
LEGAL COMPLEXITIES OF “CLIMATE REFUGEES”: A STUDY OF INDIA, BANGLADESH AND NEW ZEALAND

KHUSHIMA RAI¹

ABSTRACT

Climate change is undeniably a major factor in the displacement of people. However, the international community has yet to recognise the class of refugees affected by climate change. The absence of recognition results in the lack of legal protection and assistance for such “*climate refugees*” who are forced to be displaced due to climate change.

The study explores how India, Bangladesh, and New Zealand handle climate migration. Many climate refugees are displaced in India and Bangladesh, yet they have no protections. These countries use generic migration rules, which don't address climate-related migration or cross-border moves. New Zealand's humanitarian immigration initiatives for climate-affected Pacific Islanders are experimental. Only a few people benefit from their efforts. This study emphasises the need to recognise climate refugees officially and indicates that regional cooperation and national measures could assist in protecting climate refugees. These techniques can help climate-affected communities by considering human rights.

Keywords: climate-induced displacement, *climate refugees*, cross-border migration, human rights, migration policy, refugee law.

¹ LLM (Criminal and Security Law) Post-Graduate Student at The West Bengal National University of Juridical Sciences, Kolkata

1. INTRODUCTION

Populations worldwide are being displaced more frequently due to climate change, a serious global concern. Extreme weather occurrences such as hurricanes, cyclones, and droughts force individuals and communities to leave their homes for safety and survival. The scale of such climate-induced displacement is only predicted to rise in the coming years. As highlighted in the 2021 report published by the Intergovernmental Panel on Climate Change (IPCC), the significant impact of human activities on global warming and climate change is seen through changes in rain patterns, increased sea levels, extreme weather events, and reduced biodiversity.² Further, the 2018 IPCC report indicates that, from 2030 to 2052, the global temperatures are expected to rise by approximately 1.5 degrees Celsius, which is likely to increase the frequency and intensity of climate-related disasters.³ Coastal locations are especially susceptible to climate change, inevitably leading to displaced populations.⁴

Although it is more likely for climate change-related issues to cause people to leave their homes and settle within safer parts of their own country, there will unavoidably be many people who cannot escape their circumstances and be forced to seek asylum in foreign countries and thus become “climate refugees.” However, the international community has not yet recognised these climate refugees, and in the absence of a globally accepted definition, there is a lack of legal protection. This lack of a clear framework leaves climate refugees in a precarious legal limbo.

This paper explores the legal complexity experienced by climate refugees by analysing the policies and strategies implemented by India, Bangladesh, and New Zealand, three countries distinguished by different geographical and policy environments. Both intra- and inter-country migration flows threaten India and Bangladesh, two highly populous countries sensitive to climate change. On the other hand, New Zealand offers a humanitarian visa scheme, especially

² Intergovernmental Panel on Climate Change, Summary for Policymakers, In: *Climate Change 2021: The Physical Science Basis, Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (V. Masson-Delmotte et al. eds., 2021), https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM_final.pdf.

³ Intergovernmental Panel on Climate Change, Summary for Policymakers, In: *Global Warming of 1.5°C: An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*, 3-24 (V. Masson-Delmotte et al. eds., 2018), https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SPM_version_report_LR.pdf.

⁴ Tuli Bakshi, *Climate Crisis and Environmental Degradation: Future of People Living in Coastal Areas*, 57 ECON. & POL. WKLY. 1 (Jan. 1, 2022).

for Pacific Islanders, presenting an innovative model for other countries. The paper, therefore, aims to delve into the role of the universal human right to life in shedding light on the plight of climate refugees and propose viable solutions and policy recommendations to foster better protections for climate refugees.

2. LEGAL COMPLEXITIES OF “CLIMATE REFUGEES”

Since the year 2008, more than 376 million people have migrated due to climate-related disasters. 2022 alone saw 36.2 million individuals displaced as a direct consequence of natural disasters attributable to climate change.⁵ While many found refuge within their own nations, many were forced to seek asylum beyond their national boundaries.

Despite the extensive use of the term "climate refugee," there is no internationally agreed definition of "climate refugee". The term "climate refugee" is often employed to characterize those forcibly displaced due to climate change; however, it lacks a substantive legal foundation within international law. Broadly, it refers to people displaced by environmental changes resulting from climate change, such as extreme weather, rising sea levels, and land degradation. However, interpretations of this term vary widely. For instance, the International Organization for Migration (IOM) describes “environmental migrants” as people who move due to environmental factors, though this term does not imply forced displacement.⁶

Since the governments and international agencies do not formally acknowledge the existence of a "climate refugee" problem, a significant barrier to addressing the issue effectively is created. Without official recognition, these individuals have no established legal frameworks or protections and do not get basic rights and protections. They may also be at risk of exploitation and abuse. The lack of a widely accepted definition makes it difficult to offer consistent protections since it leaves room for different interpretations of rights and obligations between countries.

