



Disaster-related displacement into Europe: Judicial practice in Austria and Sweden

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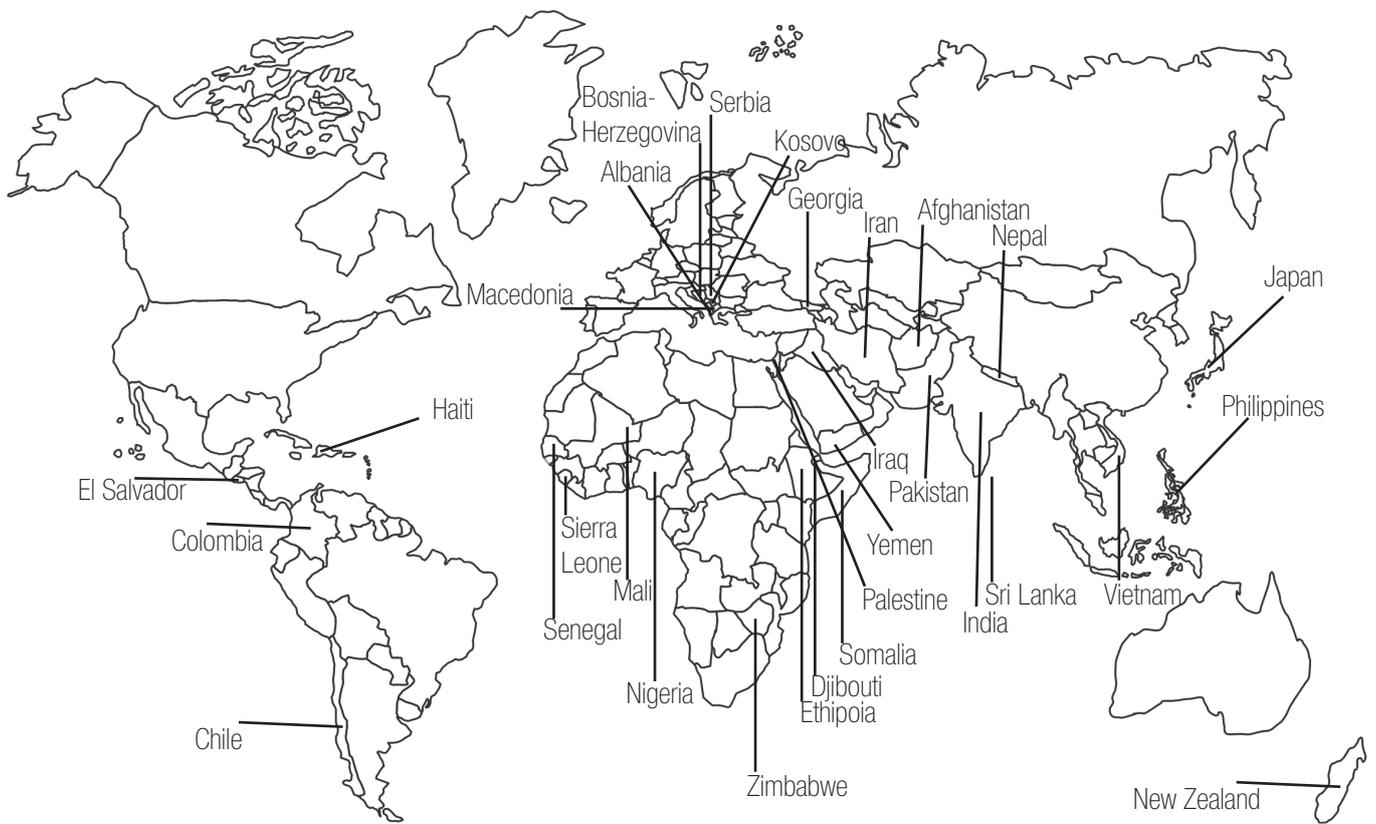
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Countries of origin of claimants considered in this report:

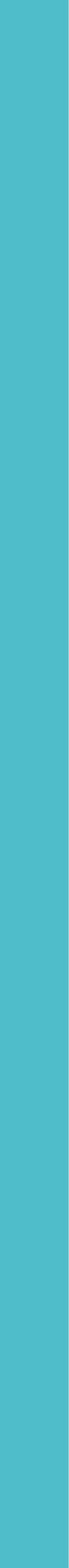


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Introduction.....	4
Methodology.....	6
Key similarities and differences.....	7
Differences.....	7
Distinctive features of the national legal frameworks.....	7
How legal frameworks are interpreted and applied.....	7
Level of judicial engagement proprio motu.....	8
Use of country of origin information.....	8
Outcomes.....	8
Similarities.....	8
Austria.....	9
Key findings.....	10
Refugee status.....	12
Subsidiary protection.....	13
Drought.....	14
Floods.....	17
Locust plague.....	17
Earthquake.....	17
Internal relocation.....	18
Humanitarian forms of protection / Article 8 ECHR.....	19
Sweden.....	21
Key findings.....	22
International protection.....	24
Floods.....	25
Earthquakes.....	26
Drought or famine.....	28
Immigration law categories.....	28
Visitor.....	28
Spouse.....	28
Parent.....	28
Dependent relative.....	28
Student.....	29
Recommendations.....	31
National level.....	32
Regional level.....	33
Country of origin information services.....	33
Academia and research funding bodies.....	33



1

- **Introduction**
- **Methodology**
- **Key similarities and differences**

INTRODUCTION

The European Union and many Member States actively promote measures to address cross-border displacement in the context of disasters and climate change. The European Union assumed the vice-chair of the Steering Group of the Platform on Disaster Displacement (PDD) in 2022, and Germany and France have both held the chair since the PDD was launched as the successor to the Nansen Initiative on Cross-Border Displacement in the Context of Disasters and Climate Change in 2016. The Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change (the Protection Agenda),¹ which was the culminating policy document reflecting the outcome of regional consultations in the Pacific, Latin America, the Horn of Africa, Southeast Asia and South Asia, was endorsed by 109 countries in 2015, of which more than 25 percent are in Europe.²

However, the work of the EU and European states to address the phenomenon manifests almost exclusively in the form of global policy processes and international technical cooperation with countries most affected. The policy focus on addressing migration and displacement in countries of origin is reflected in the European Commission's Staff Working Document on climate change, environmental degradation and migration:

... existing evidence clearly suggests that where environmental change impacts on migration, its effects will be felt primarily in the developing world, with migrants moving either internally or to countries in the same region. New large-scale international population movements to developed regions such as the EU are therefore unlikely to occur.³

This understanding informs the approach reflected in the more recent EU Pact on Migration and Asylum. The Pact does not discuss any measures that European Union Member States, or the EU itself, may adopt in order to address climate- and disaster-related cross-border movement into Europe. Rather, attention is focused exclusively on addressing 'root causes of irregular migration':

The EU is the world's largest provider of development assistance. This will continue to be a key feature in EU engagement with countries, including on migration issues. Work to build stable and cohesive societies, to reduce poverty and inequality and promote human development, jobs and economic opportunity, to promote democracy, good governance, peace and security, and to address the challenges of climate change can all help people feel that their future lies at home. In the Commission proposals for the next generation of external policy instruments, migration is systematically factored in as a priority in the programming.⁴

This report does not challenge the consensus view that most people who move in the context of disasters and climate change will not engage in long distance, cross-border journeys. Nonetheless, a key finding of the research that this report communicates is that people do move into Europe, or seek to remain here, as a consequence of adverse environmental conditions, including disasters, that unfold in their countries of origin. The European Parliament and the Parliamentary Assembly of the Council of Europe have called for further action to understand and address disaster- and climate-related displacement into Europe⁵, but academic and policy research on the subject is extremely limited.

