

Need for Recognizing the Unrecognized Climate Refugees: In the Context of Bangladesh

Md. Mohiuddin Khaled* Noor Israth Jahan*

**Associate Professor, Department of Law, University of Chittagong.*

** Lecturer, Department of Law, Southern University Bangladesh.*

Abstract: Climate change has become a reality in today's world affecting almost all the countries, particularly developing and the least developed countries.. Climate-induced migration is the inevitable consequence of climate change owing to sea level rise, irregularity in climate behavior etc. Recent studies demonstrate alarming predictions regarding climate-induced migration. It is argued on the principle of equity and justice that the international community should take the responsibility of those who are displaced and migrated due to climate change. But unfortunately enough, the concept of 'climate refugees' itself is not recognized internationally, and no specific legal framework delineating the protection mechanism for those vulnerable people is in place. This article focuses on the recurring demand of recognizing climate refugees in the international legal framework. It also suggests adopting an integrated approach to explore a legal framework for climate refugees. Finally, this article makes an analysis as to how recognition of climate refugees bears considerable significance in the context of Bangladesh which is predicted to be a country that will produce huge number of "climate refugees."

Keywords: Climate-induced migration, climate refugees, legal vacuum, principle of common but differentiated responsibility, international legal framework, Bangladesh, susceptible to climate change, recognition of climate refugee.

I. INTRODUCTION

One of the biggest challenges confronting the present world is climate change. It has become a global phenomenon having global consequences, especially in developing and the least developing countries. There is now little doubt that climate change is the result of human activities, that is, owing to anthropogenic emission of green house gases. Climate change is predicted to cause frequent extreme weather events, storm surges, desertification, drought and increased sea level rise etc. Climate-induced displacement has become a burgeoning problem. Statistics show that in 2008, 20 million people have been displaced by extreme weather events compared to 4.6 million displaced internally by armed conflicts and violence over the same period.¹ Through the years, the climatic conditions are tending to change rapidly with the consequent increase in climate-induced migration. But climate refugees are yet to be recognized and protected in international law. No specific legal regime has emerged to cover them.

Climate change has not occurred out of the blue. Many countries, especially the developed and industrialized countries played a major role in occasioning climate change, whereas the developing and the least developed countries are the worst victims the change. This is why; it is argued that the principle of "common but differentiated responsibility" should be enforced not only in the mitigation and adaptation of climate change, but also in providing a sustainable solution to growing challenge of climate-induced migration. To do so, a legal framework is inevitable at the international level recognizing and providing protection for "climate refugees."

This article will highlight the present legal vacuum concerning climate refugees. It will also suggest how a possible protection regime can be created within the international legal framework. And finally, this article will show how the recognition of climate refugees in the international level will benefit Bangladesh, one of the most vulnerable countries to climate change.

II. CLIMATE CHANGE-INDUCED MIGRATION: A LOOMING THREAT!

Predictions are widespread suggesting that Climate change will render millions of the people of Bangladesh displaced, compelling them to migrate either internally or externally. However, researchers differ on the estimates of potential displaced people due to variation of their definition of the displaced person and the

¹ INT'L ORG. FOR MIGRATION, MIGRATION, CLIMATE CHANGE AND ENVIRONMENTAL DEGRADATION: A COMPLEX NEXUS, <http://www.iom.int/jahia/Jahia/complex-nexus> (last visited August 15, 2016).

sources of their data. One researcher predicts that climate change will displace 50 million to 200 million people by 2100.² Another observation came in 1995 suggesting that global warming could put large (large means how many?) number of Bangladeshi people at risk of displacement by the middle of this century, if not earlier.³ Preliminary estimates are that the total number of people at the risk of falling victim to sea level rise in Bangladesh could be 26 million, while in Egypt it is 12 million, in China 73 million, in India 20 million and elsewhere 31 million, making an aggregate total of 162 million.⁴

It is also predicted that by 2050, the number of climate refugees may outnumber the number of traditional refugees, that is, those entitled to protection under the 1951 Refugee Convention and its 1967 Protocol.⁵ According to the 2015 report of the United Nations High Commissioner for Refugees (UNHCR), the mandated United Nations body to deal with refugees, in 2014, the number of refugees rose to 14.4 million in addition to 5.1 million Palestinian refugees under the mandate of UNRWA (United Nations Relief and Work Agency for Palestinian Refugees).⁶ If we compare the present refugee statistics and the predicted climate-induced displacement, it will be clear how the situation is getting exacerbated by the day.

