Country Note BANGLADESH

International protection issues and recommendations from international and regional human rights mechanisms and bodies

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This Country Note provides a synthetic overview of key issues and recommendations in the field of international protection put forward by international and regional human rights mechanisms and bodies. In line with the ASILE project research agenda, this Country Note pays specific attention to aspects related to ‘containment’ of people in need of international protection. The notion of containment is used here to refer to a broad range of policies and practices aimed at preventing access to territory, increasing the expulsion and restricting mobility of asylum seekers and refugees.

The Country Note covers documents released by United Nations (UN) human rights mechanisms and bodies. These include the UN Charter-based system of human rights protection, including the Universal Period Review and the Special Procedures of the Human Rights Council, and the UN Human Rights Treaty bodies. The Note also encompasses monitoring bodies established under regional human rights systems to which the country under consideration is party.
1. **International and regional human rights obligations**

Bangladesh is party to the two international covenants on human rights, the International Covenant on Civil and Political Rights (CCPR) and the International Covenant on Economic, Social and Cultural rights (CESCR). However, Bangladesh has ratified neither the CCPR first optional protocol establishing a communication procedure nor the second optional protocol aiming at the abolition of the death penalty. Bangladesh is also not party to the CESCR Optional Protocol, which allows victims whose rights under the Covenant have been violated to present a complaint to the UN Committee on Economic, Social and Cultural Rights.

Bangladesh is party to several other core international human rights instruments, including the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), including its optional protocol, and the International Convention on the Elimination of all Forms of Racial Discrimination (CERD).

The country is also party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) and of the Convention on the Rights of the Child (CRC), as well as the two optional protocols on the involvement of children in armed conflict and on the sale of children, child prostitution and pornography.

Bangladesh has been invited by several human rights treaty bodies and mechanisms to ratify international instruments to which it is not yet party: these include, in addition those mentioned above, the optional protocol to CAT, establishing a monitoring system to prevent violations of the Convention by State parties and CRC third optional protocol establishing a communication procedure.


At the regional level, Bangladesh is a member to the South Asian Association for Regional Cooperation (SAARC). SAARC was established with the signing of the SAARC Charter in Dhaka on 8 December 1985 to promote economic development and regional integration among its member states. In 1996, SAARC adopted its Social Charter, which incorporates a broad range of targets to be achieved.

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2 Ibid.

3 Ibid.

4 See the SAARC official website: [https://www.saarc-sec.org/](https://www.saarc-sec.org/)

5 SAARC comprises eight Member States: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.
across the region in the areas of poverty eradication, empowerment of women, promotion of health and nutrition, and protection of children.\(^6\)

However, the SAARC has not so far adopted any instrument dealing specifically with the promotion and protection of human rights.\(^7\)

### 2. Scope of international protection and quality of asylum procedures

Bangladesh lacks a national legal framework on the protection of refugees. In the absence of a national asylum mechanism, the 1946 *Foreigners Act* remains the key legislation governing the status of foreigners in the country.\(^8\) As stated by UNHCR, the only durable solution for the refugee population envisaged by the government of Bangladesh is voluntary repatriation.\(^9\)

Bangladesh has been hosting Rohingya refugees fleeing systematic abuses and violence in Myanmar for several decades. As of October 2020, there were 862,277 registered Rohingya refugees living in camps.\(^10\) The last exodus began on August 2017 when violence broke out in Myanmar’s Rakhine State, driving more than 742,000 Rohingyas to seek refuge in Bangladesh, while an estimated 12,000 Rohingyas reached Bangladesh during the first half of 2018.\(^11\) However, only around 34,917 Rohingyas living in Bangladesh – those who arrived in the country in 1991-1992 – were granted formal refugee status by the government. All other registered Rohingyas living in camps are officially addressed by the government as ‘forcibly displaced Myanmar nationals’. In addition, a substantial number of Rohingyas are living in Bangladesh unregistered and outside refugee camps. While official or reliable data is lacking, UNHCR estimated in 2011 that there were at least 200,000 undocumented Rohingyas.\(^12\)

In September 2013, the Government of Bangladesh adopted for the first time a National Strategy on Myanmar Refugees and Undocumented Myanmar Nationals. The document acknowledges the presence of ‘Undocumented Myanmar Nationals’ within Bangladesh territory and provides measures to address their humanitarian needs, including limited services (health, sanitation, shelter and education) in refugee camps.\(^13\)

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\(^6\) See SAARC, Social Affairs \[online\].


\(^8\) See Borhan Uddin Khan & Muhammad Mahbubur Rahman, ASILE Country Fiche Bangladesh, p. 17.