The research partnership between the Ludwig Boltzmann Institute of Fundamental and Human Rights in Austria and the Raoul Wallenberg Institute of Human Rights and Humanitarian Law in Sweden was designed as an early step towards enhancing understanding of the phenomenon of cross-border disaster- and climate-related displacement into Europe and how judicial authorities have applied relevant legal frameworks. The study, which analysed thousands of judicial decisions in Austria and Sweden, considered how judges applied domestic transpositions of the Qualification Directive and domestic humanitarian forms of protection. As Sweden had also developed a non-harmonized protection category focusing specifically on persons unable to return home in the context of an environmental disaster, this complementary framework was also considered. A number of claims brought under immigration law categories were also captured in the Swedish caseload and were included in the analysis.

1 <https://disasterdisplacement.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf>

2 <https://disasterdisplacement.org/wp-content/uploads/2015/02/GLOBAL-CONSULTATION-REPORT.pdf>, p. 228-240

3 See for instance Commission Staff Working Document (2013) Climate change, environmental degradation, and migration, p. 34 - <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013SC0138&from=EN>

4 EU Pact on Migration and Asylum (2020), p. 19-20 - https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-f13-11ea-b44f-01aa75ed71a1.0002.02/DOC_38&format=PDF

5 See European Parliament, Committee on Development, Draft Report on the Impacts of Climate Change on Vulnerable Populations in Developing Countries (2020/2042(INI)) 11 September 2020 - [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/2042\(INI\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/2042(INI)&l=en) and Parliamentary Assembly of the Council of Europe. See Parliamentary Assembly of the Council of Europe, Environmentally Induced Migration and Displacement: A 21st-Century Challenge (Recommendation 1862 (2009)) 30 January 2009 - <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17718&lang=en>

The results of this analysis lead to three overarching conclusions of relevance for the European region:

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

In light of these conclusions, the key overarching recommendation emerging from this research is that European states, acting in concert through a regional body, or as a smaller coalition of states, should initiate a regional consultative process to further enhance understanding of cross-border disaster- and climate-related displacement into Europe as a first step towards more coherent (and potentially harmonised) legal and policy responses. This process would be similar to the regional consultative processes conducted as part of the Nansen Initiative.

This summary report has the following structure: First, the methodology adopted for the research is briefly summarised. Next, key similarities and differences between Austrian and Swedish caseloads are highlighted. Then, distinctive characteristics of the Austrian and Swedish caseloads are described in more detail, accompanied by descriptions of some of the cases. Finally, key recommendations are presented.

METHODOLOGY

Identification and systematic analysis of judicial decisions in claims for international protection in the context of disasters and climate change was the core method used in the research. Keyword searches were conducted using Austrian and Swedish legal databases. Keywords included terms such as flood, cyclone, drought, earthquake and similar terms relating to natural hazards. Nearly 10,000 decisions were found in the Austrian database for the period 1 January-18 June 2020. These cases were filtered to include only the approximately 3,700 cases where the hazard keyword featured in the legal reasoning or consideration of evidence of the decision, after which a purposive sample of 646 cases was selected for close analysis, with a focus on Afghanistan, Somalia, Pakistan, and Nepal. These are the countries representing the majority of applicants. Multiple parameters including gender, temporal distribution, and judge helped ensure the range of cases and forms of reasoning would be captured.

Just under 800 cases were found in the Swedish database for the period 1 January 2006 to 31 December 2019. Based on a preliminary screening of all cases, just under 200 cases were identified where hazards were directly relevant to the claim, and these were analysed closely. In 181 of these cases, applicants directly relied on environmental pressures to support their claim. The small remainder of cases reflected mostly passing consideration by decision-makers of the relevance of disasters to the assessment of an internal relocation alternative.



KEY SIMILARITIES AND DIFFERENCES

The situation in the two case study countries is very different, potentially reflecting two extremes on a spectrum. The Austrian cases reflected a far deeper engagement by the judiciary with the potential relevance of disasters to claims for international protection than the Swedish cases, notwithstanding the fact that Sweden had introduced a non-harmonized category of international protection based on environmental disasters. We therefore highlight the differences first:

Differences

Key differences relate to distinctive features of the national legal frameworks, how legal frameworks are interpreted and applied, level of judicial engagement *proprio motu*, use of country of origin information, and outcomes. These differences are addressed in turn.

Distinctive features of the national legal frameworks:

Sweden is one of only three countries in the EU to have introduced a non-harmonized category of international protection based on environmental disaster.⁶ Analysis of how this provision has been applied is therefore particularly relevant, not least considering the interest expressed by the Parliamentary Assembly of the Council of Europe in its Resolution 1655(2009), *Environmentally Induced Migration and Displacement: A 21st Century Challenge*:

In particular, the Assembly encourages the European Union to use the ongoing amendment process outlined in its Policy Plan on Asylum for better addressing the protection gap in cross-border environmental displacement. Finnish and Swedish legislation and case law should be examined to see whether they could serve as examples of best practice or even models for a new sub-paragraph explicitly recognising cross-border environmentally displaced persons in Europe

Austria's legal framework on subsidiary protection does not conform to the EU Qualification Directive. Whereas the interpretation of Article 15b of the Directive by the CJEU clearly requires a human actor of serious harm in order for a person to establish eligibility for subsidiary protection,⁷ the Austrian transposition does not contain such a provision. This broadens the scope of international protection available in Austria.

How legal frameworks are interpreted and applied

Judges in Austrian courts engaged far more closely than their Swedish counterparts with the question of how subsidiary protection applies in claims for international protection in the context of disasters.

Although few Austrian decisions actively addressed eligibility for refugee status (and then typically reached the conclusion that environmentally-related harm did not amount to persecution), the caseload contained rich legal reasoning and disaster-relevant country of origin information relating to eligibility for subsidiary protection, and protection from *refoulement* (in particular the caseload relating to claimants from Somalia).

In contrast to this rich level of engagement, the Swedish caseload did not reflect any consideration of eligibility for refugee status, and only one case contained more than cursory consideration of eligibility for subsidiary protection.

6 The other two are Finland and Italy. See A. Kraller, C. Katsiaticas, and M. Wagner, *Climate Change and Migration: Legal and Policy Challenges and Responses to Environmentally Induced Migration* (European Parliament, 2020) - [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655591/IPOL_STU\(2020\)655591_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655591/IPOL_STU(2020)655591_EN.pdf). For further information about Swedish and Finnish provisions, see Matthew Scott and Russell Garner, 'Nordic Norms, Natural Disasters and International Protection: Swedish and Finnish Practice in European Perspective' *Nordic Journal of International Law* 91 (2022) 101 <https://rwi.lu.se/publications/nordic-norms-natural-disasters-and-international-protection/>. On the Italian provision, see Francesca Rosignoli, *Environmental Justice for Climate Refugees* (Routledge, forthcoming)

7 See Case C-542/13, *Mohamed M'Bodj v État belge*, reaffirmed in Case C-353/16 *MP v Secretary of State for the Home Department*

Level of judicial engagement proprio motu

Austrian judges proactively considered the relevance of environmental pressures in individual cases, at times recognizing a procedural obligation to do so. Consequently, proprio motu consideration of environmental pressures represented 73 percent of the Austrian case load, with only 37 percent of cases involving disaster-related claims expressly articulated by the applicant. In contrast, only a handful of the Swedish cases involved judges examining environmental factors on their own initiative. The vast majority of relevant claims within the Swedish caseload involved applicants expressly relying on disasters or other environmental pressures as part of their application to enter and/or remain in Sweden.

