

Bangladesh Housing, Land and Property (HLP) Rights Initiative

Five Key Actions for Ensuring Rights of Climate Displaced People

- A climate displacement monitoring mechanism should be implemented across Bangladesh
- The rights of climate displaced persons should be incorporated into existing climate change law and policy
- The distribution of Government Khas land should be effective, transparent and just and take into account the needs of climate displaced persons
- Non-agricultural Khas land should be allocated for climate displaced persons
- Effective return, relocation and rehabilitation programmes should be implemented for all climate displaced persons.

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Background

Bangladesh is one of the most climate vulnerable countries on Earth and is set to become even more so as a result of climate change. Bangladesh suffers from regular natural hazards, including floods, tropical cyclones, storm surges and droughts. In an average year, one quarter of the country is inundated with floodwater and once every four to five years there is a severe flood that can inundate up to 60 percent of the country. Every three years, on average, Bangladesh is hit by a severe tropical cyclone, accompanied by winds of up to 100 miles per hour and storm surges up to several metres high. These and other natural hazards are already leading to the loss of life, the loss and destruction of housing, land and property, the loss of livelihoods and widespread displacement across the country.

The effects of climate change are expected to intensify many of these existing hazards, as well as create new hazards and new drivers of displacement. In Bangladesh, climate change is expected to lead to:

- ✍ Increasingly frequent and severe tropical cyclones, bringing higher wind speeds and higher storm surges;
- ✍ Heavier and more erratic monsoon rainfall, leading to widespread flooding and river-bank erosion, resulting in the loss and destruction of housing, land, property and agricultural land;
- ✍ The melting of the Himalayan glaciers, leading to higher river flows in the warmer months of the year;
- ✍ Lower and more erratic rainfall in the north and west regions of the country, leading to increasing droughts; and
- ✍ Rising sea levels, leading to the submergence of low-lying coastal areas and saline water intrusion up coastal rivers and into groundwater aquifers, reducing freshwater availability.

These hazards are expected to disproportionately affect the poorest and most vulnerable in Bangladesh, a country where already more than 50 million people live in poverty.

The Government of Bangladesh is well aware of this looming crisis, claiming

that 20 million people could be displaced in Bangladesh by sea level rise alone over the next 40 years.

However, through a combination of lack of political will as well as a lack of financial and technical resources, there are currently no comprehensive mechanisms to provide support to people who have lost their homes, land and property as a result of climate change to rebuild their lives. All persons displaced by climate change in Bangladesh are rights-holders and are entitled to respect and protection of the full range of their human rights under national and international law.

This advocacy document identifies 5 key actions that could be undertaken by the Government of Bangladesh and could provide durable solutions to climate displacement. All of these actions are based on human rights standards. All of these actions can, and should, be supported by the regional and international communities, as well as local and international civil society and NGOs working in Bangladesh.

The Domestic and International Legal Responsibilities of the Government of Bangladesh

The Government of Bangladesh has clear responsibilities under domestic and international law to provide rights-based - and particularly housing, land and property rights - solutions to climate displaced persons.

The Constitution of the People's Republic of Bangladesh (1972) states:

Article 27 "All citizens are equal before law and are entitled to equal protection of law".

Article 15 "It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens (a) the provision of the basic necessities of life, including food, clothing, shelter, education and medical care; (b) the right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work;

Article 19(2) "The State shall adopt effective measures to remove social and economic inequality...and to ensure the equitable distribution of wealth among citizens, and of opportunities in order to attain a uniform level of economic development throughout the Republic".

Article 25 "The State shall base its international relations on the principles of respect for national sovereignty and equality...and respect for international law and the principles enunciated in the United Nations Charter.

Bangladesh has signed and is bound to respect many key international human rights treaties that provide important human rights protections to climate displaced persons, including:

- ◆ The International Covenant on Economic, Social and Cultural Rights (Bangladesh acceded on 5 October 1998);
- ◆ The International Covenant on Civil and Political Rights (Bangladesh acceded on 6 September 2000);
- ◆ The Convention on Elimination of All Forms of Discrimination against Women (Bangladesh acceded on 6 November 1984); and
- ◆ The Convention on Rights of the Child (Bangladesh ratified on 3 August 1990).

Further, although non-binding, Bangladesh is bound to respect the UN Guiding Principles on Internal Displacement as they reflect and are consistent with international human rights and humanitarian law.

