, we talk about normative-sociological legitimacy,<sup>41</sup> which provides the analytical framework for this chapter. Essentially, under a normative-sociological framework political institutions are perceived as legitimate when they appropriately exercise normative standards in governance processes.<sup>42</sup>

Normative and sociological legitimacy scholarship have grown apart in terms of their ontological and epistemological reasoning. However, they can also be seen as complementary under the normative-sociological legitimacy approach proposed here. Correspondingly, some elements are relevant in both theoretical schools. These include that objects of legitimacy are the actors in which legitimacy is bestowed,<sup>43</sup> and that those actors who bestow legitimacy are known as the audiences, those who perceive legitimacy.<sup>44</sup> In the previous section, I outlined legitimacy objects (i.e. the EU and Norway and Sweden's governments) and audiences (i.e., Sámi actors) of relevance for this chapter. To understand Sámi legitimacy perceptions, all Sámi actors are here considered as audiences, whilst state actors (i.e. Norway and Sweden's governments) are regarded as legitimacy objects.

Finally, there are drivers or sources of legitimacy, which are the reasons why audiences perceive institutions as legitimate.<sup>45</sup> Taken together, normative and sociological legitimacy scholarship offers a vast number of concepts that can be considered sources of legitimacy within a normative-sociological approach. On the normative side, research bridging legitimacy and energy offers a framework with at least nine different sources of legitimacy – authority, inclusion, procedural (i.e., decision-making) fairness, transparency, accountability, output, outcome, impact and distributive (i.e., benefits distribution) fairness.<sup>46</sup>

On the sociological side, research focused on global governance has proposed sources of perceptions of legitimacy coming from varying theoretical approaches, including individual, institutional and societal dimensions.<sup>47</sup> For the purpose of combining normative and sociological approaches, the relevant sources within sociological legitimacy studies focus on the features of political institutions (institutional sources). From an institutional legitimacy angle, political institutions are expected to follow normative standards to be perceived as legitimate; for instance, participation, accountability, efficiency, impartiality and distributive justice.<sup>48</sup>

However, the sources of interest in this study are restricted to perceptions of justice held by Sámi People, and as a central concept for their own advocacy (i.e., procedural and distributive justice – concepts explained in the next section).

Conveniently, justice-based perceptions of legitimacy overlap in both normative and sociological approaches, which makes them suitable to analyse from a normative-sociological approach. Understanding whether Norwegian and Swedish governments' decision-making processes are perceived as legitimate in the eyes of Indigenous Peoples helps to understand the potential for collaboration between Sámi People and those governments. Perceived legitimacy might provide Sámi People with greater willingness to engage with those governments, which alongside concerted government cooperation could create fairer and more effective policies for Sámi People.

### *Justice as a normative and empirical legitimacy standard*

Most of the previous studies on mobility and Sámi examine justice-based aspects.<sup>49</sup> In terms of legitimacy studies, the analysis of justice and legitimacy is already present in classic psychology studies that point to perceptions of legitimacy and link them to procedural and distributive justice.<sup>50</sup> Contemporary normative<sup>51</sup> and sociological<sup>52</sup> legitimacy research also acknowledges this link. Building on these studies, I investigate procedural and distributive justice as sources of legitimacy.

To judge legitimacy on justice grounds, audiences might pay attention to the fairness they perceive in decision-making processes (procedural justice), such as energy-related consultations.<sup>53</sup> Alternatively, or simultaneously, audiences could pay attention to the fair share of policy-making outcomes (distributive justice), like the advantages (or disadvantages) of energy policies implementation and the (un)even situation that these policies create.<sup>54</sup> Since this chapter enquires into the perceptions of mobility policies and legislation in Sweden and Norway, the legitimacy perspective will judge the appropriateness of these governments in fairly making and implementing international, regional and national law and policy related to the energy-mobility nexus.

