

BANGLADESH NATIONAL LAW AND POLICY REPORT

CONSULTATION DRAFT 2020

Displacement in the Context of Disasters and Climate Change

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1 INTRODUCTION

As reflected in the *Sendai Framework for Disaster Risk Reduction* (SFDRR),¹ the *Paris Agreement*,² and recent statements and declarations at the Global Platform on Disaster Risk Reduction 2019 (GPDRR)³ and the Asia Ministerial Conference on Disaster Risk Reduction 2018 (AMCDRR),⁴ displacement in the context of disasters and climate change is increasingly being seen by actors concerned with disaster risk management at international, regional and national levels as a phenomenon requiring concerted attention. The series of country reports of which this document is a part address the policy objective of further integrating displacement considerations into wider disaster risk management and climate change adaptation measures at the (sub)national level.⁵ The reports present the results of a mapping exercise in which national law and policy was reviewed in order to identify existing references to different aspects of displacement, including prevention of and preparedness for displacement, protection during evacuation and throughout displacement, and facilitation of durable solutions. Setting out the extent to which (sub)national law and policy presently addresses these different aspects of displacement provides a helpful starting point for future engagement with relevant actors on ways of further integrating displacement considerations.

Only documents that are expressly related to disasters, climate change and displacement are considered in this report. Due to the cross-cutting, whole-of-society impact of many disasters, a wide range of other legal and policy frameworks may well have relevance for specific kinds of engagements relating to disaster displacement or disaster risk management and climate change adaptation more generally. However, in order to retain the clear focus on addressing the extent to which displacement is already integrated into national and law and policy, a restrictive approach was taken in the review.

1.1. A human rights-based approach

In line with Paragraph 19(c) of the SFDRR,⁶ Paragraph 28 of the *Co-Chairs' Summary* of the GPDRR, and Paragraph 11 of the *Ulaanbaatar Declaration* at the AMCDRR, the reports embrace a human rights-based approach to disaster displacement. In brief, this approach sees states as having the primary responsibility for protecting persons from harm associated with displacement in the context of disasters and climate change. It recognises the Guiding Principles on Internal Displacement 1998, as well as the wider body of international human rights law underpinning those Principles, as foundational. Having a legal and policy framework in place that incorporates core principles and defines roles and responsibilities

1 *Sendai Framework for Disaster Risk Reduction* (SFDRR), see for example paras. 28(d), 30(l), 33(h, j, m).

2 *Paris Agreement*, see Article 8, which references the Warsaw International Mechanism, under which a Taskforce on Displacement was created, <unfccc.int/wim-excom/sub-groups/TFD>, visited on 27 October 2020

3 *Global Platform on Disaster Risk Reduction 2019, Co-Chairs' Summary* (GPDRR), see paras. 6, 12 and 28, <www.preventionweb.net/files/58809_chairsummary.pdf>, visited on 27 October 2020

4 Para. 1 of the *Ulaanbaatar Declaration* at the 2018 Asian Ministerial Conference on Disaster Risk Reduction 2018 (AMCDRR) expresses "deep concern at the continuing impact of disasters in the region, resulting in recurrent loss of human lives and livelihoods, displacement of people, and environmental, economic, social and material damages", <www.preventionweb.net/files/56219_ulaanbaatardeclarationfinal.pdf>, visited on 27 October 2020

5 GPDRR, *supra* note 3, para. 28: "Governments and the international community must do more to reduce the risk of disaster displacement before disasters strike. Disaster risk reduction strategies and policies should address the drivers and consequences of disaster displacement and contribute to durable solutions."