Use of country of origin information

Country of origin information (COI) was almost always included in the Austrian decisions. In particular, in many Somali cases, long and comprehensive text modules addressed the impact of the disaster on the humanitarian situation, health situation, and parts of the population in situations of particular vulnerability. In several cases concerning claims from Somalia, judges provided an often detailed summary of COI material in the section on legal reasoning before addressing specifically how the applicant might be affected by the environmental factors/disaster. In contrast, specific COI was rarely referred to in the Swedish caseload, with decisions at best making general reference to 'the country information'.

Outcomes

In Austria, subsidiary protection was granted in 42 percent of the cases when disaster was explicitly mentioned by the applicant, even though protection was not necessarily granted because of the disaster claim. In Sweden, of the 140 international protection claims expressly relying on disaster, only seven claims (5 %) were granted subsidiary protection, and only one of these decisions was based specifically on post-disaster conditions, with the remainder firmly grounded in an assessment of conflict-related risks.

Overall, 91 percent of all 181 Swedish appeals were dismissed. In Austria, 53 percent of the 646 Austrian appeals were dismissed.

Similarities

Somalia and Afghanistan were the main countries of origin of applicants in both Austria and Sweden.

The narratives by applicants were similar.

Environmental factors or disasters had a tendency to be framed as economic issues by courts in both Austria and Sweden.

Disasters and other environmental pressures typically featured as one among several factors. In Sweden, environmental pressures appeared as the central basis of claim in just 15 percent of claims.

Internal relocation was often identified as a barrier to protection in both Austria and Sweden.

2

- **Austria**

Key findings

1

In the Austrian asylum procedure, the impact of disasters, on particularly the supply situation, was considered mainly in relation to the assessment of subsidiary protection (real risk assessment and/or assessment of internal protection alternative). In some decisions relating to Somalia, the impact of disasters constituted even an important factor in the legal reasoning. Decisions indicated that different forms of inequality (for instance gender, wealth, family situation, age) were particularly important with regard to experiencing the consequences of disasters.

2

In Austria, subsidiary protection is granted when the non-refoulement principle, in particular under Article 3 ECHR, would be violated upon return. No 'human actor' of serious harm in the country of origin is necessary as required by the jurisprudence of the CJEU.

3

The country of origin information (COI) used showed considerable differences with regard to disaster-related information depending on the respective country of origin. While COI in relation to Somalia was usually very detailed with a huge variety of sources, COI in relation to other countries affected by similar disasters was less detailed. In particular in decisions on Somalia, often detailed COI was integrated in the legal reasoning.

Only decisions of the appellate court rendered in the Austrian asylum procedure, i.e. decisions on international protection and humanitarian forms of protection, were assessed. Other immigration decisions were not analysed.

Disaster-related keywords featured in nearly 10,000 cases decided by the Austrian appellate court from January 2008 until June 2020. It is likely that still more cases concerned disasters, considering the fact that decisions uploaded to the Rechtsinformationssystem des Bundes (RIS database) may not include the full reasoning in cases where the verdict was orally announced. Hazards identified in these cases included drought, flooding, disasters in general, famine, earthquakes, rainfall, cyclone and locust plague.

A purposive sampling of the cases was performed, reducing the total number of cases to be analysed to 646. The sample focused on five countries representing the vast majority of relevant cases: Somalia, Afghanistan, Pakistan, Nepal and India.

In Austria, 556 decisions (86%) concerned adult men, 43 decisions (7%) adult women and 25 decisions (4%) parent(s) with child(ren). Only a few decisions concerned minors, couples or siblings (22 decisions).

The applicant expressly referred to a disaster or other environment-related issues in 37 percent of the cases, typically as one of several reasons for leaving or being unwilling to return to the country of origin. Subsidiary protection status was granted in 42 percent of these 'explicit reference' cases, although the disaster was not necessarily identified as a reason why protection was granted.

Of the 646 analysed Austrian cases, 343 (53%) were dismissed, 268 (42%) resulted in the grant of subsidiary protection status, 18 (3%) resulted in the grant of humanitarian protection status, 2 resulted in the recognition of refugee status, and 15 cases (2%) were remitted to a lower instance.



Refugee status

In those few cases where the appellate court considered the disaster/environmental factor in the assessment of eligibility for refugee status, Austrian decisions usually stated that the harm feared would not amount to persecution and had no connection to any of the five Convention grounds. No detailed assessment was made.

The Court framed the disaster usually as an economic issue, leading to economic difficulties or loan debts (for instance disaster caused the loss of job; business destroyed by disaster leading to debts), which the Courts regarded as being not relevant for the purposes of establishing eligibility for refugee status: In E11 418248-1/2011 (2013), a decision relating to an applicant from Pakistan, the Asylum Court reasoned that it 'gained the impression ... that the applicant, whose country of origin was actually struggling with a flood disaster at the time of departure, travelled to Austria merely for economic or private reasons' and that '[i]n principle ... any economic or private difficulties are not objectively suitable for establishing refugee status'.

Regarding Somalia, the BVwG held in W111 2124400-1 (2017) that there would be no risk of persecution and that '[t]he generally prevailing precarious security situation in conjunction with the currently prevailing drought and the associated precarious supply situation are adequately taken into account by granting subsidiary protection in the present case.'

In a decision relating to Afghanistan where the applicant had claimed that 'he had lost everything in a flood and therefore had to flee', the BVwG stated in W201 2118203-1 (2019) that '[t]his claim refers to a natural disaster that had economic consequences for the applicant' and that '[b]ased on this argument, it cannot be determined that the applicant would face persecution in Afghanistan on the grounds of race, religion, nationality, membership of a particular social group or political opinion. ... The loss of the house rented by the applicant due to a flood concerns a natural disaster, which, although it had an economic impact on the applicant, did not amount to a total loss of his livelihood.'

The Austrian Federal Administrative Court (BVwG), referring to the jurisprudence of the Austrian Supreme Administrative Court (VwGH) maintained that a 'general desolate economic and social situation' could only lead to the granting of refugee status if it deprived the applicant of any livelihood or at least constituted a massive threat to livelihood (for instance BVwG W235 2117647-1 (2017)).

In some cases the applicants had argued that they belonged to a particular social group, for instance the group of 'socially weak persons who were not able to rebuild their livelihoods on their own after the total destruction of their livelihoods by the flood' (Pakistan, Asylum Court E11 422862-1/2011 (2012)) or 'the group of poor people affected by the drought and its consequences' (Somalia, BVwG W240 2187484-1 (2019)). The Court did not accept such arguments.

In a few cases COI showed that the environmental factor had an impact on inter-community/ethnic tensions, for instance in cases relating to Afghans from the Hazara ethnic group fearing persecution by the Kuchi nomads (predominantly Pashtuns). COI confirms that the long-standing conflict over access to pastureland had been intensified by the drought. Still, the Court did not recognize a connection to a Convention ground (for instance Asylum Court B13 428146-1/2012 (2013)).

Subsidiary protection

Disasters were mainly addressed in the assessment whether subsidiary protection was to be granted. Disasters were considered as relevant factors in the real risk assessment (Article 3 ECHR) and/or in the assessment of the availability and reasonableness of an internal protection alternative (IPA).