In addition, other justice-related aspects might be of importance for the formation of legitimacy perceptions by Indigenous People, such as recognition (in relation to procedural justice), and resource access (in connection to distributive justice).<sup>55</sup> For instance, just policies ought to recognise Sámi Peoples and also their land rights and their Indigenous knowledge to be perceived as legitimate.<sup>56</sup> In the case of resource access, Indigenous People might perceive as worthy of legitimacy an institution that offers “appropriate financial resources, technologies, and training, as well as public participation forums”,<sup>57</sup> but also the ability to access natural resources as they used to.<sup>58</sup>

## **Research design and methods**

### *Case studies*

The chapter is inspired by a talk delivered by an Indigenous reindeer herder in Kilpisjärvi, Finland, a town close to the triple border between Sweden, Norway and Finland. This Sámi person explained that there are challenges to reindeer

herding – a customary and economic activity done across borders – such as local and national laws that limit cross-border reindeer movement and windmills that change reindeers’ movement patterns. That anecdote led me to pinpoint cases concerning energy production in Scandinavia. I chose Swedish and Norwegian governments as objects of legitimacy considering their closer social, economic and political context, compared to the other countries with Sámi population. These countries are also relevant from an empirical standpoint because they host Sámi populations but also support industries that potentially impair Sámi livelihoods.

To choose the case studies, I first used the Justice Atlas<sup>59</sup> and later Google search to identify potential cases involving Sámi reindeer herding and energy production. I have chosen four cases involving energy production and reindeer herding issues in light of the available data. All of these cases were related to so-called green energies that, amongst others things, affect the traditional mobility processes of Sámi herders. The involved energy production forms are wind turbines, small hydro-power plants (SHP) and ore mines for “sustainable” steel production.

### *Methods*

I use DCA in order to study perceptions around the four identified cases. This is a deductive approach that is useful for this research considering the existence of a pre-given legitimacy framework. Once I identified the cases, I stated the criteria to operationalise the study of institutional sources of legitimacy related to justice (see the “Operationalisation” section).

The DCA process first required identification of data sources of the chosen cases. Some of these sources were found during the case selection process, whilst I checked for complementary information sources at a later stage. I used various types of secondary data sources such as academic and newspaper articles, recorded and transcribed interviews, organisational statements, reports and blog posts. The final sources were chosen under two conditions: to have enough information about the case and to incorporate the views of Sámi People themselves about the cases.

Secondly, I added the selected texts of all these sources into the qualitative data analysis software ATLAS.ti. This software allowed me to code text related to the operational concepts of legitimacy and justice contained in the codebook. To contextualise each case, I also identified the type of audience (e.g., Sámi person, Sámi representative.), the type of legitimacy object (e.g. Sweden) and whether and what justice types (i.e., procedural or distributive) were present in the case, as well as the type of energy involved. Thirdly, for the analysis and discussion, I created the following categories: (a) mobility situation, (b) justice perceptions and (c) legitimacy perceptions.

### *Operationalisation*

In practice, this chapter combines the methods of two recent articles studying legitimacy and justice perceptions of non-state actors, which would include Indigenous Peoples. Based on Dzebo and Adam’s (2023) empirical study of legitimacy

perceptions of non-state actors, I operationalised legitimacy as a binary variable where any statement of agreement with local, national or regional laws or governmental decisions for being fair represents perceived legitimacy, whereas any statement of contestation on justice grounds suggests lack of perceived legitimacy.<sup>60</sup> To understand whether (in)justice is the source of Sámi legitimacy perceptions, I classified statements of Sámi People into procedural or distributive (in)justice, depending on whether they refer to (un)fairness in policy-making or implementation, respectively (as discussed in the “Justice as a normative and empirical legitimacy standard” section). The relation to justice or injustice is inspired by Engen’s and others (2023) study on Sámi (and other state and non-state) actors’ acceptance/opposition under justice grounds. The study seeks to understand Sámi People’s attitudes towards energy production by linking opposition to injustice, and implying that acceptance is linked to justice.