6 SFDRR, *supra* note 1, para. 19(c) reads: "[m]anaging the risk of disasters is aimed at protecting persons and their property, health, livelihoods and productive assets, as well as cultural and environmental assets, while promoting and protecting all human rights, including the right to development".

of responsible actors also contributes to transparency and accountability. Further, a human rights-based approach recognises that disasters do not affect all persons in the same way, and highlights the differential exposure and vulnerability that manifests along intersecting gender, ethnicity, age, disability and other lines. The gendered nature of displacement is emphasised, as is the need to tackle structural barriers to equality in order to strengthen resilience to disaster risk. It follows that consultation, participation and equal access to information are cornerstones of the approach. The approach can be condensed into four elements, namely:

- governance: transparency and accountability
- procedural: participation, consultation and access to information
- substantive: express focus on fundamental rights
- non-discrimination and equality: focus on the particular situation of traditionally marginalised groups.

More details on the international standards and guidelines that reflect this approach are contained in the Background Brief on Key International Standards and Guidelines Relating to Displacement in the Context of Disasters and Climate Change, which accompanies this series of country policy reports.⁷

The report has four substantive sections. First, a snapshot of the numerical scale of disaster displacement in the country is presented, drawing on data from the Internal Displacement Monitoring Centre (IDMC) and the EM-DAT database. Next, in the interests of connecting the analysis to the relevant wider human rights law context, disaster-specific observations from human rights monitoring bodies and mandate holders under the UN system are highlighted. Then, the domestic law and policy framework is presented and analysed against a set of core principles concerning prevention of and preparedness for displacement, protection during evacuation and throughout displacement, and the facilitation of durable solutions. Finally, reflecting on this material, a concluding section summarises strengths and areas inviting closer engagement by relevant actors.



Flooding due to the cyclone season in 2009.

The intended audience of this report series includes domestic actors with responsibility for disaster risk reduction (DRR) and management (DRRM), climate change adaptation (CCA), and protection of persons in situations of climate- and disaster-related displacement at the national and sub-national level. It is hoped that these actors will find value in a consolidated overview of the domestic legal and policy framework from a human rights-based approach, read alongside the Background Brief on international standards and guidelines, not least in light of the imperative under the SFDRR to address disaster risk through “promoting and protecting all human rights”.

It is also hoped that civil society, UN, intergovernmental and academic actors at (sub) national, (sub)regional and international levels will find the series of country reports of interest and value. The compendium of which this report is a part provides a depth of insight into how different countries across the region are working to address the pressing challenge of displacement in the context of disasters and climate change. It is hoped that the compendium of reports will provide material that contributes to an enhanced appreciation of the relevance of human rights to addressing disaster displacement, the exchange of good practices, and the further integration of displacement into existing disaster risk reduction and climate change adaptation initiatives.

2 Displacement in Numbers

2.1. Number of disasters and people affected in the last ten years (2009–2018)

Hazard	Number	People affected ⁸
Drought	1	0
Earthquake	2	270
Epidemic	1	789
Cold wave	5	227,000
Flood	16	22,656,407
Landslide	4	136,420
Storm	22	13,097,796
TOTAL	51	36,118,682
Source: < public.emdat.be >.		

Clearly, flooding and storms are the hazards that affect the greatest number of people in Bangladesh. Displacement emerges clearly as one of the major impacts of storms, with 2009 reflecting this impact very clearly. Indeed, of the 6,834,000 persons displaced in the last ten years,⁹ 1,342,000¹⁰ were newly displaced in 2009, the year of Cyclone Aila. This figure represents one per cent of the total population of the country.¹¹