⁵ Joanna Apap & Sami James Harju, *The Concept of ‘Climate Refugee’: Towards a possible definition*, European Parliamentary Research Service Briefing, Doc. No. PE 698.753 (Oct. 2023), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698753/EPRS_BRI\(2021\)698753_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698753/EPRS_BRI(2021)698753_EN.pdf).

⁶ Int’l Org. Migration, *Discussion Note: Migration and the Environment*, 94th Session, MC/INF/288 (Nov. 1, 2007), https://www.iom.int/sites/g/files/tmzbd1486/files/jahia/webdav/shared/shared/mainsite/about_iom/en/council/94/MC_INF_288.pdf.

Furthermore, climate change displacement often does not fit neatly into existing legal categories. Establishing a strong causal link between displacement and climate change is challenging since slow-onset processes like sea-level rise or sudden-onset phenomena like hurricanes can produce displacement due to climate. The complexity of this makes creating effective legal frameworks difficult.⁷

In the climate change framework, the distinction between voluntary and forced migration also becomes hazy. Individuals may choose to migrate to adapt to worsening environmental conditions, but limited options and the threat of hardship or displacement often constrain their choice.⁸ Determining when migration becomes "forced" is crucial for establishing legal responsibility and protection.

Besides, the international community's focus has been on addressing root causes rather than providing legal protection, focusing on tackling climate change and mitigating its effects rather than providing legal protection for those already displaced. For example, the European Union's Green Deal focuses primarily on achieving climate neutrality by 2050 to address the root causes of climate change, although it also acknowledges the role that climate change plays in causing population displacement and forced migration.⁹ While addressing root causes is important, the focus on root causes without providing legal protection leaves climate refugees in a dangerous position. This approach does not address the immediate needs of climate refugees and neglects the urgent need for legal protection for climate refugees who are currently suffering.

2.1 SHORTCOMINGS OF CURRENT INTERNATIONAL LEGAL FRAMEWORKS IN ADDRESSING CLIMATE REFUGEES

While no international legal framework specifically addresses climate refugees, a few existing frameworks offer potential avenues for protection, each with significant shortcomings:

⁷ Maxine Burkett, *In Search of Refuge: Pacific Islands, Climate-Induced Migration, and the Legal Frontier*, ASIAPACIFIC ISSUES, No. 98 (Jan. 2011).

⁸ Sumudu Atapattu, *Climate Change and Displacement: Protecting 'Climate Refugees' within a Framework of Justice and Human Rights*, 11 J. HUM. RTS. & ENV'T. 86 (March 2020).

⁹ European Commission, *Communication from the Commission: The European Green Deal*, COM (2019) 640 final (Dec. 11, 2019), <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52019DC0640&from=EN>.

THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES

The 1951 Convention Relating to the Status of Refugees¹⁰, which serves as the cornerstone of international refugee law, defines a refugee as an individual who has fled their country owing to a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion." This definition does not cover individuals displaced by environmental factors, leaving climate refugees devoid of the protections typically extended to conventional refugees. Reinterpreting the convention to encompass climate refugees is widely considered problematic due to the potential for a more restrictive reinterpretation, which could negatively impact existing refugees. Additionally, amending the convention faces significant political challenges, including a lack of political will, apprehension about assuming new obligations, and fears of undermining the existing refugee protection system.

1969 OAU CONVENTION

The Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa¹¹, broadens the refugee definition to encompass individuals fleeing events that "seriously disturb public order". While environmental disasters could be considered seriously disturbing public order, the Convention lacks specific provisions or examples outlining its application to environmentally induced displacement. This ambiguity leaves room for interpretation regarding the Convention's relevance to climate refugees.

GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

The UN Guiding Principles on Internal Displacement¹² primarily focus on protecting and assisting internally displaced persons (IDPs), defined as those forced to flee their homes but remaining within their country's borders. The Guiding Principles explicitly include individuals displaced by disasters, encompassing those triggered by natural hazards. Though the Guiding Principles are recognised as an important international framework, they are not legally binding. However, climate-induced displacement often leads to cross-border movements, a situation not

¹⁰ *Convention Relating to the Status of Refugees*, July 28, 1951, 189 U.N.T.S. 137.

¹¹ *Convention Governing the Specific Aspects of Refugee Problems in Africa*, Sept. 10, 1969, U.N.T.S. 14691.

¹² *Guiding Principles on Internal Displacement*, UN Commission on Human Rights, E/CN.4/1998/53/Add.2 (July 22, 1998)

<https://www.refworld.org/legal/otherinstr/unchr/1998/en/18487>.

covered by the Guiding Principle. Therefore, they do not offer adequate protection and aid to those displaced across borders due to climate change.

