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Protection of Refugee Rights under International Law: The case of the Rohingya and Bangladesh's Responsibilities

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ABSTRACT

The issue of refugees, forced migration and internal displacement in the country is the most complex issue confronting the international community today. The problems facing refugees are getting worse due to either natural or man-made disasters. Bangladesh remains one of the world's top ten refugee-host countries and is currently dealing with a deeply protracted refugee situation. By permitting such residence, Bangladesh is accountable for safeguarding their fundamental human rights, including the right to life, despite not being a signatory to the 1951 Refugee Convention. This article seeks to analyze the status and protection of refugees under the Constitution of Bangladesh and relevant laws, while exploring methods to safeguard their human rights and dignity. This research will also shed light on the challenges that the Rohingyas are facing by examining the national and international legal instruments as well as important cases. The New York Declaration for Refugees and Migrants is a big step towards global unity and protecting refugees at a time when people are being forced to move around more than ever before. So, this paper will also try to address that aftermath of the New York Declaration in case of Bangladesh.

Keywords: *Refugee protection, Rohingya, Persecution, Human rights, Non-citizens, Migrants.*

I. INTRODUCTION

Bangladesh is among the world's top ten countries hosting refugees and is now facing a prolonged refugee crisis.² The Rohingya, who reside in Myanmar's northern Rakhine State, have been subjected to decades of targeted violence, statelessness, and systematic discrimination, which continue to this day. The most significant incidence of the Rohingya leaving en masse to seek protection in Bangladesh was in 2017.³ From August to October 2017,

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² Borhan Uddin Khan and Muhammad Mahbubur Rahman, 'Country Fiche: Bangladesh' (ASILE, October 2020) <https://www.asileproject.eu/wp-content/uploads/2021/01/Country-Fiche_Bangladesh_October2020.pdf> accessed 2 June 2025.

³ M Sanjeeb Hossain, 'Country Report: Bangladesh' (ASILE, 2020) <https://www.asileproject.eu/wp-content/uploads/2021/01/Country-Report_Bangladesh.pdf> accessed 5 June 2025.

almost 700,000 Rohingya individuals fled from Rakhine State, Myanmar to Bangladesh.⁴ Although Bangladesh is a member of the UN High Commissioner for Refugees (UNHCR) Executive Committee, it is not a signatory to the 1951 Convention⁵ or its 1967 Protocol.⁶ When a state is not a signatory to the refugee convention, it may not feel obliged to provide sufficient protection to refugees, and the arbitrary decisions of the government may endanger their human rights.⁷ But certain elements of these treaties, particularly the concept of non-refoulement as stated in Article 33(1) of the 1951 Convention, established the status of customary international law.⁸ Along with that the Foreigners Act of 1946⁹ are the principal statute that define the 'precarious' status of the Rohingya population in Bangladesh. The Bangladesh Constitution¹⁰ grants several inalienable and fundamental rights to the Rohingya; yet, many of these rights are infringed upon by the use of the Foreigners Act 1946 against them.¹¹ In this recent time, The New York Declaration¹² for Refugees and Migrants is a significant achievement in global cooperation and the safeguarding of refugees amidst tremendous displacement. The commitments established by Member States demonstrate that safeguarding individuals compelled to escape and assisting the nations that host them constitute a collective international obligation—one that must be distributed more equally and effectively. This study seeks to analyse the circumstances and protections provided to the Rohingya under the Constitution of Bangladesh, statutory provisions and international instruments.

II. THE GENERAL CONCEPT OF REFUGEE AND ROHINGYA

A person who is unable or unwilling to return to their home country due to a well-founded fear of persecution because of their ethnicity, religion, nationality, membership in a specific social group, or political beliefs is considered a refugee.¹³ The 1951 Refugee Convention and its 1967 Protocol are two international instruments that guarantee refugee protection on a global scale.

⁴ Research and Policy Integration for Development, *The Rohingya Response in Bangladesh and the Global Compact on Refugees* <<https://www.ripd.org.bd/research/the-rohingya-response-in-bangladesh-and-the-global-compact-on-refugees/>> accessed 2 June 2025.

⁵ Convention Relating to the Status of Refugees 1951.

⁶ Protocol Relating to the Status of Refugees 1967.

