

**Legal Obligations of Bangladesh Government and
International Community to address the Environmental
Degradation caused by Rohingya Influx**

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Abstract

This study is an exploration of the environmental repercussions caused by the influx of Rohingya refugees in Bangladesh. Despite the welcoming endeavors of Bangladesh towards the refugees, there have been a number of economic, social and environmental consequences to be sustained in the region. The basic necessities of the refugees have resulted in a sudden increase in the use of the natural resources and the lack of any alternative means to procure these commodities has resulted in noticeable degradation of the environment. The cardinal goal of the paper is however the assessment of the respective roles of Bangladesh and the international community at large for the protection and conservation of the environment in the concerned areas of Cox's Bazar and the Teknaf Wildlife Sanctuary (TWS). For that purpose, the concerned domestic laws of Bangladesh has been analyzed along with the relevant international agreements and principles that govern the responsibility of the international community for environmental protection.

Declaration

I certify that this thesis does not include any material which has been previously submitted for a degree or diploma in any University without due acknowledgement; and that to the best of my knowledge and belief it does not contain any material previously published or written by another person except where due reference is made in the text.

Md. Hasibul Islam

Date: 17.12.18

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1. Introduction

This academic study will discuss various environmental repercussions garnered from the Rohingya refugee influx in Bangladesh and what role concerned national authority and international community play to address the said repercussions. Accordingly, this research will critically analyze the current state of the concerned areas of the influx in contrast with the scenario before the influx took place, to bring a correct understanding of how much effect the migration has caused to the said areas in terms of environmental consequences through acts such as habitat destruction, deforestation, irresponsible waste management etc. The repercussions of this environmental damage will be explained here through highlighting the obligation of national and international community, as a whole, and to what extent the environment has to be protected under the purview of relevant domestic and international statutes and principles.

2. Research Aim, Methodology, Scope and Limitation

2.1 Research Aim

This study is concerned with the environmental damages caused by the Rohingya refugees' influx, and it aims to identify the duties of the Bangladesh government under its own domestic laws and the duties of the international community to aid Bangladesh in this effort under various international agreements and principles. The paper also makes endeavor to assess the actual damages caused by the influx and its long term implications in terms of environmental degradation and climate change.

2.2 Research Methodology

The research on "Environmental effects of the Rohingya influx in Bangladesh" is done through a qualitative and analytical research methodology. The key concern of this research was to explore and analyze the environmental repercussions caused by the influx of Rohingyas in Bangladesh. To do this study, the historical background of Rohingya minority, relevant legal statutes- both domestic and international, were explored. Various environmental impacts and legal aspects of the refugee influx, is analyzed here as Bangladesh has an obligation to follow under its own domestic laws and policies. In order to highlight the legal obligation of the international community to protect the environmental impacts in Bangladesh, the Convention on Biological Diversity (CBD), the United Nations Framework Convention on Climate Change (UNFCCC), the Paris Agreement, the Sustainable Development goals adopted by the UN General Assembly, the Principles of Polluter Pays

and the Common Concern for Humankind (CCH) were taken into prime concern. Secondary sources have also been used to get a proper idea on the research topic. Some data regarding the statistics of Vegetations Land and Forests around the Rohingya camps and relevant newspaper reports were also gone through. Some scholarly legal articles and research papers from the electronic journals were also used.

2.3 Scope

The ambit of this study is limited up to the analysis and criticism of the present environmental degradation due to the Rohingya Influx in Bangladesh from a legal point of view. It broadly evaluates the relevant national and international laws which should be implemented to protect the environment of the area of Rohingya camps in Bangladesh.

2.4 Limitation

Only the environmental laws and facts of Rohingya influx in Bangladesh will be focused and explained here. No human rights or international criminal laws were brought in to discussion of this research. Another limitation of this study is no interview from the Rohingya refugees, Victims or Witnesses was collected, hence, this study is only based on the books, journal articles and other academic resources relevant for the discussion. Also, no opinion from any renowned scholar or academics of Bangladesh or Myanmar was taken for the purpose of this study.

3. Historical and Political Background

Before going to the main discussion, historical and political background of the influx of Rohingya refugees will be briefly discussed here. Rohingyas are the inhabitants of the Arakan state in Myanmar and an oppressed minority in a Buddhist majority state.¹

The conflict between the Buddhist “Rakhine” and the Muslim “Rohingyas”, who are inhabitants of the same concerned land, has predated the independence of Myanmar as a sovereign entity, displayed in recorded incidences such as the World War II where Japanese occupation of the area had incited the Muslim Rohingya to join in Allied movements for the

¹ Lily Myat, ‘The Rohingya Refugee Crisis: Social, Economic and Environmental Implications for the Local Community in Bangladesh’ (2018) <<https://flex.flinders.edu.au/file/20455f70-482e-480d-843e-288609037d12/1/Thesis%20Myat%202018.pdf>> Accessed on 26 October 2018

ensuing aggression against them.² However since the independence of Myanmar from the Great Britain in 1948, the Rohingya people were not recognized as an ethnic minority by the succeeding governments and were mostly denied citizenship and voting rights. This enmity towards the minority has often been politicized on the belief that the Rohingya are not actual inhabitants of the region concerned, instead they are refugees gathering from the neighboring countries around Myanmar such as Bangladesh. This claim however is not true, based on numerous evidences on such behalf.

