



INTERNATIONAL JOURNAL OF HUMAN RIGHTS LAW REVIEW

An International Open Access Double Blind Peer Reviewed, Referred Journal

Volume 4 | Issue 3 | 2025

Art. 13

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Recommended Citation

Afnan Chowdhury, *Legal Safeguards for Climate Migrants in South Asia: A Comparative Study*, 4 IJHRLR 160-182 (2025).
Available at www.humanrightlawreview.in/archives/.

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Legal Safeguards for Climate Migrants in South Asia: A Comparative Study

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Manuscript Received

02 May 2025

Manuscript Accepted

05 May 2025

Manuscript Published

10 May. 2025

ABSTRACT

The rise of "climate refugees" due to climate change represents a new crisis, representing the most heinous state of affairs for refugees in the modern world. Sociopolitical, economic, and environmental circumstances force people to migrate from their home countries; they do not do it randomly or on a whim. Nearly 70 years ago, the Nazis harassed and denied shelter to European Jews. In a similar vein, the tragedies and disasters accompanying climate change and "climate refugees" are receiving unprecedented attention, making headlines every day. States in South Asia, for example, lack the funds necessary to provide refugees and climate refugees with adequate legal protection. But with its 1967 Additional Protocol and its lodger, the UN High Commissioner on Refugees (UNHCR), the 1951 UN Convention relating to the Status of Refugees (UNC SR) formalized international protection for political refugees. Afghanistan is the only nation in South Asia to have ratified the UNCSR, and there are no legal safeguards or national refugee laws. The SAARC region has been plagued by insecurity and censure for refugees, also known as "climate refugees." The methods used by South Asian governments to address climate refugees are examined in this chapter. Unfortunately, because of the legal loopholes in South Asian national legislation, climate refugees are totally without any legal protection. The chapter also assesses South Asia's glaringly ineffectual response to international climate change law and its climate change migration governance, which erroneously centers on national security narratives.

KEYWORDS

Climate Change, Refugees, Environmental Laws, UN Conventions.

INTRODUCTION

The world's next hot spot for climate refugees is rapidly becoming South Asia. There are countless examples of migration and displacement brought on by climate change in South Asia. Following the submersion of Bhola Island in 2009, half a million people in Bangladesh were forced to relocate. A large number of the displaced people have crossed India's porous border with Bangladesh. There is no legal protection for those migrants and refugees, and they live in continual fear of being deported to their non-existent homeland. According to studies, there are important migration routes in South Asia between Bangladesh and India, Afghanistan and Pakistan, India and Pakistan, and Nepal and India. Experts forecast a future with rising internal and external migration and displacement, both temporary and permanent, which may be due to forced relocation, adaptation, or deliberate relocation. Experts forecast a future with rising internal and external migration and displacement, both temporary and permanent, which may be due to forced relocation, adaptation, or deliberate relocation. South Asia, which consists of eight urban jurisdictions, is the fastest-growing region in the world and has seen notable transformations in infrastructure, education, and health. However, reports and research highlight the grave threat of climate change-related migration and human displacement, which calls for institutional and regional responses.¹ Numerous reasons, including conflicts, wars, violence, persecution, socioeconomic origin, political inclinations, religion, caste, communalism, sub-regionalism, and geophysical phenomena, have historically caused South Asia as a region to both produce and receive refugees. For the past several years, there has been discussion in academia on the potential link between migration and climate change in South Asia. The way that South Asian nations respond to the advent of this new group of individuals known as "climate refugees" as a result of this catastrophe varies, though. The identification and correlation of climate change as a cause of migration and internal displacement drivers in South Asia is necessary in this situation. It raises several important questions as a result. What laws do the South Asian states have in place to safeguard CDPs? In what ways should South Asian nations aid those who require asylum? The current domestic laws and policies pertaining to displacement brought on by climate change in South Asia are examined in this chapter. It highlights the variety of legal and policy alternatives available to address the various issues raised by displacement brought on by climate

¹ Koko Warner, 'Climate Change Induced Displacement: Adaptation Policy in the Context of the UNFCCC Climate Negotiations', Legal And Protection Policy Research Series, Division of International Protection UNHCR, (2011) 1-22 <http://www.unhcr.org/4df9cc309.pdf> accessed 22 March, 2018.

change and the resulting climate refugees. The laws about climate change displacement and migration, including national refugee laws, human rights laws, disaster management laws, and other environmental laws, will receive special attention.

RECEPTION OF INTERNATIONAL REFUGEE LAW IN SOUTH ASIA

Since its obvious infancy, the international community has been hesitant to address the refugee crisis, and it has become agitated with the problem. One of the most generally recognized international standards today is the 1951 United Nations Convention on the Status of Refugees (UNCSR), which is still the only legally enforceable international agreement that offers refugees particular protection.² The recognition and fulfillment of the human right to asylum under international law is, on the one hand, a progressive achievement.³ However, the non-Western nation-states that currently handle the majority of the world's refugee flows and were left out of the initial institutionalization of international refugee regimes find it ineffective.⁴

A sizable portion of the world's refugee population currently resides in South Asia.⁵ Due to sociopolitical instability and religious or ethnic persecution, South Asia has historically seen a significant amount of intraregional migration and displacement of regional populations.⁶ South Asian countries can be both refugee-generating and refugee-hosting, according to actual experience. In contrast to Afghanistan, Bhutan, and Sri Lanka, Bangladesh, India, Pakistan, and Nepal are countries that take in refugees.⁷

² Saadia M. Pekkanen, John Ravenhill, and Rosemary Foot, *The Oxford Handbook of the International Relations of Asia* (Oxford University Press, 2014) 6

³ U N General Assembly, Convention on the Status Relating to the Refugees, 28 July 1951, United Nations Treaty Series, Vol 189, 137, See also Roman Boed, 'The State of the Right of Asylum in International Law', (1994) 5(1) *Duke J. Comp & Intl. L.*, 1-33, 8-9

⁴ Andrzej Bolesta (ed), *Forced Migration and the Contemporary World: Challenges to the International System*, (Libra, 2003) See generally Daniel Kanstroom, 'The "Right to Remain Here" as an Evolving Component of Global Refugee Protection: Current Initiatives and Critical Questions', (2017) 5(3) *JMHS* 614-644 (The discussion of the article pertains to non-refoulement and resettlement.

⁵ United Nations Human Rights Commission, (2017) 'Report on Global Trends: Forced Displacement in 2016' 14 <http://www.unhcr.org/5943e8a34.pdf>. Accessed on 25th March 2018, Aung Phyro and Tapan Kumar Bose, *Refugees in South Asia: An overview in The Fleeing People of South Asia: Selections from Refugee Watch* (Anthem Press, 2009) 143-149.