THE NANSSEN INITIATIVE

The Nansen Initiative is a state-led consultative process focused on building consensus on how to best address cross-border displacement due to natural disasters, including those caused by climate change.¹³ Its Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change¹⁴ has highlighted the issue of cross-border displacement due to disasters and climate change, and has successfully brought together various effective practices, and emphasised the need for a comprehensive approach to protect affected individuals. The Nansen Initiative acknowledges the existing legal gap in protecting people displaced across borders due to climate change. However, it does not create new legal instruments or offer concrete solutions for filling this gap. It primarily focuses on displacement caused by sudden-onset disasters, leaving those displaced by slow-onset processes, like sea-level rise or desertification, with less protection. Also, it is not legally binding, and the initiative's success relies heavily on states' willingness to implement its recommendations.

2.2. HUMAN RIGHTS IMPLICATIONS OF CLIMATE MIGRATION

The right to life, recognized as a fundamental human right under international law, is directly implicated by climate-induced displacement. Climate change increases the intensity and frequency of extreme weather events such as hurricanes, cyclones, and floods, posing immediate threats to life. Gradual processes like sea-level rise and desertification force people from their homes and erode livelihoods, leading to situations where survival is at stake. Climate change can undermine the realization of fundamental human rights like the right to food, water, and shelter, ultimately impacting the right to life.

In the absence of a universally recognized "climate refugee" status, international human rights law offers potential avenues for protection. The principle of non-refoulement, a cornerstone of international refugee law, prohibits states from sending people back to areas where they would

¹³ *The Nansen Initiative*, International Organisation for Migration, (2012-2015), <https://environmentalmigration.iom.int/nansen-initiative>, (last visited Oct. 25, 2024).

¹⁴ The Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, (Dec. 2015), https://disasterdisplacement.org/wp-content/uploads/2014/08/EN_Protection_Agenda_Volume_I_low_res.pdf.

be really at risk of persecution or major injury.¹⁵ While climate change itself is not considered persecution under the 1951 Refugee Convention, one could argue that non-refoulement would apply in cases when returning climate-displaced people to their country of origin would endanger their life or expose them to cruel treatment.

The right to life, health, food, water, and housing are among the fundamental rights recognised by international human rights law as essential to human survival and dignity. Both direct and indirect effects of climate change on these rights may give rise to advocacy and legal action. When states fail to defend the rights of people impacted by climate change, strategic litigation can use human rights law to hold them responsible.

3. CASE STUDY OF LEGAL FRAMEWORKS

In this chapter the author has examined how India, Bangladesh, and New Zealand approach the issue of climate-induced displacement through their national legal frameworks. Each country presents a distinct context, and by analysing these case studies, this chapter aims to highlight the diverse legal responses to climate migration and the effectiveness of each approach in addressing the unique needs of climate refugees.

3A. INDIA

India, a highly populated nation reliant on climate-sensitive businesses like agriculture and fishing, is especially vulnerable to climate disasters. With millions of people in danger from extreme weather events like heatwaves and droughts, cyclones, flooding, and rising sea levels, climate-induced displacement in India presents itself as a serious problem. These variables create a complex setting in which displacement becomes a key issue.

Climate change is not a distant threat; it is already affecting India and causing displacement. Over the past three decades, the Indian Sundarbans have seen the displacement of over 30,000 people due to the consequences of climate change.¹⁶ Ghoramara island has drastically diminished, forcing people to move to nearby Sagar Island, while Lohachara, Suparibhanga,

¹⁵ United Nations Office of the High Commissioner for Human Rights, The Principle of Non-Refoulement Under International Human Rights Law, <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf> (last visited Nov. 3, 2024).

¹⁶ Asish Kumar Ghosh, Sukanya Banerjee & Farha Naaz, *Adapting to Climate Change-Induced Migration: Women in Indian Bengal Delta*, 53 ECON. & POL. WKLY. 17 (Apr. 28, 2018).

and Bedford islands have completely vanished.¹⁷ It is estimated that by the end of this century, the average temperature in India will increase by 1.1°C–4.1°C over the 1986–2005 baseline, depending on the emissions throughout the 21st Century.¹⁸ In the absence of effective adaptation strategies, it is predicted that extreme river flooding could affect an additional 13 to 34 million individuals by the 2040s, and coastal flooding is projected to affect between 5 to 18 million more people by the 2070s.¹⁹