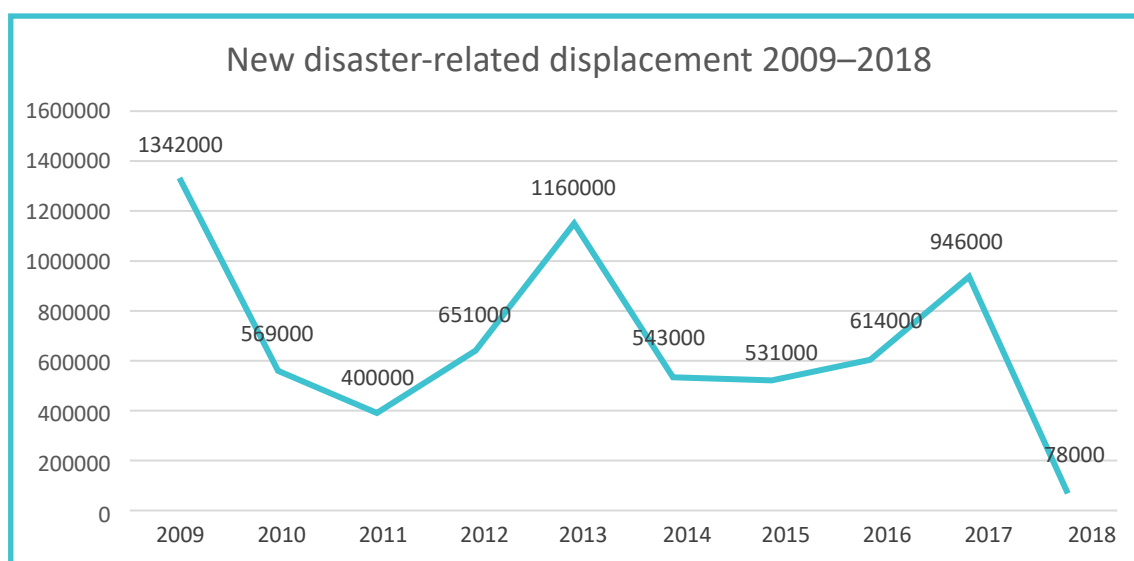
8 ‘Affected’ means “[p]eople requiring immediate assistance during a period of emergency, i.e. requiring basic survival needs such as food, water, shelter, sanitation and immediate medical assistance”, source: *ibid*.

9 Source: public.emdat.be, *supra* note 8.

10 Source: Internal Displacement Monitoring Centre (IDMC), <<https://www.internal-displacement.org/database>>, visited on 27 October 2020

11 Source: <data.worldbank.org/indicator/sp.pop.totl>, visited on 27 October 2020

The annual number of new displacements over the last ten years is reflected below.



Source: <<https://www.internal-displacement.org/database>>.

The Government of Bangladesh conducted extensive research on internal displacement due to the impacts of disasters and climate change in 2014, which provides a detailed baseline for considering the phenomenon in the country.¹²

With substantial displacements triggered by a variety of hazards, how Bangladesh approaches the protection of persons from displacement, during evacuation, and throughout displacement and the facilitation of durable solutions has implications for the enjoyment of a range of human rights, including the right to life, shelter, property, food, health, physical security, livelihoods and many more. Section 3 considers what human rights treaty monitoring bodies and mandate holders have recommended in terms of Bangladesh's approach to disaster risk reduction and climate change adaptation generally. Section 4 then considers in closer detail the legal and policy framework currently in force in the country, with a focus on measures that address all phases of the displacement cycle.

3 Recommendations from Human Rights Monitoring Bodies

A human rights and gender-equal approach to law, policy and practice on displacement in the context of disasters and climate change may benefit from a grounding in existing recommendations from human rights monitoring bodies. Based on a review of 'Concluding Observations' from the most recent periodic review before treaty monitoring bodies and other mechanisms within the UN system, a series of country-specific recommendations relating to climate change adaptation and disaster risk reduction and management has been consolidated.

¹² Government of Bangladesh, *Trends and Impact Analysis of Internal Displacement due to the Impacts of Disasters and Climate Change* (2014), <reliefweb.int/report/bangladesh/trend-and-impact-analysis-internal-displacement-due-impacts-disaster-and-climate>, visited on 27 October 2020

Bangladesh is party¹³ to the following international human rights treaties of relevance to displacement in the context of disasters and climate change:

- Convention on the Elimination of Racial Discrimination 1965 (CERD)
- International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR)
- International Covenant on Civil and Political Rights 1966 (ICCPR)
- Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW)
- Convention on the Rights of the Child 1989 (CRC)
- Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990 (CMW)
- Convention on the Rights of Persons with Disabilities 2006 (CRPD).