⁶ Sugata Bose and Ayesha Jalal, *Modern South Asia: History, Culture, Political Economy*, (Routledge, 1998) 165-167.

⁷ Partha S. Ghosh, *Migrants, Refugees and the Stateless in South Asia* (Sage India, 2016) 21-22.

However, South Asian nations have not made efforts to create a regional legal framework for refugee protection, even though they have witnessed major refugee movements and population transfers, notably during the partition of India and Pakistan in 1947 and the establishment of the new nation of Bangladesh in 1971, which also resulted in a significant refugee outflow to India.⁸ These waves of refugees should have warranted the establishment of a regional protection regime in South Asia. Regrettably, the governments of the South Asian Association of Regional Cooperation (SAARC) have failed to address the challenges faced by political refugees, and a new category of refugees, called climate refugees, as well as climate-displaced persons (CDPs) and climate internally displaced persons (IDPs), has emerged in the region. Sadly, the United Nations Convention on the Status of Refugees (UNCSR) does not address climate refugees at all. Despite the rapid increase in displacement due to climate change, the issues surrounding climate migration and displacement have garnered little diplomatic attention on the international stage to find solutions.⁹ The displacement caused by climate change presents challenges both regionally and globally.¹⁰

Climate change migration has often been viewed as a viable adaptation strategy; however, it should never be regarded as a permanent or exclusive solution. Hence, consultations regarding climate change migration need to include a practical mechanism for the execution of adaptation and mitigation strategies¹¹ and adjust the dialogue surrounding climate change in the SAARC region to focus on the protection of climate refugees or climate IDPs.¹²

European nation-states established numerous arrangements¹³ and ultimately developed a legally binding refugee protection framework to address intra-European refugee migration¹⁴ and displacement following World War II, culminating in the adoption

⁸ Fernández, María, 'Refugees, Climate Change and International Law'. (2015) 49 FMR 42–43.

⁹ Paul Martin and others, *The Search for Environmental Justice*, (Edward Elgar Publishing, 2015) 11–12.

¹⁰ Vikram Kolmannskog, 'Climate Change, Environmental Displacement and International Law' (2012) 24 J. Int. Dev. 1071–81, 1072.

¹¹ Muhammad Abid, Janpeter Schilling, Jurgan Scheffran and Farhad Zulfiqar, 'Climate Change Vulnerability, Adaptation and Risk Perceptions at Farm Level in Punjab, Pakistan' (2016) 547 Sci Total Environ 447–60.

¹² Uma Kothari, 'Political Discourses of Climate Change and Migration: Resettlement Policies in the Maldives' (2014) 180(2) Geogr. J. 130–140

¹³ Erika Feller, 'The Evolution of the International Refugee Protection Regime' (2001) 5 Journal of Law & Policy 130–132.

¹⁴ Laura Barnett, 'Global Governance and the Evolution of the International Refugee Regime' (2002) 14(2) IJRL 238–262.

of the 1951 UNCSR. The UNCSR has its roots in European history¹⁵ and is morally grounded in the Global North, while the notion of human rights is internationally recognized, universally philosophical, and historically Western;¹⁶ however, this Western-centric interpretation of human rights does not align with the traditionally 'Global South' perspective and ethically duty-bound jurisprudence found in South Asia.¹⁷ The narrative of the UNCSR reflects the experiences of human migration and displacement across Europe that occurred after World War II.¹⁸ Consequently, the South Asian nations did not take part in the UNCSR's drafting process, as it was specifically designed to address only intra-European refugee migration and displacement.

All of the original SAARC member states (with the exception of recently joined Afghanistan)¹⁹ have not ratified the UNCSR or its 1967 Additional Protocol. Most South Asian nations have not offered formal explanations for their decision in opposition to the UNCSR²⁰. There are many reasons attributable by India for not signing or ratifying the UNCSR as under:

- The definition of 'refugee' as presented by the UNCSR is seen as narrow, limited, and conservative, with claims that it is Eurocentric²¹, failing to encompass the realities of refugee migration in South Asia;
- During the 54th session of the EXCOM Meeting²² of the UNHCR in 2003, India argued that the UNCSR definition

¹⁵ Lucy Mayblin, 'Historically European, Morally Universal? The 1951 Geneva Convention on the Status of Refugees' (e-International Relations Students, 28 March 2010) <http://www.e-ir.info/2010/03/28/historically-european-morally-universal-the-1951-geneva-convention-on-the-status-of-refugees/> accessed 28 April 2018.

¹⁶ Michael Freeman, 'Human Rights: Asia and the West', in James Tuck-Hong Tang (ed.) *Human Rights and International Relations in Asia-Pacific* (1995) 13, 17.

¹⁷ Emma Haddad, 'Refugee Protection: A Clash of Values' (2003) 7(3) *IJHR* 1–26

¹⁸ Eduardo Arboleda and Ian Hoy, 'The Convention Refugee Definition in the West: Disharmony of Interpretation and Application' (1993) 5(1) *IJRL* 66–90.

¹⁹ Afghanistan joined as the eighth member state of SAARC at the 14th SAARC summit at New Delhi in April 2007; Ministry of Foreign Affairs of the Islamic Republic of Afghanistan, 'SAARC' <http://mfa.gov.af/en/page/6546/6565/6566>, accessed on 24 April 2018.

²⁰ Paula Banergee, 'Forced Migration in India', in Elena Fiddian-Qasmiyeh, Gil Loescher, Katy Long, Nando Sigona (eds) *The Oxford Handbook*, (OUP 2014), 613–626, 614.

²¹ Bimal Patel, *The State Practice of India and the Development of International Law: Dynamic Interplay Between Foreign Policy and Jurisprudence*, (Martinus Nijhoff, 2016) 118, see also Alex Balch, *Immigration and the State: Fear, Greed and Hospitality* (Springer, 2016) 44–46, Andrzej Bolesta (n 4) 21.