The nature of displacement in India is complex, encompassing a range of patterns and types. **Temporary migrations** happen for seasonal work or as a response to disasters, where people leave home for agricultural labour and return when jobs are available. After Cyclone Aila in 2009, many in the Sundarbans sought temporary work elsewhere.²⁰ This temporary migration can become more permanent if repeated or prolonged crises deplete a person's assets. Another form of migration that occurs frequently in India is **internal migration**, where rural populations vulnerable to climate change move to cities within the same country for survival and sustenance of livelihood. There is also a growing trend of **external migration**, especially towards the Gulf States, in South Asian countries, including India.²¹ Economic considerations mainly drive external migration, but climatic change factors are increasingly compelling reasons for people to migrate out of the country. Finally, transboundary migration can add another layer of complication to this complex scenario. Indeed, a great number of migrants leave Bangladesh or Nepal for India based on their factors of economic failure, environmental challenges, and political instability. Many individuals journey from Bangladesh or Nepal to India, driven by economic hardships, environmental challenges, and political instability.²² However, while all this is happening, growing unrest and increasing unacceptance among the Indians - especially the Assam and West Bengal States of India- escalates the scenario and complicates this migration pattern even further.

¹⁷ Moitrayee Sengupta, *A Triple Crisis in the Indian Sundarbans*, INTERNATIONAL ORGANISATION FOR MIGRATION, <https://environmentalmigration.iom.int/blogs/triple-crisis-indian-sundarbans-0> (last visited Oct. 25, 2024).

¹⁸ Climate Risk Country Profile: India (2021): The World Bank Group.

¹⁹ *Id.*

²⁰ Sengupta, *supra* note 16

²¹ Teresa Anderson et al., *Climate Change Knows No Border: An analysis of climate induced migration, protection gaps and need for solidarity in South Asia*, ACTIONAID, (Dec. 2016), https://actionaid.org/sites/default/files/climate_change_migration_in_south_asia_web_version.pdf.

²² *Id.*

At this point, it is crucial to recognise that climate change and socioeconomic variables are impacting migratory patterns in a complex way. While economic problems are important, climate change will become the proverbial 'icing on the cake' since it will compel people to relocate and exacerbate already-existing issues. For example, people have been moving temporarily for seasonal work in India for a long time; however, because of climate change, things like unpredictable rainfall and long droughts are forcing people to move more often and for longer periods of time, turning what was once a temporary way to make extra money into a necessity for survival.

Furthermore, sudden-onset climate calamities such as cyclones, floods, and sea-level rise are contributing to an alarming rise in the trend of forced displacement. These incidents frequently result in sudden displacement, forcing individuals to abandon their homes with few opportunities to return. This scenario is especially grave for marginalised populations in areas like the Sundarbans, where limited resources and insufficient government help make rebuilding and returning extremely difficult.

It is essential to understand the complex and diverse nature of displacement patterns in India and their environmental and socio-economic factors. Although the Indian government recognizes that the country is at risk, the role of climate change in causing migration is mainly left out of policy talks. Existing policies on disaster risk management primarily focus on disaster relief following extreme weather events and lack provisions for addressing displacement or migration resulting from environmental stress. The lack of understanding and inadequate data collection and policy frameworks further complicate efforts to address the challenges and support the rights of those displaced by climate change in India.

3A.1 EXISTING LEGAL PROVISIONS IN INDIA

India currently lacks specific legal frameworks or policies directly addressing climate-induced displacement or the status of climate refugees. Furthermore, India has not enacted a dedicated refugee treatment and protection law. Actions towards refugees are primarily based on policies developed in response to specific crises, resulting in inconsistent treatment. This ad hoc practice results in no standard legal framework confronting this developing issue of displacement because of climate change. However, several existing policies and frameworks indirectly engage with issues tied to displacement from environmental and climate-related factors; however, they do not offer comprehensive protection for climate refugees.

DISASTER MANAGEMENT ACT, 2005

The Disaster Management Act of 2005²³ provides a framework for managing disasters, including those caused by natural events. The Act defines “disaster” as a calamity that results in substantial loss of life, human suffering, property damage, or environmental degradation and exceeds the community's capacity to cope. The Act does not address climate-induced migration or climate refugees, even though climate change can create calamities. While its mitigation, preparedness, response, and reconstruction provisions potentially apply to climate change circumstances, the Act does not address climate-induced migration. The Act also does not address cross-border climate migration or long-term displacement induced by slow climate changes like sea-level rise, droughts, or erosion.

NATIONAL ACTION PLAN FOR CLIMATE CHANGE, 2008

India's National Action Plan on Climate Change (NAPCC)²⁴ addresses climate change while supporting economic growth. It follows the idea that climate change adaptation requires development and poverty reduction. The NAPCC has eight national missions that promote sustainability across industries. Without naming "climate refugees," the NAPCC addressed their concerns. The National Water Mission, National Mission for Sustainable Agriculture, and Protection of Coastal Areas address water scarcity, agricultural resilience, and coastal protection to reduce displacement drivers, respectively, and the National Mission for Sustaining the Himalayan Ecosystem focuses on protecting this crucial region, whose degradation could result in displacement.

