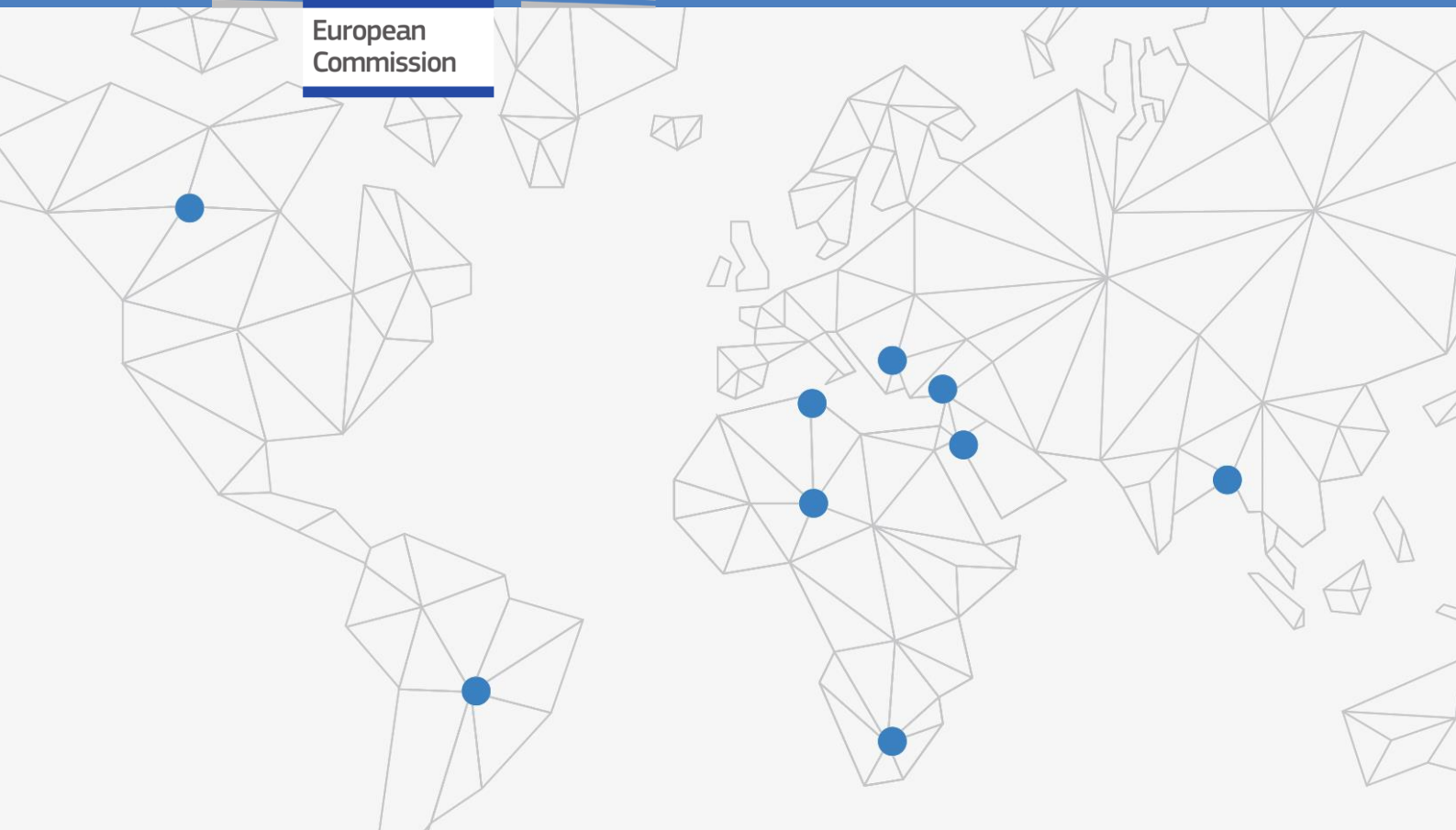


EUROPEAN POLICY BRIEF



European
Commission



ASILE

Global Asylum
Governance and
the European
Union's Role

The Protracted Rohingya Refugee Situation in Bangladesh

*Towards Reducing Precarity and
Increasing Responsibility Sharing*

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February 2024



The ASILE project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870787

ABOUT ASILE PROJECT

The ASILE project studies the interactions between emerging international protection systems and the United Nations Global Compact for Refugees (UN GCR), with particular focus on the European Union's role. Adopting an interdisciplinary perspective, it examines the characteristics of international and country-specific asylum governance instruments and arrangements, and their compatibility with international and regional human rights and refugee laws. A key objective of the project is to provide the cutting edge of academic knowledge, promising practices and a collection of evidence-based tools for the development of future asylum policies.