The UN Guiding Principles on Internal Displacement define an "internally displaced person" as "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of...natural or human-made disasters, and who have not crossed an internationally recognized state border."

Thus, the majority of persons displaced by the effects of climate change will be internally displaced persons for the purposes of the Guiding Principles.

Of particular relevance to climate displaced persons, the Guiding Principles provide:

- ✍ Internally displaced persons shall enjoy, in full equality, the same

rights and freedoms under international and domestic law as do other persons in their country."

- ✍ They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced
- ✍ National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.
- ✍ Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.
- ✍ These Principles shall be applied without discrimination of any kind, such as race, color, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.
- ✍ Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.
- ✍ All internally displaced persons have the right to an adequate standard of living.
- ✍ At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
 - (a) Essential food and potable water;
 - (b) Basic shelter and housing;
 - (c) Appropriate clothing; and
 - (d) Essential medical services and sanitation.

Action Point- ONE

An effective climate displacement monitoring mechanism should be implemented across Bangladesh

The Bangladesh Climate Change Strategy and Action Plan (2009) recommends that the Government of Bangladesh:

"develop[s] a monitoring mechanism of migration of climate-change - affected people and monitoring of internal as well as external migration". However, despite this recommendation, there still exists no mechanism for monitoring or recording climate displacement across Bangladesh.

The Government of Bangladesh should develop and implement a nationwide climate displacement monitoring mechanism to monitor and record all displacement as a result of the effects of climate change. This mechanism could include the ability to register all climate displaced persons, as well as document any support or assistance they are receiving from the Government or other stakeholders.

This comprehensive information can then be utilized nationally, to plan for and implement effective and durable rights-based solutions for all climate displaced persons in Bangladesh. Accurate information on the true scale of climate displacement in Bangladesh is an essential step towards providing effective, rights-based, responses to climate displaced persons.

This information could also be shared with other countries, similarly affected by climate displacement, in order to develop global best practice on monitoring and recording climate displacement.

The design of this climate displacement monitoring mechanism can draw on international practice, including the recent joint Government of Samoa and UNDP project entitled 'Human Rights Monitoring of Persons internally displaced by the 2009 Tsunami in Samoa'. The purpose of that study was to monitor and advise on responses to human rights challenges, as well as to bring attention to Internally Displaced Persons (IDPs) as a category of disaster affected persons with a right to protection, appropriate assistance, and active involvement in finding solutions to displacement through return, local integration or relocation.

Action Point-TWO

The rights of climate displaced persons should be incorporated into existing climate change law and policy

The Government of Bangladesh has developed a large number of laws and policies relating to climate change vulnerability and adaptation, including:

- ❑ The National Environment Policy (1992);
- ❑ The Coastal Zone Policy (2005);
- ❑ The National Adaptation Programme of Action (2005);
- ❑ The Bangladesh Climate Change Strategy and Action Plan (2009);
- ❑ The National Plan for Disaster Management (2010-2015);
- ❑ The National Land Use Policy (2001); and
- ❑ The Disaster Management Act (2012).

However, none of these laws or policies clearly addresses the challenge of climate displacement.

It is clear from recent experience that there are considerable gaps and weaknesses in the existing institutional arrangements and existing policies for ensuring the rights of climate displaced persons - including their housing, land and property rights.

An essential step in creating effective responses to climate displacement will be the design and implementation of rights-based laws and policies. Many laws and policies on climate change already exist and it is essential that the rights of climate displaced persons are incorporated into these existing laws and policies.

The UN Guiding Principles on Internal Displacement explain the responsibilities of the Government both prior to displacement, during displacement and after displacement. It is essential that all of these responsibilities are incorporated into existing laws and policies. It is equally essential that these laws and policies are drafted in a manner which emphasise respect for the human rights of all climate displaced persons.

It will only be through a concerted effort by the Government as well as from civil society, with the support of the regional and international communities, that effective and durable solutions can be found for the many current and future climate displaced persons in Bangladesh.

Action Point -Three

The distribution of Government Khas land should be effective, transparent and just and take into account the needs of climate displaced persons

Since independence the Government of Bangladesh has enacted a number of laws and policies regarding the distribution of Government Khas land. Currently, Article 53 of the Land Management Manual (1991) provides that any landless family is eligible for Khas land distribution. Khas land is officially State-owned land and is often located in marginal areas along the coast and rivers.