In Austria, the relevant threshold for granting subsidiary protection is mainly Article 3 ECHR (Section 8 Austrian Asylum Act). Here the unique situation exists that no human actor of serious harm in the country of origin (as demanded by the CJEU in interpreting Article 15b Qualification Directive) is required.

While the Austrian legal framework on international protection does not refer to disasters or environmental factors, jurisprudence of the Supreme Administrative Court and Constitutional Court does. This has influenced the approach taken by courts in Austria:

From the jurisprudence of the Constitutional Court (VfGH), it follows that in the assessment relating to subsidiary protection, disasters and relevant COI have to be taken into account.⁸ The VfGH ruled for instance that the drought in Somalia, the poor supply situation and country reports had to be considered in the assessment relating to subsidiary protection.⁹ In the context of the flooding in Pakistan in 2010, the VfGH ruled that authorities were obliged to carefully assess the situation after a disaster and to explain on which sources the authority's findings were based (for instance the finding that a certain area was not affected by a disaster) and to use only up-to-date sources.¹⁰

The VfGH criticized that while the file of the appellate court contained a map of Pakistan showing the flood zones and the affected districts, the court failed to address the situation of the applicant's presumed place of origin (for instance by referring to this map and/or by conducting relevant research on the internet).¹¹ The VfGH also ruled that COI must always include child-specific information (in the particular case, there was no reasoning concerning the care and risk situation for minors in the context of the precarious security and drought situation in Somalia).¹²

According to the Supreme Administrative Court (VwGH), the return to the country of origin can constitute a violation of Article 3 ECHR if the person affected does not have a livelihood there, with the result that the applicant's basic needs cannot be met. In this context, usually the impact of a disaster on the supply situation is relevant.^{13,14} However, the mere reliance on COI reporting a drought does not suffice to conclude that there is a real risk of a violation of Article 3 ECHR.¹⁵ Still, since the supply situation could be relevant, country reports and findings of the Court are necessary in this regard.¹⁶

In what follows, some features of the caseload of the appellate court are highlighted:

The analysed sample of decisions revealed that disasters were assessed by the court in relation to Article 3 ECHR (Section 8 Asylum Act) on different levels. Disasters were taken into consideration with regard to their impact on and interrelation with the general security, economic and supply situation in the country of origin. Disasters also played a role when the Court assessed the specific individual situation of the applicant.

The Austrian caseload relating to Somalia and Afghanistan also contained reflections regarding the conflict-disaster nexus. For instance, in decision W236 2166107-1 (2018), a case concerning Somalia, the Court reasoned that

in the specific case of the applicant, several cumulative factors (no more family reference points in Somalia, insecurity with regard to the humanitarian situation in the form of food insecurity and the guarantee of livelihoods, volatile security situation) result in a situation which, taken together, made the granting of subsidiary protection necessary.

⁸ In several decisions the VfGH found a violation of the applicant's constitutionally guaranteed right to equal treatment of foreign nationals among themselves because disasters were not taken into account in the assessment relating to subsidiary protection or because the Court failed to investigate essential points.

⁹ Constitutional Court 12 December 2019, E1170/2019.

¹⁰ Constitutional Court 19 September 2011, U256/11, para. 1.2.2.

¹¹ Constitutional Court 19 September 2011, U84/11, para. 1.2.3.

¹² Constitutional Court 9 June 2020, E 1954/2019-17, E 1964/2019-16, paras 16ff.

¹³ The VwGH refers in this regard to the case law of the ECtHR and the requirement of exceptionality ('exceptional circumstances'). The mere possibility of a violation of Article 3 ECHR caused by the circumstances of life is not sufficient. Rather, it is necessary to explain in detail and specifically that such exceptional circumstances exist. For instance VwGH 6 November 2009, 2008/19/0174. See also VwGH 21 November 2018, Ra 2018/01/0461; VwGH 25 April 2017, Ra 2016/01/0307, with further references; VwGH 25 May 2016 Ra 2016/19/0036; VwGH 07 September 2016, Ra 2015/19/0303; VwGH 8 September 2016, Ra 2016/20/0063; VwGH 23 March 2017, Ra 2016/20/0188.

¹⁴ In general, the risk must be assessed in a holistic way, i.e. the 'personal situation' in relation to the general human rights situation in the country of origin. Compare for instance VwGH 17 September 2019, Ra 2019/14/0160. Difficult living conditions are not sufficient.

¹⁵ VwGH 23 October 2019, Ra 2019/19/0282

¹⁶ VwGH 23 October 2019, Ra 2019/19/0282.

The legal reasoning also referred to COI according to which the security situation was precarious and that more than half of the Somali population was suffering from severe food shortages, child mortality and malnutrition due to drought. The basic supply of the population with food was not guaranteed. The Court also reasoned that due to the difficult security situation and restrictions caused by the activities of various militias, it would be a challenge for humanitarian organizations to reach disadvantaged sections of the population.

The disasters taken into account in the real risk assessment (Article 3 ECHR) in the Austrian decisions were droughts (Afghanistan, Somalia), floods (Afghanistan, India, Pakistan, Somalia), earthquake (Nepal), cyclone (Somalia) and locust plague (Somalia). It depended very much on the country of origin and, to a certain extent, also on the judge how and to what extent disasters were taken into account.

Drought

In the Afghanistan cases, disasters (mainly droughts) only played a minor role in the real risk assessment but were primarily considered when assessing whether an internal protection alternative was available and reasonable (81% of decisions concerning Afghanistan). Regarding real risk assessment, a drought was mentioned only in 13 decisions and floods only in three decisions (out of a sample of 200 decisions).

In most of these cases, the Court evaluated the impact of the disaster situation as not severe enough for creating a real risk of violating Article 3 ECHR. In W252 2157090-1 (2018), while the Court noticed major problems of the water supply agency in the province and stated that the realisation of basic social and economic needs would only be possible to a very limited extent due to the drought, it found the supply to be at least fundamentally secure.

In W171 2158499-1 (2019), the Court stated that the situation, especially in Herat, was tense due to the number of IDPs and the drought, but that sources (which were, however, not mentioned in the decision) would not indicate that basic supply was generally no longer guaranteed or that the health care system had collapsed.

Only in two cases relating to families with children was the impact of the drought regarded as severe enough to qualify for subsidiary protection. Decision W264 2167964-1 (2018) concerned a woman with seven children, one of whom was 4.5 years old and another child was diagnosed with epilepsy. In the legal reasoning the Court referred to malnourishment of children due to drought. In decision W272 2198119-1 (2019), subsidiary protection was granted to a man with health problems and his two minor daughters because of the difficult economic situation 'especially due to the drought' in the cities of Kabul, Herat or Mazar-e-Sharif, combined with the lack of a support network in Afghanistan.

Concerning Somalia, disaster was an issue in all decisions selected for analysis and even played an important role in the real risk assessment in many of them. The spectrum of judicial scrutiny concerning the disaster situation ranged from short paragraphs to detailed, extensive analyses of the temporal development of the disaster and its various impacts in several paragraphs of the legal reasoning. The disaster discussed most frequently in the real risk assessment was drought.

The tense supply situation due to the drought was considered as a factor regarding the general situation in the country of origin (usually together or interrelated with other factors such as the security situation or economic situation and the conflict-disaster nexus) but also when reviewing the specific individual situation. The Court stated in some decisions that not 'all people in Somalia are equally affected by the drought and the food shortage and it must be reviewed in each individual case whether the asylum seeker is affected' (W251 2163052-1 (2018)).