The CERD,¹⁴ HRC¹⁵ and CRC¹⁶ committees do not address disasters or climate change, or displacement in those contexts, in their Concluding Observations. The CESCR and CEDAW Committees consider disasters and climate change somewhat briefly. The Government of Bangladesh, in its report to the CRPD Committee, makes express reference to displacement in the context of disasters and climate change. These reports are addressed in turn below.

The CESCR Committee, in its Concluding Observations,¹⁷

“welcomes the establishment of the Bangladesh Climate Change Trust and the Bangladesh Climate Change Resilience Fund and the adoption of the Bangladesh Climate Change Strategy and Action Plan of 2009. The Committee is concerned about the adverse effects that climate change has on the enjoyment of economic, social and cultural rights by people in Bangladesh, despite the negligible contribution of the State party to the phenomenon”.¹⁸

The Committee

“recommends that the State party ensure that strategies and action plans on climate change and disaster response and risk reduction are formulated and implemented on the basis of human rights and with the meaningful participation of affected communities and civil society. It also recommends that the State party further strengthen international cooperation in order to mobilize the financial and technological support to which it is entitled in mitigating and responding to the effects of climate change”.¹⁹

The Concluding Observations do not address displacement in the context of disasters and climate change.

13 Source: <indicators.ohchr.org/>, visited on 27 September 2020

14 CERD, Concluding Observations, CERD/C/304/Add.118 (27 April 2001), <tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2f304%2fAdd.118&Lang=en>, visited on 27 October 2002

15 CCPR, Concluding Observations, CCPR/C/BGD/CO/1 (2017), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/BGD/CO/1&Lang=en, visited on 27 October 2020.

16 CRC, Concluding Observations, CRC/C/BGD/CO/5 (30 October 2015), <tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fBGD%2fCO%2f5&Lang=en>, visited on 27 October 2020

17 CESCR, Concluding Observations, E/C.12/BGD/CO/1 (18 April 2018), <tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fBGD%2fCO%2f1&Lang=en>, visited on 27 October 2020

18 *Ibid.*, para. 13.

19 *Ibid.*, para. 14.

The CEDAW Committee, in its Concluding Observations,²⁰ expresses:

“concern about the impact of climate change on women and girls in parts of the country affected by disasters, the lack of a gender-sensitive approach in disaster risk reduction and post-disaster management and the limited participation of women in policymaking processes to mitigate disaster and climate change”.²¹

The Committee

“recommends that the State party take measures to empower rural women by improving their participation in decision-making processes and enabling access to education, health, social services, land ownership and/or inheritance, as well as measures to provide access to safe drinking water for rural women and girls. Furthermore, the Committee recommends that the State party always ensure the equal participation of women and girls in policymaking processes to mitigate disaster and climate change”.²²

No reference is made to displacement in the context of disasters and climate change.

The CRPD Committee had not issued Concluding Observations to the periodic review process that commenced for Bangladesh around 2017. However, Bangladesh submitted its State Party report in April 2017.²³ The report makes multiple references to the challenges presented to Bangladesh by disasters, but also highlights proactive steps the country is taking, including by coordinating the International Conference on Disability and Disaster Risk Management in Dhaka from 12 to 14 December 2015, leading to the adoption of the ‘Dhaka Declaration’.²⁴

Displacement in the context of disasters and climate change is clearly in focus for the Government of Bangladesh, which highlights at Paragraph 57 of its report that:

“Bangladesh is considered to be one of the worst affected countries due to global warming and climate change. The impact is also seen in the form of displacement of persons, a large section of whom are persons with disabilities”.