⁷ Jobair Alam, 'Refugee Protection Under the Constitution of Bangladesh: The Rohingya Refugees in Context' in M Rafiqul Islam and Muhammad Ekramul Haque (eds), *The Constitutional Law of Bangladesh Progression and Transformation at its 50th Anniversary* (Springer) 283

⁸ *ibid*

⁹ The Foreigners Act, 1946

¹⁰ The Constitution of the People's Republic of Bangladesh 1972.

¹¹ Manzoor Hasan and Arafat Reza, 'Evaluating Bangladesh's Legal Framework for Rohingya Refugees: Gaps and Solutions' (Blog of the European Journal of International Law, 10 January, 2025) <<https://www.ejiltalk.org/evaluating-bangladeshs-legal-framework-for-rohingya-refugees-gaps-and-solutions/>> accessed 06 April 2025.

¹² New York Declaration on Refugees and Migrants, 2016

¹³ Convention Relating to the Status of Refugees 1951, art 1 (A) (2).

The Muslim ethnic group known as the Rohingya resides in Rakhine State, which is located on Myanmar's northwest coast.¹⁴ They have been identified as a minority community within Myanmar by a variety of sources.¹⁵ This is undoubtedly the case from a numerical perspective, as they are estimated to comprise only 4% of the nation's population.¹⁶ They have long been subjected to institutionalized harassment and discrimination in Myanmar as a minority group because of their ethnicity and religion.¹⁷ The Myanmar military's "clearance operation" has resulted in over 700,000 Rohingya refugees fleeing to Bangladesh since August 2017 in order to avoid detention, torture, rape, and other severe human rights violations.¹⁸

Bangladesh is particularly aware of the fate of refugees, because in 1971 its own populace has encountered the horror experience of being compelled to abandon their home country in order to evade killings and torture. This traumatic experience has remained in the minds of the Bangladeshi people and despite being a LDC country BD continues to host Rohingya refugees & non-nationals who have fled to save their lives.¹⁹

III. STATUS OF ROHINGYA'S IN BANGLADESH

The Rohingya are officially recognized by the government of BD as "forcibly displaced Myanmar nationals," (FDMN) which is slightly improved version of the description of "illegal intruders," as there is no formal individualized process for recognizing refugees.²⁰ Although the government prefers to refer to the persecuted Rohingya who are currently residing in Bangladesh as FDMN, pro-rights academics and activists are advocating for the government to officially recognize the Rohingya as "refugees."²¹ Because the term "forcibly displaced" disregards the seriousness of the crimes that this group has been through. People who leave their homes because of conflict or persecution are called refugees. But the government frequently claims that the acceptance of Rohingya individuals was not due to any legal requirement, but rather a prerogative action taken solely on humanitarian grounds.²² And, the

¹⁴ Elliot Higgins, 'Transitional Justice for the Persecution of the Rohingya' (2018) 42 (1) *Fordham International Law Journal* < <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2724&context=ilj>> accessed 27 May, 2025

¹⁵ Mohammad Shahabuddin, "Post-Colonial Boundaries, International Law, and the Making of the Rohingya Crisis in Myanmar" (2019) 9 (2) *Asian Journal of International Law* <<http://dx.doi.org/10.1017/S2044251319000055>> accessed 05 April 2025.

¹⁶ Minority Rights Group International, 'World Directory of Minorities and Indigenous Peoples - Myanmar/Burma: Muslims and Rohingya' (October 2017) <<https://www.refworld.org/docid/49749cdcc.html>> accessed 2 June 2025.

¹⁷ United Nations Human Rights Council, Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar (18 September 2018) <UN Doc A/HRC/39/CRP.2>

¹⁸ Hasan and Reza (n 10)

¹⁹ Hasan and Reza (n 10)

²⁰ C R Abrar, 'Aftermath of ICJ Ruling Redrawing Rohingya Strategy' *The Daily Star* (Dhaka, 2 February 2020) < <https://www.thedailystar.net/opinion/news/redrawing-rohingya-strategy-1862317>> accessed 09 April 2025.

²¹ *ibid*

²² Ridwanul Hoque, 'Report on Citizenship Law: Bangladesh' (European University Institute, December 2016)

Government of Bangladesh defends its refusal to confer refugee status upon the majority of the Rohingya for three primary reasons: 1) Bangladesh is not a signatory to the 1951 Refugee Convention; 2) Bangladesh is a developing and densely populated nation that cannot accommodate nearly one million refugees; and 3) if granted 'refugee status,' the Rohingya will assert various rights protected under international law, none of which the Bangladeshi Government intends to fulfill.²³ So, the best term to characterize the Rohingya's situation in Bangladesh is "precarious."