It is to be noted that in these predicted estimates include both internal displacement and displacement across the border. Though accurate number of those who will cross border in climate-induced situations is hard to predict at this point, it can be confidently said that the number will be significantly high.⁷

Climate change will not affect all the states to the equal extent; it will have severer impacts upon certain countries termed as “hotspots”.⁸ Small island states, coastal zones and regions of Africa and Asia are considered as hotspots or climate-change-prone areas due to intensity of climate change impacts. However, all the hotspots are not susceptible to same climate change consequences. Floods and frequency and intensity of storms will likely to increase internal and international displacement, particularly in Asia.⁹ Sea level rise will probably be most acute in small island states and areas of Asia.¹⁰ Glacial melts have also been linked to environmental migration in South Asia.¹¹ Drought and water scarcity will probably be the greatest impact on people who live in Africa and Asia.¹²

These climatic consequences may cause significant displacement, though exact prediction is not possible. The most-cited prediction is 200 million. There will be a great turn in migration scenario in the coming years. Still the international community is averse to creating a normative and legal framework for the protection of the forthcoming climate refugees.

III. DEFINING CLIMATE REFUGEES

A well-acclaimed definition of “climate refugees” has not been established yet. Several other proximate terms exist, such as, climate migrants, environmental migrants, environmental displacees, eco-refugees, environmentally displaced person etc.¹³ The International Organization for Migration (*hereinafter* IOM) provides a wide definition of “Environmental migrants” as follows:

“ Those who for compelling reasons of sudden or progressive change in the environment that adversely affect their lives or living conditions, are obliged to leave their habitual

² FRANK BIERMANN & INGRID BOAS, PREPARING FOR A WARMER WORLD: TOWARDS A GLOBAL GOVERNANCE SYSTEM TO PROTECT CLIMATE REFUGEES 8 (GLOBAL GOVERNANCE PROJECT, GLOBAL GOVERNANCE WORKING PAPER No. 33, 2007) (calling for a protocol to the UNFCCC to deal with climate change displacement) at page 9-14

³ NORMAN MYERS WITH JENNIFER KENT, CLIMATE INST., ENVIRONMENTAL EXODUS: AN EMERGENT CRISIS IN THE GLOBAL ARENA 134 (1995), <http://www.climate.org/PDF/Environmental%20Exodus.pdf> (citing a 1990 IPCC report). Page 8

⁴ *Id*

⁵ BONNIE DOCHERTY & TYLER GIANNINI, CONFRONTING A RISING TRADE: A PROPOSAL FOR A CONVENTION ON CLIMATE CHANGE REFUGEES, HARVARD ENVIRONMENTAL LAW REVIEW, VOL. 33, Page 349

⁶ UNHCR, 2015 GLOBAL TRENDS: REFUGEES, ASYLUM-SEEKERS, RETURNEES, INTERNALLY DISPLACED AND STATELESS PERSONS (2015) <http://www.unhcr.org/figures-at-a-glance.html>

⁷ *Supra* note 2.

⁸ *Supra* note 2 at 11-13

⁹ VIKRAM ODEDRA KOLMANNSSKOG, NORWEGIAN REFUGEE COUNCIL, FUTURE FLOODS OF REFUGEES: A COMMENT ON CLIMATE CHANGE, CONFLICT AND FORCED MIGRATION 9 (2008), at 16

¹⁰ *Id*

¹¹ *See, e.g.*, SHAHID HUSAIN, NEARLY 15 MILLION ENVIRONMENTAL REFUGEES LIKELY, INT’L NEWS (PAKISTAN), DEC. 30, 2008, <http://www.thenews.com.pk/print1.asp?id=154569>.

¹² *Supra* note 8, page 16

¹³ https://en.wikipedia.org/wiki/Environmental_migrant last accessed on August, 2016

homes, or choose to do so, either permanently or temporarily, and who move either within their country or abroad.”¹⁴

The definition given by IOM is broad in the following senses:

- It includes all people displaced by sudden environmental events as well as progressive environmental consequences without discrimination.
- It includes people displaced temporarily or permanently.
- It includes people displaced internally within the country or externally across the borders.
- It also includes people forced to move as well as those choosing to move.

