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THE PLIGHT OF ROHINGYA PEOPLE IN BANGLADESH: ACCESS TO JUSTICE AND HUMAN RIGHTS PROTECTION

Shyikh Mahdi¹

Abstract

Bangladesh has a long history of hosting Rohingya from the Northern Rakhine State of Myanmar with the earliest arrivals recorded in 1948. The recent influxes occurred in last few years forced a large number of Rohingya to flee to Bangladesh in the wake of serious state repression in Myanmar. This huge influx of refugees without proper reception and attention from the Bangladeshi side caused severe humanitarian crisis; the appalling conditions of the refugee ghettos are gradually deteriorating. Desperate for their survival, the Rohingya people are infiltrating into various levels of socio-economic structures of Bangladesh without any proper plan/management policy. Often, Bangladesh is been used as the transit zone by the Rohingya people en route to other countries. The paper will analyze the existing situations of access to justice in formal and informal institutions by registered Rohingya Refugees in Cox's Bazar District in Bangladesh. The specific objective of this paper is to make an assessment of existing situations of rights to access to justice, legal aid and representations, and fair trial of registered Rohingya residing currently in Bangladesh and check these in light of Bangladeshi national legal and international human rights standard. This paper will provide a thorough assessment of existing situation with a clear and precise analysis of international human rights and national legal standard. Some recommendations for improving the situation of Rohingya people for access to justice issue have been made at the end.

Keywords: Rohingya, Bangladesh, Human Rights, Justice, Nationality, Drug Cartel, Terrorism

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Brief Background: Bangladesh and Rohingya people

The Rohingya, originated in the Rakhine (previously Arakan) province of Myanmar is one of the most persecuted minorities of the world. The plight of these people, who are forced to leave their country because of the state-sponsored violence and oppression, recently came under global spotlight for the outbreaks of death and deplorable human rights violations at the Bay of Bengal, also known as Andaman Sea Crisis.² Hundreds and thousands of Rohingya people took the perilous road to Bangladesh, Thailand, Malaysia and Indonesia to save lives and family.³ However, the impact and problem of this ethnic cleansing had felt more strongly in Bangladesh, the immediate neighbor of Myanmar than all the other countries.

The Rohingya community is one of the many ethnic groups of Myanmar, with a distinct historical root and heritage of their own.⁴ Throughout the course of history of many hundred years, the Rohingya community was once one of the prosperous and culturally rich groups even had ties with the Muslim rulers of the Subcontinent.⁵ However, things started to take unprecedented turns especially in the British period, and after the independence of Myanmar in 1947; gradually it became the second most underdeveloped and poorest of all states of Myanmar.⁶ The military rule in Myanmar slowly began its systematic oppression of the Rohingya people especially in the citizenship issues.⁷

Finally in 1982, the then Govt. of Myanmar enacted the Citizenship Act of 1982, which categorically excluded Rohingya from the list of the many ethnic

² IOM, "Situation Report on Andaman Sea Crisis", https://www.iom.int/sites/default/files/situation_reports/file/IOM-Andaman-Sea-Crisis-Situation-Report-September-2015.pdf accessed on June 3, 2016

³ Human Rights Watch, "Perilous Plight: Burma's Rohingya Take to the Seas", May 2009

⁴ Thant Myint-U, "The River of Lost Footsteps: Histories of Burma", (Farrar, Straus & Giroux: New York, 2006), p. 72

⁵ Human Rights Watch, "Govt. could've stopped sectarian violence", July 31, 2012 <https://www.hrw.org/report/2012/07/31/government-could-have-stopped/sectarian-violence-and-ensuing-abuses-burmas-arakan> accessed on May 21, 2016

⁶ UN General Assembly, "Report of the Special Rapporteur on the Situation of Human Rights in Myanmar", A/66/365 (Sept. 16, 2011), p. 17; UNDP, "Integrated Household Living Conditions Survey in Myanmar (2009-2010): Poverty Dynamics Report, June 2011.