IV. UNDERSTANDING IRREGULAR MIGRANTS

People who have entered or are residing unlawfully in a country are commonly termed "illegal migrants." In 1975, the United Nations proposed for the term "irregular migrants," described as "workers who illegally and/or secretly enter another country to seek employment." The International Conference on Population and Development (ICPD) Programme of Action from 1994 stated that "undocumented or irregular migrants" are "people who fail to meet the requirements set by the country of destination to enter, stay, or do an economic activity."²⁴ Alternatively, "migrants in an irregular situation" could be used.²⁵ Every migrant holds the right to respect, protection, and the complete realisation of their human rights as outlined in the fundamental international human rights treaties, irrespective of their legal status or specific circumstances. A State holds the obligation to ensure the protection of human rights for all individuals within its jurisdiction.²⁶

V. LEGAL FRAMEWORK OF ROHINGYA RIGHTS IN BANGLADESH

(A) Protection of Rohingya's through the Constitutional Provisions of Bangladesh

The constitution of BD is the supreme law of the land. The fundamental rights are enumerated in Part III of the constitution to guarantee equality before the law. The Bangladeshi constitution, as the supreme law, safeguards both the fundamental human rights of citizens and the rights of non-nationals residing inside its territory.²⁷ The Constitution delineates 18 fundamental rights.

< <https://migrationresearch.com/item/report-on-citizenship-law-bangladesh/551407> > accessed 05 June 2025.

²³ Nasir Uddin, 'The Rohingya- An Ethnography of 'Subhuman' Life' (2020) 33(1) *Global Change Peace & Security*

< <https://www.tandfonline.com/doi/full/10.1080/14781158.2021.1844177> > accessed 12 June 2025.

²⁴ Muhammad Ekramul Haque & Md. Abu Bakar Siddique, 'Protection of Refugees in the Non-Signatory States to the 1951 Refugee Convention: Bangladesh Case Study' (2022) 28 *Asian Yearbook of International Law* <http://dx.doi.org/10.1163/9789004718128_003> accessed 27 May 2025; United Nations Population Fund (UNFPA), Programme of Action of the International Conference on Population and Development (Cairo, 5–13 September 1994) <https://www.unfpa.org/sites/default/files/event-pdf/PoA_en.pdf> accessed 2 June 2025.

²⁵ International Federation of Red Cross and Red Crescent Societies, *The Legal Framework for Migrants and Refugees* <<https://www.ifrc.org/document/legal-framework-migrants-and-refugees>> accessed 2 June 2025.

²⁶ *ibid*

²⁷ Hasan and Reza (n 10)

Although most of these are exclusively conferred to Bangladeshi citizens, a few are accessible to both citizens and non-citizens. The following rights may be conferred upon any Rohingya residing in Bangladesh:

Article 31 of the Constitution of the People's Republic of Bangladesh guarantees every individual within the territory of Bangladesh the right to the protection of law and to be treated solely in accordance with the law. This further affirms that 'no action detrimental to the life, liberty, body, reputation, or property of any person shall be undertaken except in accordance with the law'. The state is obligated to respect, protect, and fulfil the fundamental human rights of the individuals involved.²⁸ The Constitution provides protections against arrest and detention for both citizens and non-citizens. No individual who is arrested shall be detained in custody without being immediately informed of the grounds for their arrest. This right is inapplicable to any person categorised as an 'enemy alien' at that time.²⁹ Subsequently, Article 34 of the Constitution can effectively be applied to protect the rights of Rohingya's. It also prohibits any types of forced labour and any violation of this provision shall be an offence punishable by law. The Constitution also guarantees right of fair trial;³⁰ freedom of expression,³¹ religion³² and right to move the HCD pursuant to Article 102 to enforce fundamental rights.³³

From these above provisions of the Constitution, it is preserved that no one may be denied their life or freedom once they are on Bangladeshi territory, regardless of whether they are a citizen of that country.³⁴ However, in the majority of other articles, fundamental rights have been guaranteed solely for citizens. The intentional use of the phrase 'person' in lieu of 'citizen' unequivocally indicates that the drafters of the Constitution used the words deliberately.³⁵

(B) Examining the Legal Framework Governing Refugee Protection in Bangladesh

Historically, South Asian states choose bilateral and executive solutions over international and legal approaches when addressing refugee problems, considering international refugee mechanisms as excessively Euro-centric.³⁶ This system's protection of refugees is

²⁸ The Constitution of the People's Republic of Bangladesh 1972, art 32.

