

# **Bangladesh: Analysis of Gaps in the Protection of Rohingya Refugees**

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**UNHCR**  
The UN  
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This report examines the situation of camp based Rohingya refugees in Bangladesh. It is based on statistical and sectoral reports by UNHCR and partner agencies as well as on participatory assessments with refugees.

The analysis provides a comprehensive view of the main risks and problems faced by refugees including obstacles in the way of more durable solutions. It further highlights those areas where protection risks are experienced by refugees and local residents alike. Moreover, the analysis attempts to capture the capacity of the Government of Bangladesh (GoB) as well as that of the refugee and local communities to address such risks, improve the lives of refugees and expand opportunities for durable solutions.



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## LIST OF ABBREVIATIONS

|        |  |
|--------|--|
| AALCC  | - Asian-African Legal Consultative Committee                                 |
| APC    | - Asia-Pacific Consultations   |
| BDR    | - Bangladesh Defence Rifles  |
| BDRCS  | - Bangladesh Red Crescent Society  |
| BLAST  | - Bangladesh Legal Aid and Services Trust                                    |
| CiC    | - Camp-in-Charge   |
| CERF   | - Central Emergency Response Fund (UN)                                       |
| CHWs   | - Community Health Workers   |
| CRH    | - Compressed Rice Husk   |
| CRC    | - Convention on the Rights of the Child                                      |
| CEDAW  | - Convention on the Elimination of all Forms of Discrimination against Women |
| ExCom  | - UNHCR Executive Committee  |
| GoB    | - Government of Bangladesh   |
| GoM    | - Government of Myanmar  |
| ICCPR  | - International Covenant of Civil and Political Rights                       |
| ICESCR | - International Covenant on Economic, Social and Cultural Rights             |
| ICRC   | - International Committee of the Red Cross                                   |
| IFRC   | - International Federation of Red Cross and Red Crescent Societies           |
| IOM    | - International Organization of Migration                                    |
| IPD    | - In Patient Department  |
| MFDM   | - Ministry of Food and Disaster Management                                   |
| MSF-H  | - Médecins sans Frontières Holland   |
| RRRC   | - Office of the Refugee and Repatriation Commissioner                        |
| RTM    | - Research Training and Management International                             |
| SGBV   | - Sexual and Gender Based Violence   |
| SOP    | - Standard Operating Procedures  |
| TAI    | - Technical Assistance Incorporated  |
| UNHCR  | - United Nations High Commissioner for Refugees                              |
| UNFPA  | - United Nations Population Fund   |
| WFP    | - World Food Programme   |

## EXECUTIVE SUMMARY

Bangladesh has a long history of hosting Rohingya from the Northern Rakhine State of Myanmar with the earliest arrivals recorded in 1948. The most recent influx occurred in 1991/2 when over 250,000 Rohingya fled to Bangladesh in the wake of serious state repression in Myanmar. It was this latter group that was recognised by the Government of Bangladesh (GoB) as refugees and hosted within twenty camps in the Cox's Bazaar district. Presently there are two remaining Rohingya refugee camp housing 26,317 refugees (as of May 2007) who have been in a camp setting for over 16 years albeit without freedom of movement, permission to work or access to education. There are, in addition, a Government estimated 100,000 – 200,000 Rohingya that have not been recognised by the GoB as refugees and are therefore living 'illegally' outside the camps.

The restrictions imposed on camp based refugees, and the non recognition of those living outside the camps, is justified by the GoB on account of the severe social and economic challenges it faces in caring for its own citizens. Bangladesh is a developing country of over 147 million residents. Its large population is confined within a relatively small land mass, rendering Bangladesh the 7<sup>th</sup> most densely populated country in the world. Among the many development challenges it confronts are acute poverty, high levels of illiteracy, and insufficient health care and other basic services for its citizens. Bangladesh, therefore, is reluctant to extend its protection to non citizens or to create conditions that might attract further asylum seekers onto its territory.

In the past year, however, the GoB has shown increasing openness to working with international partners in resolving what has become one of the most protracted refugee situations in the world. This analysis, therefore, aims to assist in those deliberations by providing a clear and comprehensive view of where current gaps exist so as to further the collaborative engagement needed to remedy them.

The following are some of the key gaps identified in the body of this report.

### Legal and Administrative Framework

Bangladesh has not acceded to the 1951 Convention Relating to the Status of Refugees nor its 1967 Protocol. There is no law regulating the administration of refugee affairs in Bangladesh or guaranteeing the realisation of the rights of refugees. The absence of a national refugee and asylum legal and administrative framework leaves refugees and asylum seekers in a precarious situation in Bangladesh, exposed to serious protection risks and with limited opportunities for a durable solution to their plight.