In W251 2137996-1 (2017), the Court observed that certain population groups, in particular farmers and nomads, were more affected by the drought and the very precarious supply situation than for instance people living in cities. In this case, subsidiary protection was granted because the applicant's family lived exclusively from farming and was therefore particularly affected by the prevailing drought. The mother could not be expected to sustain herself and the three siblings as well as the applicant during the drought disaster by farming on small fields, especially since the family was not wealthy and could not afford to send the applicant to school.

In W159 2124047-1 (2017) subsidiary protection was granted inter alia because of the applicant's membership in a minority clan and, being a farmer growing vegetables, his dependency from farming. The Court saw a real risk of an Article 3 violation:

[i]f one takes into account that in southern / central Somalia there is a precarious security situation as well as a generally poor basic supply situation (drought, food shortage), which hits the applicant particularly hard as a member of a minority clan and farmer.

In decision W 211 2144925-1 (2017) it was taken into account that the applicant's family had also left the home region and the farm and had to move to a camp, as 'the last harvest from the farm of the family practically failed' and that in case of a return of the applicant to Somalia, it could not be assumed that he would be supported by his family with food.

There were decisions in the sample where personal circumstances in the light of the tense supply situation reached the threshold of Article 3 ECHR since the livelihood was not regarded to be secured. Thus, the security situation was not important in the legal reasoning. For instance, decision W211 2172503-1 (2018), which referred in the legal reasoning to reports on the drought disaster in Somalia (for instance FSNAU Technical Release, OCHA Humanitarian Bulletin) concluded that

[i]n view of the still documented precarious supply situation and the non-existing support options by family members, ... the complaining party would not be able to earn a subsistence living with the necessary probability in the event of a return

The Court stressed that there was

no need to address other reasons for granting the status of beneficiary of subsidiary protection, because the notorious supply crisis already leads to this.

Almost all Somalia decisions were substantiated with detailed and extensive COI which was often integrated in the legal reasoning. Sometimes reference to the important IPC (Integrated Food Security Phase Classification)¹⁷ levels was made.

From mid-2018 onwards, the Somalia decisions reflected a change in the weather conditions, even though this change was assessed differently by the judges. Some followed a cautious approach, for instance when the further course of the drought situation was regarded as uncertain since the impacts of the rainy season could not be assessed yet and it could not be ruled out with the necessary certainty that food shortages or harvest failures would lead to life threatening effect on the applicant and his family (for instance W125 2010495-2 (2017)). Some decisions contained a very detailed elaboration on the consequences of the rain for returnees arguing that the humanitarian situation in Somalia was not so dire any longer that every returnee would be at risk of facing a violation of their rights under Article 3 ECHR, but that the food supply, security and humanitarian situation in large parts of Somalia was still tense and may in individual cases stand in the way of return.

¹⁷ <https://www.ipcinfo.org/>

Whereas until mid-2018 most applicants from Somalia were successful with their appeals, afterwards most decisions reflected the easing of the drought and supply situation through the rainfall which constituted one factor leading to an increase in the dismissal of appeals. However, already in March 2020 decisions reflected the recurrence of the drought with its impact on the food supply situation. The Court reasoned for instance in W211 2217305-1 (2020), after having referred to COI on the drought and its impact, that:

[w]hile the most recent information reports an improvement in grain harvest and livestock numbers following a good rainy season, 1.3 million people are still affected by supply shortages and are classified as level IPC 3

that

[t]he risk of damage due to the locust infestation remains high

and that

[d]epending on the failure of the next Gu season or the development of the locust plague, there is also a threat of the situation deteriorating again.

The Court argued that the supply situation in Somalia and Somaliland remained volatile and a sustainable improvement of the food supply in the region could not yet be assumed. The Court concluded that

the absolute numbers of people at risk of food insecurity in his home region do not allow the assumption that the applicant would not be specifically affected by this supply problem¹⁸

This conclusion was reached despite the fact the applicant belonged to a majority clan and had family members in his region of origin.



16 ¹⁸ Reference to figures according to which in the applicant's region of origin out of a population of 1.32 million, 322,000 people would be classified in IPC level 2 and 135,000 in IPC level 3, and that these figures would be expected to increase by June 2020.

Floods

Concerning the Somalia cases, the rain in spring 2018 was not only discussed as easing the drought but also as bringing new challenges in form of floods in some regions. For example, recurring text modules in legal reasoning addressed the impact of the floods of autumn 2019 on inhabitants and returnees and the response by humanitarian actors (by referring to COI), and it was assessed whether applicants came from the areas concerned and thus affected by the impact of the flooding in case of return. In W240 2189309-1 (2018) the legal reasoning mentioned that

[a]fter last year's devastating drought disaster, Somalia's two main rivers have now burst their banks and caused the most severe flooding

and that

[t]his general basic supply situation (drought, post-flood situation and food shortage) must also be included in the assessment

The Court concluded that

[a]gainst this background, too, the applicant would face a real risk of inhuman treatment within the meaning of Article 3 of the ECHR

With regard to Pakistan (most decisions rendered in 2012 by the Asylum Court), flood disasters (sometimes also different earthquakes) played a role only as a factor with regard to the general situation in the country of origin. However, the disaster was not evaluated as being a relevant factor for creating a real risk of violating Article 3 ECHR as the judges held that the places of origin of the applicants were not or only slightly affected by the flood. While it was always argued that the home city/region of the applicant was not affected by the flood disaster of 2010, this was poorly supported by COI. It was the Constitutional Court which clarified in 2011 that authorities were obliged to use up to date COI in this context.

Locust plague

In 2020, the locust plague was a new environmental factor that was addressed in the real risk assessments in four decisions concerning Somalia. In two cases of March 2020, subsidiary protection status was granted. Both decisions mentioned the locust plague together with the drought situation, the rain and the poor supply situation. The locust plague was regarded as an additional factor that might lead to a deterioration of the supply situation.

Earthquake

With regard to the few Nepal cases (14), several decisions explicitly referred to the earthquakes of 2015 in the real risk-assessment. While most of the decisions rendered in 2015 mentioned the earthquake in relation to the general situation in Nepal as a barrier to return (as well as factor impacting on the family support network and on the capacity of the state to support), in subsequent decisions the earthquakes were mentioned, if at all, in the context of the availability of a supporting family network.

Concerning the few cases from India, disaster played only a minor role in the real risk-assessment.

Internal relocation

In 44 percent of the analysed Austrian decisions, disaster was mentioned or discussed as a factor when assessing the option of an internal protection alternative (IPA). However, the reasoning differed considerably depending on the country of origin and judge. Disaster and environmental factors such as drought, floods, rainfalls, earthquakes, 'natural events' or also locust plagues were mostly mentioned in addition or in relation to other factors in IPA assessments.

The most frequent factors were the impact of the disaster on the supply situation in the relocation site, the (in)availability of support by family members or other relatives and social contacts, clan membership, the security situation (violence, fighting, terrorist attacks etc.), health situation and health provision, accessibility of the region where the applicant might be relocated, the situation of IDPs, discrimination, minority status, gender, family status, age, employability, local knowledge, school education and other individual qualifications and characteristics. In particular, concerning young, healthy, male applicants, various IPA assessments argued that the disaster situation did not have an impact on everyone in the same way. In this context, the decisions repeatedly referred to the phrase of a 'healthy young man' who can be expected to relocate elsewhere.