²⁹ Ibid, art 33.

³⁰ Ibid, art 35.

³¹ Ibid, art 39(1).

³² Ibid, art 41.

³³ Ibid, art 44.

³⁴ ABM Imdadul Haque Khan, 'Bangladesh's obligation towards refugees' *Dhaka Tribune* (Dhaka, 21 May 2014) <<https://www.dhakatribune.com/bangladesh/laws-rights/65238/bangladesh%E2%80%99s-obligation-towards-refugees>> accessed 15 May 2025

³⁵ Ishraque Labib, 'Protection of the Rohingyas inside Bangladesh: Is Bangladesh Fulfilling Its Obligation?' (Dhaka Law Review, 20 May 2023) < <https://www.dhakalawreview.org/blog/2023/05/protection-of-the-rohingyas-inside-bangladesh-is-bangladesh-fulfilling-its-obligation-6273>> accessed 5 May 2025

³⁶ Naser, Mostafa Mahmud & Tanzim Afroz 'Protection of Refugees in Bangladesh: Towards a Comprehensive

predominantly dependent on an executive 'mercy-based approach'³⁷ rather than a legal framework outlining their rights, and it largely depends on informal hospitable refugee protection. Bangladesh is similarly influenced in this context.

Bangladesh has not ratified any legally binding international agreements for the protection of refugees. Bangladesh is not a signatory to the 1951 Convention and its 1967 Protocol, the 1954 Convention relating to the Status of Stateless Persons, or the 1961 Convention on the Reduction of Statelessness. In addition, the domestic legislation does not provide the granting of asylum or refugee status, nor has the government instituted a systematic mechanism for the protection of refugees. In the absence of a national asylum framework, the 1946 Foreigners Act remains the principal statute regulating the status of refugees and other individuals within UNHCR's mandate. Despite the Bangladesh Constitution guaranteeing specific fundamental human rights to foreigners, the Foreigners Act refuses to recognize refugees as a special class of vulnerable people deserving protection.³⁸ This law, however, doesn't differentiate between a persecuted asylum seeker and other foreigners entering Bangladesh. Nonetheless, in the absence of any legislative framework regarding refugees, their safety is predominantly reliant on mercy based. As their protection is not 'rights-based'; instead, it relies on the discretion of the executive. Consequently, although the government of Bangladesh has conveyed sympathy for the suffering of the persecuted refugees, it has consistently been unwilling to confer refugee status. The refugee protection system is hence 'ad hoc, arbitrary, and discretionary.'³⁹

On the other hand, Bangladesh has ratified the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, without any reservations or declarations on its non-refoulement provision. As a result, the principle of non-refoulement is formally respected by Bangladesh. More than that, one example involving Bangladesh could be considered relevant to this discussion. For instance, in *Refugee and Migratory Movements Research Unit (RMMRU) v. Bangladesh*⁴⁰, the Court ruled that the returned Rohingya could not be sent back to Myanmar because of Bangladesh's non-refoulement responsibilities. The Court further stated that, whether or not a States has formally signed, acceded to, or ratified the

Legal Regime' (2007) 18(1) Dhaka University Law Journal
<<https://journal.library.du.ac.bd/index.php/DULJ/article/view/1570/1479>> accessed 14 April 2025

³⁷ Sakhawat Sajjat Sejan, 'Analyzing the Legal Issues in the Rohingya Crisis: A Bangladesh Perspective' (2020) 37 (1) *International Journal of World Peace* < <https://www.paragonhouse.com/xcart/ijwp-37-1-march-2020-pdf.html>> accessed 10 April 2025

³⁸ Ashraf Azad 'Foreigners Act and the Freedom of Movement of the Rohingyas in Bangladesh' (2017) 5(2) *Griffith Journal of Law & Human Dignity* < <https://griffithlawjournal.org/index.php/gjld/article/view/986>> accessed 22 June 2025

³⁹ Pia Prytz Phiri, 'Rohingyas and Refugee Status in Bangladesh' (Forced Migration Review, 2008) <<https://www.fmreview.org/phiri/>> accessed 22 April 2025

⁴⁰ *Refugee and Migratory Movements Research Unit (RMMRU) v Bangladesh* (unreported)