### Host communities and refugees

Many thousands of Rohingya who fled to Bangladesh after 1992, and were not recognised as refugees, presently live among local populations and have quasi-integrated into these communities, notwithstanding their 'illegal' status. Nevertheless these self-settled Rohingya, as well as Rohingya refugees, are vulnerable to economic exploitation, harassment and extortion. Moreover, refugees are not included within local and national development agendas which means that their possible contributions to development are not taken into account.

### Safe admission to the territory

In the absence of a legislative framework on asylum, asylum seekers and refugees who are intercepted while attempting to enter Bangladesh without authorization are treated as illegal entrants and face a risk of being detained. The GoB does not engage in systematic refoulement, however there is no specialised government body with the responsibility of determining refugee claims or making formal referrals to UNHCR.

### Individual registration of refugees

The responsibility to register refugees lies with the GoB. A serious gap in protection is the situation of some 5,000 refugees who reside legitimately inside the refugee camps without recognition by the GoB. The GoB currently recognises some 21,255 refugees on the basis of its 1992 registration whereas a recent profiling exercise conducted by UNHCR shows 26,317 legitimately residing within the camps. A high proportion of the vulnerable 'unregistered' group is made up of children.

### Restriction of movement and employment

Refugees are not legally entitled to work in Bangladesh. Inability to survive without employment leads many refugees, particularly men, to seek employment illegally. They are exposed to serious risks in doing so including unfair/unsafe work conditions, harassment, exploitation and extortion.

### Arbitrary arrest and detention

Detention is used by the *Mahjees* (unelected refugee leaders), local residents as well as the local police as a tool of intimidation, abuse and exploitation. Whether detained arbitrarily, or further to a legitimate arrest for suspected criminal activity, refugees, as well as citizens, are held in pre-trial detention in overcrowded facilities. Violence and mistreatment in detention are widespread and individuals can experience long periods of incarceration before formal charges are laid and/or trials held.

### Sexual and gender based violence

Domestic violence is widespread within refugee families. Women subjected to such violence by their husbands, fathers and other male authority figures have little redress to punish such abuse or to further prevent it because domestic violence is not a criminal offence in Bangladesh. Rape is also prevalent both within and outside the camps with the *Mahjees*, local villagers and police as the most common perpetrators. Polygamy is practiced in the camps, resulting in a high level of female heads of households who are vulnerable to sexual exploitation and abuse.

### Documents

The GoB does not issue refugees and asylum seekers with individual identity documents. Temporary documents issued by GoB are insufficient to protect against abuse. In refugee camps there is an urgent need to replace 'family books' with individual documentation in order to guarantee effective access to rights and entitlements, particularly for refugee women and children. Agreement has been reached between the GoB and UNHCR to abolish the family book system in favour of ration cards which will be made available to female and male heads of household and is awaiting implementation. There is a need for the issuance of marriage certificates for married couples in the camps.

### Security and the administration of justice

Present camp administration and *Mahjee* refugee representation structures are corrupt and abusive, creating an atmosphere of insecurity and impunity in the camps. Restrictions on the rights of refugees compounded by the lack of accountability of appointed officials and refugee leaders create an environment of abuse of power and great insecurity for the refugees. An agreement has been reached between the GoB and UNHCR to gradually abolish the *mahjee* system and replace it with an elected group of elders/imams to ensure effective representation and protection of the refugees.

### Food and non food items

Food shortages and attendant malnutrition are serious problems in the camps as is the lack of sufficient cooking fuel. Contributing factors are inaccurate or outdated family books, which are the basis of entitlements to assistance, and restrictions on wage earning employment. Women, and especially women heads of households are particularly vulnerable and have had to resort to borrowing, begging and in some instances survival sex to support themselves and their children.

### Accommodation

Refugees are housed in semi-permanent structures built in 1992, many of which are overcrowded and in serious need of repair. Until 2006, the GoB allowed only minimal repair and maintenance, however, recent agreements have enabled the construction of larger and more permanent shelters in accordance with international standards. The exercise of construction has begun and is envisaged for completion by end 2008 provided adequate funding is provided. Similarly, sanitation facilities, previously in bad conditions, have been rebuilt. Bathing cubicles continue to be a source of concern as they are not well lit which exposes women to risks of harassment and violence.

### Health care

Available medical staff is not sufficient to meet demand, with current doctors daily number of examinations being four times the international standard. There is, moreover, a serious shortage of female health care staff. This causes significant difficulty in addressing the needs of refugee women who are often not comfortable talking freely about their health problems with male personnel. These anxieties are aggravated by reports of harassment and abuse of women by male health staff.

There is a need to focus more on preventive health as many common diseases in the camps stem from overcrowding, poor sanitation and insufficient personal hygiene.