NATIONAL POLICY ON DISASTER MANAGEMENT, 2009

The National Policy on Disaster Management 2009²⁵ of India aims to shift from a relief-centric approach to a proactive strategy focused on prevention, mitigation, and preparedness. This policy establishes a comprehensive institutional framework from the national to the local level, outlining responsibilities and coordination mechanisms for disaster management. While the policy acknowledges climate change's impact on disaster frequency and intensity, it doesn't explicitly address climate refugees or their specific needs. The policy focuses on community-

²³ The Disaster Management Act, 2005, No. 53, Acts of Parliament, 2005 (India).

²⁴ National Action Plan on Climate Change, Prime Minister's Council on Climate Change, Government of India, June 30, 2008, <http://www.nicra-icar.in/nicrarevised/images/Mission%20Documents/National-Action-Plan-on-Climate-Change.pdf>.

²⁵ National Disaster Management Authority, National Policy on Disaster Management, Oct. 22, 2009, https://nidm.gov.in/PDF/policies/ndm_policy2009.pdf.

based disaster preparedness and resilience-building but may not adequately cover displacement and resettlement challenges faced by those displaced by climate change.

THE FOREIGNERS ACT, 1946

Without a specific refugee law, refugees are often treated as any other foreigner and are governed by the Foreigners Act of 1946. The Foreigner's Act of 1946²⁶ grants the Central Government of India broad authority to regulate the entry, presence, and departure of foreigners within India. This includes powers such as restricting entry or departure, controlling presence and enforcing compliance. The act's provisions for regulating entry and presence could be applied to climate refugees, potentially impacting their ability to seek safety and asylum. This means they may be detained for illegal entry into the country while their asylum claims are processed. This approach fails to recognize the unique circumstances of those fleeing environmental disasters and subjects them to legal processes intended for different migration situations.

3A.2 LIMITATION OF INDIA'S LEGAL FRAMEWORK IN ADDRESSING CLIMATE DISPLACEMENT

India's existing legal framework presents several key challenges and limitations in addressing climate-induced displacement and climate refugees:

Absence of a National Refugee Law: India lacks a dedicated law specifically addressing the treatment and protection of refugees. The response to disasters is ad hoc and tailor-made for each situation. This simply means that protection is not always consistent and is often less than what it should be.²⁷ This lack of a complete legal framework is especially problematic for climate migrants because it places them in a difficult legal position due to various environmental and socioeconomic considerations that cause their displacement.

Limited Focus on Disaster Risk Management: India's current disaster risk management policies focus on giving immediate relief after natural disasters. They do not do enough to deal with displaced people or people who have to move because of slow-onset natural stresses like rising sea levels, land degradation, or long droughts. This narrow focus ignores climate change's long-term displacements.

²⁶ The Foreigners Act, 1946, No. 31, Acts of Imperial Legislative Council, 1946 (India).

²⁷ Ananda Varshini, *The Need for Refugee Law in India and the Way Forward*, 5 INT'L J.L. MGMT. & HUMAN. 503 (2022).

Challenges in Addressing Transboundary Migration: Transboundary migration, particularly from Bangladesh to India, is influenced by climate change impacts, among other factors. However, political tensions and rising intolerance towards migrants, especially in Indian states bordering Bangladesh, complicate this issue and create challenges for developing effective policies and ensuring the protection of climate migrants.²⁸

3B. BANGLADESH

Bangladesh's geographic location and geomorphological conditions make the country vulnerable to the effects of climate change. It is also densely populated and highly dependent on natural resources, which makes its population particularly vulnerable to climate shifts. The susceptibility of Bangladesh to natural hazards has been recognised as an important element contributing to climate-induced displacement. This includes sudden onset environmental changes like floods and cyclones and slow onset processes like rising sea levels, changing rainfall patterns, coastal erosion, and salinity intrusion, which pose significant threats to coastal communities.

Most displacement within Bangladesh due to climate change is internal, particularly rural-to-urban movement, which has become increasingly common as people seek safety and employment in cities like Dhaka and Chittagong. In addition to internal displacement, climate change pressures in Bangladesh drive cross-border migration, primarily into neighbouring India, through the porous borders of Bangladesh and the Indian states of West Bengal, Assam and other North-Eastern states. There is a prolong history of cross-border movement between Bangladesh and India due to the strong cultural, linguistic, and religious connections that the two nations share. As a larger economy, India presents various economic and academic opportunities for Bangladeshis. However, climate change is also a significant factor affecting migration from Bangladesh to India.²⁹

This cross-border migration strains relations between the two countries, as India faces its own climate displacement challenges and lacks a formal legal framework to recognize or support climate refugees. Competition for resources, nationalist feelings, and unclear legal pathways

²⁸ Anderson, *supra* note 20.