However, in order to fix international responsibility by creating an international framework for climate refugees, a more specific and well-structured definition of climate refugees needs to be developed. Prof. Benoit Mayer, in his work identified the following issues in arriving at definition:

First, it must be remembered that climate refugees are the result of climate change as opposed to other general environmental disruptions. . The benefit of such approach is that it recognizes that climate change is caused by international action whereas environmental changes in a country is not necessarily caused by international action. To fix the international responsibility to tackle climate change consequences, the identification of the real problem is the first necessary step.

Second, IOM’s definition requires that climate change is the sole cause for displacement. In reality though, a decision to migrate takes into account a set of factors and does not solely depend on climate change in all cases. People do not choose to migrate as soon as climate change occurs if otherwise adaptation is possible. Climate change induced migration propensity can be reduced by providing necessary adaptation alternatives. So, the most challenging definitional issue is to set a threshold of causal relationship between climate change and migration.

Third, while IOM’s and other literatures include both internal displacees and external displacees, Mayer suggests limiting it to external displacees only in order to providing international character to climate refugees. Besides, theoretically, internal displacees are still within the jurisdiction of the state; Excluding them from the ambit of the “climate refugees” does not mean that international community should not help the states in taking proper response measures for their internal displacees within their territory. Rather it is emphasized that they should be protected by the state with the assistance of international community. The limited point is that their situation is different from international displacees.

Fourth, climate refugees do not include those people who flee from environmental disasters for a short period. The issue of displacees for temporary settlement is not as critical as those seeking permanent settlement. Floods, desertification, droughts, land degradation are few instances that necessitate permanent settlement. These people seeking permanent migration owing to climate change are “climate refugees.”¹⁵

Biermann and Boas define climate refugees as “people who have to leave their habitats immediately or in the near future because of sudden or gradual alteration in the natural environment related to at least one of the three impacts of climate change: sea level rise, extreme weather events, and drought and water scarcity”.¹⁶ Biermann and Boas in their definition did not differentiate between permanent settlement or temporary settlement, internal displacement or cross-border displacement, voluntary or forced migration. Rather they base their definition on the criteria of cause of relocation i.e. climate change. Biermann and Boas’ definition is too wide in scope as to make a large number of people eligible for assistance.¹⁷ It is unsuited for any proposed specific legal framework for the protection of climate refugees.

This article refers the following definition as a comprehensive but well-specified definition of climate refugees and thus seeks to follow this for the purpose of this article.

“A climate refugee is an individual who is forced to leave his or her home and to relocate temporarily or permanently across a national boundary as the result of sudden or gradual environmental disruption that is consistent with climate change and to which humans are more likely than not contributed.”¹⁸

¹⁴ .INT’L ORG. FOR MIGRATION, DISCUSSION NOTE: MIGRATION AND THE ENVIRONMENT, 6–7 (Nov. 1, 2007), http://www.iom.int/jahia/webdav/shared/shared/mainsite/about_iom/en/council/94/MC_INF_288.pdf (last visited August, 2016).

¹⁵ BENOIT MAYER, THE INTERNATIONAL LEGAL CHALLENGES FOR CLIMATE-INDUCED MIGRATION: PROPOSAL FOR AN INTERNATIONAL LEGAL FRAMEWORK, COLO. J. INT’L ENVTL. L. & POL’Y, Vol. 22:3, pp. 368-369

¹⁶ *Supra note 2* at page 8

¹⁷ *Supra note 5* page 368

¹⁸ *Supra note 5*, page 361

IV. CLIMATE-INDUCED MIGRATION: HOW SEVERAL DISCIPLINES CAN HELP SHAPE THE INTERNATIONAL LEGAL REGIME FOR CLIMATE REFUGEES

Climate-induced migration, hereby implying displacement of people across the national border due to consequences of climate change has multi-disciplinary implications and relevancy. International environmental law, international human rights law, international refugee law – all the three branches of international law could provide a solid ground for the protection of climate refugees. But neither of the legal regimes addresses specifically the plight of this vulnerable group of people.

a) *International refugee law:*

International refugee law might be proper regime to come in aid of climate refugees. But the narrow definition of “refugee” under the international refugee regime excludes the possibility of extending help towards “climate refugees.” The 1951 Refugee Convention defines refugee as a person who

“.....owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”¹⁹

The Convention since its inception recognizes that in order to qualify as a refugee, the cause of displacement must derive from the actions or non-actions of states amounting to “persecution” against its nationals. It is beyond question that the consequence of climate change does not fall *per se* within the definition of “well-founded fear of being persecuted”.²⁰ Climate change is a collective fault; no single state or government can be termed as persecutor in relation to climate change. The United Nations High Commissioner for Refugees (hereinafter referred to as UNHCR) also confirmed that according to the Convention definition, either the state persecutes someone or national authorities fail to protect someone from persecution in order for someone to be a refugee.²¹