### Primary and secondary education

Refugee children are prohibited from accessing formal education. Education is therefore provided informally for primary school children, by refugee volunteers who have received only limited teacher training. The school curriculum is restricted to Burmese, Maths and English. Many classrooms are overcrowded and lack sufficient books and other learning materials. Secondary education is not permitted.

### Right to own property

Refugees do not have the right to own moveable or immovable property.

## Durable solutions

UNHCR cannot promote voluntary repatriation to Myanmar given the continuing protection risks for Rohingya and very few refugees opt to voluntarily return for the same reason. Resettlement, strategically pursued since 2006, is expected to remain a solution for a relatively small number of refugees. The GoB recognises voluntary repatriation as the preferred durable solution, and has not provided any possibility of local integration within its territory. However, recent discussions between the GoB and UNHCR have tabled the possibility of self-reliance for refugees pending voluntary repatriation. All stakeholders agree that there is a need for a comprehensive solutions strategy in this regard.

# 1. PROTECTION ENVIRONMENT

## Introduction

In recent times Bangladesh has witnessed three large influxes of refugees to its territory: in 1948, 1978 and in 1991/2. The former occurred during and after the independence of 'Burma', while the second was provoked by the repressive state practices of Myanmar towards Muslim Rohingya causing an outflow of some 200,000 persons. This movement was relatively brief with the vast majority of Rohingya being repatriated within a short period of time. In 1991 and 1992 a third influx of some 250,000 Rohingya fled to Bangladesh in the wake of serious state repression in the Northern Rakhine State of Myanmar.

The 1991/2 Rohingya influx was accommodated in twenty camps near Cox's Bazaar in south-eastern Bangladesh. Faced with its own social and economic development challenges, the Government of Bangladesh (GoB) favoured swift repatriation of the refugees and with the agreement of the Government of Myanmar (GoM) a massive repatriation exercise was undertaken. Between 1993 and 1997 some 236,000 refugees were repatriated amidst accusations of coercion. Since 1992, the GoB has refused to recognize subsequent Rohingya arrivals and has prohibited their access to the two remaining refugee camps.

## Current demographic profile

The two remaining Rohingya refugee camps are Kutupalong (approx. 10,000 refugees) and Nayapara (approx. 16,000 refugees) both of which are administered by UNHCR. Women and men figure equally among the total camp based population with over 56% of the total being refugees under 18 years of age. This latter figure is twice what it was fifteen years ago, reflecting a relatively high birth rate of 68 births per month. There are approximately 6 persons per household with the average age of household heads estimated at 42 years of age.

In addition to the camp based Rohingya refugee population, there are between 100,000 – 200,000 Rohingya living illegally outside the camps throughout Cox's Bazaar and the Bandarban sub-district of Chittagong. Although firm figures are not available, it is believed that the 'self-settled' Rohingya who live outside the camps are a mix of former repatriated refugees who returned to Bangladesh, extended family members of Rohingya in Bangladesh, and/or, seasonal workers and economic migrants. All are, however, believed to have left Myanmar because of repressive state policies and practices against them.

There are over 250,000 Bihar Urdu speakers in difficult circumstances in Bangladesh. While recognized by the Bangladesh High Court as citizens, they still do not enjoy effective citizenship. Moreover, there are a relatively small number of refugees and asylum seekers from various countries who, in the absence of a state determination procedure, seek refugee recognition from UNHCR under its Mandate.

The following gaps analysis is primarily focused on the circumstances of the camp based Rohingya refugee population. It is intended to inform the

deliberations of UNHCR and other key stakeholders on facilitating durable solutions to this protracted refugee situation.

## Major international and regional protection instruments

Bangladesh is party to the International Covenant of Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (with declarations on arts. 1, 2 & 3), the Convention on the Rights of the Child (CRC) with reservations to arts. 14(1) & 21, the Convention on the Elimination of Racial Discrimination (CERD), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) - with reservations to Articles 2 & 13 (a). It has also signed the Convention on the Political Rights of Women and the Optional Protocol to the Convention on Elimination of Discrimination against Women. It is an active participant of the Asian-African Legal Consultative Committee (AALCC), the Asia-Pacific Consultations (APC) and the UNHCR Executive Committee Meetings (ExCom).

The GoB has not, however, acceded to the 1951 Convention Relating to the Status of Refugees & its 1967 Protocol, nor to any regional instrument relating to refugees.

## National legal and administrative protection framework

There is no national legislation governing the administration of refugee affairs in Bangladesh, and the legislation applicable to foreigners (the Foreigners Act 1946) and admission (the Control of Entry Act 1952) make no explicit reference to refugees.