ASILE represents an advance in comparison to the current state of the art. It seeks to facilitate a ground-breaking understanding of the role and impacts of legal and policy responses - instruments and arrangements - on refugee protection and sharing of responsibility from the perspective of their effectiveness, fairness and consistency with international and regional legal and human rights and refugee law standards. It will do so through an interdisciplinary examination and mapping of UN GCR actors and key policy and legal instruments on mobility and containment, and the impacts of vulnerability and status recognition assessments over individuals in search of international protection.

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Abstract

Within a global refugee regime tainted by a culture of responsibility shifting as opposed to the principle of responsibility sharing under the UN Global Compact on Refugees, over a million Rohingya people are currently living in Bangladesh, one of the Least Developed Countries (LDC) from the Global South. With a limited 'right to have rights', the status of the Rohingya people in Bangladesh is 'precarious'. This precarity is further exacerbated by limited employment opportunities, which allow them to serve as 'volunteers' and informally access the labour market. These opportunities provide some scope to earn money in amounts that are barely enough to sustain themselves but, in the end, far from sufficient to make Rohingya refugees financially empowered or self-reliant. This Policy Brief reveals the precarious lives of the Rohingya people in Bangladesh by shedding light on their status and right to work. It offers recommendations to the Bangladesh government and other key stakeholders from the UN network and beyond, which, if adopted, would reduce the precarity of the Rohingya people and facilitate greater responsibility sharing concerning a protracted refugee situation in dire need of global attention and support.

1. Introduction

As we approach the end of 2023, a protracted refugee situation involving more than a million Rohingya people prevails in Bangladesh. In a global refugee regime tainted by a culture of responsibility shifting as opposed to the principle of responsibility sharing under the UN Global Compact on Refugees, Bangladesh, one of the Least Developed Countries (LDC) from the Global South, continues to serve as one of the world's major refugee-hosting states and upholds the principle of *non-refoulement*, the cornerstone of refugee protection.

That said, due to Bangladesh being a non-signatory to the 1951 Refugee Convention, not possessing a national law addressing refugee matters, and limited resources, the Rohingya people's 'right to have rights' in the country remains limited. As political commitment and aid from the international community – particularly affluent states – to alleviate the plight of the Rohingya people continue to dwindle, competition for resources has exacerbated tensions between poor host communities and Rohingya refugees in Bangladesh's south-eastern region.

The importance of a nuanced understanding of the refugee response in Bangladesh cannot be overstated. To that end, this Policy Brief reveals the precarious lives of the Rohingya people in Bangladesh by shedding light on their status and right to work. It offers recommendations to the Bangladesh government and other key stakeholders from the UN network and beyond, which, if adopted, would reduce the precarity of the Rohingya people and facilitate greater responsibility sharing concerning a protracted refugee situation in dire need of global attention and support.

2. Methodology

This policy brief summarises in-depth research on the Rohingya refugee situation in Bangladesh undertaken between 2020 and 2023 under the [ASILE Project](#). It reflects the essential findings and analysis presented in two country reports on Bangladesh (Interim Country Report and Final Country Report) published in [2022](#) and [2023](#), as well as peer-reviewed publications which appeared in the [Forced Migration Review](#) and the [Journal of Refugee Studies](#) in 2021 and 2023, respectively. These publications drew from desk-based research, archival research at the UNHCR Headquarters in Geneva, Switzerland and the Library of the National Parliament in Dhaka, Bangladesh, and two rounds of fieldwork conducted in 2021 and 2022, which encompassed 39 in-depth interviews of key informants representing a range of local and international organisations who either are or had been engaged in the Rohingya refugee response in Bangladesh, as well as Rohingya refugees.