81 percent of decisions concerning Afghanistan considered disasters in the assessment whether an IPA was available and reasonable. While in most Afghanistan decisions the Court saw in the return to the home region a real risk of violating Article 3 ECHR due to the dangerous security situation, an IPA to one of the Afghan cities was regarded as available and reasonable since the drought did not affect the basic supply of goods in, for instance, Mazar-e Sharif and Herat to such an extent that would make it unreasonable or even impossible to rebuild the livelihood there.

36 percent of the analysed sample decisions concerning Somalia mentioned disasters in the context of an IPA. Only in very few decisions, disaster (drought, flood, locust plague) was mentioned as (almost) the exclusive factor in the IPA assessment.

In decisions relating to Pakistan, the indication of the existence of an IPA was identified as an additional factor after having already determined that no real risk existed in case of return because the home province was not or only slightly affected by the disaster (flood). The relevance and reasonableness of the new relocation site, if it was mentioned at all, was not assessed in detail. In some cases, after stating that the possibility of relocation existed, it was referred to a city or region affected less by the flooding.



Humanitarian forms of protection / Article 8 ECHR

A ruling of the Austrian Supreme Administrative Court of 2017 states that when weighing the interests according to Article 8 ECHR, the question of the possibilities to create a livelihood in the case of a return to the country of origin must also be taken into account under the aspect of 'ties to the country of origin' (Section 9(2) item 5 BFA-VG 2014). With regard to Somalia, the VwGH held in 2017 that there was a 'notorious drought catastrophe in Somalia and the prevailing food shortage there' and the authorities or the Federal Administrative Court had to assess the consequences thereof with regard to the specific situation of the applicant.

In none of the analysed decisions were environmental factors or disasters considered by the Court when weighing up the interests pursuant to Article 8 ECHR. When humanitarian protection was granted based on Section 55 Asylum Act, disasters or environmental factors were never mentioned as a relevant factor in the legal assessment. It is striking that also in those cases where the judge had mentioned a 'tense situation' due to the drought in Afghanistan in the context of the IPA assessment, such environmental factors and disasters were never taken into account in the legal assessment for humanitarian protection.



3

- **Sweden**

Key findings

1

Executive and judicial decision-makers overwhelmingly failed to carefully consider claims for international protection relating to disasters. Decisions reflected a lack of engagement with emerging international jurisprudence and very limited use of country of origin information.

2

The non-harmonized provision extending international protection to people unable to return home as a result of an 'environmental disaster' was often not applied in cases where a fear of disaster-related harm was expressly articulated by the applicant. When the provision was applied, its interpretation was narrow and decisions rarely reflected individualised assessment against specific country of origin information.

3

People seek to enter and remain in Sweden using existing immigration law categories, but decision-makers rarely exercise discretion in recognition of the adversity engendered by the disaster. The kinds of effective practises identified in the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change do not appear to have been integrated into the Swedish legal and policy framework.

In the period from 2006 to 2019, only 792 judicial decisions contained a hazard keyword somewhere in the text. In some of these cases, the hazard keyword only appeared in the appended decision letter from the Swedish Migration Agency, rather than in the judicial decision itself. In the vast majority of cases, closer analysis revealed a claim that did not in any way relate to a fear of being exposed to environmentally-related harm in the applicant's country of origin. For instance, in some cases the applicant is recorded as having referenced an earthquake that took place decades ago.

Others make reference to hunger or famine, but the conditions referred to relate either to generalised poverty, or to the consequences of armed conflict, with no connection to a particular hazard event such as a drought. Just under 200 cases were directly relevant to the claim, of which 181 were cases where an individual relied expressly on the disaster to support an application to enter or remain in Sweden. 140 of these cases were framed as claims for international protection and the remaining 41 cases turned on questions of immigration law, such as visitor or student visa extensions or family migration cases. In seven other cases, disaster was only addressed as part of an assessment of whether an internal relocation alternative was available in Afghanistan.

The five main countries of origin for people seeking international protection were Somalia (38), Afghanistan (16), Nepal (12), Serbia (8) and Albania (8). People relying on immigration law categories came from a wide range of countries in Asia, Africa, Europe and Latin America.

Judicial decisions reviewed for this research typically attach the decisions of the Migration Agency. These decisions reflect a consistent approach by the Migration Agency to dismiss claims for international protection in this context. It is therefore likely that the cases reviewed represent a large cohort of the total number of cases in which individuals sought international protection expressly in relation to disasters or other environmental pressures, leaving aside the possibility that some applicants may have chosen not to appeal against adverse decisions taken by the Migration Agency.

Judicial decision-makers tended to either not consider the relevance of environmental factors at all (48%), or to conduct only a cursory assessment (41%), notwithstanding the duty, until 2016, to consider eligibility under a non-harmonized category of international protection for persons unable to return home in the context of an environmental disaster. Detailed assessments were conducted in only ten of the 181 cases where applicants expressly relied on environmental factors in support of their claims to enter and/or remain in Sweden.

Three of these cases combined international protection and domestic immigration law elements, whilst the remaining seven were exclusively concerned with international protection. One case resulted in recognition of eligibility for subsidiary protection, and a second case recognised eligibility for the grant of a residence permit as the parent of a child living in Sweden. The remaining eight cases were dismissed. Of the 181 claims that relied directly on environmental factors, 91 percent were dismissed on appeal.

For the remaining 9 percent of cases (16 cases), three resulted in recognition of refugee status (but not for reasons related to the disaster), seven resulted in the grant of subsidiary protection (but only one for reasons expressly related to the disaster), one resulted in the applicant being recognized as a stateless person, one resulted in the grant of a residence permit on 'compelling and compassionate reasons' grounds (not related to disaster), one resulted in the grant of a residence permit as the parent of a child established in Sweden, and three were remitted.

In what follows, a snapshot is provided of how judicial authorities applied the law on international protection, as well as domestic immigration law categories, in cases where a applicant expressly relies on adverse environmental conditions in support of the claim.

International protection

None of the decisions considered eligibility for recognition of refugee status in relation to environmental factors.

Only one decision considered eligibility for subsidiary protection in detail. In UM22726-10, a Haitian woman aged approximately 30 years old obtained subsidiary protection on the basis of a clearly established risk of sexual violence in camps in the aftermath of an earthquake in Haiti in 2010. She had travelled to Sweden in the immediate aftermath of the earthquake on a visit visa issued by the Swedish embassy in Haiti. Her mother and sisters were already settled in Sweden.

She argued that a father who had never assumed parental responsibility for her, and the existence of relatives outside of the capital city Port-au-Prince, did not change the fact that she would return to Haiti as a single woman without a support network. She had been living with an aunt, who had died in the earthquake.

The applicant provides an account of her experience living in a tent camp in the immediate aftermath of the earthquake, with details about people close to her being raped and robbed, and not receiving any assistance from the authorities.

The determination considers specific but limited country of origin information submitted by the applicant and by the Migration Agency. Three Amnesty International reports about sexual violence in the aftermath of the earthquake were submitted by the applicant, and a UN Security Council report on the security situation in Haiti submitted by the Migration Agency are referenced.

The Court considers the totality of the country of origin information submitted, noting how 2.3 million people became homeless after the earthquake, and how national authorities were severely impacted, including in their ability to protect people from violence. The Court notes that conditions remain dire even 14 months after the earthquake, likening it to a situation of lawlessness, with a 'near total collapse' of the police and justice agencies, and 680,000 living in tent camps. Women live with the 'constant threat of sexual violence.'