Administratively, the Ministry of Food and Disaster Management (MFDM) is responsible for refugee related issues and coordinating activities in relation to camp based refugees. It in turn has designated responsibility for a range of camp administrative matters (management, delivery of assistance, health care, water and sanitation and camp maintenance) to the Office of the Refugee Relief and Repatriation Commissioner (RRRC).

Other general provisions of Bangladesh law apply to refugees in principle, although they are not necessarily observed in practice. Several articles in the Constitution, for example, arguably have a bearing on refugee affairs including: The obligation to 'support oppressed people throughout the world waging a just struggle against imperialism, colonialism and racism' (art. 24(1) (c)); the obligation to 'base its international relations on the principles and respect for international law and the principles enunciated in the UN Charter' (art. 25); the obligation to protect every citizen and 'every other person within Bangladesh for the time being' (art. 31); the obligation that 'no person shall be deprived of life and liberty save in accordance with the law' (art. 32).

In addition, article 28 and 29 of the Constitution, the Prevention of Violence against Women and Children Act (last amendment 2003), Dowry Prohibition Act 1980, Cruelty to Women (Deterrent Punishment) Ordinance 1983, and some sections of the Penal Code provide procedures for the protection from violence against women. Domestic violence, however, is not a criminal offence in Bangladesh.

## Partnerships to strengthen protection capacity

UNHCR is the principal partner of the Government for providing protection, including assistance, to the camp based refugees. This relationship is formalized in a Memorandum of Understanding (MoU) between the two parties. A number of specialized agencies work within this framework, including World Food Programme (WFP) who, pursuant to a MoU with UNHCR is responsible for food security and related assistance. WFP works with the International Federation of Red Cross and Red Crescent Societies (IFRC) and the Bangladesh Red Crescent Society (BDRCS). BDRCS provides services for lifting, transport, storage, handling, distribution of food and non food items

Technical Assistance Incorporated (TAI) provides a number of services related to health and community development including: food distribution monitoring; sanitation maintenance and emergency water; community centres and activities; informal education and the implementation of gardening, poultry raising and tree plantation projects. Bangladesh Legal Aid and Services Trust (BLAST) provides legal assistance to Rohingya and UNHCR Mandate 'urban' refugees.

The GoB has recently agreed to invite other UN Agencies and Non Governmental Organizations (NGOs) into the programme although the formal invitations and subsequent bilateral agreements are still pending. At present, and as of 2007, the international NGO Médecins sans Frontières Holland (MSF-H) has been working within refugee camps to provide in-patient health care. United Nations Population Fund (UNFPA) has also, through UNHCR, been involved with regards to reproductive health.

## Migration policies and refugee protection principles

The absence of state recognition of refugee status, coupled with the precarious situation in which many refugees and 'self-settled' Rohingya live, is believed to contribute to the secondary movement of Rohingya out of Bangladesh to other countries in search of protection. These linkages were recently brought out in a study conducted by the International Organization of Migration (IOM), which also confirmed the involvement of local criminal gangs in facilitating such irregular movements. Those who have moved out of Bangladesh in search of a more favourable protection environment have largely been from the non camp based Rohingya population.

Rohingya have migrated irregularly throughout the region and beyond: Rohingya are appearing most notably in Australia, India, the Gulf States, Japan, Malaysia, Pakistan, Saudi Arabia, Thailand, and the United Arab Emirates.

The issue of onward movement is a matter of great concern for several reasons. Often facilitated through illegal channels managed by criminal gangs, Rohingya are vulnerable to many forms of abuse and exploitation including being charged exorbitant fees, subjected to poor treatment and left without recourse if intercepted and detained *en route* by authorities of transit or destination states. Many states deny admission to Rohingya, and some have engaged in systematic *refoulement*, to avoid creating pull factors to their territory.

## Local population receptivity towards refugees

Refugees are confined to camps, limiting possibilities of interaction and dialogue with local populations. *Mahjees*, in collaboration with village leaders, have been known to impose arbitrary taxes on Rohingya and their wages although in May 2007, this practice was formally abolished through agreement between the RRRC and UNHCR. There have also been known incidents of sexual violence against Rohingya women by local villagers.

Many 'self-settled' Rohingya are integrated into local communities. The fact that they share a similar language and culture to local Chittagonian population has facilitated this. The absence of legal recognition, however, leaves them open to economic exploitation which is common and incidents of harassment and extortion have been recorded.

## Refugees and national and regional development agendas

Rohingya are not included in local or national development agendas. The GoB has been reluctant to authorize activities that would encourage local integration although recently there has been some willingness to consider expanded self-reliance initiatives.

In parallel, and in recognition of both the protracted and severely depressed conditions of Rohingya in Cox's Bazaar District, a recent community development initiative was launched by ten international agencies in 2006.<sup>1</sup> The initiative aims to improve the key development indicators of the area. The latter indicate that 50% of the local population live in extreme poverty, 75% of children under 5 are underweight, literacy rates in some areas are as low as 16.8% and do not exceed 21,9%; and access to drinking water is well below the national average.