## Analysis

**Case 1, Norway.** The first case concerns the Fosen wind turbines park, which is located in settler Norway. It involved the construction and operation of a 151-turbines farm in Sámi territory by the state-owned Statkraft company. Sámi opposed the project due to the adverse effects that the operation was anticipated to have on grazing in a legally recognised reindeer herding area.<sup>61</sup> Opponents of the construction engaged in peaceful protests and litigation to stop the operation. However, the company proceeded with the construction that was completed in 2020 before the court’s verdict, which was regarded by those Sámi opposed to it as unfair and lacking their consent.<sup>62</sup> In October 2021, the court concluded that this project violated Sámi human rights. However, the state company is yet to act upon this decision.<sup>63</sup>

Fosen violations provoked evident contestation towards the Norwegian government, to whom the Fosen company belongs. Right after the court’s decision, Andreas Bronner representing a group of Sámi herders stated that “[Fosen park] construction has been declared illegal, and it would be illegal to continue operating them”.<sup>64</sup> During a later protest, Áslat Holmberg, president of the Saami Council, questioned, “What kind of safeguards are there for Sámi if the justice system isn’t working in [their] favor?”<sup>65</sup> Holmberg also asked, “What kind of constitutional state doesn’t respect the ruling of its own Supreme Court?”<sup>66</sup> In line with these statements, other Sámi representatives have also condemned the failure of the Norwegian government to act.

For instance, Beaska Niillas, a Sámi politician, stated: “If the Norwegian Government themselves don’t follow their own legal systems, then how are they to expect that others are to respect the laws and the legal system?”<sup>67</sup> The quote exemplifies a lack of trust in the Norwegian government for failing to respect its legal system. This Sámi politician later mentioned that his Sámi community expected the Norwegian government to respect the resolution, which underlines a justice component related to unfair distribution of energy production. Sámi protesters demanded in March 2023 that the solution is to close down the turbine park and

restore Sámi land use in that area. They said that “transition to green energy should not come at the expense of Indigenous rights”.<sup>68</sup>

In sum, a complex situation arose in the Fosen case. First, there was perceived procedural justice through the recognition of Sámi herding-related mobility rights by the court. On the other hand, since Fosen is a state-led company, the decision to continue the construction and operation of the turbine park rests on the Norwegian government, the decisions of which Sámi People seem to perceive as illegitimate for disregarding Sámi lack of consent and failing to comply with the Norwegian court’s ruling, violations that represent procedural injustices. This not only affects Norwegian government perceived legitimacy, which might hamper future cooperation, but also affects Sámi mobility since the decision disregarded Sámi reindeer herding interests. The installation of wind turbines has disrupted reindeer grazing and impeded mobility.

**Case 2, Norway.** The second case relates to SHP stations in Norway. Through a sociological legitimacy lens, I re-analysed a study exposing more than 71 cases of opposition (contestation) versus acceptance (agreement) that corresponds to the arguments linking illegitimacy to injustice and legitimacy to justice, respectively. To start, an important feature of SHP is that energy producers claim it causes no harm to the natural environment. However, Sámi people, particularly reindeer herders, perceived it to be harmful for the environment not only because of the construction of the necessary dams but also the construction of related infrastructure, such as highways. Indeed, 65% (47 out of 71) of upcoming SHP projects have been opposed by Sámi herders in the reviewed study.<sup>69</sup>

Sámi representatives, “i.e., reindeer districts, the Sámi Parliament, and the reindeer authority”,<sup>70</sup> were amongst the groups opposed to the upcoming SHP projects, along with other reindeer herding Sámi. Those opposed to SHP perceived that the project would impact reindeer herding activity by the construction of dams, roads and pipelines and contributing to changes in the soil that would affect the local flora,<sup>71</sup> and therefore also reindeers’ natural feed and traditional herding practices. However, this study found that not all Sámi herding communities opposed SHP, and that the acceptance/opposition corresponded to not only the perceived impact of SHP but also related changes (e.g., roads construction).<sup>72</sup>

In the case of perceived impact, opposing communities critiqued the state’s failure to use a Sámi reindeer herder expert to carry out impact assessments during decision-making processes, indicating a procedural injustice. Additionally, the absence of a cumulative effects evaluation in the same case might be perceived as another procedural injustice for excluding follow-up plans to restore natural environments affected by SHP complementary roads in the decision-making process.<sup>73</sup> This could prevent Sámi People from herding as they used to. Meanwhile, the fact that the main group opposing SHP are reindeer herders, most of whom are Sámi People, connects to a distributive injustice, since Sámi and other herders seem to be more affected by those projects than other social groups.