Clearly, a human rights-based approach to displacement in the context of disasters and climate change in Bangladesh should take into account relevant recommendations from treaty monitoring bodies. These recommendations are summarised as:

- how climate change impacts on the enjoyment of economic, social and cultural rights
- the importance of adopting a human rights-based and gender equality approach to disaster risk reduction and climate change adaptation generally
- the importance of meaningful participation with affected people and civil society, including the importance of meaningful participation of women in decision making
- the importance of engaging with the international community for technical and financial assistance.

20 CEDAW, Concluding Observations, CEDAW/C/BGD/CO/8 (25 November 2016), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/BGD/CO/8&Lang=En, visited on 27 October 2020

21 *Ibid.*, para. 38.

22 *Ibid.*, para. 39.

23 CRPD, State Party report, CRPD/C/BGD/1 (April 2017), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fBGD%2f1&Lang=en, visited on 27 October 2020

24 UN Office for Disaster Risk Reduction (UNDRR), ‘Dhaka Declaration’ (2015), <www.preventionweb.net/english/professional/policies/v.php?id=47093>. See also the subsequent ‘Dhaka Declaration’ of 2018 here: <dkconf18.modmr.gov.bd/wp-content/uploads/2018/05/Dhaka-Declaration-2018.pdf>, visited on 27 October 2020

Although not expressly related, these recommendations also apply in the context of disaster displacement. Some of these recommendations appear to find expression in the domestic legal and policy documents addressed below.

4 Legal and Policy Framework

The responsibility of the government towards citizens is secured in the constitution of Bangladesh. Ensuring fundamental human rights and freedom, equality, and political, economic and social justice for all citizens are expressly acknowledged responsibilities of the government of Bangladesh.²⁵ Protection and improvement of environment and biodiversity is mentioned as one of the fundamental principles of state policy.²⁶ Moreover, provisions for ensuring basic necessities such as food, clothing, shelter, education and medical care, are mentioned as fundamental principles.²⁷ Rural development and agricultural revolution,²⁸ public health and morality²⁹, equality of opportunity including participation of women in all spheres of national life,³⁰ and the right to work³¹ are also identified as fundamental principles of state policy of the Government of Bangladesh. Equality of opportunity in public employment,³² right to protection of law³³ and rights to property³⁴ are also part of fundamental rights as per provisions of the constitution of Bangladesh. All those rights are directly or indirectly affected in the context of disasters, including in situations of disaster displacement.

The right to be free from discrimination on grounds of disability is protected as a fundamental right under the constitution of Bangladesh.³⁵

The following legal and policy documents were considered in the review:

- *Bangladesh Climate Change Strategy and Action Plan 2009* (BCCSAP)
- *National Adaptation Programme of Action 2009* (NAPA)
- *Bangladesh Standing Orders on Disaster 2010* (SOD)
- *Cyclone Shelter Construction, Maintenance and Management Policy 2011* (CSCMMP)
- *The Disaster Management Act 2012* (DMA)
- *National Plan on Disaster Management 2016–2020* (NPDM)
- *National Strategy on the Management of Disaster and Climate Induced Internal Displacement 2019* (NSMDCIID)

25 *The Constitution of the People's Republic of Bangladesh* (The Constitution), Preamble.

26 *Ibid.*, Art. 18A: "The State shall endeavour to protect and improve the environment and to preserve and safeguard the natural resources, bio-diversity, wetlands, forests and wild life for the present and future citizens."

27 The Constitution, *supra* note 23, Art. 15.

28 *Ibid.*, Art. 16.

29 *Ibid.*, Art. 18.

30 *Ibid.*, Art. 19.

31 *Ibid.*, Art. 20.

32 *Ibid.*, Art. 29.

33 *Ibid.*, Art. 31.

34 *Ibid.*, Art. 44.

35 *Ibid.*, Art. 28.

These documents were systematically reviewed using RWI's human rights-based legal and policy analysis tool. The detailed results of this review are found at Annex 1 of this report, which is available at rwi.lu.se/disaster-displacement/. Key insights relating to each of the four elements of the human rights-based approach adopted for this study are set out briefly below.