3. Key Findings

Key Finding #1:

With a limited 'right to have rights', the status of over a million Rohingya refugees in Bangladesh is 'precarious'.

Bangladesh is not a State Party to the 1951 Refugee Convention or its 1967 Protocol. It does not have a dedicated national law that addresses refugee matters and grants refugees judicially enforceable rights. The overwhelming majority of Rohingya people in Bangladesh do not have refugee status. In the absence of this status, the current piecemeal national legal and policy framework is composed of several special agreements or Memorandums of Understanding (MOUs) between the UNHCR and the Governments of Bangladesh and Myanmar, a bilateral agreement between the Governments of Bangladesh and Myanmar, the Bangladesh Constitution, the Foreigners Act 1946, the National Strategy on Myanmar Refugees and Undocumented Myanmar Nationals in Bangladesh 2013, and the biometric 'smart card' jointly issued to Rohingya refugees by the Bangladesh Government and UNHCR, make up the framework that extends a degree of protection towards Rohingya refugees in the form of a limited 'right to have rights' and a status that is 'precarious'.

From the perspective of refugees, the importance of these MoUs is profound. They lay the basic foundations of the Rohingya refugee response and remain the only documents solely dedicated to laying out the framework of their governance in Bangladesh and stipulating the rights of refugees. Yet, all the MoUs are confidentialised, meaning that their subjects, i.e. Rohingya refugees, are unaware of the contents that shape their experience of refugeehood. While these MoUs have empowered UNHCR to play a more substantial role in the Rohingya refugee situation, the fact that they are confidentialised means that they have not done much to alleviate the precarious status of Rohingya refugees. Furthermore, the extent to which these MoUs are legally enforceable remains to be seen, creating uncertainty around whether the rights included in them are guaranteed to Rohingya refugees and can be enforced in a Bangladeshi court of law.

In addition to the rights that are included in MoUs, the Bangladesh Constitution guarantees several inalienable and fundamental rights to Rohingya refugees, which include the right to protection of the law (Article 31), the right to life and personal liberty (Article 32), safeguards to arrest and detention (Article 33), prohibition of forced labour (Article 34), protection in respect of trial and punishment (Article 35), and the freedom of thought, conscience and speech (Article 39). Unlike the remaining rights guaranteed under Part III of the Bangladesh Constitution, the abovementioned rights apply not just to citizens but to all persons residing in Bangladesh and are, at least in theory, judicially enforceable. Unfortunately, for a long time, many of these rights were often violated through the enforcement of the Foreigners Act 1946. Although this tendency has decreased in recent times, over the years, many Rohingya

refugees have been detained and sentenced under the Foreigners Act after being found beyond the boundaries of refugee camps where the Bangladesh Government directs them to stay. Alarming, there are also [instances](#) where Rohingya victims of human trafficking were also detained under the Foreigners Act 1946.

Formal courts in Bangladesh remain largely inaccessible to Rohingya refugees due to their limited economic means and the restricted right to freedom of movement they are given. These realities have resulted in a unique justice system within camp settings where Camps-in-Charge (CiCs) representing the Office of the Refugee Relief and Repatriation (RRRC) dispense justice according to the gravity of crimes committed by and against refugees on an ad hoc, informal and discretionary basis. What this translates to is that if crimes of a lesser degree are committed inside camps, they will be dealt with not by the Bangladesh Police or a court of law but rather by a CiC, even if the concerned acts qualify as crimes under The Penal Code, 1860 (Bangladesh's primary criminal law). This arrangement blurs the lines marking the 'separation of powers' between the Executive and Judiciary in Bangladesh and stands in contravention to Article 31 of the Bangladesh Constitution, which provides the 'right to protection of law' not just to citizens but also to "every other person for the time being within Bangladesh".

Key Finding #2:

Limited employment opportunities which allow Rohingya refugees to serve as 'volunteers' and informally access the labour market provide some scope to earn money in amounts that are barely enough to sustain themselves. However, in the end, far from sufficient to make them financially empowered or self-reliant in line with the objectives of the UN Global Compact on Refugees.