The majority of these laws and policies have targeted "landless" persons and families for the grant of Khas land. However, these programmes have met with mixed success due to vested interests illegally occupying Khas land, a lack of political will, the inefficiencies in the way local and national administration is organized and the absence of an updated, systematic and universally accepted source of information on land resource availability and land rights.

There is, however, a large amount of agricultural and non-agricultural Khas land under the control of the Government and it is clear that this land could play an important part in creating durable solutions for climate displaced persons. Currently, the State is estimated to control 3.5 million acres of Khas land - of which 25% is agricultural, 50% is non-agricultural and 25% is covered by water bodies.

It is essential that the Government take steps to implement an effective, transparent and just programme for the distribution of Khas land to landless persons - including climate displaced persons. These programmes should be rights-based, they should involve the participation of affected communities in their design and the ability to review adverse decisions should be clear and accessible. It is important that decisions about the distribution of Khas land are made on the basis of genuine need, rather than political or personal considerations. Civil Society representatives should also be part of the decision-making panels for Khas land distribution. Furthermore, training should be provided to decision makers on climate displacement in Bangladesh and the need to ensure rights-based durable solutions for climate displaced persons.

Article 54 and 56 of the Land Management Manual (1991) provides that persons who are landless as a result of river erosion should be given first priority for the allocation of Khas land. It is important that this Manual is updated to reflect the current reality that the vast majority of people are and will become landless as a result of a range of adverse effects of climate change, rather than simply prioritizing those people affected by river erosion. The law should treat all people affected by the adverse consequences of climate change and natural disasters equally - including victims of tropical cyclones, storm surges, flooding, droughts and landslides.

Action Point- Four

Non-agricultural Khas land should be allocated for climate displaced persons

At present it is only possible for the Government to grant legal title to agricultural land for landless persons (including climate displaced persons). The Government is restricted - under Articles 102 and 103 of the Land Management Manual 1991 - to granting simple leases over non-agricultural land to landless persons.

It is clear that domestic land solutions will play an important role in promoting durable solutions for the current and future millions of climate displaced persons in Bangladesh. However, it is equally clear that there is a severe shortage of land in Bangladesh, coupled with dramatic overcrowding in the major cities and slums. For this reason, it is essential that the Government of Bangladesh is able to utilize all land - both agricultural and non-agricultural - in providing solutions to climate displaced persons.

Further, the effects of climate change - including flooding, storm surges, droughts and river erosion - are decreasing the amount of available agricultural land, further emphasizing the need for a policy and legislative change to allow the grant of non-agricultural land to climate displaced persons.

It is currently estimated that the State has 1.75 million acres of non-agricultural khas Land (50 percent of the total 3.5 million of acres of Khas Land). With a change of existing law and policy, the vast majority of this land could be made available to climate displaced persons - with enhanced tenure security - representing an important step towards truly durable solutions to this crisis.

Action Point- Five

Effective return, relocation and rehabilitation programmes should be implemented for all climate displaced persons.

In line with the Government of Bangladesh's responsibilities under domestic and international law, effective return, relocation and rehabilitation programmes should be promptly implemented for all climate displaced persons in Bangladesh.

The UN Guiding Principles on Internal Displacement state, in accordance with international human rights and humanitarian law, that the competent authorities (in this case the Government of Bangladesh) have the primary duty and responsibility to facilitate the conditions as well as provide the means for internally displaced persons (including climate displaced persons) to return to their homes or places of habitual residence, or to facilitate and provide the means for their relocation to other parts of the country.

The Guiding Principles also emphasise that special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return, or relocation.

Currently, there are no comprehensive programmes in Bangladesh to ensure the effective return of climate displaced persons to their homes or places of habitual residence, nor to facilitate their relocation to other parts of Bangladesh. There are also no comprehensive programmes to ensure the effective rehabilitation of climate displaced persons upon return or relocation. Experience has shown that there are many critical livelihood and other challenges to the effective rehabilitation of many climate displaced persons in Bangladesh.

It is essential that such return, relocation and rehabilitation programmes are designed in a rights-based manner and implemented immediately. The Guiding Principles also note the importance of cooperation by international humanitarian organisations and other actors in assisting with the return or relocation and rehabilitation of climate displaced persons.