Additionally, SHP is a sensitive topic concerning justice and colonialism for Sámi People in the Norwegian side, because it is a reminder of the Kautokeino-Altavassdraget dam construction, of 1968. The organised opposition to the dam



construction brought Sámi voices together to oppose not only this hydropower project but also other subsequent energy production projects threatening Sámi land used for reindeer herding. Concerning hydropower, regardless of small or big projects, the Sámi Parliament President Silje Karine Muotka said in 2022 that “I can swear that history repeats itself” referring back to the 1968 dam project.<sup>74</sup>

In this context, Sámi People might perceive the Norwegian government’s decisions as illegitimate, since a licence from Norwegian Water Resources and Energy Directorate is required to build SHP and all their related infrastructure, again evidencing the trade-offs between official licences and Sámi mobility-related rights.

**Case 3, Sweden.** The next case occurred in 2022 in the Gállok (Sámi language name for Kallak) locality in Jokkmokk, Lapland, at the north end of settler Sweden.<sup>75</sup> The process started in 2006, when the British company “Beowulf Mining Plc.” and the Swedish partner “Jokkmokk Iron Mines AB” were granted exploration permission by the Swedish government. After that, there were protests of Sámi People and other civil society actors, which led to consultations and statements of the Swedish Sámi Parliament,<sup>76</sup> the Sámi Council and other Sámi organisations. Despite Sámi opposition, Sweden approved an application by the British company to establish an iron mine in Gállok.<sup>77</sup> The approval occurred a couple of months after the new Sámi consultation law was adopted by the Swedish Parliament. The Swedish government also disregarded the decision of the Norrbotten County, which had rejected mining in Kallak since 2014.<sup>78</sup> Consultations with Sámi representatives and local institutions occurred, but they seem to have been disregarded or downplayed by the Swedish government in relation to other interests, raising questions about procedural injustice.

In this respect, the Swedish Sámi Parliament chairperson said that

the board really regrets that the government, with the decision to grant a processing concession, is opening up another iron ore mine in the north, despite the Sami’s resistance and despite the fact that several important bodies have said no.<sup>79</sup>

In an official statement, the Sámi Parliament pinpointed at least two factors that might affect their mobility: loss of reindeer land for foraging and husbandry due to mining operations and transport; and long-term inability of the used area after closedown and restoration.<sup>80</sup> This project would restrict long-term access to land that sits in the Laponia World Heritage Area.<sup>81</sup>

In addition to the potential perceived procedural injustices already emphasised, the Gállok case illustrates aspects of potential distributive injustice by exposing an imbalance between the Sámi rights to freely practice their culture in their ancient territories (e.g. reindeer grazing and husbandry lands) and a mining-based “low” carbon economy, in which government nonetheless favoured economic interests at the expense of Sámi and environmental health threatened by mining trade-offs.<sup>82</sup> By proceeding with decisions perceived to be unfair, the Swedish government has undertaken administrative action that could impact its perceived legitimacy, and future collaboration with Sámi People.

**Case 4, Sweden.** This case focuses on the addition of turbines to an existing wind farm in Botsmark, Västerbottens County. In Northern Sweden in March 2023, the Swedish Land and Environment Court denied permission for new turbines to be installed by the European Energy Sveriges company in Botsmark.<sup>83</sup> The project was initially approved despite opposition from Sámi villagers of Rans and Grans, whose lands would be directly impacted. However, Sámi People appealed the decision arguing that despite proposed precautionary measures, the project continued to threaten Sámi reindeer herding activities, as it would constrain the mobility of their herds.<sup>84</sup> As a result of this appeal, the project concession was finally rejected.