Rohingyas as a whole did not support the Rakhine leaderships on the newly enacted policies which only furthered the already pre-existing enmity and hostility between the two groups. In continuance of that, anti-Muslim sentiments were being encouraged and the citizenship and other civil and political rights of the Rohingya minority were being marginalized day-by-day. This 2 million Rohingya people are no longer considered as the citizens of Myanmar bearing no rights or remedies as provided for other citizens.³

Throughout the decades, this discrimination against Rohingyas did not stop. To implement the “Dragon King Operation” of 1978, within the span of three months, over 150,000 to 200,000 Rohingyas were forced to flee to Bangladesh through mass atrocities,⁴ and the Citizenship Law 1982 of Myanmar effectively declares the minority as “stateless” and illegible for holding or acquiring rights.⁵ Even after the upheaval of democracy in a country previous ruled by military in 2015, the situation remained the same and through most recent influx of refugee in 2017, where 600,000 Rohingyas were displaced to Bangladesh.

²Mirco Kreibich, Johanna Goetz and Alice Muthoni Murage, Myanmar's Religious and Ethnic Conflicts: no end in sight' (2017), The Green Political Foundation <<https://www.boell.de/en/2017/05/24/myanmars-religious-and-ethnic-conflicts-no-end-sight>> Accessed on 27 October 2018

³ Cui Yue and Bright Lumor Mensah, 'Identity and the Rohingya Question in Myanmar' (2017) International Journal of Interdisciplinary and Multidisciplinary Studies (IJIMS), 2017, Vol 4, No.3,473-481 <<http://www.ijims.com>> Accessed on 27 October 2018

⁴ Carl Skutsch, Encyclopedia of the World's Minorities (1st Edition, Routledge, 2004) p. 128

⁵ 'Myanmar's 1982 Citizenship Law and Rohingya' Burmese Rohingya Organisation UK (London, 2014) <<http://burmacampaign.org.uk/media/Myanmar%E2%80%99s-1982-Citizenship-Law-and-Rohingya.pdf>> Accessed on October 27, 2018

4. The influx and the environmental effects

It is prudent to note that Bangladesh is already at a struggling point with its own citizens considering the fact that it is the eighth most densely populated country in the world.⁶ Hence, the country has undergone numerous economic, social and environmental happenings with the influx of so much unaccounted for refugees. It is estimated that the subsequent influx of refugees after the ARDS attacks on 25 August 2017 may number more than 700,000.⁷ Even before the incident, there has been about 200,000-500,000 undocumented refugees whereas the number of documented refugees numbered about 33,131.⁸

73% of these Rohingyas are living in new spontaneous settlements, 13% in makeshift settlements, nine percent among host communities, and five percent informal refugee camps, according to a research conducted in 2017.⁹ It is therefore a common sight in Cox's Bazar to find Rohingya refugees in mass shelters around hilly dispositions.¹⁰ From this perspective, Rohingya influx and its impacts is not an ethnic issue in Bangladesh, but an environmental one.¹¹

To accommodate these spontaneous settlements, a heavy toll is being exacted on the local pre-existing ecology and environmental balance. This can be credited to the sudden need of the displaced people for basic necessities such as shelter, drinking water or fuel, most of which are currently accrued from the surrounding forests and wildlife. The Rohingyas need wood for their makeshift shelters, cooking and it is merely a matter of convenience to reach

⁶ Lily Myat, 'The Rohingya Refugee Crisis: Social, Economic and Environmental Implications for the Local Community in Bangladesh' (2018) <<https://flex.flinders.edu.au/file/20455f70-482e-480d-843e-288609037d12/1/Thesis%20Myat%202018.pdf>> Accessed on 26 October 2018

⁷ Maedhbh McDonald, 2018, 'Responding to the world's fastest growing refugee crisis', *Concern Worldwide* (20 March 2018) <<https://reliefweb.int/report/bangladesh/responding-world-s-fastest-growing-refugee-crisis>> Accessed on 29 October 2018

⁸ Abul Hasnat Milton, Mijanur Rahman, Sumaira Hussain, Charulata Jindal, Sushmita Choudhury, Shahnaz Akter, Shahana Ferdousi, Tafzila Akter Mouly, John Hall and Jimmy T. Efirid, 'Trapped in stateless: Rohingya refugees in Bangladesh' (2017) *International Journal of Environmental Research and Public Health*, Vol. 14, No. 942, pp. 2-8

⁹ Mayesha Alam, 'How the Rohingya crisis is affecting Bangladesh-and why it Matters' *The Washington Post* (12 February, 2018) <https://www.washingtonpost.com/news/monkey-cage/wp/2018/02/12/how-the-rohingya-crisis-is-affecting-bangladesh-and-why-it-matters/?utm_term=.9fed66a85f19> Accessed on 29 October 2018

¹⁰ Masakazu Tani, Md. Zulfikar Rahman, Abu Zofar Md. Moslehuddin, and Hiroshi Tsuruta, 'Characteristics of Dwellers as a Major Agent of deforestation a reserved forest in Bangladesh' (2014) *International Journal of Environment*, Vol. 4, No.2, pp. 25-30 <<http://benjapan.org/ije/IJEvol04no02/ije040201.pdf>> Accessed on 30 October 2018

¹¹ Lily Myat, 'The Rohingya Refugee Crisis: Social, Economic and Environmental Implications for the Local Community in Bangladesh' (2018) <<https://flex.flinders.edu.au/file/20455f70-482e-480d-843e-288609037d12/1/Thesis%20Myat%202018.pdf>> Accessed on 26 October 2018

for the nearby forest as a source of these resources, and the resulting situation is mass deforestation on the concerned areas.¹²