⁷ Human Rights Watch, "Burma: Rohingya Muslims: Ending Cycle of Exodus?", September 1996, p. 29, <http://www.unhcr.org/refworld/docid/3ae6a84a2.html> accessed on June 12, 2016

groups of Myanmar. As justification, the Govt. argued that these Rohingya people are basically illegal migrants from Bangladesh who settled in Arakan during the British period.⁸

Through this one piece of legislation, the Rohingya community became state- less in own country, and was forced to flee to the neighbor Bangladesh. Thus the first influx of Rohingya refugees in Bangladesh came at early eighties.⁹

However, Bangladesh also strictly enforced the Citizenship act of her own, and started to push back some of the refugees over the years. However, in 1991 the reprisal of the oppression of the Military Junta of Myanmar caused another huge influx of Rohingya refugees in Bangladesh, although by 1995 Bangladesh started to return the Rohingya refugees again.¹⁰ Since then, many of the Rohingya people live alongside the Bangladesh-Myanmar border and in different refugee camps with very limited freedom and access to basic human rights.

In 2012 a severe ethnic conflict and riot broke out in different places of Rakhine (previously Arakan) province, where armed Buddhist groups and packs of militant monks attacked the Rohingya and other minorities and caused a huge loss of lives and properties.¹¹ That resulted into another big influx of refugees in Bangladesh, who basically chose to go to South East Asian countries like Thailand, Malaysia and Indonesia through the ordeals of inhuman treatment, torture and deceptions, and thus the Andaman Sea crisis came into existence.¹²

Despite being the closest neighbor and one of the largest Muslim countries of the world, the Govt. of Bangladesh seemed very reluctant to provide basic supports to these Rohingya refugees throughout the years. Many scholars argued the under- lying reason as the financial and structural weakness of the country

⁸ Human Rights Watch, "Govt. could've stopped sectarian violence", July 31, 2012 <https://www.hrw.org/report/2012/07/31/government-could-have-stopped/sectarian-violence-and-ensuing-abuses-burmas-arakan> accessed on May 21, 2016

⁹ Bertil Lintner, "Burma in Revolt: Opium and Insurgency since 1948", p. 317.

¹⁰ Patrick Balazo, "Truth and Rights: Statelessness, Human Rights and the Rohingya", Under Current, Fall/Winter2015, Vol. 11 Issue 1, pp. 6-15

¹¹ Bridget Welsh, "Devided or Together? South East Asia in 2012"; Journal of Southeast Asian Affairs, Vol. 1, 2013, pp. 1-13

¹² IOM, "Situation Report on Andaman Sea Crisis", https://www.iom.int/sites/default/files/situation_reports/file/IOM-Andaman-Sea-Crisis-Situation-Report-September-2015.pdf accessed on June 3, 2016

although there were offers and implementations of International aid supports. The reasons however, are more complex than just financial limitations; the security concerns (both local and international) and interrelation between the Governments of Bangladesh and Myanmar played vital roles in this context.¹³

Number of Rohingya refugees in Bangladesh and their distribution

There are a number of estimates on the population of Rohingya communities in Bangladesh. Refugee International calculates about 29,000 Rohingya people to live in official camps, whereas the UNHCR statistics states the number as something around 34,000.¹⁴ However, UNHCR and INGOs agreed to the assumption of around 200,000 Rohingya living in Bangladesh in unofficial camps and other settlements.¹⁵ However, independent Bangladesh researchers and various national NGOs estimates that the number of Rohingya people living outside the official camps as close as half million (500,000).¹⁶

Most of the Rohingya live in Cox's Bazar district, at the southeastern coast of Bangladesh that shares 286 kilometers of borders with Myanmar. UNHCR runs two official refugee camps are at Kutupalong and Nayapara region of the district, and they along with other local and international NGOs provide basic humanitarian support. But rest of the population lives outside these two official camps, and all of them are categorically denied of any kind of humanitarian assistance. However, both the residents of the official and unofficial settlements do not have access to any legal rights, which exposes them to exploitation and violence often inside and outside the camps.