1951 Refugee Convention, article 33 of the Convention has become a part of customary international law that is binding on countries of the world.⁴¹

(C) Existing Legal Framework for the Asylum Seeker regarding Detention and Freedom of Movement

In the absence of domestic legislation particularly governing the status of the Rohingya, their rights to enter and reside in Bangladesh are delineated in the Foreigners Act of 1946. Article 2(a) of this Act states a “foreigner” as “a person who is not a citizen of Bangladesh”. This Act refers to Rohingya as “illegal foreigners,” specifying that any foreigner “shall not enter Bangladesh, or shall enter Bangladesh only at specified times, through designated routes, at particular ports or places, and subject to prescribed conditions upon arrival.” Refugees are not even acknowledged as another group that requires special consideration by the legal framework.⁴² So, the Foreigners Act of 1946, which gives the government the authority to order that any “foreigner,” defined as any non-citizen, “reside in a particular place,” acts as the basis for restricting the Rohingya's freedom of movement under Bangladeshi law. Though, Freedom of movement is acknowledged in numerous international instruments, such as Article 12 of ICCPR.⁴³ The Human Rights Committee highlighted that- Aliens whose status has been regularised are allowed to enjoy the right to move freely.⁴⁴ Despite that, article 12(3) of the ICCPR also restricts the right to liberty of movement- that are established by law for safeguarding national security, maintaining public order, ensuring public health or morals, or protecting the rights and freedoms of others.

In Bangladesh there are two designated Rohingya camps who have received official recognition (Ukhiya and Teknaf). These are the Rohingya who entered Bangladesh during the 1991–1992 influx. In total, 34917 Rohingya people were registered by the UNHCR and granted refugee status by the government through an executive order. Registered Rohingya in Bangladesh have restrictions on their freedom of movement.⁴⁵ In 1993, the Bangladesh government entered into a Memorandum of Understanding (MoU) with UNHCR, specifying that refugees must remain within camp boundaries without engaging in economic activities.⁴⁶

⁴¹ *ibid*

⁴² Haque & Siddique (*n* 38)

⁴³ International Covenant on Civil and Political Rights 1966, art 12.

⁴⁴ Human Rights Committee, General Comment No. 27: Article 12 (Freedom of Movement) (1999), CCPR/C/21/Rev.1/Add.9, 2 November 1999

⁴⁵ EASO, Country of Origin Information Report Bangladesh: Country Overview (2017) <<https://euaa.europa.eu/publications/coi-report-bangladesh-country-overview>> accessed 22 June 2025.

⁴⁶ Ashraful Azad, Legal status of the Rohingya in Bangladesh: refugee, stateless or status less (Equal Rights Trust 2016) 57-87.

A military repression on the Rohingya in Myanmar in 2017 led to a significant influx of refugees into Bangladesh. In light of the military action more than 0.7 million people have fled in BD.⁴⁷ The Kutupalong mega-camp in Ukhia, Cox's Bazar, is now host to almost all Rohingya refugees. The Rohingya refugee crisis in Bangladesh has been identified by UNHCR as one of the largest and fastest-growing refugee crises in recent decades.⁴⁸ Bangladesh has not established formal laws or policies that restrict the freedom of movement for unregistered stateless Rohingya refugees residing in camps. Though the government of BD has imposed restrictions on the movement and employment rights of camp-based refugees.⁴⁹ Refugees may request a one-day pass from the Camp in Charge to access medical care or visit other refugees in another camp.⁵⁰

In case of *Detention*, according to the 1946 Foreigners Act, Bangladesh penalises unlawful entry into the country, with a maximum imprisonment period of five years.⁵¹ The punitive provisions of this law disproportionately affect migrants, stateless individuals, asylum-seekers, and refugees in an irregular situation, who are unable to secure a defined legal status.⁵² In 2017, the Committee on the Rights of Migrants Workers urged the Bangladeshi government to decriminalise irregular entry.⁵³ Additionally, 1951 Convention also states that refugees shall not be penalised for their illegal entry or presence in a country.⁵⁴

VI. PROTECTION OF ROHINGYA REFUGEES UNDER INTERNATIONAL INSTRUMENTS AND PRINCIPLE OF NON-REFOULMENT

It is essential to understand that refugee law is encompassed within the broader framework of contemporary international protection, where numerous aspects of international obligations concerning the protection of individuals and groups intersect.⁵⁵ Refugee protection is universally guaranteed by two international instruments: the 1951 Refugee Convention and its 1967 Protocol. Broader definitions of the term "refugee" are also included in regional

⁴⁷ Khan & Rahman (n 1).