This lack of access to alternative fuel, proper waste management and necessities, coupled with the emergency of the situation and the ignorance of the people concerned has resulted in mass deforestation, hunting and pollution. The Forest Department of Bangladesh have had conducted a survey on the matter, revealing that a staggering 4000 acres of forest land has already been eradicated.¹³ This is alarming news when we consider more of the concerned statistics. The local Teknaf Wildlife Sanctuary (TWS) supposedly had a 100% forest covering in the late 1980's in its 11,615 hectares territory,¹⁴ and was home to 538 species of plants and 613 species of wildlife.¹⁵ However within just 25 years the area has seen a 92% decrease in forest and wildlife habitat.¹⁶ And unfortunately the constant admission of refugees, that has been ongoing since the last few decades, has clearly not helped in this regard.¹⁷

The environmental effects of the influx is not limited to just the local fauna and flora of the area, but also has direct repercussions on the livelihood of the people as well. The reduction in the forest cover and the ensuing damage to the ecosystem clearly implies that they would be stripped of the natural resources and drinking water as they would otherwise have access to.¹⁸ A sudden rise in the population have already had its fair share of impacts on the local economy and the livelihood of the inhabitant, regardless of the fact that the excessive use of the land is merely accelerating the degradation process of the concerned environment and bio diversity. Another alarming concern has been brought up by the aid group called Doctors Without Borders regarding the impacts on drinking water as a viable resource, as it was

¹²Janny, NS & Islam, M., 'An Analysis of Refugee Problems in Bangladesh'(2015) Asian Journal of Multidisciplinary Studies, Vol. 3, No. 3, pp. 91-98

¹³ Major Abu Md. Shahnur Shawon, 'Effects of the Rohingya Conundrum on Bangladesh', PSC Bangladesh Army, PME Prep

¹⁴Site Information Brochure (NSP, 2006) Teknaf Game Reserve Nishorgo Support Project, Forest Division, Bangladesh

¹⁵Abdul Mannan, 'Saving our forests, and all creatures who dwell in them' *Dhaka Tribune* (3 February 2017) <<http://www.dhakatribune.com/opinion/oped/2017/02/03/saving-forests-creatures-dwell/>> Accessed on 30 October 2018

¹⁶Jahangir, S., *The Daily Independent* (December 24, 2005)

¹⁷ Lily Myat, 'The Rohingya Refugee Crisis: Social, Economic and Environmental Implications for the Local Community in Bangladesh' (2018) <<https://flex.flinders.edu.au/file/20455f70-482e-480d-843e-288609037d12/1/Thesis%20Myat%202018.pdf>> Accessed on 26 October 2018

¹⁸ Social Impact Assessment of the Rohingya Refugee Crisis into Bangladesh: Key Findings and Recommendations, United Nations Development Programme (UNDP) & UN Women 2017 <https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/assessments/171207_social_impact_assessment_and_rapid_host_community_impact_assessment_summary.pdf> Accessed on 2 November, 2018

observed that in Hakimpara refugee camp, a quarter of shallow tube wells have dried up. This is another direct consequence of the reduction in the forest covering, as the rainfalls are now more likely to run off to the sea instead of replenishing the underground aquifers.¹⁹ In the off chance that we are not able to combat this effect on forest covering, we can expect dramatic changes in the availability of drinking water in the concerned areas.

It is already an established fact that the meager camps accommodating the refugees are dangerously inadequate for its purpose. This overcrowding in a specific area makes the condition of the lives of the people in question unhygienic and unpleasant, while situations such as mass deforestation, water pollution and overexploitation of natural resources simply follow the phenomenon.²⁰ Due to these poor living conditions, the well-being of the local populace and the refugees themselves are further put into question when we consider the possibilities of transmittance of diseases such as HIV, Diarrhea and Malaria among other transmittable diseases in such situations.²¹

Table I: Total vegetation cover of Teknaf sub-district :

Year	Area (Hectare)	Area Change
2014	26105.04	
2015	25984.08	-120.96
2016	26298.54	-314.46
2017	25014.06	-1284.48

Table II: Total vegetation of Teknaf Wildlife Sanctuary :

Year	Area (Hectare)	Change (Hectare)
2014	11448.00	-
2015	11491.56	43.56
2016	11467.53	-24.03
2017	11364.66	-102.87

¹⁹Kaamil Ahmed, 'Bangladesh forests stripped bare as Rohingya refugees battle to survive', *Mongabay Series: Global Forests* (9 January, 2018) <<https://news.mongabay.com/2018/01/bangladeshi-forests-stripped-bare-as-rohingya-refugees-battle-to-survive/>> Accessed on 3 November 2018

²⁰Datta, SK., 'Rohingya's Problem in Bangladesh' (2015) *Himalayan and Central Asian Studies*, Vol. 19, No. 1-2, pp. 134-150

²¹Atim, G., 'The Impacts of Refugees on Conflicts in Africa' (2013) *Journal Of Humanities And Social Science*, Vol. 14, No. 2, pp. 4-9

The timeline displayed above show a drastic change in vegetation in the two concerned areas of Teknaf sub district and Teknaf Wildlife Sanctuary, both of which has seen a reduction in vegetation by 1284.48 hectares and 102.87 hectares respectively. This is an alarming development when we consider the fact that this massive change took place in just 3.5 month of the refugee influx.²² If this trend is allowed to continue, the Teknaf peninsula and all the concerned areas may suffer devastating environmental degradation.

5. The role of Bangladesh under environmental laws and policies

Various legal aspects of the environmental repercussions of the refugee influx, in terms of the obligations that Bangladesh has under its own domestic laws and policies are essential to discuss; as Bangladesh as a state, is bound to maintain and protect its own environment under its own domestic laws. Firstly the applicable environmental laws within Bangladesh will be emphasized and then the applicability of international principles in Bangladesh will also be highlighted to evaluate the extent of actual implementation of these principles.