²² UNHCR's Executive Committee 54th Session contained in United Nations

overlooks the main factors that contribute to the increase in refugee movement;

- India asserted at the same meeting that most refugee migrations are driven by widespread poverty and deprivation globally, particularly in developing regions like South Asia, where even survival migration is exceedingly challenging;²³
- There exist various categories of displaced persons not addressed by the UNCSR, and India has raised objections to Article 35 of the UNSCR,²⁴ which assigns supervisory authority solely to the UNHCR, thereby compromising India's sovereignty;
- India disagrees with the UNHCR's view of India as a suitable country for local integration and claims that this perspective fails to support refugee repatriation, placing a heavy burden on India, which is financially strained due to its growing population and should not be seen as a permanent destination for refugees as it is also a developing nation;

Thus, India opposes the UNCSR on the grounds that it is Eurocentric²⁵ and does not consider the issues faced by developing countries²⁶ or the challenges posed by economic migrants in South Asia. Additionally,²⁷ the limited scope of the definition of refugees and its failure to address mass exoduses, sovereignty concerns, internal security, and the security threats²⁸ posed by climate change have created insurmountable issues.

The refugee crisis in South Asia is serious, as the countries involved have not established any formal mechanisms to address the situation. Without specific refugee laws, refugees and asylum seekers are managed through inconsistent and unstable administrative systems that are arbitrary, biased, and preferential

General Assembly document A/AC.96/987 and document no. 12A (A/58/12/Add.1).

²³ Alexander Betts, *Survival Migration: Failed Governance and the Crisis of Displacement* (Cornell University Press, 2013) 10.

²⁴ See for discussion, Hoi Trinh, *UNHCR and Accountability: The Non Renewability of UNHCR Decisions*, in Andrzej Bolesta (ed), *Forced Migration and the Contemporary World: Challenges to the International System*, (Libra, 2003) 51.

²⁵ Patel (n 21) 118.

²⁶ *Ibid*, 136.

²⁷ *Ibid*, 138.

²⁸ Hans Joachim Schell n Huber, *Climate Change as a Security Risk*, (Earthscan Publication, 2008) 19–20.

in their treatment.²⁹ South Asian nations have adopted policies based on political considerations, emphasizing their sovereign rights during discussions regarding refugee³⁰ migration between countries that generate refugees and those that host them, which has significantly hindered the development of an effective refugee protection framework in South Asia.³¹ In spite of numerous shortcomings, South Asian countries have generously provided refuge to a vast number of individuals for a long time, even in the absence of a legal framework for refugee protection. The acceptance of millions of Afghan refugees in Pakistan and Tibetan refugees in India since March 1959 serves as significant examples of the historical commitment to refugee protection in this region.

³²

The legal and institutional structures in South Asian nations have acknowledged the significance of the international principle of non-refoulement even though they have not signed the UN Refugee Convention. Since 1995, India, Pakistan, and Bangladesh have had representation on the Executive Committee of the UNHCR, which is the UNHCR's main decision-making body.³³ Human rights instruments and the influence of international politics in this area have also contributed to the efforts made by states to safeguard refugees despite their limited resources. Currently, the SAARC countries receive support from the UNHCR, which includes ensuring the protection of asylum seekers and refugees, as well as promoting international refugee law standards in relation to efforts for adopting national legal frameworks that align with international standards.³⁴ The hesitance of respective governments to ratify the Refugee Convention or create national legal frameworks, along with the complexities involved in refugee issues on a regional scale, requires assessment. Moreover, there is an urgent need to consider a regional strategy to tackle forced migration and refugee protection challenges in South Asia amidst the impending crisis of climate change.

²⁹ R. Abrar Chowdhury, 'Legal Protection of Refugees in South Asia', (2001) 10 FMR 22–23.

³⁰ Galina Cornelisse, *Immigration Detention and Human Rights: Rethinking Territorial Sovereignty*, (Martinus Nijhoff Publishers, 2010) 33–44.

³¹ Veerabhadran Vijayakumar, 'Developing A Regional Approach to Refugee Problems in South Asia', (1997) Draft Paper Presented for the Fourth Regional Consultations on Refugee and Migratory Movements in South Asia, Dhaka, published in *Refuge*, (2001) 19 (2) 6–16

³² Narayan Sharma, 'Refugee Situation in South Asia: Need of a Regional Mechanism', (2008) 1, KLR 103–122, 104.

³³ N.L. Mitra, 'Refugee Law at Cross-roads', (1996) 1(2) *Bulletin on IHL and Refugee Law*, 265.

³⁴ Rosada Costa, 'Rights of Refugees in the Context of Integration: Legal Standards and Recommendations', (2006) *Legal and Protection Policy Research Series*, Division of International Protection Services, UNHCR Geneva. 17–18

Bangladesh

Bangladesh is currently accommodating a large number of Rohingya refugees from Myanmar and has been a host country for these refugees since the beginning of the crisis. According to the inter-agency Humanitarian Response Plan (HRP) for the years 2017-2018, the Rohingya population in Bangladesh is extremely vulnerable, with many individuals having undergone significant trauma.³⁵ The complexities of this humanitarian crisis are anticipated to escalate, particularly with the impact of climate displacement, which has already had social and political repercussions in Bangladesh. Reports indicate widespread displacement due to major natural disasters, such as floods and cyclones, over a span of 40 years (1970-2009).³⁶ Bangladesh has not ratified the 1951 Refugee Convention or its 1967 Additional Protocol, unlike other South Asian nations except for Afghanistan. Nevertheless, Bangladesh is a signatory to various international human rights treaties that offer indirect protection and benefits to refugees. However, due to the dualist legal framework in the country, international human rights cannot be enforced in the legal system unless specific provisions are included in domestic laws or implemented through separate legislation.³⁷ Nour Mohammed stated that, under Bangladesh's domestic legal system, refugees are viewed and treated as foreigners, subject to the regulations outlined in the Bangladesh Foreigners Act of 1946³⁸ and various other laws governing aliens and non-nationals in the country.

The Bangladesh Registration of Foreigners Act 1939³⁹, the Bangladesh Passport Act 1920,⁴⁰ the Bangladesh Citizenship (Temporary Provision) Order 1972⁴¹, the Extradition Act 1974⁴²,

³⁵ UN Children's Fund Report, 'Bangladesh: Humanitarian Situation Report No. 11 (Rohingya influx)', (Relief web, 21 January 2018) 1-10 <https://reliefweb.int/report/bangladesh/bangladesh-humanitarian-situation-report-no19-rohingya-influx-21-january-2018> accessed on 1 February 2018.

³⁶ Harun Rasid and Bimal Paul, *Climate Change in Bangladesh: Confronting Impending Disasters*, (Lexington Books, 2013) 79.

³⁷ Abul Hasanat, 'Using International Law in National Courts: Bangladesh Perspective', (2013) 13(1) and (2) B JL 50-72, 52.

³⁸ Nour Mohammad, *Refugee Protection Under the Constitution of Bangladesh: A Brief Overview* (MCRG) 141-156, 148-149 http://www.mcr.ac.in/rw%20files/RW39_40/12.pdf accessed 2 February 2018

³⁹ Bangladesh: The Registration of Foreigners Act, 1939 [Bangladesh], Act No. XVI of 1939, 8 April 1939.