²⁹ Maria Camila Duque, *Climate Change in Bangladesh Shapes Internal Migration and Movement to India*, MIGRATION POLICY INSTITUTE (Sept. 4, 2024), <https://www.migrationpolicy.org/article/bangladesh-india-climate-migration#:~:text=Most%20of%20this%20movement%20is,such%20as%20sea%2Dlevel%20rise>. (last visited Oct. 26, 2024).

for migrants make for a dangerous mix. So, climate-related movements could make things worse and could potentially cause conflicts.

3B.1 EXISTING LEGAL PROVISIONS IN BANGLADESH

Bangladesh has no national refugee law or policy and is not a signatory to the 1951 Refugee Convention. Due to the lack of defined legal provisions, the protection of refugees, including climate refugees, is largely based on ad hoc executive orders and existing laws like the Foreigners Act of 1946³⁰, which were not specifically designed to address refugee issues. This lack of clear legal provisions can lead to inconsistencies and varying standards for different refugee groups. Refugees might find it hard to get basic rights and services. This situation could potentially be even more challenging for climate refugees, who may face unique vulnerabilities and protection needs.

However, Bangladesh has several legal and regulatory frameworks to address climate vulnerability and climate-induced displacement. Although these policies seek to alleviate displacement pressures, they predominantly focus on short-term adaptation and disaster relief instead of providing enduring solutions for individuals permanently displaced by climate change.

DISASTER MANAGEMENT ACT, 2012

The Disaster Management Act, 2012 of Bangladesh³¹ establishes a framework for disaster management by creating a National Disaster Management Council, Department of Disaster Management, and local committees. The Act's relevance to climate refugees stems from Bangladesh's susceptibility to climate change impacts and the inclusion of climate-related events in the Act's definition of "disaster," such as cyclones, sea level rise, and drought. The Act recognises climate change as a contributing factor to disasters. However, rather than addressing climate refugees, the Act focuses on reactionary solutions. Effective implementation and enforcement of the Act might be also be difficult.

³⁰ The Foreigners Act, 1946, No. 31, Acts of Imperial Legislative Council, 1946 (Bangladesh).

³¹ The Disaster Management Act, 2012, No. 34, Acts of Parliament, 2012 (Bangladesh).

BANGLADESH CLIMATE CHANGE STRATEGY AND ACTION PLAN 2009

The Bangladesh Climate Change Strategy and Action Plan 2009³² is a response of the Bangladesh government to address climate change. The plan includes six pillars: food security, comprehensive disaster management, infrastructure, research, mitigation, and capacity building. The plan acknowledges that climate change may displace and trigger internal migration. The plan prioritizes immediate actions but faces limitations. The plan suffers from a weakness that depends largely on the funding of well-developed countries. Moreover, its success lies in the coordination of such a high-level plan with ministries and other organizations.

BANGLADESH DELTA PLAN 2100

The Bangladesh Delta Plan 2100 (BDP 2100)³³ or BDP 2100, is a long-term strategy to that ensures food and water security, economic growth, and environmental sustainability so that the delta can be safe, climate-resilient, and thriving. It acknowledges how vulnerable the country is to natural disasters and climate change and presents ways for mitigating such vulnerabilities. The plan understands that poverty and natural disaster risks cause climate-induced displacement. It invests in resilience-boosting water management and flood control to solve these issues. However, the BDP 2100 is significantly reliant on substantial funding, estimated at 2.5% of GDP per year, which may strain resources and be difficult to achieve. The plan also depends on managing transboundary waterways with the help of nearby countries, which can be tricky from a political point of view.

3B.2 THE IMPLICATIONS OF BANGLADESH'S CLIMATE MIGRATION ON INDIA IN THE ABSENCE OF ADEQUATE LEGAL FRAMEWORKS

The absence of strong legal frameworks to address climate-induced migration from Bangladesh has serious consequences for neighbouring countries, particularly India, including but not limited to resource strain, the rise of social tensions, and the potential for increased vulnerability and exploitation of migrants.

³² The Bangladesh Climate Change Strategy and Action Plan 2009, Ministry of Environment and Forests, Government of the People's Republic of Bangladesh (Sept. 2009), <https://faolex.fao.org/docs/pdf/bgd163540.pdf>.

³³ Bangladesh Delta Plan 2100: Bangladesh in the 21st Century, General Economics Division, Bangladesh Planning Commission (Oct. 2018), <https://oldweb.iged.gov.bd/UploadedDocument/UnitPublication/1/756/BDP%202100%20Abridged%20Version%20English.pdf>.