5.1 Domestic Laws and Policies of Bangladesh

i) The National Environmental Policy, 1992

Firstly, we can refer to the National Environmental Policy, 1992. It was drawn for the purposes of providing protection and sustainability in the management of the environment. An environmental policy may be defined as a declaration or intention that provides a framework for actions that for the implementations and aims toward environmental well-being and protection. It has already been mentioned that Bangladesh is among the most disaster susceptible countries in the world. Due to its unique geographic position, hydro-geological characters such as low elevation from the sea and abundance of flood plains, high density of population and over-dependence on nature, this country is very much vulnerable to natural disasters. This policy was among the first few steps of Bangladesh towards enacting the principles and framework necessary for the sustainability of the environment. However, it is prudent to notice first hand that the National Environmental Policy, 1992 is not a binding

²²Sakib Intiaz, 'Ecological impact of Rohingya refugees on forest resources: remote sensing analysis of vegetation cover change in Teknaf Peninsula in Bangladesh' (2018) Scientific Journal of European Ecocycles Society, Vol. 4, No.1, pp. 16-19

legal provision. Instead it is a preliminary framework to guide and give idea to the goals and aims that should be followed upon to reach the environmental goals concerned.

The objectives of the Policy are the followings -

- i. Maintaining the ecological balance and overall development through protection and improvement of the environment;
- ii. Identifying and regulate polluting and environmentally degrading activities;
- iii. Ensuring environmentally sound development;
- iv. Ensuring sustainable and environmentally sound use of all natural resources; and
- v. Actively remain associated with all international environmental initiatives (MoEF, 1994).

Through the observation on the said objectives, we can assess that Bangladesh has already in its principles has an obligation to maintain the ecological balance, identify and regulate the polluting and environmentally degrading activities, ensure environmental development and sustainability. Additionally, part of the purpose for setting up these policies is to incorporate the international environmental initiatives. Despite the policies not being necessarily binding, they are relevant in the environmental issues of the Rohingya refugee influx to invoke the framework and endeavors that are necessary to be undertaken by the government of Bangladesh.

ii) The National Environmental Management Plan, 1995

The National Environmental Management Plan (NEMAP) is intended to be a framework with the goal of implementing the National Environmental Policies (NEP). Its activities are centered around objectives such as leading to better management of scarce resources, reduction in environmental degradation, improvement in natural or artificial habitats and ecosystems, sustainable development and the conservation in biodiversity. The NEMAP provide for actions for the government, NGOs and the civil society at large, and also includes activities in relation with agriculture etc.

The relevancy of the policy in the environmental issues of the Rohingya influx is reflected in its emphasis on environmental degradation and environmental protection. The policies include activities for the conservation and protection of the environment, and therefore it is relevant in identifying the role of the Bangladesh government in this endeavor.

iii) The Environmental Court Act, 2000

The Environmental Court Act (2000) is in support of the Environmental Conservation Act (1995) and the Environmental Conservation Rules (1997). It provides the legal framework necessary for establishing environmental courts that are to try cases relating to environmental pollution. Both the Environmental Conservation Act, 1995 and the Environmental Court Act 2000 were subjected to amendments in 2002 and subsequently the Environmental Conservation Rules, 1997 were reworked to include ambient air quality and exhaust fan vehicles.

This Act is relevant because it gives us a framework as to how the cases concerning environmental damages should be adjudicated. In case of the environmental damages caused by the Rohingya refugee influx, the corresponding cases where pollution is detrimental and deliberate, the cases can be brought for adjudication. Hence, under this Act, the government of Bangladesh is responsible for both the establishment of the environmental courts and the adjudication thereby.

5.2 Applicability of the international laws in domestic courts of Bangladesh

A national court in Bangladesh is not liable to uphold international laws and principles; even the Constitution of People's Republic of Bangladesh does not hold any such mandate to oversee the mandate of such laws.²³ Therefore these are not necessarily compulsory within the country. However, there are numerous precedents where the respective courts have decided that the applicability of the international provisions concerned, be it soft or hard, must be based upon the applicability of the said law in the municipal laws of the country. Hence, in case of contradiction between the municipal and international law, the municipal law prevails in Bangladesh. But in absence of such domestic law, international law serves as a guiding principle.

The supremacy of the municipal law was made clear, for instance, in the case of *Bangladesh v Samboon Asavhan*²⁴: -

²³ Gazi Saiful Hasan, Sheikh Ashrafur Rahaman, 'Principles of International Environmental Law: Application in National Laws of Bangladesh', In: Nirmal B., Singh R. (eds), Contemporary Issues in International Law (Springer, Singapore 2018)

²⁴ (1980) 32 DLR (AD) 252

*“that it is well settled that where there is municipal law on an international subject the national court’s function is to enforce the municipal law.”*²⁵

The issue of the applicability of the international instruments was also brought up in the case of *Hussain Mohammad Ershad v. Bangladesh and others*²⁶. It was decided in this case by the Supreme Court of Bangladesh that international instruments are not binding unless it is incorporated in the domestic law.²⁷

We need to assess the applicability of the international laws and principles to identify the obligations of Bangladesh government for the response needed to the environmental damages caused by the Rohingya refugee influx. And after this assessment, we can contemplate that the international laws can only make such an obligation if it has been adopted by the municipal laws. The same effect may also arise in the event that the domestic law is silent or otherwise incomplete in the concerned area of law.

6. The role of international community

In order to ascertain the role of the international community to address the environmental degradation of Bangladesh caused by the Rohingya influx, we must first contemplate at the many international instruments that come into consideration in this scenario. \

6.1. Relevant international agreements

A. The Convention on Biological Diversity (CBD)

The Convention on Biological Diversity (CBD) is a non-binding convention that came into force on 29 December 1993. The objectives of the convention are the followings²⁸ :

- i) The conservation of biological diversity;
- ii) The sustainable use of the components of biological diversity; and,
- iii) The fair and equitable sharing of the benefits arising out of the utilization of genetic resources.