\(^9\) UNHCR. Global Focus: Bangladesh. Last accessed: 30 November 2020. \[online\]

\(^10\) UNHCR, Refugee Response in Bangladesh, last accessed 2 December 2020 [online]

\(^11\) UNHCR, Rohingya emergency [online]


\(^13\) Uddin Khan& Mahbubur Rahman, ASILE Country Fiche Bangladesh, p. 18.
The National Strategy also allows certain humanitarian actors, including from the UN organisations in the country (notably IOM and UNHCR), to implement actions in favour of Rohingya Refugees.\(^{14}\) In 2016, the Government conducted a census of undocumented Myanmar nationals. Registered people were provided with documentation called ‘Information Cards’ which, as described by UNHCR, can be used as a protection tool enabling access to the formal justice system.\(^{15}\)

In its 2017 submission to the Universal Period review, UNHCR, while commending Bangladesh for hosting a large population of Rohingya refugees on its territory, recommended the government to develop a national asylum mechanism and enact national refugee legislation.\(^{16}\) UNHCR underlined how the lack of a formal asylum system creates an insecure and unpredictable environment for refugees in the country. The same recommendation was put forward by several UN Treaty Bodies, including the Committee on Elimination of Discrimination Against Women, which underlined that 60% of unregistered Rohingya people are women and children, who struggle to secure a legal status with severe consequences on their enjoyment of basic human rights.\(^{17}\)

An outstanding protection issue in Bangladesh concern the living conditions and access to rights for refugees hosted in camps. Bangladesh houses a large share of refugee and undocumented Rohingyas in the mega-settlement called Kutupalong-Balukhali Expansion Site, located in the South-Eastern district of Cox’s Bazar.\(^{18}\) The area, which is prone to natural disasters like landslides, cyclones and flooding, is severely overcrowded: civil society organisations estimate that the average usable space in refugee camps is 10.7 square meters per person, well below the international recommended standard of 45 square meter per person.\(^{19}\)

In August 2018, the Special Rapporteur on the situation of Human Rights in Myanmar, while commending Bangladesh for hosting a large refugee population, raised substantial concerns over the poor living, sanitary, and environmental conditions of refugee camps, which may lead, among other things, to disease spreading.\(^{20}\)

Along the same line, the UN Committee on Economic, Social and Cultural Rights called on Bangladesh to take immediate measures to ensure the safety of Rohingya living in camps and safeguard them against disease outbreaks. The Committee further recommended Bangladesh to take effective measures to recognize the legal status of the Rohingya and

\(^{14}\) UNHCR, Submission for the Universal Periodic Review, 3rd cycle, 2018, p. 2
\(^{16}\) Ibid.
\(^{18}\) UNHCR. Rohingya Refugee Emergency at a Glance, 21 March 2018. [online]
ensure their access to livelihoods, health care, education and other basic services provided outside of the camps.\textsuperscript{21}

UN treaty bodies have also expressed concerns over allegations of labour exploitation and sexual and gender-based violence with respect to the women and girls from the unregistered Myanmar Rohingya population.\textsuperscript{22} UNHCR reported that unregistered Rohingyas, especially women and girls, were often unable to access legal remedies for fear of being arrested under the Foreigners Act of 1946, which bars foreign victims from accessing legal remedies.\textsuperscript{23}

The Committee Against Torture in 2019 expressed concerns over reports of more than 100 cases in which Rohingya have been subjected to forced labour and sex trafficking within Bangladesh and that, in some cases, Bangladeshi border guards and military and police officials have been involved in facilitating the trafficking of Rohingya women and children.\textsuperscript{24} The Committee recommended the Government of Bangladesh to ensure registration of complaints of sex or labour trafficking of Rohingya within Bangladesh and ensure that allegations involving official complicity are investigated and prosecuted.

3. Admission to territory and safeguards against removal of asylum seekers and refugees

In its submission for the 3\textsuperscript{rd} cycle of the Universal periodic review in 2018, UNHCR recognized that, despite not being party to the 1951 Convention, Bangladesh had been hosting hundreds of thousands of Myanmar refugees over three decades and had, in general, respected the principle of non-refoulement.