Exacerbating Existing Tensions: As climate change causes more Bangladeshis to seek asylum in India, it exacerbates existing political and social concerns about immigration, which are fostered by anti-immigrant attitudes and could lead to discriminatory laws. The influx of climate migrants from Bangladesh places additional strain on India's resources, particularly in border districts already dealing with climate consequences, which can worsen tensions between migrant communities and native people.³⁴

Vulnerability and Exploitation of Migrants: The absence of a clear legal framework for climate migrants in India leaves Bangladeshi migrants at the mercy of a law that does not offer them protection. They struggle to obtain basic services, find work, or voice their rights without accepted legal status. They are more prone to abuse by employers, landlords, and traffickers. Since Bangladeshis do not have legal recognition, this group of refugees remains treated as "irregular migrants" and is susceptible to deportation for climate-related reasons for their displacement.

Thus, climate change is a significant driver of migration from Bangladesh to India, with far-reaching consequences for both countries, which, combined with rising anti-immigrant sentiment in India, creates a precarious situation for migrants, leaving them vulnerable to exploitation and deportation.

3C. NEW ZEALAND

New Zealand's geographic location in the Pacific, as well as its historical and cultural ties to Pacific Island nations, put it at the forefront of climate-induced migration. As Pacific Island nations grapple with the growing effects of climate change, such as rising sea levels, stronger storms, and coastal erosion, climate migration emerges as a major regional issue and a defining legal dilemma for New Zealand.

NEW ZEALAND'S POTENTIAL PROGRESSIVE LEGAL MODEL

New Zealand's legal system, while incorporating the 1951 Refugee Convention through the Immigration Act 2009,³⁵ does not explicitly recognize climate displacement as grounds for refugee status. Despite lacking a dedicated legal framework, New Zealand has implemented policies and programs demonstrating a growing awareness of the need to address climate migration. Initiatives like the Pacific Access Category (PAC) and the Recognised Seasonal

³⁴ Duque, *supra* note 28.

³⁵ The Immigration Act, 2009, No. 51, Acts of Parliament, 2009 (New Zealand).

Employer (RSE) scheme, initially designed for labour mobility, have been highlighted as potential avenues for facilitating the entry and residency of climate-affected individuals from Pacific Island nations.³⁶

PACIFIC ACCESS CATEGORY (PAC) & SAMOAN QUOTA RESIDENT VISAS

The Pacific Access Category (PAC)³⁷ and Samoan Quota (SQ)³⁸ are visa schemes designed for labour mobility from specific Pacific Island Countries (PICs) to New Zealand. While not specifically for climate refugees, they have been considered as potential migration avenues for those displaced by climate change. Through a ballot system, the **PAC** offers a pathway to residency for a limited number of citizens from Fiji, Tonga, Kiribati, and Tuvalu. The **Samoan Quota** functions similarly but is exclusively for Samoan citizens. As PICs are highly vulnerable to climate change impacts, leading to displacement, these schemes could potentially offer a pathway to New Zealand for those affected.³⁹

LIMITATIONS AND CRITICISMS OF THE SCHEMES

A key success of these programs is their focus on PICs, acknowledging the unique challenges these countries face due to climate change. They provide a legal method for migration, offering stability and security absent in temporary migration schemes like the Recognised Seasonal Employer (RSE) Scheme⁴⁰. However, these schemes are subject to criticism for their limitations.

The primary criticism is that they are restrictive, offering a limited number of slots and imposing eligibility restrictions such as age, employment offers, English language competency, health, and character checks. These limitations raise equity concerns, as the most vulnerable populations affected by climate change may not meet these criteria.

³⁶ Catherine Dyer & Andreas Neef, *The evolution of Aotearoa New Zealand's policy discourses on Pacific climate mobilities from 2006–2021*, FRONT. CLIM. (Jan. 10, 2023) <https://www.frontiersin.org/journals/climate/articles/10.3389/fclim.2022.1000632/full>.

³⁷ Pacific Access Category Resident Visa, NEW ZEALAND IMMIGRATION <https://www.immigration.govt.nz/new-zealand-visas/visas/visa/pacific-access-category-resident-visa> (last visited Oct. 30, 2024).

³⁸ Samoan Quota Resident Visa, NEW ZEALAND IMMIGRATION <https://www.immigration.govt.nz/new-zealand-visas/visas/visa/samoan-quota-scheme-resident-visa> (last visited Oct. 30, 2024).

³⁹ Dyer, *supra* note 35.

⁴⁰ Recognised Seasonal Employer Limited Visa, NEW ZEALAND IMMIGRATION <https://www.immigration.govt.nz/new-zealand-visas/visas/visa/recognised-seasonal-employer-limited-visa> (last visited Oct. 30, 2024).

Furthermore, the primary goal of these visas is to address New Zealand's workforce shortages, not climate migration. It raises ethical considerations about the responsibilities and potential exploitation of vulnerable populations.