²⁵ Gazi Saiful Hasan, Sheikh Ashrafur Rahaman, ‘Principles of International Environmental Law: Application in National Laws of Bangladesh’, In: Nirmal B., Singh R. (Eds), Contemporary Issues in International Law (Springer, Singapore 2018)

²⁶ II ADC (2005) 371

²⁷ Ibid

²⁸ ‘Mapping Human Mobility (Migration, Displacement and Planned Relocation) and Climate Change in International Processes’ IOM Migration, Environment and Climate Change Division (Dina Ionesco, Mariam Traore Chazalnoël and Ileana Sinziana Puscas), International Labour Organization (ILO) and United Nations Development Programme (UNDP), (August 2018) <<https://unfccc.int/sites/default/files/resource/WIM%20TFD%20II.2%20Output.pdf>> Accessed on 7 November 2018

The convention does not have any direction contemplation as to the correlation between human mobility and environmental challenges, but some opportunities can be explored to make the convention relevant to the issue. The occurrence of migration itself, along with the driving factors behind migration such as frustration of natural resources, degradation of land or water, urbanization and most notably conflict or chaos have, in most cases, very much evident repercussions on the biological diversity of the area migrated to. As per article 7 of the CBD, migrations such as the Rohingya influx is therefore relevant to the convention, which reads as follows–

“Article 7: Identification and Monitoring - Each Contracting Party shall, as far as possible and as appropriate, in particular for the purposes of Articles 8 to 10:

- (a) Identify components of biological diversity important for its conservation and sustainable use having regard to the indicative list of categories set down in Annex I;
- (b) Monitor, through sampling and other techniques, the components of biological diversity identified pursuant to subparagraph (a) above, paying particular attention to those requiring urgent conservation measures and those which offer the greatest potential for sustainable use;
- (c) Identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques; and,
- (d) Maintain and organize, by any mechanism data, derived from identification and monitoring activities pursuant to subparagraphs (a), (b) and (c) above.”

In most cases, migrations are usually followed by an increase in the usage of the available space, natural resources which ultimately contribute to pollution and repercussions in the bio-diversity of the migrated area. Article 8 allocates in-situ activities concerned with conservation incentives and as such there is an apparent correlation between human mobility and climate change, as in the case of the Rohingya influx of Bangladesh at the moment. The said article is quoted below:

“Article 8: In-situ Conservation - Each Contracting Party shall, as far as possible and as appropriate:

- c) Regulate or manage biological resources important for the conservation of biological diversity** whether within or outside protected areas, with a view to ensuring their conservation and sustainable use;

(d) Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings;

(e) Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas;

(f) Rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, inter alia, through the development and implementation of plans or other management strategies.”

Migration and the increase in human interference in the migrated place is often followed by the introduction of new species that are alien to the concerned environment. Even though the act of introducing new life forms is not inherently criminal in mens rea, the consequences can be dire. The invasive species can quickly out-compete the indigenous life forms and harm the local bio diversity. And coincidentally, the convention itself has made contemplations on the issue which further invoke the relevancy of the convention with the issue of migration. Article 8 (h) states-

Prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species.

The convention gave broad consideration to the indigenous communities on the basis that migration may be followed by a range of social and economic outcomes for the local communities such as drastic change in how the land is used, forced relocation, abrupt urbanization and the depletion of the available natural resources such as drinking water and wood. Such impacts have already been noted in the paper as repercussions of the Rohingya influx. This emphasis on the issue of migration makes the convention even more relevant to the environmental degradation through the refugee influx. As per article 8 (j) –

“(j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;”

The convention implores its parties to the identification and management of any and all activities that may or may not result in adverse impacts on the biological diversity. Should the

concerned “activities” be a consequence of a mass migration, such as the Rohingya influx, the convention becomes relevant to determine the role of its parties to act on the identification and management of the said activities. The following is the article 8(1) which reads –

“Where a significant adverse effect on biological diversity has been determined pursuant to Article 7, regulate or manage the relevant processes and categories of activities;”

Under article 10 the contracting parties are under the liability to ensure national level planning for the purposes of conserving biodiversity. Therefore, it is also an obligation to give consideration for human mobility, should it happen around or be impactful for such areas. The provision reads like this –

“Article 10: Sustainable Use of Components of Biological Diversity, Each Contracting Party shall, as far as possible and as appropriate:

(a) Integrate consideration of the conservation and sustainable use of biological resources into national decision-making;

(b) Adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity;”

Article 14(e) is concerned with considerations for emergency response to occurrences that may potentially pose hazardous to the said biodiversity. Climate disasters that are sudden or accounted for already present arduous risks for human lives, but in unique demographics such as the Rohingya refugee influx are vulnerable to a double-risk scenario. This can be credited to the make-shift nature of most of the habitats in the refugee camps, and the gradual reduction in the tree-covering of the concerned area. The provision is as follows -

“Each Contracting Party, as far as possible and as appropriate, shall:

Promote national arrangements for **emergency responses to activities or events**, whether caused naturally or otherwise, which present a **grave and imminent danger to biological diversity** and encourage international cooperation to supplement such national efforts and, where appropriate and agreed by the States or regional economic integration organizations concerned, to establish joint contingency plans.”

1. Article 19 mentions genetically modified crops and likewise biotech which may be a good example of the biological adaptation of the climate change. This implies a

plausible solution to reduce displacement due to famines caused by climate change. Despite not being directly applicable to the Rohingya refugee scenario, the provision is nevertheless necessary to contemplate the relevancy of the convention to the issue of human mobility and refugee crisis occurrences. The article is as follows -

“Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, to provide for the *effective participation in biotechnological research activities* by those Contracting Parties, especially *developing countries*, which provide the genetic resources for such research, and where feasible in such Contracting Parties.”