So, international refugee law is inherently suffering from legal vacuum in relation to the protection of climate refugees due to its strict adherence to the traditional refugee definition. There is also no political willingness to amend the core refugee definition. The difficulties of applying the refugee definition to the climate refugees have been apparently established in a recent case of New Zealand. The High Court of New Zealand in *Teitiota v. Chief Exec. of the Ministry of Bus. Innovation Emp’t* rejected the refugee request of a citizen of Kiribati, holding that he had not shown that he would be subject to sustained and systematic violation of his rights should he be forced to return.²² Besides, the New Zealand High Court rejected specifically the claim that through emitting green house gases the international community as a whole is a persecutor, and held that the international community did not have any motivation to harm climate vulnerable states.²³ Furthermore, the alleged persecution of the climate migrants would not fit into any of the five Convention grounds.²⁴

However, in two hypothetical cases, refugee protection may be provided to climate refugees:

Firstly, as climate change is due to collective contribution in the emission of green house gases, so no single state can be forced to incur responsibility for the consequences of climate change. The requirement of the Convention definition “Source-of –the-persecution” also cannot be fulfilled. But if a state willingly discriminates between people on the basis of any of the five Convention grounds while taking measures to reduce vulnerability to climatic consequence, then the Convention requirement of “persecution” will be fulfilled. **Secondly**, states may adopt legislation to grant subsidiary protection for anyone who having left their country is unable to return to the country of origin because of an environmental disaster. Finland and Sweden have taken such pioneering steps and established the precedent of extending refugee protection to climate refugees.²⁵

¹⁹ THE 1951 REFUGEE CONVENTION, ARTICLE 1A (2)

²⁰ *Supra* note 15, page 381

²¹ UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, HANDBOOK ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS UNDER THE 1951 CONVENTION AND THE 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES, 65 (1979), <http://www.unhcr.org/refworld/pdfid/3ae6b3314.pdf> [hereinafter UNHCR Handbook].

²² *Teitiota v. Chief Exec. of the Ministry of Bus. Innovation and Emp’t* [2013] NZHC 3125 at 63], per J. Priestley (N.Z.) (Denying Teitiota’s application for refugee status based on international climate change).

Teitiota]. See also; MATTHEW GAUTHIER, CLIMATE REFUGEES AND INTERNATIONAL LAW: LEGAL FRAMEWORKS AND PROPOSALS IN THE US AND ABROAD, page 2

²³ *Id.* pp. 3-5

²⁴ *Id.*

²⁵ SWEDISH ALIENS ACT, Ch. 2, § 4 (SFS 2005:716) (Swed.), <http://www.sweden.gov.se/content/1/c6/06/61/22/bfb61014.pdf> (official translation); see also FINNISH ALIENS ACT, § 88a(1), 301/2004, <http://www.finlexfi/en/laki/kaannokset/2004/en20040301.pdf>

- b) **International human rights law:** International human rights law might be a potential avenue to reduce vulnerabilities of climate refugees. Climate change consequences i.e. flooding, desertification, frequency of severe weather events etc. have intense impacts on the enjoyment of basic human rights i.e. right to life, right to health, right to social protection etc. That means climate change has severe effects on the enjoyment of civil rights to socio-economic rights. But the problem is, while the claimers of rights are well-identified; the corollary duty-holders can hardly be identified. This is because under international human rights law, states bear the responsibility to protect the fundamental rights of its citizens and any other person within its jurisdiction.²⁶ States do not have obligations to other countries' citizens who are not under their jurisdiction i.e. "effective control". Hence, states are likely to refuse to take the responsibility of climate refugees coming from other countries. Therefore, International human rights regime is ill-suited, inadequate to provide protection to climate refugees.
- c) **International environmental law:** The United Nations Framework Convention on Climate Change (*hereinafter* UNFCCC), 1992²⁷ and the Kyoto Protocol²⁸ associated with it form the core instruments regarding climate change in the international environmental law discourse. But neither of them is well-suited to deal with climate refugee problems. Being treaties of international environmental law, both are primarily concerned with relation between states; neither of these instruments creates the obligation for the states towards individuals or communities unlike international human rights law and international refugee law.²⁹ The UNFCCC and the Kyoto Protocol are mainly focused on climate change mitigation by setting specific timetables to achieve emission targets.³⁰ Both instruments are preventive in nature rather than remedial.³¹ Of course, climate change adaptation is a focal point in each of these instruments,³² but that does not specifically cover the situation of climate change refugees.