⁴⁰ Bangladesh: The Passport Act, 1920 (Bangladesh), Act No. XXXIV of 1920, 9 September 1920.

⁴¹ National Legislative Bodies/National Authorities, Bangladesh: Bangladesh Citizenship (Temporary Provisions) Order, 1972, 26 March 1971, Order No. 149 of 1972

⁴² Bangladesh: The Extradition Act, 1974 (Bangladesh), Act No. LVIII of 1974,

the Naturalization Act 1926,⁴³ and others provide the legal framework in Bangladesh for regulating the entry, stay, and exit of foreigners, especially in the absence of a national refugee protection law. Many of these legislations, which include some from the colonial period, do not specifically mention the term 'refugees' or offer them dedicated provisions for their protection, similar to the situation with Indian laws. Additionally, Nour Mohammed highlights that constitutional provisions can be referenced to support refugee protection. Article 31 of the Constitution of Bangladesh affirms their right to legal protection, asserting that every citizen and any individual present in Bangladesh is entitled to seek the protection of national law, ensuring no harm comes to their life, liberty, reputation, body, or property except in accordance with legal procedures. Furthermore, Article 32 of the Constitution states that no individual shall lose their life or personal liberty unless it is through lawful means, while Article 33 details the protections against unlawful arrest and detention, clarifying that any arrested individual has the right to be promptly informed of the reasons for their arrest. Moreover, the arrested person's entitlement to consult and be defended by a lawyer of their choosing must not be denied.⁴⁴ These constitutional guarantees may be applicable to climate refugees through a comprehensive interpretation, as they might fall under the categories of non-citizens, aliens, or foreigner

Individuals are thus constitutionally entitled to protection against various forms of discrimination and deprivation in Bangladesh. There needs to be an interpretation grounded in constitutional liberalism and environmental democracy that permits and anticipates the broadening of constitutional protections, the safeguarding of human dignity in accordance with constitutional ethics, and adherence to global human rights commitments. Bangladesh has been recognized as one of the most vulnerable countries facing risks from climate change; however, it lacks a protective framework for climate change refugees who enter the country. In light of climate-induced displacement, recent reports indicate a serious crisis involving internal displacement. To support internally displaced persons (IDPs) in Bangladesh, the relevant principles of fundamental rights outlined in Articles 26, 27, 28, and 43 of the Constitution are significant, asserting that no state laws should contravene fundamental rights principles.

30 July 1974.

⁴³ Naturalization Act, 1926 (Bangladesh), See Also: Ridwanul Hoque, Report on Citizenship Law: Bangladesh RSCAS/EUDO-CIT-CR 2016/14 December 2016.

⁴⁴ These rights are civil and political in nature. These 18 fundamental rights have been primarily divided into two groups such as a) Rights granted to all persons- citizens and non-citizens alike. These rights are enumerated in articles 32, 33, 34, 35, 41 and 44 of the Constitution of Bangladesh. 58The Constitution of the People's Republic of Bangladesh, 1972 article 31.

Article 28 states that no law or policy should discriminate against citizens based on religion, caste, creed, or gender. Furthermore, Bangladesh is a party to numerous binding international human rights treaties. Since 1995, it has been a member of the Executive Committee of the UNHCR and is knowledgeable about the 1998 United Nations Guiding Principles on Internal Displacement; regrettably, the Bangladeshi government has not utilized these principles to safeguard the IDPs. Therefore, substantial efforts are necessary from both the government and civil society, along with media engagement, to recognize the challenges faced by IDPs and to explore alternative avenues for providing adequate humanitarian support to the most affected individuals. This is not only a humanitarian responsibility but also a constitutional duty of the state of Bangladesh.⁴⁵

Afghanistan

The initial significant wave of refugees from Afghanistan occurred due to the Soviet invasion in 1979 and the subsequent decade-long conflict. A second major displacement of people arose from the struggles among different factions and Mujahideen groups following the Soviet withdrawal (1992–1994). The third large-scale emigration was instigated by the oppressive Taliban rule (1996–2001). Migration driven by climate change will exacerbate these situations as Afghanistan faces migration trends caused by desertification, water scarcity, floods, crop failures, livestock decline, and localized resource conflicts.⁴⁶ In terms of legal frameworks, the Islamic Republic of Afghanistan became the 146th party to the UN Convention on the Status of Refugees (UNCSR) and its 1967 Additional Protocol in August 2005. Afghanistan's entry into the UNCSR is a pivotal development, and domestic measures for protecting refugees are anticipated. Nevertheless, the national implementation of the international refugee law framework is unlikely to safeguard those displaced by climate factors since the refugee protection framework in Afghanistan adheres to the criteria established by international law for recognizing refugees, which do not accommodate climate-induced displacement.⁴⁷ The combination of human rights

⁴⁵ Mohammad Shahabuddin, 'Human Rights and the Law', in Ali Riaz, Mohammad Sajjadur Rahman (eds) *Routledge Handbook of Contemporary Bangladesh* (2016) 283–292, 284. See generally Lassa Oppenheim, Sir Robert Jennings and Sir Arthur Watts, *Oppenheim's International Law* (Peace, Longman, 1992) 1261.

⁴⁶ Hiram A Ruiz, 'Afghanistan: Conflict and Displacement 1978 to 2001', (2002) 13 *FMR* 9–10. See also Rafael Reuveny and Aseem Prakash, 'The Afghanistan War and the Breakdown of the Soviet Union' (1999) 25 *Rev Int'l Stud* 693–708.