⁴⁸ Khan & Rahman (n 1); see also: UNHCR Rohingya Emergency at a Glance (Web source) UNHCR, Rohingya Refugee Emergency at a Glance (2018a) <<https://unhcr.maps.arcgis.com/apps/Cascade/index.html?appid=5fdca0f47f1a46498002f39894fcd26f>> accessed 8 May 2025.

⁴⁹ *ibid*

⁵⁰ n 39

⁵¹ The Foreigners Act 1946, s 14

⁵² n 39; see also: Human rights Watch (Web source), 'Bangladesh is not my country' - The Plight of Rohingya Refugees from Myanmar < <https://reliefweb.int/report/bangladesh/bangladesh-not-my-country-plight-rohingya-refugees-myanmar-enbn>> accessed 19 June 2025.

⁵³ n 39

⁵⁴ Convention relating to the Status of Refugees 1951, art 31(1)

⁵⁵ Natalia Szablewska and Saiful Karim, 'Protection and International Cooperation in The International Refugee Regime' in Rafiqul Islam and Jahid Hossain Bhuiyan (eds), (Martinus Nijhoff Publishers) 193

instruments. For example, the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa was established by the Organisation of African Unity (OAU) in 1969.⁵⁶

In addition to these, A number of human rights treaties have broadened the purview of refugee laws and made progress in protecting refugees' rights, which is frequently referred to as "contemporary protection."⁵⁷ Bangladesh is a party to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which are the foundations of the international human rights regime.⁵⁸ Additionally, states have to provide everyone on their territory or under their authority the rights guaranteed by these two instruments, without discriminations between citizens and foreigners.⁵⁹

Bangladesh is a party of multiple significant international human rights instruments, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) along with its optional protocol, and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).⁶⁰

(A) The 1951 Refugee Convention and its 1967 Refugee Protocol:

The 1951 Refugee Convention is the principal convention regarding the protection of refugees. It was adopted in 1951, subsequent to the Second World War and at the start of the Cold War.⁶¹ The 1951 Convention outlines the fundamental minimum standards for receiving of refugees by its signatory states and also outlines a refugee's responsibilities to their host state.

In accordance with the 1951 Refugee Convention, a refugee is an individual who- has a well-founded fear of persecution due to their race, religion, nationality, political opinion, or social group; is outside his or her country of origin; and is unwilling or unable to rely on the protection of that country or return there.⁶² The standard of "well-founded fear of persecution" in the 1951 Refugee Convention has been generally understood as relating to an individual's fear of persecution. However, the Refugee Convention does not specify the process for determining an

⁵⁶ Organisation of African Unity (OAU), Convention Governing the Specific Aspects of Refugee Problems in Africa.

⁵⁷ *n* 54, page 194

⁵⁸ Roberto Cortinovis & Lorenzo Rorro (CEPS), 'Country Note BANGLADESH, International protection issues and recommendations from international and regional human rights mechanisms and bodies' (ASILE, April 2021) <https://www.asileproject.eu/wp-content/uploads/2021/05/Country-Note_Bangladesh.pdf> accessed 1 June 2025.

⁵⁹ Hasan and Reza (*n* 10)

⁶⁰ *n* 6

⁶¹ *n* 39, page 11.

⁶² Convention relating to the Status of Refugees 1951, art 1(A)(2).

individual's refugee status.

The 1967 Refugee Protocol widened the definition of a “refugee” established by the 1951 Refugee Convention. The 1967 Protocol, adopted on 4 October 1967, eliminates geographic and time-based limitations, thereby expanding the Convention's applicability to universally protect all individuals fleeing conflict and persecution.⁶³ However, it does not confer new rights to refugees beyond those established by the 1951 Refugee Convention.⁶⁴

According to international refugee law, refugees must not be returned to situations that endanger their life or liberty.⁶⁵ The principle is known as the principle of non-refoulement. Non-signatory states are required by customary international law to comply with the norm of non-refoulement.⁶⁶ Despite these, an exception from non-refoulement is only permitted where the circumstances precisely fulfil the conditions established in the Article 33(2) of the 1951 Refugee Convention.