Solution for Climate Refugee Problem: Adapting to the Existing Legal Frameworks or Devising a New Instrument?

It is now well-established that climate change entails international responsibility. The international community is now treaty-bound to take the responsibility for climate change mitigation and adaptation on the basis of common but differentiated responsibility.³³ Climate-induced displacement is also a dreadful consequence of climate change. But there is still a palpable absence of a vivid initiative on the part of the

²⁶ In this context, "jurisdiction" is to be understood as a synonym of "control." See MARKO MILANOVIĆ, FROM COMPROMISE TO PRINCIPLE: CLARIFYING THE CONCEPT OF STATE JURISDICTION IN HUMAN RIGHTS TREATIES, 8 H.R. L. REV. 411, 435–36 (2008)

²⁷ The United Nations Framework Convention on Climate Change (UNFCCC) is an international environmental treaty negotiated at the Earth Summit in Rio de Janeiro from 3 to 14 June 1992, then entered into force on 21 March 1994

²⁸ The Kyoto Protocol was adopted in Kyoto, Japan, on 11 December 1997. It entered into force on 16 February 2005.

²⁹ HARI M. OSOFSKY, LEARNING FROM ENVIRONMENTAL JUSTICE: A NEW MODEL FOR INTERNATIONAL ENVIRONMENTAL RIGHTS, 24 STAN. ENVTL. L.J. 71, 75-88 (2005).

³⁰ Article 4(2) of the UNFCCC obliges all Annex I (developed) countries to adopt national policies and take corresponding measures on the mitigation of climate change by limiting their anthropogenic emission of green house gases and protecting and enhancing their green house gas sinks with a view to returning individually or jointly to its 1990 levels of emission of carbon dioxide and other green house gases not controlled by the Montreal Protocol. Article 3(1) of the Kyoto Protocol commits developed country parties to reducing overall emissions of six green house gases by at least 5 percent below 1990 levels in the commitment period 2008 to 2012. In COP 18, the continuation period of Kyoto Protocol was extended up to 2020.

³¹ *Supra* note 5, page 358

³² Article 4(1)(a) and (b) require the parties to formulate and implement national and where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions and removal of all green house gases not controlled by the Montreal Protocol as well as to facilitate adequate adaptation to climate change. The Kyoto Protocol also emphasizes both mitigation of and adaptation to climate change.

³³ Article 4(2) of the UNFCCC and Article 3(1) of the Kyoto Protocol are the instances of common but differentiated responsibility as both the provisions bind only the developed countries to take specific commitment for the reduction of anthropogenic emission of green house gases. Article 4(3) of the UNFCCC is also another example of the principle which requires the developed countries to provide new and additional financial resources for developing countries through funding mechanism for the fulfillment of their treaty obligations.

international community to identify their obligations, to formulate a legal framework and to establish proper institutions for implementation and enforcement of the obligations in relation to climate change refugees. Of course, academic literatures have suggested multiple solutions to the international community regarding how to carve out international responsibility for climate change refugees.

It is suggested that climate-induced migration is sufficiently new and substantial to justify its own regime rather than being forced into legal frameworks that were not designed to handle it.³⁴ It has also been suggested that an independent instrument which guarantees the human rights and humanitarian protections of this vulnerable group of people could identify the extent of obligations fulfilling those guarantees across the home state, host state and international community, could form sufficient institutional mechanism to implement the provisions, and could oversee the implementation.³⁵ Almost the same suggestion also came from another researcher.³⁶ But given the concern of insufficient ratifications and the unwelcome situation of the international community to accept treaty obligations, it is suggested that soft law should be the starting point for such legal frameworks.³⁷ A resolution adopting such legal framework should follow from the United Nations General Assembly.³⁸

In international law, there are many instances, in which soft laws turned into hard law after widespread acceptance by the international community. Because it is very unlikely that a new legal framework covering climate refugees in the nature of hard law will be welcomed by the international community at the first instance, soft law adopted at the first phase may smooth the path of its future turning into hard law. The existing legal mechanisms should also be explored to find any way-out for filling the gap in the protection of climate refugees. In this regard, complementary protection could also offer a possible protection avenue for climate refugees.