Bangladeshi citizens receive aid provided by boat in hard to reach areas of southern Bangladesh. Photo by U.S. Marine Corps photo by Sgt. Ezekiel R. Kitandwe

The two core aspects of the *governance* element are strongly reflected in the national legal and policy framework of Bangladesh. The NSMDCIID provides a robust, expressly rights-based approach to addressing displacement in the context of disasters and climate change. It provides guidance relating to prevention of and preparedness for displacement, protection during evacuation and throughout displacement, and facilitation of durable solutions. The existence of such a document, which sets out to coordinate the mainstreaming of displacement across sectors, makes Bangladesh stand out as having one of the most coherent, rights-based approaches to the phenomenon of all ten countries considered in this review. Other documents, including in particular the Standing Orders on Disaster, further establish Bangladesh as having a clear and practical commitment to addressing displacement risk.



Due to damage of bridges and fallen trees, large traffic jams have occurred post cyclone. Photo cc by BBC World Service Bangladesh Boat

Few provisions relating to accountability were identified, which means that people adversely affected by matters falling within the responsibility of the state may not have access to an appropriate remedy, and failures in one place or event may not inform preparedness in the face of future climate- and disaster-related challenges.

Some enhancements to the existing framework might include:

- further incorporation of displacement into more binding legal instruments, considering the Disaster Management Act is the only legally binding instrument addressing elements of disaster displacement in Bangladesh
- further incorporation of displacement into climate change adaptation law and policy in particular, given the very limited treatment of the phenomenon in existing law and policy
- taking steps to implement the NSMDCIID³⁶
- recognising informal settlements in order to enhance prevention of displacement in these particularly exposed and vulnerable areas.

Procedural aspects of the legal and policy framework in Bangladesh reflect a clear commitment to participation and access to information, although the most relevant provisions are concentrated in the NSMDCIID. There is a potential tension in the legal and policy framework between the express provision for forced evacuation and relocation reflected in the Disaster Management Act on the one hand, and the NSMDCIID on the other. More express endorsement of the principle of free, prior and informed consent in the legal and policy framework could help to reduce this potential source of tension.

³⁶ An updating and consultative review process commenced in 2019.



Flooding in Galachipa, an area in the far south of Bangladesh. Photo cc by BBC World Service Bangladesh Boat

The legal and policy framework relating to disaster risk reduction and climate change adaptation in Bangladesh addresses *substantive rights* in relation to prevention of and preparedness for displacement, protection during evacuation and throughout displacement, and facilitation of durable solutions. However, apart from the NSMCDIID, the treatment of displacement is somewhat *ad hoc*, and does not consistently reflect a human rights-based approach.

The legal and policy framework is strongest in the context of infrastructure and systems relating to evacuation and protection of people during displacement, particularly those staying in evacuation centres and temporary shelters. However, whereas some documents identify a range of human rights considerations that arise in this context, other documents address 'basic needs', and thus lose sight of the other core principles that underpin a human rights-based approach, and in particular principles of accountability and transparency, as well as access to justice, including through the courts.

Durable solutions to displacement are clearly on the agenda for Bangladesh, with multiple references to return, resettlement, and relocation. Some references were framed in the context of a human rights-based approach.



Construction of a cyclone shelter in Patuakhali, Bangladesh in 2013. Photo cc by Helena Wrigh

The *non-discrimination and equality* element is reflected throughout the legal and policy framework in Bangladesh, including in the context of displacement.

Specific provisions for understanding *displacement* risk make the legal and policy framework of Bangladesh stand out in comparison with many other countries considered in this review. The clear focus is predominantly the result of the NSMDCIID, with its expressly rights-based approach to addressing displacement in the context of disasters and climate change, but also comes through in the SOD, with its detailed and consistent focus on vulnerability mapping.



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