Article 31(1) of the 1951 Convention defines that- refugee will not be penalised for their unlawful entry or presence in a country. This provision was incorporated to account for the practical challenges that refugees may encounter when attempting to comply with administrative formalities in order to seek asylum in a new country, as well as the circumstances that compel them to leave their home countries.⁶⁷

(B) The International Covenant on Civil and Political Rights (1966):

Article 6 (1) of the ICCPR provides absolute protection of the right to life, safeguarding against arbitrary deprivation of life. The convention also ensures protection against torture and cruel, inhuman, or degrading treatment.⁶⁸ "Under the article 2 obligation, States Parties are obligated to respect and ensure the rights of all persons in their territory and under their control. This includes the obligation not to remove anyone from their territory where there is a substantial risk of irreparable harm, as described in articles 6 and 7 of the Covenant, either in the country to which removal is to be affected or in any country to which the person may be subsequently removed. Extradition, deportation, expulsion, or any other form of removal would violate this obligation."

⁶³ The UN Refugee Agency (Web source) UNHCR, About UNHCR The 1951 Refugee Convention <<https://www.unhcr.org/about-unhcr/overview/1951-refugee-convention>> accessed 8 May 2025.

⁶⁴ n 39

⁶⁵ Convention relating to the Status of Refugees 1951, art 33 (1).

⁶⁶ Muhammad Ekramul Haque & Md. Abu Bakar Siddique (n 38).

⁶⁷ n 39, page 10.

⁶⁸ International Covenant on Civil and Political Rights 1966, art 7.

(C) The United Nations Convention on the Rights of the Child, 1989:

The CRC (1989) requires that states adopt any feasible measures to provide the protection, care, psychological recovery, and social reintegration of children (under 18 years) impacted by armed conflict, particularly unaccompanied or separated displaced children.⁶⁹ According to the UNCRC, "unaccompanied children" are those who have been separated from both parents and other relatives, and are not under the guardianship of an adult. "Separated children" refer to those who have been alienated from both parents or their legal or customary primary caregiver, while they may still be in contact with other adult relatives.⁷⁰ According to the CRC, the child's best interests must always come first in all decisions involving them. All children of refugees and asylum seekers, "whether unaccompanied or accompanied by his or her parents," are entitled to "appropriate protection and humanitarian assistance" under Article 22 of the CRC. Article 37 of the CRC safeguards children against torture or any form of cruel, inhuman, or degrading treatment or punishment, as well as unlawful and arbitrary deprivation of liberty.

(D) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984:

The CAT (1984) establishes that no State Party is permitted to expel, return ("refouler"), or extradite an individual to another State if there are significant reasons to believe that the individual would be subject to the risk of torture.⁷¹ So, this convention explicitly provides protection from refoulement in its article 3. However, the protection provided in Article 3 is limited to the torture described in Article 1(1) of the CAT.⁷² Torture means intentional infliction of severe pain or suffering for purposes like obtaining information, punishment, or intimidation; for any reason related to discrimination and the infliction of pain or suffering requires involvement from a public official or another individual acting in an official role.⁷³

VII. BRIEF IDEA OF NEW YORK DECLARATION ON REFUGEES AND MIGRANTS, 2016

The New York Declaration reflects a mutual comprehension among the countries regarding the critical matter of safeguarding international refugees. Regarding large populations of refugees and migrants, the UN General Assembly made a commitment on September 19, 2016, to enhance global responses to these circumstances.⁷⁴ This declaration reflects a strong dedication

⁶⁹ *ibid*, art 11.

⁷⁰ General Comment No. 6 (2005), Committee on the Rights of the Child Committee on the Rights of the Child, General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, CRC/GC/2005/6, 1 September 2005, part III, arts 7–8.

⁷¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, art 3(1).

⁷² Hasan and Reza (n 10).

⁷³ *n* 71, art 1(1).

⁷⁴ UNHCR, The UN Refugee Agency (Web source), New York Declaration for Refugees and Migrants

to continue the systematic expansion of global refugee support.⁷⁵ The New York Declaration for Refugees and Migrants manifests the Comprehensive Refugee Response Framework (CRRF), emphasizing the importance of providing timely, sufficient, and needs-based humanitarian support for refugees, whether in immediate crises or prolonged circumstances.⁷⁶ The New York Declaration outlined commitments for refugees and migrants, resulting to the Global Compact on Refugees and the Global Compact for Safe, Orderly, and Regular Migration.⁷⁷