Complementary protection is a form of legal protection accorded to a person who otherwise is not entitled to refugee protection under the 1951 Refugee Convention, but gets the expanded protection of the principle of non-refoulement under international human rights law.³⁹ Judicial interpretations suggest that obligations to grant complementary protection arise, inter alia, under Article 3 of the 1984 Convention against Torture, and other Cruel, Inhuman and Degrading Treatment or Punishment and Article 6 and 7 of International Covenant on Civil and Political Rights, 1966.⁴⁰ It is still hypothetical as to whether adverse impacts of climate change or environmental degradation could amount to “torture and cruel, inhuman and degrading treatment or punishment” as would offer complementary protection for the victims.⁴¹ Domestic codification of complementary protection can also strengthen this possible avenue for protection.⁴² Temporary protection may also be of some aid to fill the protection gap of climate refugees. Temporary protection is an emergency measure accorded to those who do not fulfill the refugee definition but are unwilling to return to life-threatening conditions.⁴³ With the increasing incidence of climatic events, temporary protection can be an emergency solution. All the possible solutions need to be explored to remove the persistent legal vacuum concerning climate refugees.

Exploring Significance of Recognition of Climate Refugees in the Context of Bangladesh

a) Climate change and displacement in Bangladesh:

Bangladesh is going through a critical stage due to the perceived and predicted climate change consequences. According to the Stern Review Report (2007), Bangladesh is one of the earliest and hardest affected countries due to climate change.⁴⁴ Though Bangladesh’s contribution to the gross emission of green house gases (only 0.06% of global Carbon-dioxide emission since her birth in 1971) is very negligible,⁴⁵ still Bangladesh is one of the top 10 nations mostly vulnerable to climate change.⁴⁶ The country has already started to experience various

³⁴ *Supra* note 5, page 30

³⁵ *Id.*

³⁶ *Supra* note 15, page 357

³⁷ *Supra* note, page 408

³⁸ *Id.*

³⁹ PROF. ROGER ZETTER, PROTECTING ENVIRONMENTALLY DISPLACED PEOPLE: DEVELOPING THE CAPACITY OF LEGAL AND NORMATIVE FRAMEWORKS, RESEARCH REPORT, FEBRUARY 2011, REFUGEE STUDIES CENTRE, OXFORD DEPARTMENT OF INTERNATIONAL DEVELOPMENT, UNIVERSITY OF OXFORD, page 20

⁴⁰ *Id.* page 21

⁴¹ *Id.*

⁴² An increasing number of States are codifying forms of complementary protection including those in the European Union, Canada, USA, New Zealand and Australia see *Id.*

⁴³ *Id.*

⁴⁴ STERN REVIEW: THE ECONOMICS OF CLIMATE CHANGE (2007)

⁴⁵ BUTZENGEIGER, S., HORSTMANN, B., SEA-LEVEL RISE IN BANGLADESH AND THE NETHERLANDS –ONE PHENOMENON, MANY CONSEQUENCES (2004)

<http://www.germanwatch.org/download/klak/fb-ms-e.pdf>

⁴⁶ GERMAN WATCH GLOBAL CLIMATE INDEX (CRI)- 2011 REPORT

effects of climate change including, inter alia, long-term floods, cyclones and droughts causing devastation, adversely affecting the country's agriculture and land, challenging water resources, food, health, energy and urban planning.⁴⁷ According to statistics, from 1970 to 2009, about 39 million people have been displaced by major natural calamities.⁴⁸ Sea level rise due to increased global temperature is predicted to have devastating effect upon the country. The Intergovernmental Panel on Climate Change predicted that by 2050, Bangladesh is on course to lose 17% of its land and 30% of its food production along with the perceived increase in the poverty level.⁴⁹ Experts also warn that about 6-8 million more people of Bangladesh could be displaced due to increase in global temperature and sea level rise.⁵⁰ These warning and prediction were reinforced further in 1995 when half of Bhola Island, Bangladesh' biggest island, submerged into rising sea levels displacing 500000 people.⁵¹

b) Existing legal frameworks to address climate change :

Given these alarming predictions regarding Bangladesh's exposure to climate change consequences, climate-induced displacement and its proper management have become a burning issue. With a view to addressing the challenges posed by climate change, Bangladesh has drawn up a national framework. Under the mandate of the United Nations Framework Convention on Climate Change for the Least Developed Countries, Bangladesh submitted its National Adaptation Programme of Action (NAPA) in 2005. As a follow up, Bangladesh Climate Change Strategy and Action Plan (BCCSAP) was adopted in 2008 and became operational in 2009. The BCCSAP is based on six pillars⁵² which will enhance climate resilience and adaptive capacity of the country. But climate-induced displacement, one of the major consequences of climate change, has not been addressed with remarkable specificity, importance and relevance in this Strategy Paper.