However, UN Treaty bodies have in the past recorded instances of violations of non-refoulement by Bangladesh. In April 2010, a group of UN Special Procedures mandate holders sent a joint allegation letter to the Government of Bangladesh to call attention on information received concerning the situation of unregistered Rohingya asylum-seekers, refugees and migrants in Bangladesh. The Communication referred that unregistered refugees were reportedly victims of violence and attempted deportation carried out by both state and non-state actors. The Communication mentioned the case of more than 500 Rohingyas who had been arbitrarily arrested in January 2010 and, in some cases, pushed back across the Myanmar border.\textsuperscript{25}

\textsuperscript{21} Committee on Economic and Social and Cultural Rights, Concluding observations on the initial report on Bangladesh, E/C.12/BGD/CO/1, 18 April 2018, par. 28; Report of the Special Rapporteur on the situation of human rights in Myanmar, A/73/332, 20 August 2018, par. 75.


\textsuperscript{23} UNHCR, UPR Submission Bangladesh, 3\textsuperscript{rd} cycle, 2017 p. 3.

\textsuperscript{24} Committee against Torture. Concluding observations on the initial report on Bangladesh. CAT/C/BGD/CO/1, 26 August 2019, par. 40.

Similarly, UNHCR stressed that Bangladesh closed the Myanmar/Bangladesh border following the eruption of violence in Rakhine State in June 2012. UNHCR mentioned media reports, according to which some 4,000 asylum-seekers trying to flee Rakhine State had been sent back to Myanmar by October 2012 and expressed concerns about the closed-border policy adopted at the time by the Bangladesh government.  

In 2017 when more than 700,000 Rohingyas fled into Bangladesh, UNHCR did not record instances of refoulement and praised the government for keeping the national border with Myanmar open. In November 2017, Bangladesh signed with Myanmar a Memorandum of Understanding (MoU) for repatriation of displaced Rohingya people to Myanmar. In her 2018 Report, the Special Rapporteur on the situation of Human Rights in Myanmar underlined that the repatriation of refugees from Bangladesh to Myanmar was extremely premature as Government of Myanmar had made no progress in dealing with the root causes of movements, including long-standing and systematic discrimination of Rohingyas through the law, policy and practice, and the denial of citizenship rights. The Special Rapporteur was also concerned about the lack of transparency and consultation concerning discussions by the governments of Bangladesh and Myanmar over the issue of repatriation, including the selection by the Government of Bangladesh of approximately 8,000 refugees to be vetted by the Myanmar Government for possible return.

4. Detention and restriction to freedom of movement

4.1. Legal framework for detention and detention conditions of asylum seekers and refugees

Under the 1946 Foreigners Act, Bangladesh criminalises irregular entry into the country and makes it punishable with detention to up to five years. This law disproportionately affects migrants, stateless people, asylum-seekers and refugees in an irregular situation, who are unable to secure a defined legal status and are subject to the punitive provisions of the law. Due their illegal immigration status in Bangladesh, people in an irregular situation are reluctant to seek legal redress for crimes committed against them for fear they may be detained and deported.

29 Human rights Watch, ‘Bangladesh is not my country’, p. 42.
In 2017, the Committee on the Rights of Migrants Workers underlined its concerns for the fact that irregular entry into Bangladesh is considered to be a criminal offence and called on the Government of Bangladesh to decriminalize irregular entry.\(^{30}\)

In 2015, the Committee on the Rights of the Child expressed concern at reports that Rohingya children from Myanmar and their families are routinely detained because of illegal entry into the State party.\(^{31}\) The Committee urged Bangladesh to release asylum-seekers and refugee children held in detention centres and enable them to access the Office of the United Nations High Commissioner for Refugees.\(^{32}\)

**4.2. Restrictions to freedom of movement**

Bangladesh has not formally enacted laws, regulations or formal policies that provide for a restriction to the freedom of movement of refugees living in camps.\(^{33}\) However, Rohingya refugees are *de facto* confined in specific areas and their freedom of movement is strictly regulated and curtailed.\(^{34}\) As reported by civil society organizations, several army and police checkpoints have been established on the roads of the Cox’s Bazar district to prevent refugees from moving into the town of Cox’s Bazar.\(^{35}\)

The basis for restricting the free movement of Rohingya under Bangladeshi law is the Foreigners Act of 1946, which allows the government to order that any “foreigner”—defined as any non-citizen—be required to “reside in a particular place.” As underlined by Human Rights Watch, those provisions raise issues concerning their consistency with international law, as they do not require that said restrictions be necessary to protect national security, public order, public health or morals, or the rights or freedoms of others. In addition, the decision behind the order restricting Rohingya’s movements outside camps does not appear to have assessed the proportionality of such a move or the necessity of the order on an individualized basis.\(^{36}\)

The Special Rapporteur on the situation of Human Rights in Myanmar called on the Government of Bangladesh to grant Rohingya freedom of movement in the country.\(^{37}\) Similarly, the Committee on Economic, Social and Cultural Rights urged Bangladesh to lift existing movement restrictions, so as to allow Rohingya them improved access to basic services, including emergency medical treatment, education and other basic services.\(^{38}\)

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\(^{30}\) Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Concluding observations on the initial report of Bangladesh. 27 May 2017, CMW/C/BGD/CO/1.