⁴⁷ Larry Goodson, *Afghanistan's Endless War: State Failure, Regional Politics, and the Rise of Taliban*, (Seattle: University of Washington Press, 2001) 114. 38 Hiram A Ruiz (n 36) 9–10.

guaranteed by international human rights conventions and Islamic traditions is a distinctive aspect of Afghan democracy. The Constitution of the Islamic Republic of Afghanistan integrates the principles of the Universal Declaration of Human Rights (UDHR) of 1948 alongside key human rights treaties. The clause that climate refugees might invoke is found in article 7 of the Afghan Constitution, which offers protection.⁴⁸

All individuals are protected under international human rights agreements. Nevertheless, to effectively address the challenges faced by climate refugees, Afghanistan needs to establish comprehensive legal frameworks and policies that respect cultural sensitivities in this area while enhancing its agricultural infrastructure and water conservation efforts during periods of abundant water supply, and diversify income-generating activities to cope with the severe impacts of climate change.⁴⁹

Bhutan

Bhutan is the youngest democracy in the South Asian region that has adopted a new Constitution in 2008 clearing the way from a hereditary monarchy to a 'constitutional one' under a parliamentary system.⁵⁰ In the 1990s, around 95,000 people of Nepali origin arrived in Bhutan and petitioned for Bhutanese citizenship but were expelled from the country on cultural grounds in contravention of international human rights the fundamental rights outlined in Article 7 of the Constitution of the Kingdom of Bhutan affirm that "All persons or individuals shall have the right to life, liberty, and the security and safety of the person, and these rights shall not be infringed upon except through due process of law."⁵¹ This right is granted to everyone, encompassing aliens, foreigners, non-citizens, political refugees, climate refugees, and other displaced persons. Unfortunately, the government of Bhutan fails to offer such constitutional protections to a considerable number of refugees residing in the country. Numerous fundamental rights enshrined in the Constitution of the Kingdom of Bhutan should be accessible to both political and climate refugees, including the right to intellectual property, the right to not be deprived or stripped of

⁴⁸ M. Alimullah Miyan, 'Droughts in Asian Least Developed Countries: Vulnerability and sustain ability, Weather and Climate Extremes' 7 (2015) Sci. Direct 8–23, 9 See also, RameshaChandrappa and others, *Coping with Climate Change: Principles and Asian Context*, (Springer, 2011) 310.

⁴⁹ 3Gordon Brown, *The Universal Declaration of Human Rights in the 21st Century: A Living Document in a Changing World*, NYU Global Institute for Advanced Study, (Open Book Publishers, 2016), 29–32.

⁵⁰ Marian Gallenkamp, 'Democracy in Bhutan An Analysis of Constitutional Change in a Buddhist Monarchy', (2010) IPCS Research Papers, New Delhi 3–7

⁵¹ The Constitution of the Kingdom of Bhutan, 2008, article 7 (1).

property, the right to equality before the law, and the right to be free from arbitrary arrest or detention. While the Constitution of Bhutan aligns with the tenets of international human rights instruments, the nation has only committed to a few international human rights treaties, such as the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁵² and the UN Convention on the Rights of the Child (CRC),⁵³ along with its first two optional protocols.⁵⁴ However, Bhutan has signed but not ratified the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD)⁵⁵ and the UN Convention on the Rights of Persons with Disabilities (CRPD).⁵⁶ The UNCSD and various international human rights instruments rights treaties have not been acceded to and, therefore, Bhutan maintains a limited relationship with global human rights legal arrangements. Thus, the refugees of all classes are discriminated by the Bhutanese state officials and agencies in violation of constitutional safeguards and its international human rights commitments.

India

India has historically been a refuge for individuals and asylum seekers from various religious backgrounds and communities.⁵⁷ The country hosts refugees from nations such as Afghanistan, Iran, Iraq, Somalia, Sudan, and Uganda.⁵⁸ India has been working towards developing a consensus on asylum policies that align with

⁵² UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, was ratified on 31 August 1981.

⁵³ UN Convention on the Rights of the Child (CRC), 1989, was ratified on 01 August 1990.

⁵⁴

Optional Protocol to the UN Convention on the Rights of the Child on the Involvement of Children in Armed Conflict was signed on 15 September 2005 and was ratified on 09 December 2009, and Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography was signed on 15 September 2005 and was ratified on 26 October 2009.

⁵⁵ UN Convention on the Elimination of All Forms of Racial Discrimination (CERD), 1965, was signed on 26 March 1973.

⁵⁶ UN Convention on the Rights of Persons with Disabilities (CRPD), 2009, was signed on 21 September 2010.

⁵⁷ Roger Zetter and Héloïse Ruaudel, 'Refugees' Right to Work and Access to Labor Markets—An Assessment,' (2016) KNOMAD Study, 40–42, See generally Kim Knott, 'Living Religious Practices' in Saunders Jennifer, Fiddian-Qasmiyeh Elena Snyder Susanna. (eds), *Intersections of Religion and Migration. Religion and Global Migrations*, (Palgrave Macmillan, New York, 2016) 71–90.

⁵⁸ Ananthachari, T., 'Refugees In India: Legal Framework, Law Enforcement And Security,' (2001) 7 ISIL Year Book of International Humanitarian and Refugee Law, <http://www.worldlii.org/int/journals/ISILYBIHRL/2001/7.html>. See generally Alexander Betts and Gil Loescher, *Refugees in International Relations*, (Oxford University Press, 2011) 268.

global human rights standards, approaching it more as an administrative issue rather than a legal obligation. However, India has not ratified the UN Refugee Convention and the 1967 Protocol relating to the Status of Refugees.⁵⁹ Additionally, India has not signed the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness.⁶⁰ Nevertheless, India is a signatory to numerous international human rights treaties, including the Universal Declaration of Human Rights from 1948, the ICCPR1966, and the International Covenant on Economic, Social and Cultural Rights from 1966, The CERD from 1963, CEDAW from 1979, the CAT 1948, and the CRC 1989 are all relevant. The government evaluates the situation of refugees through temporary administrative measures established by the Foreigner Registration Act of 1939 and the Foreigner Act of 1946, which regulate the entry, residency, and exit of all foreign nationals in India. Additional pertinent laws include the Passport (Entry into India) Act of 1920, the Passport Act of 1967, and the Extradition Act of 1962. In India, there is no specific national body dedicated to refugees aside from the Foreigner Regional Registration Office (FRRO), which functions under the Bureau of Immigration. However, the Constitution of India, especially Part III regarding fundamental rights, forbids discrimination based on race, religion, caste, creed, sex, or place of birth and also grants fundamental freedoms, with reasonable limitations, to refugees. Numerous members of Parliament from various political parties have proposed private member's bills aimed at establishing a National Refugee Law, including the Asylum Bill 2015, National Asylum Bill 2015, and the Protection of Refugees and Asylum Seekers Bill 2015, all of which remain unpassed. Refugees and asylum seekers are provided with protection under the Constitution of India. The Supreme Court (SC) of India has significantly contributed to the advancement of refugee rights. The SC has interpreted the word 'person' to encompass non-citizens as well. In the case of *Chairman, Railway Board & Others v. Mrs. Chandrima Das & Others*, the SC mandated that the Indian state adhere to international human rights treaties and UN Declarations,⁶¹ as well as incorporate the principles of the Universal Declaration of Human Rights into domestic law. Key

⁵⁹ Omar N. Chaudhary, 'Turning Back: An Assessment of Non-Refoulement under Indian Law' (2000) 39 (24) EPW 3257.