Internal migration or migration within the boundary is also unregulated and does not have any normative frameworks to address those displacements. Bangladesh has also not incorporated the provisions and norms of the Guiding Principles on Internal Displacement (1998), the most appropriate framework on internal displacement.⁵³ The Guiding Principles include the right to dignity and security, participation in decision-making in relation to displacement, return and relocation, right to move or remain together as household and reunite if separated, other basic rights including right to life, food, housing, non-discrimination among internally displaced persons (IDP) in distributing assistance.⁵⁴

c) How recognition of climate refugees bears importance for Bangladesh:

International legal vacuum regarding climate refugees along with domestic deficiency of legal frameworks on internal displacement is a matter of growing concern for the affected and to-be affected people by climate change. Although there is no legal framework recognizing and protecting the rights of the internally displaced people in Bangladesh, there has been growing raise in the internal migration, mainly from rural and coastal areas to urban areas. An estimated half a million people move to cities every year.⁵⁵ Five factors

⁴⁷ CHIMALAYA, ADAPTING AGRICULTURE TO CLIMATE CHANGE (2011), <http://chimalaya.org/2011/01/02/adapting-agriculture-climate-change/> accessed on: July 03, 2016

⁴⁸ SHAKEEL AHMED IBNE MAHMOOD, IMPACT OF CLIMATE CHANGE IN BANGLADESH: THE ROLE OF PUBLIC ADMINISTRATION AND GOVERNMENT'S INTEGRITY, J. ECOL. NAT. ENVIRON. VOL. 4(8), page 227

⁴⁹ PLANETIZAN, BANGLA-DOOMED?(2008), <http://www.planetizen.com/node/33615>; THE INDEPENDENT, BANGLADESH IS SET TO DISAPPEAR UNDER THE WAVES BY THE END OF THE CENTURY (2008), <http://www.independent.co.uk/news/world/asia/bangladesh-is-set-to-disappear-under-the-waves-by-the-end-of-the-century--a-special-report-by-johann-hari-850938.html>. Accessed on August 05, 2016.

⁵⁰ THE DAILY STAR, DHAKA TO STRESS CLIMATE COMPENSATION FOR LDCs (2011), <http://www.thedailystar.net/newDesign/news-details.php?nid=209899>, Accessed on August 06, 2016.

⁵¹ EMILY WAX, IN FLOOD-PRONE BANGLADESH, A FUTURE THAT FLOATS, WASHINGTON POST, September 27, 2007; Accessed on August 14, 2016.

⁵² The six pillars on which BCCSAP is built on are: 1. Food security, social protection and health; 2. Comprehensive disaster management; 3. Infrastructure; 4. Research and knowledge management; 5. Mitigation and low carbon development; and 6. Capacity building and institutional strengthening.

⁵³ See generally, *supra note* 39, page 22

⁵⁴ WALTER KÄLIN, RHODRI C. WILLIAMS, KHALID KOSER, AND ERRIN WILLIAMS (EDS.) (2008) 'PROTECTING INTERNALLY DISPLACED PERSONS A MANUAL FOR LAW AND POLICY MAKERS,' BROOKINGS INSTITUTION-BERN UNIVERSITY PROJECT ON INTERNAL DISPLACEMENT, [HTTP://WWW.BROOKINGS.EDU/PAPERS/2008/1016_INTERNAL_DISPLACEMENT.ASPX](http://www.brookings.edu/papers/2008/1016_INTERNAL_DISPLACEMENT.ASPX)

⁵⁵ SYFUL ISLAM, CLIMATE MIGRANTS CAUSE BABY BOOM IN BANGLADESH'S URBAN SLUMS (2012), <http://www.trust.org/alertnet/news/climate-migrants-cause-baby-boom-in-bangladesh-urban-slums>. Accessed on August 24, 2016

i.e. economic, environmental, social, demographic and political are the main drivers of such increase in the migration scenario in Bangladesh.⁵⁶ Climate-induced migration is likely to fuel the existing migration crisis. Internal relocation of all climate-induced displaces is not a viable and sustainable solution for Bangladesh, given the demographic culture, scarce resources and socio-economic crises prevalent in the country. Besides, more importantly, climate-induced migration or displacement has intense international implications, being caused by global emission of green-house gases to which Bangladesh has participated to the very slightest extent. So climate-induced displacement in Bangladesh needs to be resolved with the assistance of the international community on the basis of the principle of common but differentiated responsibility.