¹³ The Diplomat, "Refugees and Neighbors, Rohingya in Bangladesh", October 2015 <http://thediplomat.com/2015/10/refugees-and-neighbors-rohingya-in-bangladesh> accessed on June 5, 2016

¹⁴ The Daily Star, "Bangladeshi Rohingya Camps: Promise or Peril?", March 2015, <http://www.thedailystar.net/bangladeshs-rohingya-camps-promise-or-peril-52913> accessed on April 23, 2016

¹⁵ The Diplomat, "Refugees and Neighbors, Rohingya in Bangladesh", October 2015 <http://thediplomat.com/2015/10/refugees-and-neighbors-rohingya-in-bangladesh> accessed on June 5, 2016

¹⁶ The Daily Star, "Bangladeshi Rohingya Camps: Promise or Peril?", March 2015, <http://www.thedailystar.net/bangladeshs-rohingya-camps-promise-or-peril-52913> accessed on April 23, 2016

Key challenges at present

The Foreigners Act 1946 and the Control of Entry Act 1952 provides for a punishment of imprisonment of five years to any person illegally entered or stayed in Bangladesh, and they have no exceptions for refugees. This is the key tool which is been used against Rohingya people in many cases, and many of them end up in the jails of Cox's Bazar and other districts of Bangladesh.¹⁷

Bangladesh hasn't signed or ratified any of the international legal treaties or conventions regarding the right to refugees, including the UN Refugee Convention 1951 or the 1967 protocol, or any other regional treaties for the protection of refugees. However, under the *nonrefoulement* principle, Customary International Law recognizes the obligation of not to reject asylum seekers at the borders of any country when they are fleeing from threat on their life and liberty.¹⁸

Geo-political aspects at the Bangladesh-Myanmar border

The border between Bangladesh and Myanmar are mostly hilly with dense forest, many parts of it are inaccessible. This paves the way for armed insurgents of Myanmar and the terrorists to thrive, conduct trainings and running their operations. Many of the armed groups of Myanmar like the Arakan Army, who are fighting for the liberation of the Rakhine (previously Arakan) province, have established their secret bases in these areas. Besides, existence of Bangladeshi armed insurgent groups like UPDF and JSS are also based in the hill tracts, which make the total area unstable and a security concern for both Bangladesh and Myanmar. Recently, Bangladesh Army conducted a number of operations into the hilly border areas to oust the insurgents. Obligation of not to reject asylum seekers at the borders of any country when they are fleeing from threat on their life and liberty.

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¹⁷ UNHCR, 'Two Camps of thought on Rohingya Refugees in Bangladesh'; January 2013, <http://www.unhcr.org/news/latest/2013/1/5106a7609/camps-thought-helping-rohingya-bangladesh.html> accessed on April 27, 2016

¹⁸ UNHCR, 'Bangladesh: Analysis of the gaps in protecting the Rohingya Refugees'; 2007, <http://www.unhcr.org/protect/PROTECTION/46fa1af32.pdf> accessed on May 5, 2016

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Another aspect of the problem is the uncontrollable supply and smuggling of drugs and narcotics through the border areas, which has become the transit hotspot for Methamphetamines (popularly called as *Yaba* or *Baba*), a drug introduced in the times of second world war, now became the most popular choice among the addicted persons of Bangladesh. Although the police and border guards are continuously confiscating as many as millions of pills (sometimes even a single lot has hundred thousands of pills), the supply and demand seem to be on rise. The tension between the two border guards forces of the two country often go up high, mostly caused by the activities of the drug smugglers from two sides.²² Some of the locally influential political persons of Bangladesh are also involved in this illegal trade which often creates unnecessary pressures and problems for the law enforcing agencies.