⁶⁰ Haq Centre for Child Rights, 'Twenty Years of CRC: A Balance Sheet' (Haq Centre for Child Rights, 2011) 3,346 <http://haqcrc.org/wp-content/uploads/2016/07/twenty-years-of-crc-a-balance-sheet-volume-II.pdf>, accessed 20 February 2018.

⁶¹ *Nilabati v. State of Orissa* (1993) 2 SCC 746; *D. K. Basu v. State of W.B.* (1997) 1 SCC 416; *PUCL v. Union of India* (1997) 3 SCC 433; *Githa Hariharan v. RBI*, (1999) 2 SCC 228; *Apparel Export Promotion Council v. A. K. Chopra* (1999) 1 SCC 759.

international human rights treaties can be referred to when interpreting and comprehending national legislation. As a result, the SC has recognized and addressed the difficulties faced by refugees in various cases.

Maldives

The Maldives is the most susceptible geopolitical region in South Asia, facing severe challenges due to climate change. The nation has struggled to prepare for the prospect of climate-induced displacement and migration to a yet-to-be-determined location.⁶² Nonetheless, the Maldives is likely to produce climate refugees as climate change intensifies, manifesting in rising sea levels, extreme weather conditions, persistent flooding, and alterations to both land and marine ecosystems due to increased ocean and land temperatures, which may threaten the Maldives' existence as a sovereign state. With three-quarters of its land area just one meter above sea level, even a slight increase in mean sea levels could endanger human rights and trigger a humanitarian crisis crucial for the Maldives' survival. The Maldives has significant deficiencies in the legal protection available for refugees, as it does not currently host any refugees, nor is there any NGO or civil society organization providing legal aid or support for refugees in the country. Consequently, there is no legal framework in place to protect climate refugees in the Maldives, and the UNCSR does not even reference terms such as "climate change refugee," "climate refugee," "climate displacement," or "environmental refugee." Additionally, non-binding international human rights treaties and conventions fail to offer any protective measures.⁶³

Nepal

In Nepal, the government has been accommodating Tibetan and Bhutanese refugees without adequate consideration for humanitarian concerns, and it is not a signatory to the UN Convention on the Status of Refugees (UNCSR) or its 1967 Additional Protocol, nor has it joined the 1954 UN Convention Relating to the Status of Stateless Persons or the 1961 UN Convention on the Reduction of Statelessness.⁶⁴ Recently, the

⁶² Chloe Anne Vlassopoulos, 'Defining Environmental Migration in the Climate Change Era: Problem, Consequence or Solution', in Faist Thomas, Jeanette Schade (eds.) *Disentangling Migration and Climate Change: Methodologies, Political Discourses and Human Rights*, (Springer, 2013) 145–163.

⁶³ G. Chomette, 'Indian Ocean: Maldives, an Archipelago in Peril', (2010) Massachusetts Institute of Technology and Dominique Carrééditeur, 124–163.

⁶⁴ Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report—Universal Periodic Review: 2nd Cycle, 23rd Session NEPAL, 1 https://www.upr-info.org/sites/default/files/document/nepal/session_23_november_2015/unhcr_upr23_npl_e_main.pdf accessed 1 March 2018.

Nepalese government chose not to implement the UN Human Rights Council's (HRC) suggestions on the establishment of refugee laws and related conventions, citing a flawed narrative of national security.⁶⁵ Meanwhile, human rights advocates and stakeholders drafted a Human Rights Bill that unfortunately did not address the issue of climate refugees, as it became ineffective following the dissolution of the Nepali Parliament. Additionally, Nepali municipal law does not include the term 'refugee,' and the country's domestic legislation classifies all non-citizens as foreigners without offering any intermediate status for non-citizen residents. There is also an absence of a national policy addressing the treatment of refugees in Nepal. All legal matters concerning foreigners in Nepal are governed by the Immigration Act of 1992, which lacks the necessary provisions to safeguard the rights of refugees and asylum seekers. The overall responsibility for refugee protection initiatives has been assigned to the National Unit for the Coordination of Refugee Affairs (NUCRA), which operates under the Ministry of Home Affairs (MoHA) of Nepal and is tasked with managing the National Refugee Policy. Nepal has agreed to numerous human rights mechanisms and instruments, which provide various guarantees for Nepalese citizens, including the right to live with dignity as stated in article 16, the right to equality in article 18, the right to justice in article 20, the right against torture in article 22, and the right against preventive detention in article 23, which allows for the protection of all refugees in Nepal as outlined in the new Constitution. Nevertheless, the Nepalese government is imposing restrictions on refugees, breaching its international and constitutional responsibilities to uphold and guarantee the peaceful exercise of fundamental human freedoms within the country. These provisions, however, are insufficient due to their legal instability and potential for varied interpretations, which are likely to jeopardize the rights of political and climate refugees, especially in the absence of a national refugee law and adherence to international standards of refugee protection. Consequently, there is a pressing need to establish an inclusive national refugee policy in Nepal that sufficiently addresses the concerns of all relevant stakeholders once and for all.

Pakistan

Pakistan is not a party to the UNCSR or its 1967 Additional Protocol; however, it has been accommodating a diverse refugee

⁶⁵ Kathmandu Post, 'Nepal refuses to adopt refugee Convention citing national interest', Kathmandu Post, (3 December 2015) <http://kathmandupost.ekantipur.com/news/2015-12-03/nepal-refuses-to-adopt-refugee-convention-citing-national-interest.html> accessed 1 March 2018.

population from various countries. It is the second largest host nation worldwide, with a refugee population of 1,505,525, which includes 1.5 million registered Afghan refugees. The refugee situation in Pakistan is governed by a tripartite agreement among Afghanistan, Pakistan, and the UNHCR, which encompasses non-refoulement and voluntary repatriation. Article 9 of the Constitution of the Islamic Republic of Pakistan guarantees the security of individuals, including refugees and other foreign nationals within the country.⁶⁶As a member of the United Nations, Pakistan is required to collaborate with the UNHCR and facilitate its operations in Pakistan. However, such agreements address gaps in the protection of refugees but only to a certain degree, and these temporary arrangements cannot replace the need for specific national refugee legislation in Pakistan. The principle of non-refoulement is recognized as customary international law, from which no exceptions are permissible unless a conflicting treaty exists—meaning it is based on ‘evidence of a general practice accepted by states’ as determined by the consistent practices of states and *Opinio Juris* (the acceptance of a practice as law by states or the legal opinion). Consequently, all nations are obligated to adhere to these standards in safeguarding refugees. In this regard, it would be tragic to consider the forced return of Afghan refugees from Pakistan on ethical and political grounds. The Pakistani government must adhere to customary international law principles and its commitments to refugee protection while respecting the non-refoulement principle along with its tripartite agreements concerning Afghan refugees.⁶⁷ Nonetheless, Pakistan cannot evade its national and international obligations to establish a comprehensive and unified national law that encompasses a participatory protection framework addressing all forms of human displacement, including refugees, asylum seekers, internally displaced persons (IDPs), and climate refugees.