The project aims to enhance the absorption capacity of local communities vis-à-vis 'self-settled' Rohingya and eventually camp based refugees once restrictions on movement outside the camp are relaxed. The project is a united effort by the United Nations agencies and is a pragmatic response to the protection gaps facing Rohingya outside the camps.

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<sup>1</sup> FAO, ILO, UNAIDS, UNFPA, UNDP, UNICEF, UNHCR, WFP, WHO, IOM

## 2. ADMISSION IN SAFETY AND REGISTRATION

### Access to the territory

The Bangladesh border is patrolled by the Bangladesh Defence Rifles (BDR). As Bangladesh is not a party to the 1951 Convention, and has no national refugee law there are no standardized procedures for the treatment of refugees distinct from other potential entrants. UNHCR has begun to offer protection training for border guards to make them aware of the difference between asylum seekers and migrants when applying legislation on illegal entry. At present, asylum seekers who are intercepted while attempting to enter Bangladesh without authorization are treated as other illegal entrants and face a risk of being detained.

Given the relative porous border between Myanmar and Bangladesh, many refugees are able to cross it undetected, especially through the forested areas in Teknaf and Tamu sub-districts. A large proportion of urban refugees, especially Chin from Myanmar, arrive via the Indian/Bangladesh border. Refugees report at times having to pay bribes en route to members of the BDR, and/or Ghat *Mahjee* (boat leaders) and to dalas (local guides).

### Non-refoulement at point of entry

The GoB does not engage in systematic refoulement and refugees who are detained are often released upon some form of informal payment to border guards. There is regular cross border movement of seasonal workers and day labourers which helps to explain why refugees who are among such movements are able to enter the country relatively unnoticed.

### UNHCR access to new arrivals at entry points

There is no system for identifying refugees among broader migration movements, nor is there a specialised government authority with responsibility for determining their protection claims. Moreover, there is no formal referral mechanism to UNHCR although the Office does attempt to keep abreast of Rohingya influxes. In urban areas asylum seekers generally come to the attention of UNHCR through its implementing partner, Bangladesh Legal Aid and Services Trust (BLAST) who refers the applicants to UNHCR for status determination.

### Individual registration of refugees and asylum-seekers

The GoB stopped registering refugees in 1992. Thereafter it has not permitted its officials or UNHCR to conduct new registration with the result that Rohingya who arrived after 1992 have not been able to register as refugees. In the absence of formal recognition by the Government, some 5,000 camp-based refugees are unable to effectively access their rights. Food security is a particular problem, as recognised refugees must share their rations with their unrecognised kin who do not have access to food distribution.

Recently, in 2006, UNHCR conducted a profiling exercise in the two refugee camps to verify the actual number of persons legitimately residing in the camps against the figure of 21,255 registered refugees used by the GoB.



The UNHCR profiling exercise identified some 26,317 refugees residing within the two refugee camps. UNHCR has provided this new demographic information to the GoB to advocate for the urgent registration of those who do not currently enjoy official recognition. UNHCR has also established the present breakdown of family units

within the camps in order to facilitate the issuance of family cards and access to food distribution and other entitlements to those without formal recognition.

UNHCR registration data is systematically updated using the new 'ProGres' software and the registration information is collected according to acceptable international standards.

The GoB has, in principle, agreed to remedy the discrepancy between the number of registered refugees and the actual number and discussions are ensuing on the issuance of ration cards to heads of households, thereby abolishing the old and irregular family book system.

Urban refugees are registered by UNHCR although the 'ProGres' registration procedure has not yet been introduced for this group, causing delays in registering new cases. The need to provide more technical training to UNHCR's implementing partner for urban refugees, BLAST, has been identified as well as complete the transformation to ProGres. Activities in this regard are planned for 2007.

### Information on rights and responsibilities

Information on rights and responsibilities of camp based refugees tends to be provided by camp personnel who advise refugees of what they are not permitted to do. Urban refugees, by contrast, are provided social counselling and informed of their rights to apply for medical assistance by UNHCR and BLAST personnel during the registration process.

### Limited restrictions on movement

The Constitution provides for the right of citizens to move freely within the territory. This right, however, has not been extended to Rohingya refugees. They are confined to camps and those living and moving outside the camps do so illegally.

The rationale for the restriction was to encourage repatriation. The protracted nature of the refugee problem in Bangladesh however, illustrates that that restrictions alone will not prompt return since Rohingya continue to experience serious risks to their safety and fundamental rights in Myanmar.