Despite the existence of this convention, it not being specialized for the human mobility and its impacts on environmental repercussions, we can assess from the above observations that the Convention on Biodiversity (CBD) is nevertheless very much relevant in a mass migration scenario. As such, the parties to the CBD is therefore under the obligation to take measures to conserve the biodiversity in the Cox’s Bazar, Teknaf Wildlife Sanctuary and other concerned places that are under the environmental repercussions due to the influx of Rohingya refugees.

Despite the sizable emphasis given to the conservation and action for biodiversity and environmental protection, the CBD is that parties are responsible only for the activities within their territory. Therefore, as a party to the convention, the agreement only obliges the Bangladesh government to take care of the issue stipulated under the above articles of CBD.

However, there is a financial mechanism for allowing developing countries to implement the provisions of the convention. It is operated by the Global Environment Facility under the authority of the Conference of the Parties (COP). Under Article 20 of the convention, the developed countries have the following obligations to aid in the financial resources needed for the national level implementations in a developing country–

1. To provide, in accordance with its capabilities, financial support and incentives in respect of those national activities.
2. To provide new and additional financial resources to enable developing country Parties to meet the agreed full incremental costs to them of implementing measures which fulfill the obligations of this convention.
3. To provide financial resources related to the implementation of this Convention through bilateral, regional and other multilateral channels.

4. To take account of the specific needs and special situation of least developed countries in their actions with regard to funding and transfer of technology.
5. To take into consideration the special conditions resulting from the dependence on, distribution and location of, biological diversity within developing country Parties, in particular small island States.
6. To consider shall also be given to the special situation of developing countries, including those that are most environmentally vulnerable, such as those with arid and semi- arid zones, coastal and mountainous areas.

Additionally under Article 12, the developed countries have an incentive to provide the developing countries with the research and training necessary for the conservation and sustainable use of the biological resources.²⁹

Therefore, from the assessment of the above article, we can contemplate that the developed country parties to the convention have an obligation to provide the financial resources to the developing countries for the national level implementations under the CBD. These financial resources need to be provided for the costs needed for the protection of environment and biodiversity. And other than the financial resources provided through the GEF, the parties can also provide the same through various multilateral and bilateral channels.³⁰

As a party to the convention and as a developing country, Bangladesh is eligible for those financial resources, to implement the national level obligations it has accrued under the CBD. And the relevancy of the obligations met under the convention has already been established in this paper through our discussion on the human mobility and environmental damage issue. Therefore the international community, in form of the said developing countries, is liable to aid Bangladesh in its environmental issues.

B. The United Nations Framework Convention on Climate Change (UNFCCC)

The United Nations Framework Convention on Climate Change (UNFCCC) is one such environmental treaty, and its object is the following³¹ -

²⁹ Article 12 of The Convention on Biodiversity International, <<https://www.cbd.int/convention/articles/default.shtml?a=cbd-20>> Accessed on 15 December 2018

³⁰Article 20, The Convention on Biodiversity International, <<https://www.cbd.int/convention/articles/default.shtml?a=cbd-20>> Accessed 15 December 2018

³¹ Ibid

"Stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system".

As of now, the UNFCCC has 197 parties. And as such the terms of the instrument is likewise applicable to the parties and in greater view to the international community, to take action related to climate change.

Under Article 3 (2) & (5) of the convention, it is to be considered that the obligations set upon a developing country party does not become disproportionate to its capacity to uphold. And cooperative endeavors must be undertaken by the parties to promote sustainable development and economic growth, so that developing countries are better able to address the climate change issues.

Under Article 4, developed countries are under the obligation to provide new and additional financial resources to the developing countries to aid them in implementing their environmental obligations.

Under Article 5 and 6 of the convention, the developed countries have the responsibility of providing aid in systematic observations and exchange of knowledge and must also provide necessary training and education to the developing countries.

And finally under Article 11, there are financial mechanisms set by the convention for procuring financial resources for the developing country parties through not only through the parties themselves but also through various multilateral and unilateral channels.

And through this observation we can contemplate that Bangladesh, as a party to the UNFCCC and its position as a developing country, is eligible to all the support entailed under the above provisions in its endeavors against the environmental issues caused by the Rohingya refugee influx.

C. The Paris Agreement

The Paris Agreement 2015 is often cited as a big leap forward in a collective endeavor to repelling climate change. It establishes a binding obligation to all its parties to their

“nationally determined contributions (NDCs)”, which are essentially a country own formulated goals and strategies for mitigation of the concerned issue³². The agreement uses a hybrid governance model where the states themselves are responsible for setting their NDCs for reaching their goals and implementing them as such. While every 5 years an evaluation is made on their respecting progress and effort, by the Conference of the Parties (COP). As for our purpose, the agreement is very much relevant in assessing the role of the international community in the environmental challenges of the Rohingya refugee influx.

The agreement makes explicit calls to both developed and undeveloped countries in their role in the conservation and enhancement of carbon reservoirs such as forests and the reduction of greenhouse emissions. Article 4 of the agreement requires that all parties to the agreement set and endeavor towards their respective NDCs to reduce greenhouse gas emissions. The article also instructs developed countries to be of assistance to the developing countries in the effort as this –

“Recognizing that enhanced support for developing country Parties will allow for higher ambition in their actions.”