Sri Lanka

In Sri Lanka, there is no specific refugee legislation, and the country has not ratified the UN Convention on Refugees or signed the 1967 Additional Protocol. Nevertheless, the constitution of Sri Lanka safeguards all individuals, including refugees and asylum seekers, against "torture or cruel, inhuman or degrading treatment, or punishment"⁶⁸and guarantees "equality before the law and equal protection of the law" for all. Furthermore, it states

⁶⁶ The Constitution of Islamic Republic of Pakistan, 1973, article 9, states that ‘Security of person. No person shall be deprived of life or liberty save in accordance with law’.

⁶⁷ Refugee Convention (n 3) article 33 (1).

⁶⁸ The Constitution of the Democratic Republic of Sri Lanka, 1978, article 11.

that "no person shall be subjected to any disability, liability, restriction" or face arrest, detention, charges, or punishment based on religion, race, caste, sex, language, or any similar grounds. Thus, these constitutional protections clearly indicate that political Cal refugees, along with climate refugees, are also entitled to protection; however, the government of Sri Lanka has failed to uphold this constitutional obligation. The UNHCR has been conducting the refugee status determination (RSD) process for refugees and asylum seekers in Sri Lanka under a partnership with the government that assures education and healthcare for these individuals, yet they are not allowed to work and support themselves.⁶⁹ Regrettably, the disputed agreement fails to address the situation of climate refugees or the human dislocation and migration instigated by climate change. Evidence has shown that Sri Lanka has breached international human rights laws and non-refoulement principles by forcibly sending Pakistani refugees back to their homeland, justifying this action by stating that "*a state's duty under international law must be adapted to consider domestic circumstances.*" Consequently, the Sri Lankan government must develop national legislation that addresses all displaced populations, including political and climate refugees and climate-displaced persons (CDPs), while complying with global standards for refugee protection. Nonetheless, the current national and international regulations do not adequately offer protection for climate refugees or CDPs, as the nature and context of their protection are significantly different.

DOMESTIC LEGAL AND INSTITUTIONAL MECHANISM TO PROTECT CLIMATE REFUGEES IN SOUTH ASIA

Climate change has emerged as the most significant challenge of this century, poised to alter our future on this planet. In discussions about policy, climate change is often viewed primarily as an environmental issue; however, it is a challenge deeply intertwined with extensive implications across virtually all areas of development, including healthcare, livelihoods, and displacement. Predictions from experts indicate alarming numbers regarding climate-related displacement and migration in South Asia.⁷⁰ Catastrophic climate events and the resulting mass displacements threaten to disrupt the very foundation of nations and impact the constitutional rights of citizens, including the right to life and other rights considered intrinsic to this right. As a region that is home to a quarter of the global population, South

⁶⁹ Refugee Convention (n 3) article 33 (1), and CAT, 1984 (n 75).

⁷⁰ IOM, 'Assessing the Climate Change Environmental Degradation and Migration Nexus in South Asia', (International Organization for Migration (IOM) Bangladesh, 2016) 28 https://publications.iom.int/system/files/pdf/environmental_degradation_nexus_in_south_asia.pdf, accessed 25 April 2018.

Asia's stance and legal responses are crucial for the future of the international climate framework and the establishment of a legal structure addressing climate-induced displacement. This situation not only presents challenges but also offers a unique chance for the region to promote sustainable development in South Asia. The core of the domestic discourse in South Asia revolves around implementing the principle of Common But Differentiated Responsibilities (CBDR), providing technological and financial support, eradicating poverty, setting developmental priorities, and focusing on mitigation and adaptation. South Asian nations have enacted policy measures at the national level and sought cooperation at both regional and international levels. The next section will examine the legal initiatives undertaken by South Asian countries in response to climate displacement. Since the primary focus for climate change matters falls within the realm of environmental law, the discussion will explore the degree of legal attention and protection afforded to climate-displaced individuals under domestic environmental law systems and the extent to which legal actions addressing climate change have considered climate displacement.⁷¹

LEGAL AND INSTITUTIONAL MECHANISMS TO PROTECT CLIMATE REFUGEES UNDER THE ENVIRONMENTAL LAWS

Bangladesh

Bangladesh has been portrayed as the world's most climatically vulnerable country that has been bracing the climate change-related risks and resultant climate change-induced displacement. Bangladesh has been active at the international negotiations to formulate effective and strong mitigation and adaptive measures to address climate change concerns and climate-induced displacement. At the domestic level, there is no explicit recognition of right to environment under the Constitution of Bangladesh. Article 18(1) of the Constitution of the Peoples Republic of Bangladesh adopted through the 15th amendment provides for environmental protection in the form of non-justiciable principles. It exhorts the nation-states to go for protecting and enhancing the quality of environment, preserving and safeguarding the biodiversity, forests, wetlands, natural resources and wildlife for the present and posterity.⁷²

⁷¹ Vijay P. Ojha, 'Climate Change Mitigation Strategies in South Asia', in Raghavendra Jha (ed.), *Routledge Handbook of South Asian Economics*, London and New York, (Routledge, 2011) 309–322.

⁷² Constitution of Bangladesh 1972(n 58) article 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.'

non-justiciable principles. It calls upon nation-states to protect and enhance environmental quality, as well as to preserve and safeguard biodiversity, forests, wetlands, natural resources, and wildlife for both current and future generations.⁷³ The judiciary has declared the right to a clean environment as part of the constitutional right to life in the significant case of *M. Farooque v. Bangladesh and Others*.⁷⁴ Following the Stockholm Declaration, environmental legislation in Bangladesh progressed with the introduction of the Environmental Pollution Control Ordinance in 1977, which replaced the Water Pollution Control Ordinance. In 1995, a comprehensive and overarching law to safeguard the environment was enacted in the form of the Bangladesh Environment Conservation Act 1995. While this Act lacks explicit provisions addressing climate change, its regulations concerning environmental protection and pollution can be leveraged to advocate for climate action. Regarding climate change, the Bangladeshi government initiated the National Adaptation Plan (NAPA) in 2005, which seeks to mitigate the adverse effects of climate change and promote the country's sustainable development. This plan acknowledges the migration of individuals from rural to urban areas due to climate-induced disasters. The NAPA has gained significant momentum through the launch of the Bangladesh Climate Change Strategy Action Plan in 2009.