This resolution seems to provide procedural justice to Sámi People at least in the appeal stage, when Sámi arguments were meaningfully weighed. The result also provided a sense of distributive justice to Sámi villages, who would have been directly affected by the wind turbines construction and operation, although the energy from them would flow to other areas. Yet, the court's decision has been removed from the official registry, indicating that the case could have been reopened due to consecutive appeals or because the "announcement has gained legal force".<sup>85</sup> No additional evidence was found to support any of these possibilities.

### Summary of the findings and discussion

The goal of this chapter was to explore the mobility paradox by understanding Sámi actors' perceptions of the legitimacy of government approaches to administrative decision-making affecting their lands and mobility. It also sought to interrogate the extent to which legitimacy subjects uphold Sámi reindeer herding rights versus EGD-related goals, and to identify if and how perceived justice was a relevant aspect for their perceived legitimacy. To report the results and ease the discussion, I have divided the analysis into the following topics: (a) mobility; (b) perceptions of justice; and (c) perceptions of legitimacy.

Concerning mobility, all the presented cases were intended to be (Case 4) or were finally built (Cases 1, 2 and 3) in Sámi legally protected lands. While Sámi People are not against "green" energy production per se, conflicts arise when state use of Sámi land takes place without their consent, reminiscent of colonial practices and transforming Sámi recognised areas into sacrifice zones.<sup>86</sup> Reindeer herding is part of the recognised identity of Sámi People; it inherently requires mobility and is also a form of economic activity, and there are legal instruments to support Sámi mobility. Whilst not specified in the reviewed data, Sámi opposition to the projects is underpinned by their rights to be consulted in decisions that affect them, and obligations to protect reindeer herding right as a form of cultural expression, which provide legal support for Sámi to oppose energy-related projects, including via judicial appeal. It is also implicit in the case studies that involved companies, either private or state-owned, use the EGD as a supporting framework to justify "green" energy production (i.e., wind turbines, "green" mining and SHP) during contested cases.

It is left to the governmental authorities to solve the mobility paradox – weigh these regulations and interests – although contested processes such as Cases 1 and

4 underline varying decisions between authorities in Sweden and Norway, in which case the role of the relevant national courts was key for settling differences. On the other hand, Case 3 indicates that Sámi People in settler Sweden could find more obstacles to fair mobility than Norway until 2022. As United Nations Special Rapporteurs declared in 2022, the Swedish government missed the opportunity to make up for past grievances in Gállok and disregarded important international Indigenous-related obligations and national laws.<sup>87</sup> Case 4, in turn, suggests that Sámi People might have more resources to appeal judicial decisions after the Swedish consultation law has taken effect.

Regarding legitimacy, the analysis suggests that Sámi People perceive some lack of legitimacy in most cases, whether related to actions or decisions of the Norwegian or Swedish governments. For instance, case 1 showed that Sámi actors perceived the Norwegian government had violated the law for failing to implement the court decision to dismantle the Fosan wind farm. In contrast, Case 4 concerning Botsmark might indicate that Sámi People perceive the Swedish state as legitimate for recognising Sámi mobility-related rights. Yet, it was not the national government but a court that took a favourable decision for Sámi People. It is not evident from the reviewed data if Sámi perceptions over one political institution might act as shortcuts to bestow legitimacy over others.<sup>88</sup> In contrast, it is evident that the Swedish government's promulgation of a Sámi consultation law might not have elicited the perception of legitimacy for Sámi People, who contested the Swedish resolution in Case 3.

In relation to justice, all cases seem to have justice aspects associated with Sámi's perception of the legitimacy of state decision-making, which could be identified by looking at two cross-cutting situations. First, procedural injustices were evident when Sámi representatives' legal claims were overruled on final appeal, as in Cases 1 and 3. Interestingly, the empirical evidence of Cases 1, 3 and 4 underscores that Sámi representatives have been invited to consultation, although those consultations are not meaningful or effective if used only as a tool for perceived legitimacy, whilst Sámi claims are not considered in reality.