At present, the concept of “international assistance” for resolving climate refugee problem is based on solely “mercy regime,” as no legal framework exists defining the extent of obligations, rights of the climate refugees, ways and means for implementation of obligations and enforcement of rights, necessary principles and norms regarding the fulfillment of obligations etc. It is high time to turn the so-called “mercy regime” into “right regime” and/or “duty regime”. If adequate legal framework covering climate refugees were created, the predicted climate-induced displacement could be sustainably solved on the basis of international principle of burden-sharing.

Bangladesh has not been a party to any of international refugee instruments, neither to 1951 Refugee Convention nor to its 1967 Protocol on some hypothetically justified grounds. Whatever be the justification behind such non-accession to any of the refugee instruments, Bangladesh should pursue for her own sake for the development of an international framework recognizing climate refugees. Bangladesh as one of the most vulnerable countries to climate change should effectively raise the voice in various international forums towards the realization of the long-awaited demand. Needless to say, Bangladesh should be a party to the prospective international legal framework recognizing climate refugees for tackling the predicted climate-migration phenomena.

V. CONCLUSION

Unrecognized Climate refugees are the worst victims of the century who need immediate umbrella of protection and recognition relevant for many countries extremely prone to climate change consequences. Bangladesh is one of those internationally recognized and predicted vulnerable countries in the world having the risk of producing millions of climate refugees. An interdisciplinary and holistic approach needs to be taken to create a legal framework for climate refugees as climate refugees have overlapping implications on the multiple areas of law. It is the demand of the 21st century to remove this long-standing lacuna of the existing international legal frameworks.

That climate change is due to human-induced activity is now no longer speculative and that the developed countries have played the major role in the inadvertent change in the climate is also well-established. So a well-structured legal framework needs to be crafted in the international law which will underline the necessary rights and protections of those displaced people, which will spread the responsibility of them among the international community and the host state on the basis of the concept of burden-sharing, and which will establish proper institutional set-up to carry out the implementation of the treaty. A traditional approach to the existing legal frameworks is inadequate to find a proper regime for those unprotected people. There requires a progressive appreciation of the existing legal frameworks to locate climate refugees within or a newly framed legal instrument incorporating the core principles of international human rights law i.e. principle of non-discrimination, guarantee to basic human rights such as right to life, protection from torture, inhuman or degrading treatment or punishment etc. and international refugee law i.e. the well-recognized principle of non-refoulement and principle of non-discrimination should be developed.

The international community should take a pro-active approach to find a just and equitable solution to this problem. In this respect, the successful negotiation and culmination of the Convention on Cluster Munitions can be a glaring example before the international community as to how willingness of the international community matters. The Convention on Cluster Munitions (CCM) is an international treaty that addresses the humanitarian consequences and unacceptable harm to civilians caused by cluster munitions through a categorical prohibition and a framework for action.⁵⁷ This example should be used as an incentive in solving the climate refugee problem which leaves millions of people destitute, unprotected, unrecognized and susceptible to gross violations of human rights. The recurrence of the climate change consequences makes it inevitable to move the international community towards the path of solution.

⁵⁶ Maxmillan Martin and et.al. Policy Analysis: Climate Change and migration in Bangladesh (2013), Working Paper 4, <http://migratingoutofpoverty.dfid.gov.uk/files/file.php?name=wp4-ccrm-b-policy.pdf&site=354>, Accessed on August 25, 2016.

⁵⁷ Adopted on 30 May 2008 in Dublin, Ireland and signed on 3-4 December 2008 in Oslo, Norway, the Convention on Cluster Munitions entered into force on 01 August 2010. As of 16 June 2016, a total of 119 states have joined the Convention, as 100 States parties and 19 Signatories

Regional initiative to recognize the problem and devise a solution to this could also be a pushing force for future international framework of action. Vulnerable countries could raise their voice from their respective regional forums. Finally, they could raise strong voice in various international forums towards taking international action to end the agonies of millions of people.