This is an enumeration of the responsibility that the developing nations among whom are parties to the agreement to protect and assist environmental challenges being faced in Bangladesh at the moment, especially when we consider the fact that Bangladesh itself is a party to the Paris Agreement (25 December, 2015) and is recognized as a developing country. The agreement makes explicit reference about the consideration for forests and other biological carbon reservoirs. Article 5 of the agreement for example, is entirely dedicated to that purpose. Article 5 reads as follows:-

(1) Parties should take action to conserve and enhance, as appropriate, sinks and reservoirs of greenhouse gases as referred to in Article 4, paragraph 1(d), of the Convention, including forests.

(2) Parties are encouraged to take action to implement and support, including through results based payments, the existing framework as set out in related guidance and decisions already agreed under the Convention for: policy approaches and positive incentives

³²‘Forests and Land Use in the Paris Agreement’, Climate Focus Client Brief on the Paris Agreement (2015) <<https://climatefocus.com/sites/default/files/20151223%20Land%20Use%20and%20the%20Paris%20Agreement%20FIN.pdf>> Accessed on 10 November 2018

for activities relating to reducing emissions from deforestation and forest degradation, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries; and alternative policy approaches, such as joint mitigation and adaptation approaches for the integral and sustainable management of forests, while reaffirming the importance of incentivizing, as appropriate, non-carbon benefits associated with such approaches.

Therefore under the obligations set by this provision, the agreement becomes further relevant to the Rohingya refugees scenario, especially when we consider the cases of forest degradation and deforestations in the concerned area. As it has been mentioned previously on the paper, entire forest coverings are being depleted for making makeshift housings and to use as fuel for fire, among other uses.

The agreement also makes sizable reference to the necessity of protecting vulnerable ecosystems and the need for food security.³³ Both of which terminologies are very much relevant to the Rohingya refugee influx scenario.

Additionally, under article 6 (1) & (2) there are mechanism for cooperative endeavors between parties to promote and implement conservation of the environment and sustainable development. The provision is as follows –

1. Parties recognize that some Parties choose to pursue voluntary cooperation in the implementation of their nationally determined contributions to allow for higher ambition in their mitigation and adaptation actions and to promote sustainable development and environmental integrity.
2. Parties shall, where engaging on a voluntary basis in cooperative approaches that involve the use of internationally transferred mitigation outcomes towards nationally determined contributions, promote sustainable development and ensure environmental integrity and transparency, including in governance, and shall apply robust accounting to ensure, inter alia, the avoidance of double counting, consistent with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

Under Article 7 (6) of the agreement, international cooperation for providing the needs of the vulnerable developing countries has been recognized as the following –

³³Ibid

“Parties recognize the importance of support for and international cooperation on adaptation efforts and the importance of taking into account the needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change.”

Additionally under the Article 7 (7), the developed countries have the following obligations to the developing countries

- i. To the Sharing of information, good practices, experiences in regards to the implementation of the goals;
- ii. In strengthening international arrangements and scientific knowledge on the concerned issues;
- iii. In identifying effective adaptation practices, adaptation needs, priorities, supports and in Improving the effectiveness and durability of adaptation actions.

Under Article 10, the developing countries are also eligible for financial support from the developed countries as this –

“Support, including financial support, shall be provided to developing country Parties for the implementation of this Article.”

And under article 11, all parties to the agreement are under the obligation to aid in the capacity of the developing countries to implement the obligations accrued under the agreement.

Through the analysis on these provisions from the convention, we can clearly contemplate that the international community, in form of the developed country parties of the Paris Agreement, has obligation to aid Bangladesh in the environmental issued caused by the Rohingya refugee influx.

6.2 Relevant policies and principles of international environmental law

A. Sustainable Development Goals

The Sustainable Development goals (SDGs), since its inception in 2015 as a set of goal for sustainability by the United Nations General Assembly, has so far been treated as a valuable component in the protection of environment. There is an undeniable implication that development process without any consideration given as to its respective

environmental consequences can be a diminishing factor in terms of sustainability of the environment. Therefore it is very much important to ensure that development policies and environmental protection are treated as correlatives, to ensure that not too much damage is caused to the environment and combat climate change. This is primary reasoning of the SDG. The goal 13, signified by Climate Change, is the cardinal SDG goal relating to environmental protection. The following is an overview of the goal and how they relate to the role of the international community in the environmental protection scenario of the Rohingya influx in Bangladesh -

Goal 13: Take urgent action to combat climate change and its impacts

Targets -

- Strengthen resilience and adaptive capacity to climate-related hazards and natural disasters in all countries;
- Integrate climate change measures into national policies, strategies and planning;
- Improve education, awareness-raising and human and institutional capacity on climate change mitigation, adaptation, impact reduction and early warning;
- Implement the commitment undertaken by developed-country parties to the United Nations Framework Convention on Climate Change to a goal of mobilizing jointly \$100 billion annually by 2020 from all sources to address the needs of developing countries in the context of meaningful mitigation actions and transparency on implementation and fully operationalize the Green Climate Fund through its capitalization as soon as possible; and,
- Promote mechanisms for raising capacity for effective climate change-related planning and management in least developed countries and small-island developing States, including focusing on women, youth and local and marginalized communities.³⁴

Upon consideration of the targets in the goal, it is clear that the international community has a great obligation to cooperate Bangladesh government in its environmental protection endeavor that includes protection and prevention of environmental degradations caused by the Rohingya influx in Bangladesh.

³⁴ <https://sustainabledevelopment.un.org/sdg13>, Accessed on 8 November 2018

B. Common but differentiated responsibilities (CBDR)

The common but differentiated responsibilities (CBDR) principle often appears in treaties that address a common concern. Under the principle of CBDR, countries with fewer resources, which have historically contributed less to a problem, should have fewer responsibilities, while developed States bear more responsibility for addressing it. However, a global problem necessitates a solution that requires all nations to meet standards which would have a meaningful impact, with developed States assisting developing States in meeting those standards.³⁵

Therefore the underlying proposal of the principle that there should be collective responsibility for the common goal of environmental conservation, but it should not be equal to everyone. Instead the burden to uphold these obligations should be differentiated on various factors such as economical capacity etc.