In light of the prevailing situation in the country, the Court considers that the applicant, as a single woman without a strong family network, will be 'at risk of being unable to defend herself against various assaults or inhuman or degrading treatment'. The Court does not engage with arguments that the applicant is eligible for recognition of refugee status as a member of a particular social group, but instead determines that she is entitled to a permanent residence permit on the basis of her eligibility for subsidiary protection.

The decision of the Migration Agency, which is appended to the Court determination, is cursory, dismissing the claim without engagement with country of origin information to support conclusions that none of the protection or humanitarian provisions in the Swedish Aliens Act apply to her situation.

Express, if not detailed, judicial consideration of eligibility for international protection under Sweden's non-harmonized international protection provision is reflected in only 38 (27%) of the 140 decisions on claims for international protection. In those cases where the law was applied, the most detailed assessment amounted to no more than consideration of the eligibility criteria with reference to the preparatory works, and perhaps some brief reflections on general country of origin information. The decisions often reflected no application of the law to the specific facts of the individual case, and frequently lacked reasoning to support the conclusions reached. No appeals were allowed under this provision.

The following extracts illustrate the cursory consideration of claims for international protection that specifically relate to a fear of exposure to disaster-related harm. They are divided into cases concerning floods, earthquakes, and drought. Isolated cases relating to cyclones and landslides are not considered here.

Fifty of the 181 cases directly relying on disasters concerned floods. In what follows, a selection of the claims for international protection that relate to flood risks and impacts are presented.

In UM5969-14, a couple with a young child from Bosnia Herzegovina applied for international protection in Sweden within weeks of a large-scale flood that impacted several countries in the Balkans in 2014. A significant part of the case turned on the claim that large-scale flooding across much of the country in June 2014 had destroyed their home and livelihood. Some emergency aid had been provided by the government, but this was not enough for the couple to recover. They also highlighted some medical complaints affecting their child, and pointed to the political activism of the male primary applicant. The Court considered that an inability to make repairs in the aftermath of a flood was not sufficiently serious as to support a claim for international protection:

Bosnia and Hercegovina was affected by flooding during the spring and summer of 2014. 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 Hercegovina, 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.

The Court also asserted the existence of an internal relocation alternative. Neither conclusion was supported with reference to country of origin information. Similarly, with reference to Chapter 5, section 6 of the Aliens Act, the humanitarian grounds, including the medical condition of the child, were not considered compelling. The appeal was dismissed.

In UM1724-11, a family from Vietnam consisting of two parents and a one year old child applied for international protection in Sweden. The claim was based solely on the adverse impacts of flooding. The Court followed the reasoning of the Migration Agency and dismissed the appeal. Without referring to specific country of origin information, the Migration Agency reasoned that floods are temporary phenomena and would not prevent a return to the applicants' home area. Internal relocation was also identified as being available to the applicants. The possibility of securing a residence permit on humanitarian grounds was summarily dismissed.

In UM6608-10, UM6610-10 a mother with two children from South Ossetia in Georgia sought asylum on the basis of a fear of being exposed to violence, as well as impacts of a flood. The application for asylum in Sweden came one month after the flood. Part of the case concerns a claim that the applicants did not receive relief from the flood because of their ethnicity and for reasons of political opinion. The flood risk was not described in any detail in the Court's determination, and no country of origin information was referenced to support the decision dismissing the appeal. The possibility of securing a residence permit on humanitarian grounds was also summarily dismissed.

In UM2032-11, a woman from Pakistan was granted a Schengen visa to visit her children, who were settled in Sweden. She entered Sweden towards the end of 2009, and applied for international protection nearly one year later. Her application turned on the claim that the extensive flooding in Pakistan in June 2010 had destroyed her agricultural land and that everything she owned had been swept away in the flood waters. Whilst recognizing that the area the applicant comes from had been affected by flooding, the Court dismissed the appeal. The Court reasoned that the floods are temporary events and, now in 2011, the area that applicant would return to would no longer be flooded. The Court also had regard to the existence of other family members in another part of Pakistan, along with previously-submitted evidence that the applicant had savings in bank accounts and owned a truck. It would not, according to the Court, contravene the requirements of humanity to return the applicant to Pakistan.

Although the applicant had daughters in Sweden, the Court did not consider there to be grounds to make an exception to the general rule that settlement applications must be made from outside Sweden. The humanitarian category of particularly compassionate circumstances was dismissed.

Earthquake

Forty-seven of the 181 cases directly relying on disasters concerned earthquakes.

In UM15983-10, a Haitian man with family remaining in Haiti had submitted an application for international protection in Sweden, based on a fear of being persecuted for reasons of political opinion. In January 2010, whilst his appeal against the refusal to recognize eligibility for international protection was pending, a powerful earthquake struck Haiti. This fact was included in the appeal. The Court dismissed the asylum claim, including the claim based on the earthquake. The Court provided no reasoning to support the conclusion that 'the environmental disaster [is not] now of such a character as to give rise to a protection need.' Similarly, no reasons are given for dismissing the claim under the humanitarian reasons provision.

In UM6177-16, another sur place claim, a man from Nepal submitted a fresh claim under Chapter 12, section 19 of the Aliens Act for international protection following the 2015 earthquakes. The applicant had already been living in Sweden for several years before making the application for international protection. The Court considered the claim primarily in relation to the environmental disaster provision at Chapter 4, section 2a of the Aliens Act. Determining the claim in 2016, the Court acknowledged that Nepal had been affected by earthquakes, but that these were not the kind of sudden onset disasters envisaged by the drafters of the provision. Moreover, the Court did not consider the earthquakes to be so extensive or extreme as to give rise to a need for international protection:

Against the background of the relied upon earthquakes in April and May 2015, they are not considered to constitute such sudden disasters as can give rise to a residence permit in Sweden. When it comes to the earthquakes and aftershocks that happened after that, the Migration Court considers that they are not of the type or extent that is required for [the applicant] to be considered a person in need of protection.

The humanitarian category was not considered due to delimitations of the scope of appeals for fresh claims.



Drought or famine

Seventy-seven the 181 cases directly relying on disasters specifically concerned drought or famine. In contrast to the detailed consideration of drought-related claims from Somalia and Afghanistan reflected in the Austrian caseload described above, the Swedish caseload does not reflect a recognition by the judiciary that adverse conditions of existence that arise in the context of drought can give rise to eligibility for international protection. The claims themselves tend to foreground risks associated with the armed conflict that has been ongoing in both countries for decades, with rarely more than a few sentences about the relevance of the drought to the claim.

Approximately 57 percent of the 77 cases concern Somalia, and these are heavily concentrated around 2011, which was a year in which famine had been declared for much of the country. Many of these appeals turn on challenges to language assessments, which purport to place the applicant as having origins in the north of the country, where the situation of food insecurity had not reached famine levels. Other cases (UM5901-11; UM3180-11) result in the grant of subsidiary protection on the basis of individual risks in the context of a dangerous security situation. The limited number of appeals relating to Somalia, even in the year when a famine had been declared, needs to be understood in relation to the general approach Sweden took to claims for international protection for people from Somalia in 2011. Following a decision from the Migration Court of Appeal in February 2011 (MIG 2011:4), individuals who could establish that they came from southern or central Somalia were automatically eligible for international protection under Sweden's non-harmonized category relating to generalised violence (Chapter 4, section 2a Swedish Aliens Act). Consequently, in 2011, 63 percent of all decisions on international protection for applicants from Somalia were positive. Notably, MIG 2011:4 focuses exclusively on the security situation in the country, making no reference to drought or famine. The approach may well have been different if the case had been decided later in the year, as famine was not officially declared until July 2011.