Pakistan

Recently, the "Global Climate Change Risk Index 2023" report released by Green Watch, an NGO based in Bonn, evaluated that Pakistan ranked among the ten nations most severely impacted by climate change from 1995 to 2015. The nation incurred an economic loss of 3.8 million dollars due to disasters and climate change. The Intended Nationally Determined Contribution (INDC) submitted by Pakistan to the UNFCCC indicates that "consistent exposure to life-threatening climate change-induced disasters such as droughts, earthquakes, landslides, famines, floods, cyclonic activities, glacier melting, global warming, glacial lake outburst flooding (GLOF), and heatwaves has led Pakistan to be listed among the top ten countries most affected by climate change on the Global Climate Risk Index." The Constitution of Pakistan does not explicitly guarantee a "right to environment." The topic of "environmental protection and ecology" was included in the concurrent legislative list; however, following the 18th constitutional amendment, it has been repositioned under the

⁷³ Sanjoy Biswas, Md. Akterul Alam Chowdhury, 'Climate Change Induced Displacement and Migration in Bangladesh: The Need for Rights-Based Solutions' (Refugee Watch, 2012) 171 http://www.mcrg.ac.in/rw%20files/RW39_40/13.pdf accessed 13 November 2017.

⁷⁴ *M. Farooque v. Bangladesh and Others* (1997) 49 DLR (AD) 1.

provincial jurisdiction. Pakistan's environmental laws have been shaped and influenced by developments in international law. From the time of Pakistan's independence until the late 1950s, the country lacked significant environmental legislation.⁷⁵

India

India's environmental legislation is derived from both constitutional and legal measures implemented at the national level and international obligations established globally. Initially, the Indian Constitution lacked explicit provisions regarding the environment and included only clauses related to public health improvement, as well as the modernization and scientific organization of agriculture and animal husbandry⁷⁶. In the Indian context, the contemporary understanding of environmental awareness traces its roots back to the 1972 Stockholm Declaration. The Supreme Court of India has consistently recognized the significant role the Stockholm Declaration played in sparking environmental discussions within the country. The Declaration prompted a surge of domestic regulatory and legislative actions. articles 48-A and 51-A (g) were added to the Constitution of India as directive principles of state policy and as a fundamental duty, respectively. Unlike fundamental rights, which are enforceable, directive principles and fundamental duties do not constitute enforceable rights. Nevertheless, the active role of the Indian judiciary has advanced the nation's commitment to environmentalism by interpreting directive principles in a manner that aligns with the expanded understanding of the right to life as protected by the Constitution of India. Judicial trends from other jurisdictions demonstrate that the fundamental rights enshrined in the Constitution can be leveraged to mitigate the effects of climate change on citizens' fundamental human rights. The next chapter will explore the judiciary's response to climate change. In addition to constitutional provisions, India has a variety of national policies and laws addressing environmental matters that can be invoked concerning climate change issues. Significant legislation includes the Environment (Protection) Act (1986), the Indian Forest Act (1927), the Forest Conservation Act (1980), the National Green Tribunal Act (2010), and the Energy Conservation Act (2001), along with other laws relating to air, water, and energy. These legislative frameworks can be interpreted to initiate climate mitigation actions and to hold accountable those contributing to

⁷⁵ Pakistan's Intended Nationally Determined Contribution (Pak-Indc) 1–31, 2 <http://www.unfccc.int/ndcregistry/PublishedDocuments/Pakistan%20First/Pak-INDC.pdf> accessed 12 November 2017.

⁷⁶ Constitution of India, 1950 (n 92) article 47.

climate change by providing broad access to litigants.⁷⁷

CONCLUSION

Climate change impacts the social, economic, and existential frameworks of individuals, communities, and nations. It encompasses a range of issues, including health, food security, access to water, livelihoods, and patterns of migration and displacement. In response to the increasing threat posed by climate change, the international community has established a comprehensive legal framework through instruments such as the UNFCCC, the Kyoto Protocol, and the Paris Agreement. This legal framework was developed on the basis that climate change represents an environmental crisis, necessitating the imposition of obligations on countries to lower their greenhouse gas emissions. Over time, the conversation surrounding climate change has broadened, leading legal frameworks to acknowledge the connections between climate issues. Climate change has significant implications for security and migration, with the latest IPCC report emphasizing the risks of climate displacement. South Asian nations have established national adaptation plans for climate change but lack a comprehensive policy framework that specifically addresses climate-induced displacement and offers protection for individuals affected by climate-related factors. This lack of legal consistency in refugee protection policies is particularly acute in South Asia, where the Refugee Convention only addresses those fleeing their own countries due to state-sponsored persecution based on race, religion, political beliefs, or ethnicity.

The SAARC countries, with the exception of Afghanistan, are not signatories to the UNCSR. Domestically, they provide various levels of protection to political and civil refugees under international human rights commitments. However, the lack of national refugee legislation creates a gap between normative and processual protections, leading to inconsistencies in refugee protection policies. The refugee situation in South Asia has reached a new crisis level due to the absence of legislation specifically for refugees, leading to various forms of suffering for these individuals.

The anticipated crisis of climate change migration or environmental displacement reveals that the current refugee protection systems of the UN may be unprepared. The

⁷⁷ National Environment Tribunal Act (1995), the National Environment Appellate Act (1997) and the Biodiversity Protection Act (2002). See also Stellina Jolly and Sandeep Mahajana, 'Climate Change and Security: Forging a Cooperative Mechanism in South Asia' (2014) 10(6) *Int. J. Public Policy* 315, 332.

establishment of an Additional Global Protocol on Climate Refugees to complement the 1951 UNCSR is urgently needed. Collaborative mechanisms, consultations, and sharing of effective practices, such as judicial cooperation, roadmap development, technology advancement, and capacity-building initiatives, could be pursued. A South Asian Declaration on Migratory Movements in South Asia should also be considered, incorporating climate change refugees as a foundational element for current and future resolutions regarding the refugee crisis.

The research on refugee protection should be encouraged and funded in South Asia to generate valuable insights and outcomes. This research should be used to develop optimal protection strategies and foster potential avenues for refugee support in various jurisdictions within the region and beyond. Proactive advocacy aimed at safeguarding the rights of all types of refugees should be conducted within a structured consultation framework, with an annual review process in place to document and guide protection practices for civil society initiatives.