\(^{31}\) Committee on the Rights of the Child Concluding observations on the fifth periodic report on Bangladesh. CRC/C/BGD/CO/5, 30 October 2015, par. 70.

\(^{32}\) Ibid., par. 71.


\(^{34}\) Uddin Khan & Mahbubur Rahman, ASILE Country Fiche Bangladesh, p. 20.

\(^{35}\) Human rights Watch, ‘Bangladesh is not my country’, p. 43.

\(^{36}\) Human Rights Watch, ‘Bangladesh is not My country’, p. 44.


\(^{38}\) Committee on Economic, Social and Cultural Rights, Concluding Observations Bangladesh, E/C.12/BGD/CO/1, 18 April 2018, par. 28.
5. Other key protection issues

5.1. Statelessness and birth registration

In Bangladesh, statelessness mostly affects Rohingya refugees. At the end of 2019, there were 854,704 stateless persons of Rohingya ethnicity under the UNHCR’s statelessness mandate in Bangladesh who were at the same time also counted as refugees from Myanmar.\(^39\)

UNHCR’s statistical reporting usually assigns only one legal status for each person of concern. However, due to the size of the stateless Rohingya population displaced from Myanmar, UNHCR considered it important to reflect the dual status of this population group as both displaced and statelessness. In fact, despite their registration with the UNHCR, Rohingya live in a condition of de facto statelessness because they are unable to obtain citizenship from Myanmar.\(^40\)

Statelessness in Bangladesh also affects the Biharis’ minority, more correctly referred to as ‘Urdu-speakers’, or as the ‘Urdu-speaking community’.\(^41\) Urdu-speaking community numbers are estimated at around 250,000 - 300,000 people, though some other estimates run higher to 500,000.\(^42\)

In 2008, the Supreme Court of Bangladesh ruled that all members of the Urdu-speaking community were nationals of Bangladesh, ending the statelessness of Urdu-speaking men, women and children residing in the country. Following to the Supreme Court ruling, 80% of Biharis were registered to vote and obtained national identity cards. Some of them, however, saw their applications turned down by state officials due to technical reasons, such as being unable to provide proof of a permanent address in the case of those living in refugee camps.\(^43\)

Another key protection issue in Bangladesh is the risk of statelessness for children born out of mixed marriages.\(^44\) In 2009, Bangladesh adopted an amendment to the Citizenship Act of

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39 UNHCR. Global Trends, Forced Displacement in 2019, p. 72 [online]
42 Ibid.
43 Ibid.
44 UNHCR, UPR Submission Bangladesh, 3rd cycle, October 2017, p. 4.
1951 to accord citizenship to children born outside Bangladesh to either a Bangladeshi father or mother. Before this amendment, legislation remained gender-biased as it was only the father through whom a child could acquire citizenship.\(^{45}\)

However, as underlined by UNHCR, the 2009 amendment does not apply retroactively meaning that children born to a Bangladeshi mother prior to 31 December 2008 are not entitled to Bangladeshi citizenship.\(^{46}\) The Committee on the Elimination of Discrimination against Women pointed to the same issue and recommended that Bangladesh provide citizenship to all children born to a Bangladeshi parent and ensure that such laws were applied retroactively to children born before the Act entered into force.\(^{47}\)

Birth registration is an outstanding issue in Bangladesh, which exacerbates Bangladesh’s statelessness problem. The Committee on the Elimination of Discrimination against Women noted that only 3 per cent of children in Bangladesh are registered at birth (within 45 days following their birth) and that 88 per cent are registered once they reach school age, a circumstance that expose them to the risk of statelessness and prevent them from having access to basic services.\(^{48}\)

The Committee on the Rights of the Child reported that birth registration under the age of 5 remained at 37 per cent in 2013, meaning that the overwhelming majority is registered only once they have reached school age. While noting the 2004 amendment to the Birth and Death Registration Act, which provides for the establishment of the Office of the Registrar General, and the introduction of an online birth registration system, it recommended Bangladesh to take further measures to improve birth registration rate. These include establishing mobile registration offices, in particular in rural areas, and undertaking a campaign aimed at registering all children who have not yet been registered and who do not have birth certificates. The Committee also asked to promote mass campaigns to increase awareness of the importance of birth registration among parents and relevant authorities and to provide information on the procedures for birth registration and the rights and entitlements associated to birth registration.\(^{49}\)

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\(^{46}\) UNHCR, UPR Submission for Bangladesh, 3rd cycle, October 2017, p. 4

\(^{47}\) Committee on the Elimination of Discrimination against Women, Concluding observations on the eighth periodic report of Bangladesh, 25 November 2016, CEDAW/C/BGD/CO/8, par. 27.