Unfortunately the restrictions on movement have led to a series of persistent and grave protection problems both within and outside camps. Inactivity contributes

to illegal activity, corruption, abuse and domestic violence. The inability to engage in legal economic activity leads to exploitation including in regard to wages, conditions of work, and exposes refugees to the risks of arrest and detention. A further consequence of the limitation on the freedom of movement is that it renders women, particularly female heads of household, vulnerable as they are less able to engage clandestinely in income generating activities. In some instances this has led to survival sex by refugee women.

## 3. FAIR AND EFFICIENT STATUS DETERMINATION

### Group and individual status determination

The GoB does not undertake any form of group or individual refugee status determination. All refugees, except those that were recognized in the 1992 influx, are therefore officially considered as illegally resident in the country.

The government has permitted UNHCR to conduct status determinations of urban refugees under its mandate. Once determined to be in need of international protection, UNHCR assumes responsibility for their care and maintenance on a case by case basis.

### Fair and efficient RSD

Refugee status determination is conducted by staff of UNHCR and BLAST and the procedure is in many respects in accordance with UNHCR's RSD Procedural Guidelines. Standard Operating Procedures (SOP) for refugee status determination have been drafted and are in the initial phase of implementation, albeit with a few challenges that need to be addressed.

Applicants who receive a negative decision in the first instance are provided with an opportunity to appeal the decision within 30 days of being notified of the decision. UNHCR must schedule an appeal interview within 30 days of the notice, and, notify the applicant of the decision within 30 days of the interview.

The refugee definition applied in the RSD Process is in conformity with UNHCR's Statute<sup>2</sup>. Country of origin information is accessible through a variety of sources including the European Country of Origin Information Network.

### Complementary and Temporary Forms of Protection

There is no legislative framework in Bangladesh for the grant of temporary protection in the event of mass influx, or for the grant of complementary forms of international protection to those who do not meet the refugee definition. The GoB did not specifically consider the provision of temporary protection when recognising Rohingya on a *prima facie* group basis, although they were recognised originally on a 'temporary' basis. UNHCR, operating under its mandate, takes a holistic and inclusive approach to the recognition of refugees.

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<sup>2</sup> Statute of the United Nations High Commissioner for Refugees, G.A. res. 428 (V), annex, 5 U.N. GAOR Supp. (No. 20) at 46, U.N. Doc. A/1775 (1950)

## 4. PROTECTION FROM VIOLENCE, COERCION OR DELIBERATE DEPRIVATION

### Non-arbitrary arrest and/or detention

Arbitrary arrest and detention has long been a problem for Rohingya refugees, dating as far back as the early nineties when arrest and detention were used as a means to effect repatriation.

Arbitrary arrest and detention are also inflicted on camp refugees at the instigation of *Mahjees* as well as local residents as a tool of intimidation, abuse and exploitation. Participatory assessments with refugees reveal this to be a persistent protection problem with often tragic consequences. Arrest and detention can, for example, be used to force compliance in regard to monetary disputes, as well as to remove fathers and husbands from homes in order to more easily sexually abuse and exploit their female family members, including through forced marriages.

While there have been some recent improvements as a result of coordinated efforts between the GoB and UNHCR to improve the administration of justice in the camps, it is recognised that much more needs to be done.

Refugees can also be arrested for criminal activity. They (and local villagers alike) are subjected to unusually long sentences and denied due process protections. Detentions without trial can extend well past the expected sentence for the crime committed. Moreover, violence and mistreatment of refugees in detention is widespread and jails are severely over-populated. The Cox's Bazaar jail, for example, has the capacity of 800 detainees and is currently holding 3600 individuals in detention.

Reports indicate that in 2006 there were 365 arrests of Rohingya refugees of which 267 are out on bail and living in the camps with a further 98 still in detention (6 convicted and 92 pending trial). A more systematic profiling of the detained is needed as well as more concerted and coordinated efforts to address the prevalence of abusive detention and the general lack of due process guarantees currently facing those who are detained.

### Mechanisms to prevent and respond to sexual and gender based violence

Sexual and gender based violence is a very serious protection issue in the camps and surrounding areas. It occurs in many forms. Violence within the home is a widespread both within refugee families but also within the host community. Women who are beaten by their husbands, fathers and other male authority figures have little redress to punish such abuse or to further prevent it since domestic violence is not a criminal offence in Bangladesh.

As revealed by refugees in participatory assessments, rape is also very common both within and outside the camps. Refugee men, including *Mahjees*, as well as local villagers are known perpetrators. Women who collect firewood in areas surrounding the camps, female heads of household or young girls whose fathers/husbands are in detention are particularly at risk of rape and kidnapping.