In Bangladesh, Rohingya refugees are not formally given the right to work. This decision is premised on the minimal livelihood opportunities for large numbers of economically marginalised members of the host community in the south-eastern region of Bangladesh and the belief within the Bangladesh government and host communities in south-eastern Bangladesh that giving the right to work to refugees will not just exacerbate tensions between the host and refugee communities, but also emerge as a 'pull factor' creating conditions that will make refugees reluctant to voluntarily repatriate to Myanmar.

This, of course, does not mean that the Rohingya do not 'work' and, in turn, earn money for their services. In addition to actively participating in the informal labour market, primarily in and around refugee camps to which the Bangladesh government turns a blind eye, a small portion of Rohingya refugees are also employed by key stakeholders in the refugee response from the UN and NGO community as 'volunteers', for which they get paid for their services. Although the kind of work the Rohingya people are engaged in does not qualify as 'decent work' the standards of which are espoused by the International Labour Organization (ILO), the Bangladesh government's decision to allow the Rohingya people to earn some loose cash through these opportunities reduced their

structural vulnerabilities to a small extent. It extended a degree of dignity to their lives. Also, it empowered some Rohingya women because doing a job and earning some money meant being able to work outside their homes.

The benefits of this arrangement set in place by the Bangladesh government and other key stakeholders of the refugee response are limited. It prevents Rohingya refugees from improving their standard of living, perpetually keeps them in a state where they are primarily and ultimately dependent on the benevolent aid of donors to sustain themselves, and overarchingly contributes to their precarity.

By not formally giving Rohingya refugees the right to work, the Bangladesh government is failing to appreciate the economic potential of their physical presence in the country. Whether the Bangladesh government can acquire the political will to formally give Rohingya refugees the right to work in Bangladesh in the future remains to be seen. When responding to the Rohingya refugee situation, as long as poorer countries like Bangladesh continue to take on far greater responsibilities with limited funds, acquiring such 'political will' will not be easy. In the coming days, months, and years, a lot will depend on the extent to which the Bangladesh Government's fears about the consequences of formally granting the right to work are addressed.

An important question remains: what kind of work will Rohingya refugees do if they were formally granted the right to work in Bangladesh? Decades of marginalisation and disenfranchisement in their homeland Myanmar have left a significant portion of the Rohingya population without access to comprehensive formal education and other forms of vocational training, which, if provided, would have allowed them to partake in jobs beyond the informal labour market.

Policy Recommendations

Recommendation 1:

The Bangladesh government should enact a national law that addresses refugee matters and grants refugees several judicially enforceable rights. The content of this law, framed in collaboration with the Rohingya people and other key stakeholders of the refugee response, shall not be a mere replication of all rights and obligations of the 1951 Refugee Convention. Instead, this law shall be premised on the lived experiences of the Rohingya in Bangladesh and Bangladesh's invaluable experiences collected along the long and lonely journey of hosting them over the past five decades. A national law that clearly lays bare the rights of Rohingya refugees, that may, for instance take inspiration from the Bangkok Principles on Status and Treatment of Refugees, and resolves the administrative challenges usually inherent in protracted refugee situations shall play a crucial role in reducing the precarious status of the Rohingya people because it shall give them the 'right to have rights'.

Recommendation 2:

The Bangladesh Government should formally grant the right to work to Rohingya refugees based on the precedent set by and experiences gained from the Jordan Compact of 2016, through which [Jordan issued work permits](#) to Syrian refugees in exchange for substantial foreign investment into the Jordanian economy. Within a global refugee regime premised on evading responsibilities towards refugees instead of sharing responsibilities, it is unlikely that appeals to the Bangladesh Government on humanitarian and moral grounds to ensure that Rohingya people are formally allowed to partake in the Bangladeshi economy would work. Instead, the international community would have to explain the economic potential of Rohingya refugees participating in the local economy. The acquiring of political will to formally give Rohingya refugees the right to work in Bangladesh in the future will depend significantly on substantial foreign investment into the Bangladesh economy that takes inspiration from the Jordan Compact but does not contain refugees within the Bangladeshi labour market.