The New York Declaration highlighted states' focus on border control and management while asserting that border measures shouldn't undermine the right to seek asylum. The proactive participation of non-signatory states in the 2016 New York Declaration for Refugees and Migrants, the 2018 Global Compact on Refugees (GCR), and the inaugural Global Refugee Forum in late 2019 offers hope for enhancing refugee protection in these non-signatory states.⁷⁸

The Global Compact on Refugees (GCR) provides an extensive framework designed to create a more organized and equitable framework for distributing responsibilities, recognizing the essential role of global cooperation in achieving a lasting solution to the refugee crisis. The main goals focus on reducing host countries burden, promoting refugee self-reliance, increasing opportunities for third-country solutions, and fostering safe and dignified conditions to return in home countries.⁷⁹ According to its object, ensuring safe and dignified return conditions- the Government of Bangladesh remains committed to the principle of voluntary return.⁸⁰

In case of Bangladesh, The GCR is not applicable to the Rohingya response due to ongoing global issues concerning it. The lack of recognition of the Rohingya people as 'refugees' within national frameworks creates uncertainty regarding how state actors can apply the Global Compact on Refugees (GCR).⁸¹ Nonetheless, the effectiveness of the Global Compacts in

<<https://www.unhcr.org/what-we-do/protect-human-rights/asylum-and-migration/new-york-declaration-refugees-and-migrants>> accessed 18 June 2025.

⁷⁵ United Nations General Assembly, New York Declaration for Refugees and Migrants, UNGA Res 71/1 (19 September 2016) annex I, para 10.

⁷⁶ Karen Hargrave and Veronique Barbelet, 'The Global Compact on Refugees Lessons from Bangladesh' (Humanitarian Policy Group, December 2019) <https://odi.org/documents/6113/The_Global_Compact_on_Refugees_lessons_from_Bangladesh.pdf> accessed 13 May 2025.

⁷⁷ UN General Assembly, 'New York Declaration for Refugees and Migrants' A/RES/71/1, (3 October 2016) <<https://www.ohchr.org/en/migration/new-york-declaration-refugees-and-migrants>> accessed 29 June 2025.

⁷⁸ Muhammad Ekramul Haque & Md. Abu Bakar Siddique (*n* 38), page 37

⁷⁹ UNHCR, The Global Compact on Refugees (2018) < <https://www.unhcr.org/about-unhcr/overview/global-compact-refugees>> accessed 9 July 2025.

⁸⁰ Karen Hargrave, Kerrie Holloway, Veronique Barbelet and M. Abu Eusuf, 'The Rohingya response in Bangladesh and the Global Compact on Refugees' (HPG Working Paper, April 2020) < <https://www.refworld.org/reference/research/odi/2020/en/148746>> accessed 16 May 2025.

⁸¹ *n* 77.

addressing the protection gaps experienced by displaced individuals or groups remains uncertain.⁸² The GCR has not been clearly applied in the Rohingya response, largely due to contextual limitations. Additionally, as a voluntary framework, its implementation depends on whether host governments view it to be helpful to their interests. The GCR's objectives and its practical tools, which emphasize independence and integration, appear inconsistent with the government's aims and concerns.

VIII. CONCLUSION

Bangladesh is definitely bearing an excessive burden due to a prolonged refugee crisis, with no imminent visible solution, and achieving durable solutions through repatriation, integration, or resettlement is nearly impossible. It is a fact that, aside from the limited group of Rohingya individuals who have obtained registered refugee status, the majority of unregistered Rohingya in Bangladesh exist without any legal recognition. Bangladesh, like many other South Asian countries, has not signed any legally binding international refugee protection instruments. Considering that there is certainly no comprehensive pro-refugee regime in Bangladesh, the present legal framework for refugees consists of an interconnected set of laws, by-laws, policies, judicial decisions, and executive directives. The domestic legislation of BD doesn't allow the granting of asylum or refugee status. BD needs to put greater emphasis on enhancing the protection of refugees and attaining sustainable solutions to the refugee crisis. A well-structured legal framework for refugees will not only improve the protection of lawful refugees but also empower the state to efficiently regulate and navigate the complexities of refugee and migratory movements. Moreover, because to the lack of refugee protection poses significant challenges for them in daily life, including restrictions on movement, formal employment, education, citizenship rights etc. Additionally, treating Rohingyas as FDMN diminishes the severity of the crimes they have faced and negates their legal status.

⁸² Haque & Siddique (n 38), page 38