Thus the movement of Rohingya people across the border raises a serious security concern for the Govt. of Bangladesh, as there is rampant illegal trade and smuggling activities going on around the hilly jungles with frequent border crossings from both Bangladesh and Myanmar. Very recently, existences of some of the Islamic militant groups have also been evident around these places, who are also established their bases in these areas.

However, desperate situations drive Rohingya people to take desperate measures. A study of PHR (Physicians for Human Rights) revealed that the ratio of acute malnutrition among the children under five years of age is about 18% in some of the Rohingya settlements inside Bangladesh, where the WHO has set the critical threshold as 15%.

Besides, occurrences of rapes and other crimes are happening inside the camps without any effective measures of redress or legal protection. Often the victims stay silent as they know they have nothing to do, and without any legal status or protection they might get victimized again if they sought any assistance from the police or other administrations. As a result, many of the vulnerable members of Rohingya especially the youth become an easy prey for these insurgent groups and drug smugglers which intensifies the complexity of the problem.

Some of the recent incidents have already jeopardizes the situation. A senior Buddhist Monk was brutally killed in Bandarban, the hilly district adjacent to Cox's Bazar in May 2016. In the same month, some unknown assailants attacked on a local Camp of Bangladesh Ansar (A Paramilitary Security Force) and killed one of the guards, looted some rifles. The news of recovering thousands of *Yaba* pills is very common in these days. With the current rise of extremist violence with the hints of terrorism, this kind of incidents especially in the zone where Rohingya people are staying has the potential to make things even more difficult. Drug smugglers from two sides. Some of the locally influential political persons of Bangladesh are also involved in this illegal trade which often creates unnecessary pressures and problems for the law enforcing agencies.

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The cold response from the Govt. of Bangladesh about the Rohingya issue

The Govt. of Bangladesh issued an order to a group of NGOs and aid agencies to terminate their activities and support services at the refugee camps; in awake of the fear that the increased support can attract more Rohingya people to flee and join in the camps in Bangladesh. In August, 2012, three International NGOs named the Doctors without Borders (MSF), Action against Hunger (ACF) and the Muslim Aid UK were ordered to stop their operation immediately. A Senior Minister of the Govt. justified the approach by saying "we cannot be friends with the Terrorists or Rapists". This practice is, however not a new one. In 1978, when the first influxes of refugees started to come, the then Bangladesh Govt. withhold the food supply to force the Rohingya to return to Myanmar, which resulted into the death of thousands of Rohingya people.

Meanwhile, Mousa Abdullah, a French aid worker of Baraka City (an Islamic NGO based in France) was arrested by the police last year. It was perceived as a silent threat to all the future aid workers intending to come in the Rohingya camps for aid and support activities. He was detained in prison for a few months as a suspect for possible militant involvements, and was released afterwards.

Since some of the incidents in Cox's Bazar region started to raise concerns in different levels especially in security issues, Govt. proposed a plan to relocate all the refugee camps to an island in the Bay of Bengal. As Cox's Bazar is the

most popular tourist spot of the country with the longest sea beach of the world, this proposal can be presumed as an attempt to boost the local and foreign tourists by assuring security and decency of the place.

Even the lucky ones who can stay in the camps, the situation is not at all favorable by any means. Complaints of maltreatment, beatings, denial of food ration and even sexual tortures are not very uncommon within the camp walls in Bangladesh.

Positive Achievements

Bangladesh announced the concept of National Refugee Policy which came into existence at 2014. The plan was declared in 2010, with the agreed condition that no new Rohingya refugee could be registered and accepted at the two official UNHCR camps at Cox's Bazar. This however, impeded the UN agencies and INGOs to offer any additional support to the undocumented refugees. One of the positive attitudes of the Bangladesh administration was the careful use of the term "Undocumented Nationals of Myanmar" (UNM), instead of refugees or stateless Rohingya people. Bangladesh acknowledged Rohingya as the citizens of Myanmar, although even in the recent political changes failed to shed any positive light upon the problem, as Aung Sun Suu Kyi herself declared to ban the usage of the word "Rohingya", which is described by many as a disgraceful stance by the democratic leader.