\(^{48}\) Ibid.

\(^{49}\) Committee on the Rights of the Child Concluding observations on the fifth periodic report of Bangladesh, 30 October 2015, CRC/C/BGD/CO/5. parr. 34-35.
ANNEX 1. METHODOLOGICAL NOTE

Human rights systems at the international and regional levels have established a range of mechanisms and bodies to monitor and promote states’ compliance with their treaty obligations.

This Country Note describes key issues and recommendations in the field of asylum and international protection highlighted by international and regional human rights bodies in the context of existing monitoring and reporting procedures. In so doing, this Country Note complements research conducted under the ASILE project, in particular Country Fiches as well as the Catalogue of International and Regional Legal Standards.\(^{50}\)

The Country Note is based on desk research covering reports, documents and observations provided for by the following human rights monitoring mechanisms and bodies:

- The United Nations Charter-based system of human rights protection, including the Universal Periodic Review Process (UPR)\(^{51}\) and the Special Procedures of the UN Human Rights Council;\(^{52}\)
- UN human rights Treaties Bodies tasked with monitoring the implementation of provisions of the core international human rights treaties;\(^{53}\)
- Human rights monitoring bodies established under relevant regional human rights systems to which the Country under consideration is party. These may include, depending on the country under consideration, bodies of the Council of Europe Human Rights system,\(^{54}\) the Inter-American Human Rights System,\(^{55}\) the African Human Rights system,\(^{56}\) and the League of Arab States human rights system.\(^{57}\)

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\(^{50}\) See ASILE, Our research [online]
\(^{51}\) OHCHR, Basic facts about the UPR [online]
\(^{52}\) OHCHR, Special Procedures of the Human Rights Council [online]
\(^{53}\) OHCHR, Monitoring the core international human rights treaties [online]
\(^{54}\) See the website of the Council of Europe [online]
\(^{55}\) See Inter-American Commission on Human Rights [online]
\(^{56}\) See African Commission on Human and Peoples’ Rights [online]
\(^{57}\) See Arab Human Rights Committee [online]
ANNEX 2 - SELECTED DOCUMENTS FROM INTERNATIONAL AND REGIONAL HUMAN RIGHTS MONITORING BODIES

1. United Nations Charter-based bodies

Universal Periodic Review 3rd cycle (2018)

UN Special Procedures
- Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover: Addendum. 16 May 2011, A/HRC/17/25/Add.1. [online]

2. UN-Treaty Bodies

Human Rights Committee (HRC)
- Concluding observations on the initial report on Bangladesh. 27 April 2017, CCPR/C/BDG/CO/1 [online]

Committee on Economic, Social and Cultural Rights (CESCR)
- Concluding observations on the initial report of Bangladesh, 18 April 2018, E/C.12/BDG/CO/1 [online]

Committee against Torture (CAT)
- Concluding observations on the initial report of Bangladesh, 26 August 2019, CAT/C/BDG/CO/1 [online]
Committee on the Elimination of Discrimination against Women (CEDAW)
- Concluding observations on the eighth periodic report of Bangladesh. 25 November 2016, CEDAW/C/BD/CO/8 [online]

Committee on the Rights of the Child (CRC)
- Concluding observations on the fifth periodic report submitted of Bangladesh, 30 October 2015, CRC/C/BDG/CO/5 [online]

Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW)
- Concluding observations on the initial report of Bangladesh. 27 May 2017, CMW/C/BDG/CO/1 [online]

3. Other UN bodies

UNHCR
- Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights’ Compilation Report Universal Periodic Review: 3rd Cycle, 30th Session, October 2017 [online]
- Global Focus: Bangladesh. Last accessed: 30 October 2020. [online]
- UNHCR. Global Trends, Forced Displacement in 2019. [online]

4. Civil Society Organisations

- Human Rights Watch, “Bangladesh is not my country”, The Plight of Rohingya Refugees from Myanmar, 5 August 2018. [online]
- Institute on Statelessness and Inclusion. “The World’s Stateless”. December 2014 [online]