Second, distributive justice appears to be the main motivation of Sámi contestation in all cases, although contestation might not come from all Sámi actors. Sámi People emphasised during contestation in all cases that the cumulative effects of green energy production (e.g., pollution for constructions or long-term uselessness of production areas<sup>89</sup>) create unequal risks to their culture and livelihoods compared to other regions or societies. However, some of the cases showed that different Sámi actors can also have different interpretations of distributive justice. For instance, Case 2 showed that Sámi People did not oppose over 30% of the SHP projects between 2010 and 2018, which suggests that they are not necessarily against "green" technologies. This also emphasises their individual identities and agency beyond their collective environmental identities, although further research is needed to understand different Sámi perceptions and what those entail.

Taken together, the reflections above suggest that scaling up green energies is far from providing a fair transition, which is another goal of the EU green deal. This argument has been advanced by other scholars,<sup>90</sup> and more examples of perceived

legitimacy associated to justice like Case 4 are needed to advance towards that goal. These results are not conclusive, but provide an initial idea about the state of the mobility paradox, and the trade-off affecting justice and legitimacy perceptions. The implications of lack of perceived legitimacy towards the effectiveness of mobility and energy governance are clear if justice is considered an effectiveness parameter.

## **Conclusion**

The implications of this research for studies of mobility in the Nordic countries in light of the green transition are revealing. A first lesson comes from the contextualisation, which showed a variety of legal instruments at different levels to protect Sámi People's mobility rights that involve reindeer herding. Although some of the legislation does seem inconsistently applied, which potentially diminishes the perceived legitimacy of the Swedish and Norwegian governments' decision-making. Both the Swedish and Norwegian governments' legitimacy seems to be at stake where international commitments to respect, protect and fulfil Indigenous Peoples rights are not upheld.

Furthermore, both procedural and distributive justice issues were identified as relevant sources of contestation or support, which suggests a relationship between perceived (in)justice and perceived (il)legitimacy. In addition, all of these cases indicate a nexus between "green" energy production and reindeer herding issues, which represent trade-offs between Sámi and mainstream forms of mobility, and risks for the cultural and environmental benefits of Sámi herding.

However, reindeer herding might not be the only form of mobility relevant for Sámi People. Sámi People have also experienced urbanisation processes linked to cultural and educational immersion in non-Indigenous contexts. Conversely, younger generations with Sámi heritage are experiencing the return to their ancestral homelands and re-immersing in the Sámi traditions and cultural life. Future Nordic mobility and legitimacy research might want to address the perspectives of Sámi People facing contrasting forms of mobility including in the context of other challenges such as climate change, biodiversity issues and food and social security.

Moreover, this study opened up for future studies on the justice-legitimacy nexus. Future research in environmental justice and legitimacy is needed to understand whether consultation processes are intended to realise Sámi rights or to legitimise Swedish political institutions. The latter could be evident when legislation and political decisions contradict Sámi recommendations after consultations, such that the consultation becomes meaningless. This presumably represents lack of justice but also questions the effectiveness of Swedish legislation concerning the green transition. It is important to acknowledge that other variables might also affect Sámi People's perceptions of legitimacy, for example, cognitive shortcuts<sup>91</sup> related to other justice-based situations concerning biodiversity, food security, self-determination, amongst others. Also, their perceptions might rely on other sources outside the justice spectrum that were not analysed in this chapter.

Engaging the findings of this chapter in broader discussions, the energy-mobility nexus also relates to climate mitigation and adaptation issues. The revision of the “green” energy plans suggests that the development of mitigation policy-making and implementation aims to sustain the current rate of energy consumption by transitioning to cleaner energies, while ignoring the trade-offs of these decisions. The “green transition” implies a need for adaptation. However, when zooming in on Sámi People’s cases, climate adaptation represents for them various losses, diminishes their culture and becomes a form of maladaptation. To better inform decision-making and their social implication, future research might also point towards large-N research studies or richer small-n case studies to identify more legitimacy perspectives in mobility-related cases.

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