The National Policy on the undocumented nationals of Myanmar contains five key points – Enlistment of all Rohingya people staying in Bangladesh, providing basic humanitarian relief to all, strengthening diplomatic relationship and the border management issues with Myanmar Govt., and boosting the coordination among concerned sectors at national level. This policy however fails to provide for a system that allowed the refugees opportunities for self-reliance, and says nothing about the legal rights and protection for basic human rights.

As per the policy, the survey of undocumented Rohingya has already been started. With the help from UNICEF and some partner NGOs, the process of birth registration for the Rohingya children born in Bangladesh is also ongoing.

The curious case of the Bihari Community in Bangladesh

Bangladesh hosts a number of stranded Pakistani citizens, whose homeland were in some parts of India and Pakistan, and then settled in Bangladesh (then East Pakistan) after the partition of 1947. However, in the Bangladesh war of liberation in 1971, these Bihari migrants choose to stay in favor of Pakistan and denounced the liberation war, even collaborated with the Pakistani Army in many operations and atrocities. After the war and independence of Bangladesh, members of these communities were relocated into a number of Refugee Camps, and were basically stateless since Pakistan refused to take them back. However, in 2003, a Supreme Court judgment following a legal battle has given some members of the community the citizenship of Bangladesh, as they were born after the independence and pledged allegiance to Bangladesh. Afterwards, another Supreme Court judgment reaffirmed the citizenship of all Bihari people who were born after the liberation of Bangladesh and ensured their voting rights.

This example has been picked up only to show the socio-political agility of Bangladesh and the Judiciary to accommodate refugees or even hostile citizens. However, for Rohingya people that should not be the case because their ancestral roots and culture-heritage affirms and strengthens their claim of citizenship rights in Myanmar. The curious case of the Bihari citizens in Bangladesh could be an example or inspiration for the concerned parties to provide a little bit more sympathy, humanitarian assistance and genuine support to the Rohingyas to get back to their country.

Conclusion & Recommendations

The Govt. of Bangladesh need to rethink the whole approach about the Rohingya people in its territory, especially in providing safety and some legal protection for human rights. By opening up to the supports and humanitarian assistance from International donors and by facilitating the aid agencies to work closely with the needy people, Bangladesh can do more in its present capacity and infrastructure to provide something better for Rohingya people.

The border guards of Bangladesh (BGB) and other Law enforcing agencies at the border should stop the pushback of Rohingya people, and the Govt. should allow and facilitate UNHCR to register all the refugees arriving at Bangladesh. NGOs, Civil Society organizations should be allowed to visit the refugees at different camp to watch and improve the living conditions.

However, all the attempts will go in vein if the International community does not respond and pressure the Govt. of Myanmar to settle the issue with genuine interest and respect for human rights and dignity. During the violent attacks on Rohingya people on 2012, General Thein Sein expressed that the only way to solve the problem is to send the Rohingya people to different UNHCR camps in other countries. With the inception of democratic process, peace talks with different ethnic groups and dramatic expansion of opportunities of trade and investment in the new Myanmar, the issue of the Rohingya people seems to be pushed back in the line. Western powerhouses even the multinational business giants who have capacity to influence the Govt. policies in many aspects should step up for Rohingya people and their basic rights.

Most importantly, in light of the national policy the coordination with the Myanmar Govt. has to be given utmost importance. Especially in wake of the political change and the recent waves of democracy, Bangladesh Govt. can help and assist the Myanmar Govt. to de jure and de facto accept and own the Rohingya people, and ensure their safety, dignity and human rights in their own homeland.

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