Rape and sexual abuse is also used as a means to coerce women into marriages against their will and/or as a means of exacting revenge on male family members. Refugees report that male family members have been falsely accused and detained to enable others to abuse their female daughters and/or wives and force them into marriages against their will. Rape and sexual abuse of women in detention is also a prevalent protection problem.

Polygamy is practiced in the camps. Many husbands have left wives for new ones, leaving the former vulnerable as food in the camps is scarce and sexual abuse, particularly of women heads of households, is high.

Insufficient levels of humanitarian assistance to refugees, particularly of food, coupled with the absence of legal income generating potential, has driven many refugee women to engage in survival sex. Coercion by *Mahjees*, camp personnel, and local police (who financially profit from sexual labour) are other factors, as revealed in a recent study on healthcare and HIV/AIDS awareness.

There are many socio-economic factors contributing to the occurrence of sexual and gender based violence. Cultural traditions, insufficient humanitarian assistance, limited income generating possibilities as well as the frustrations arising from inactivity and lack of future prospects all contribute to a high level of violence and exploitation experienced by women refugees. Moreover, the absence of effective prevention and response mechanisms contributes to the general level of impunity that prevails, as does the fact that the perpetrators are often those who are responsible for ensuring the security of camp residents including the *Mahjees*, other camp personnel and the local police.

Improved monitoring and reporting mechanisms have been introduced by UNHCR, including Standard Operating Procedures for SGBV and those for reporting abuses to the District Commissioner and the RRRC. Nevertheless, it is recognised that a more comprehensive approach to tackling the problem needs to be implemented: one that address in partnership with the Government, other agencies and refugees, the root causes of SGBV and includes a more accountable system for ensuring the administration of justice within the camps.

### Specific programmes to protect children

Children and adolescents (under the age of 18) comprise 56% of the total refugee population in the camps. A relatively significant number of them (2,461 as of January 2007) are not registered as many were born after the 1992 registration or to unregistered parents living in the camps. Although recently profiled by UNHCR, these children have not yet been formally recognised by the GoB. It is a significant hardship because children who are not in the family book are not eligible for food rations, health care or education services. Families therefore have to stretch meagre resources further, and insufficient food has resulted in relatively high levels of malnutrition. Moreover, the high cost of medication over and above essential

medication provided by UNHCR, further contributes to malnutrition as food is sold to pay for needed medicine.

Several measures have been taken to address these problems. In 2006 the Government agreed in principle to register unregistered children, and review the provision of food rations accordingly. This commitment is expected to be implemented in 2007 with the provision of ration cards. Moreover,



Moreover, agreement has been reached for the provision of birth certificates with retroactive effect for refugee children, which will be more reliable than registration in the family book. In regard to health care, UNHCR provides services such as vaccinations and therapeutic feeding for the malnourished, to registered and unregistered children.

Among the other hardships children suffer from is lack of adequate living space and playing areas. As yet only a limited number of sports and cultural activities for children have been organised and these only from time to time. Playground facilities urgently need repair as the present dilapidated state of current structures pose risks of physical danger.

There are 40 unaccompanied/separated children in the camps. They are under the guardianship of their relatives which is deemed adequate for their care and wellbeing. The causes for their particular status are either deceased parents or parents in detention.

At present, there are no specific services available to refugee children with special needs/disabilities. UNHCR is in talks with Handicap International to potentially begin work in the camps, subject to the attainment of relevant funding.

With regards to cases of sexual exploitation of children, there have been reports and cases deposited of refugee minors (females) being harassed, abused or raped by local villagers. These cases are being taken up and charges pursued by the refugee parents with the help of UNHCR, BLAST and the RRRC Office.

Unfortunately no training is provided to workers who deal with children in the refugee camps.

## Effective security systems in camps/settlements

The RRRC has been delegated by the MFDM to oversee camp administration. The RRRC has in turn appointed two Camp-in-Charge (CiC) (one in each camp) to be the focal point in the camps who supervise the *Mahjees*. The latter were all selected by the government in 1994 and have not changed since then. They are assisted by a handful of camp volunteers. In addition, each camp is patrolled by a few members of the local police who work with the CiCs and the *Mahjees* to manage law and order in the camps.

In 2001, block communities were established in the camps. They were to be led by a small group comprised of a *Mahjee*, teacher, imam, and a male and female refugee. Their effectiveness has been severely limited due to the dominance of the *Mahjee* power structure in the camps.

The present *Mahjee* system is not one which is accountable or protects the rights of camp residents. To the contrary, the *Mahjees* themselves, with the complicity and engagement of the CiCs and local police, are viewed as key abusers of human rights and a large reason why the camps are not secure. *Mahjees* are known to physically abuse and arbitrarily detain refugees; sexually abuse and exploit women; impose taxes for entering and leaving the camps for employment; tithe earnings of refugees; and collude with local villagers and police in other forms of economic exploitation and extortion of refugees both within and outside the camps.