The principle was formalized in the UNFCCC in 1992, and is contained in paragraph 1 and 1 of the articles 3 and 4, respectively. As a party to the convention, Bangladesh has to uphold the obligations set by the UNFCCC. However due to the application of CBDR principles, the responsibilities of Bangladesh to address environmental damages should not be equal as the other developed country parties to the convention. Instead the responsibility to implement the environmental conservation should be on the basis of equity and in accordance with its common but differentiated responsibilities and respective capabilities. And as such, under the provisions of Article 4, the other parties are under the obligation to do their part of the differentiated responsibility in the conservation, and cooperate in aiding Bangladesh in its struggle against the damages caused by the influx of Rohingya refugees.

C. The Polluter Pays Principle (PPP)

The Polluter Pays Principle (PPP) was first referred to by the OECD Council in 1972, where it was stated that “the principle to be used for allocating cost of pollution prevention and control measures to encourage relational use of scarce environmental resources and to avoid distortions in international trade and investment is the so called polluter Pays Principle”. The principle was additionally also defined as such, “This principle means that the polluter should bear the expenses of carrying out the measures decided by public

³⁵ Chelsea Bowling, Elizabeth Pierson, Stephanie Ratté, ‘The Common Concern of Humankind: A Potential Framework for a New International Legally Binding Instrument on the Conservation and Sustainable Use of Marine Biological Diversity in the High Seas’ (2017) Yale Law School, Yale School of Forestry & Environmental Studies <<https://docplayer.net/48698444-Chelsea-bowling-1-elizabeth-pierson-1-stephanie-ratte-2-executive-summary.html>> Accessed on 9 November 2018

authorities to ensure that the environment is in an acceptable state”³⁶ PPP is generally recognized as a principle of international environmental law, and has been accepted in the article 14 of the Rio De Geniro Declaration. The following is the respective principle of the Rio Declaration dealing with the PPP –

“Principles 16: National authorities should endeavor to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.”

The principle becomes very much relevant to the environmental protection of the Rohingya influx scenario because Myanmar as a country has had signed on the Agenda 21 of the UN and is therefore party to the Rio Declaration³⁷. Myanmar has had direct responsibility for causing the environmental damages subsequent to the refugee influx. And as for being the sole polluter in this scenario, the country has an obligation under the PPP to provide for the expenses to be incurred in remedying the damages.

D. The principle of Common Concern for Humankind

The principle of Common Concern for Humankind (CCH) has been at an interesting position in its applicability in customary international law. Even though the phrase “common concern of humankind” or any other phrase of the similar stature does not take place in any of the cases presented to the International Court of Justice, it has been made clear to the point that many of the same principles that motivate “common concern” has arisen in the context concerning the environment. The study of the following two cases appears productive to assess the standing of the - Gabcikovo-Nagymaros Project Case (1997). This case supposedly highlights an obligation to carry out environmental impact assessment. Slovakia and Hungary, to the purview of the ICJ, had been in the breach of a treaty made prior in 1977 concerning a certain construction of a series of locks. But the actual importance of the case is reflected on the emphasis the ICJ gave to the “reconciliation between economic development and its impact on the environment”, as this reconciliation has become one of the standards that the states must abide by.

³⁶ Richard Reibstein (ed.), ‘Polluter Pays Principles’ Available at: http://www.eoearth.org/article/Polluter_pays_principle, Accessed on 5 November 2018

³⁷ List of the Nations Who Attended and Agreed to the 1992 RIO Declaration on Environment and Development (Agenda 21), The Post Sustainability Institute <<https://www.postsustainabilityinstitute.org/which-nations-signed-agenda-21.html>> Accessed on 10 November 2018

In the general scenario however, the international law apparently focuses more on how the states interact and influence each other, and less on a standardized notion of greater good for the collective. This is not necessarily an appropriate model for a doctrine like the CCH. Despite this tendency, there have been a number of occurrences in the past where the decision of the ICJ was more indicative of the global relevancy of an issue, instead of the notion arising out of the sovereign ideologies. The 1970 Barcelona Traction case for example, where the issue of the case had been financial but the Court had to note that some obligations “which are not owed to other States on account of national sovereignty, but are rather obligations owed toward all humankind, giving such examples as the outlawing of genocide and slavery”. Such obligations are referred to as *Erga Omnes* and are often codified into mediums such as treaties to conform to a standard that ultimately amounts to an expression of the *De Facto* international. As for our purposes, the principle of CCH becomes relevant because, ultimately the environmental repercussion being faced by Bangladesh at the moment due to the Rohingya refugee influx is a common concern for all humankind. Even if the unforgiving human conditions the refugees are facing in their makeshift habitats are kept out of the consideration, the cost for this temporary accommodation is taking a heavy toll on the environment. And if not prevented, the concerned areas will face grave environmental degradation, which may only result in further impact on bigger issues such as climate change and contribute to long term disasters such as global warming. As such, under the principle of Common Concern for Humankind (CCH), it is a role of the international community to take measure against the environmental challenges in Bangladesh.

7. Conclusion

After concluding the whole research, it may be concluded that there is enough scope for both the International Community and Bangladesh as the host state of Rohingya refugees to take action for reducing the environmental damages and to ultimately protect the environment. It is also a legal responsibility of all the signatory countries under the mentioned international statutes to protect the environment. These legal principles should be immediately implemented for better lives of Rohingya refugees and nearby residents of those localities in Bangladesh, to protect the environment of concerned places and to protect the natural resources of Bangladesh.

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