The feasibility of adopting similar frameworks in other countries facing climate-induced displacement pressures depends on several factors. The PAC and SQ offer valuable lessons in acknowledging the specific needs of climate-vulnerable countries and establishing dedicated migration pathways. These aspects can be replicated in other contexts.

However, replicating the specific eligibility criteria and quota system may not be universally suitable. Each country or region has its own unique context, including existing migration patterns, economic conditions, and political considerations. A successful model would need to be adapted to the specific circumstances of the receiving country and the sending countries.

3.1 REFLECTIONS ON THE CASE STUDY

In India, there is currently no specific legislation addressing the phenomenon of climate refugees or formally recognizing cross-border climate migration. Through temporary assistance and rehabilitation, India's disaster management and adaptation policies partially support the rights of internally displaced climate migrants. These efforts are insufficient to defend climate refugees' right to life, especially foreigners. Thus, Indian policies fail to address cross-border climate migrants' human rights concerns.

In contrast, Bangladesh has national policies, such as the National Strategy on the Management of Disaster and Climate-Induced Internal Displacement, that recognise the human rights of those internally displaced due to climatic conditions. Such policies incorporate provisions of required support such as shelter, livelihoods, and relocation assistance. However, in Bangladesh, as in India, climate refugees who cross borders do not have any specific legal provision that protects them. Such a limitation makes it difficult to effectively safeguard the rights of migrants arriving in the country from neighbouring countries, though the country itself is inherently susceptible to the impacts of climate change.

New Zealand, on the other hand, has developed a unique humanitarian visa scheme for Pacific Islanders affected by climate change, demonstrating a more proactive approach to climate migration. Although limited, this program indirectly asserts the right to life by providing legal routes for climate change-displaced people. New Zealand's approach reflects a deeper commitment to preserving the human rights of climate-displaced people than India or

Bangladesh, and it could serve as a model for climate-change migration policies that respect human rights for other countries as well.

4. POTENTIAL SOLUTIONS AND POLICY RECOMMENDATIONS

Based on the findings of this study, potential solutions and policy recommendations are outlined below to address the concerns identified:

Recognizing climate displacement as a human rights issue can provide a foundation for policies that protect the dignity and basic needs of displaced persons.

A regional framework can be implemented to deal with climate migration across borders in countries like India and Bangladesh. South Asia shares common vulnerabilities and a region-specific framework can be drafted in consultation with the South Asian Association for Regional Cooperation (SAARC).

Both India and Bangladesh should consider enacting national policies that formally recognize and protect climate-displaced persons, even in the absence of international refugee status for climate refugees. India could introduce amendments to its Disaster Management Act or create a separate policy for climate migrants, covering temporary and long-term relocation, access to housing, healthcare, and job opportunities. Bangladesh could also strengthen its Climate Change Strategy and Action Plan to integrate long-term support for internally displaced persons and allocate resources for planned relocation where needed.

New Zealand's Pacific Access Category (PAC) visa could serve as a model for a broader humanitarian visa program. India and Bangladesh, in partnership with countries prepared to welcome climate migrants, can try to formulate similar humanitarian visas, particularly for continuously displaced groups facing existential dangers from increasing sea levels and erosion.

National governments should work with human rights organizations to ensure displaced individuals have access to basic services, legal protections, and avenues for compensation and resettlement.

Local governments in India and Bangladesh should collaborate with NGOs and international organizations to develop sustainable relocation programs for at-risk communities.

By implementing these recommendations, India, Bangladesh, and New Zealand can build more resilient, rights-based frameworks to protect climate-displaced individuals and set a precedent for global climate migration policy.

5. CONCLUSION

The climate refugee crisis presents a pressing challenge that requires urgent, coordinated action. This study has highlighted the varied responses of India, Bangladesh, and New Zealand, revealing both the strengths and limitations of each approach.

Strong internal displacement and cross-border migration challenges are visible in India and Bangladesh. Both countries lack considerably formal protections for climate-related factors so that those displaced by them continue to face a range of risks in the absence of adequate support structures. In New Zealand, humanitarian visa programs have been established to support climate refugees. However, the scale and limits of accessibility for the programs limit their impact. In conclusion, current national and international legal frameworks require attention and changes to safeguard the rights and needs of those displaced by climatic events. Implementing more effective measures will be crucial for protecting the welfare of these at-risk populations.

To truly address the issue, strong laws that acknowledge climate refugees are required, as well as teamwork between regions to handle migration challenges. It's also important for countries to join forces globally to provide financial and humanitarian aid to those in need. This approach will help ensure their safety, respect, and a chance for a better future. Ultimately, extending legal recognition to climate refugees is essential not only to address the complex legal challenges they face but also to uphold human dignity and ensure a just and equitable response to the global climate crisis.