Claims from Afghanistan constitute 22 percent of the cases. None of these cases involve more than passing reference to drought, and several cases are appeals against decisions to refuse entry clearance to people applying from outside of Sweden. A number of appeals are against decisions to refuse to consider fresh claims for asylum for people whose initial claims had already been finally determined, and these all forefront protection concerns not related to the ongoing drought.

The remainder of claims come from a range of countries, including Mali, Ethiopia, Nigeria, Senegal, Djibouti and others. As with the majority of cases, these claims typically reference environmental conditions as part of a wider narrative, and receive very limited, if any, judicial attention.



Immigration law categories

Forty-one claims concerned exclusively immigration law categories, and a further six (counted as international protection claims) also included an immigration law component. Visitor, spouse, parent, dependent relative, and student categories were reflected amongst these cases. These requirements for the grant of a visa or residence permit are set out in Chapter 5 of the Swedish Aliens Act.

Visitor

In UM2983-19, a citizen of the Philippines was granted a Schengen visa to enable her to travel to Sweden to visit her partner. Approximately two months after her arrival in Sweden, the applicant applied to extend her stay. She wanted to get married to her partner, and her home had been destroyed in a landslide in the Philippines. The appeal against the decision to refuse to extend the Schengen visa was dismissed because the Court considered that the applicant had not demonstrated compelling reasons why she could not return to the Philippines to apply for a new visa from overseas. The Court expressed the opinion that 'the situation of not having a home in one's country of origin is not a basis for granting a residence permit.' The fact that the applicant had not given a definite time for when she would be able to return to the Philippines influenced the determination, as the Court did not consider that the applicant intended only to visit Sweden.

Spouse

Two cases concerned applications to remain in Sweden as the partner of a person with settled status. In UM19749-10, a woman from Chile applied for international protection as well as for leave to remain as the partner of a person with settled status in Sweden. The basis of her international protection claim was the fact that an earthquake had struck Chile, apparently after her arrival in Sweden. Her relatives had all relocated internally after their home was destroyed, but there would not be adequate space for her. Particular reliance was placed on the fact that she was pregnant and in a relationship with a person who had settled status in Sweden. The international protection claim was dismissed on all grounds, including in relation to the environmental catastrophe provision. The Court found no reason to grant an exception to the requirement that an application for a residence permit as the partner of a person settled in Sweden must be made from outside of Sweden.

In UM7873-16, a Serbian woman applied to switch her status from the holder of a Schengen visitor visa to a residence permit as the married spouse of a person with settled status in Sweden. She applied for an exception to the requirement that such applications must be made from outside of Sweden, pointing to the difficulties she would experience as a result of the family home in Serbia having been washed away in the 2014 floods. The family was now forced to reside with relatives, and she would find it difficult to do the same. The Court did not consider this claim to justify the granting of an exception and the appeal was dismissed.

Parent

In UM30-17, a woman who had been trafficked from Zimbabwe to South Africa in the aftermath of flooding was recognized as being eligible for a residence permit based on the strength of her new family ties in Sweden, including a daughter born in a new relationship with a Swedish citizen while her claim for international protection was pending. The claim for recognition of refugee status, subsidiary protection, or protection on the basis of an environmental disaster, was dismissed as the applicant was unable to demonstrate a real risk of being trafficked, and the immediate impacts of the flood had long since abated.

Dependent relative

Chapter 5, section 3a of the Swedish Aliens Act establishes a category for adult dependent relatives to migrate to Sweden. One of the requirements is that a relationship of dependency existed before the settled relative migrated to Sweden. Where the main criteria for the grant of a residence permit are not satisfied, decision-makers may consider whether exceptional and compassionate circumstances exist to nevertheless justify granting a residence permit.

These provisions were considered by the Migration Agency and the Court in case UM22776-10, in relation to a 24 year old single woman from Haiti, who had applied to join her mother in Sweden. The daughter had been living with a neighbour after her mother migrated to Sweden in 2006. A 2007 application to join the mother had been dismissed because the mother did not have settled status, which she only obtained in 2008. A new application was made 11 days after a devastating earthquake hit Haiti in January 2010. The daughter was reduced to sleeping in a tent on the street and expressed concerns for her security. Both the Migration Agency and the Court concluded that the requisite condition of dependency only arose after the earthquake, and therefore the requirements for the grant of a residence permit were not satisfied. Although the difficult living conditions in Haiti in the aftermath of the earthquake were considered compassionate, they were not considered exceptional, and the appeal was dismissed. Neither the Court nor the Migration Agency make reference to any country of origin information in support of the conclusion.

UM4697-11 and UM4471-12 concerned applications by elderly parents from Chile of children settled in Sweden. In these cases, the disaster was a supporting factor, adding to more general claims about being dependent upon children settled in Sweden. In UM4697-11, an elderly father with Parkinson's disease applied to remain in Sweden with his five daughters. The only daughter remaining in Chile was unable to support him because her home had been destroyed in an earthquake. In UM4471-12, an elderly mother who had suffered a stroke sought to remain in Sweden with her adult daughters. Her home had been damaged in a flood. Neither of the cases were considered exceptional and both appeals were dismissed.

Student

Disasters were identified as reasons for interruptions in studies as students needed to return home to address the impacts on property and family members. In UM12156-16, a student pursuing a Masters degree had his studies interrupted by a flood in his home country of India. He struggled to pay course fees, and returned to India in order to assist his family, who had been severely affected by the flood. His residence permit expired while he was away, and there were delays renewing it. After some months' delay, he returned to Sweden, but was unable to show adequate progress on his course. An exception to the adequate progress requirement can be made if there are 'weighty reasons'. Neither the Migration Agency nor the Court considered his account of the difficulties associated with the floods to provide sufficient justification for his poor progress on his course, and his visa was not extended.

In UM2014-11E a student returned from Sweden to Pakistan to address the impacts of the 2010 floods. He was away for four months, but when he returned to Sweden in February 2011 his course had already started and he could not join. He was therefore unable to show adequate progress when it came time to renew his residence permit.

The Court considered guidance from the Migration Court of Appeal in MIG 2009:5 concerning when a residence permit may nonetheless be extended despite inadequate progress having been made. The Court recognizes that returning home because of a disaster is “a fully acceptable reason” for not making progress in a course of studies. However, the appeal was nevertheless dismissed because the Court considered that the student should have done more both before and after the disaster to ensure progress in studies.

The facts of these cases highlight how disasters can interrupt studies, with implications for immigration status. Recognition in UM2014-11E that having to address the impacts of a disaster is “a fully acceptable reason” for not making adequate progress on a course points towards the potential for existing immigration law provisions to accommodate challenges faced by people in different situations of migration who face adversity in the context of disasters and climate change.

It warrants noting that none of the cases described above were considered to meet the very high threshold required to establish eligibility for the grant of a residence permit on humanitarian grounds, under Chapter 5, section 6 of the Aliens Act.



4

- **Recommendations**

National level

Decision-makers

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

National governments

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

Legal representatives

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

Regional level

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

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

The European Commission

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

Platform on Disaster Displacement

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

Country of origin information services

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

Academia and research funding bodies

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