The need to reform the administration of justice in the camps is clear and pressing one. Reform, however, must proceed with caution as the criminal networks are firmly established and the authority of the *Mahjees* entrenched. Moreover, the heavy-handed and arbitrary manner in which the camps have been run has reinforced authoritative and coercive forms of leadership. Consequently, there is no practice of accountable leadership on which reforms can be based. The GoB has indicated that reform will be undertaken in 2007. The modalities of such reform will have to be carefully discussed and negotiated to ensure that an equitable system of leadership is put in place.

There is also an agreement between UNHCR and the GoB for the reform of the police system which, like the *Mahjee* system, is implicated in various forms of abuse against refugees. One aspect of such reform will be an increase in police training provided by UNHCR.

A reform of the administration of justice will also need to address the problem of local involvement in the exploitation of refugees of which there are many examples. One of these involves a local leader from the surrounding area of the Kutupalong refugee camp, who has used his marriage to a refugee woman to help secure residence in the camps and further the criminal aspirations of himself and the gang under his control.

### The maintenance of civilian character of camps/settlements

The refugee camps are located close to the Bangladesh/Myanmar border. There are no armed struggles in the region and camps therefore are not at risk of this kind of activity. Their close proximity to the border, however, allegedly leaves them open to use by new arrivals in transit or for seasonal workers that have been refused re-entry into Myanmar.

## 5. ESSENTIAL SERVICES ASSURED

### Refugees and asylum-seekers participate

In the past the GoB did not permit active refugee engagement in the delivery of items and services within the camps. Recently, however, there have been more opportunities for their active participation. For example, refugees participate in food distribution and as trainers in some skills training, such as sewing and soap making. They receive payment in kind for their services and efforts are made to ensure that women heads of household benefit from these opportunities. Refugees also serve as teachers in informal schools and some have received teacher training although such training is very basic and not extensive.

The involvement of youth has been encouraged by UNHCR who has promoted the creation of refugee youth groups as a means to heighten awareness and prevention of prevalent protection risks such as domestic violence, early and forced marriage, SGBV as well as to educate on matters such as reproductive health.

Although, as noted earlier, the institution of the block communities was supposed to give refugees a larger voice in decisions that affect their lives, in practice the *Mahjees* and CiCs run the camps without such participation. In recent years, however, UNHCR has actively sought and obtained refugee participation (of both sexes, all ages and including those with specific needs) in a series of assessments concerning essential issues including those pertaining to food, services, security, administration and prospects for durable solutions. The results of these assessments are being used to inform the plans for improving the situation of the camps in consultation with the GoB and other agencies.

### Identification of urgent protection risks

UNHCR staff and implementing partners are generally the first to be informed of persons at risk of harassment and/or violence in the camps. The responsibility for ensuring their security, however, rests with the CiC, the *Mahjees* and the local police. Given the many problems associated with their administration of justice noted above, the system for ensuring security of those at risk is relatively weak.

In this environment, UNHCR and implementing partners try to protect refugees at risk by closely following their cases and intervening on their behalf with camp authorities. The Office facilitates the relocation of persons of risk to the other camp pending the arrest of the perpetrator. It also identifies for resettlement extremely vulnerable persons and advocates with resettlement countries for acceptance. Recent consultations with refugees have further highlighted the range of protection risks in the camps, and helped to identify means to reduce them. As with the administration of justice more generally, however, considerable work needs to be done improve identification, reporting and follow-up mechanisms for those at risk of physical abuse.

In regard to identification and response for refugees with physical and/or psychological disabilities, there are insufficient mechanisms in place to ensure appropriate care. It is hoped that the arrival of MSF-H will help to ameliorate this problem. Moreover, discussions are underway with Handicap International,

Research Training and Management International (RTM) and other international NGOs to begin re-engaging in the provision of services in the camps which will also be of benefit to those with disabilities.

In as far as unaccompanied and separated children are concerned, a recent camp population verification exercise identified 40 such cases of children and then further enquired into the presence of family member's as guardians. It has been established that all of these cases have refugee relatives in the camps and seem to be under adequate guardianship within these families. UNHCR is keeping a close eye on these cases to follow their status. Nevertheless, best interest determination has not been conducted to date for this group which is a protection concern that needs to be addressed.

### Nutritional well-being

Anaemia and malnutrition is a serious problem in the camps. A survey conducted in 2005 found that out of 508 children under 5 examined, an alarming 65.4% were anaemic and therefore chronically malnourished. The global acute malnutrition rate was determined as being 12.8% for children between 6-59 months. A survey is planned for 2007 which will update these figures. While it is believed that the situation has improved in the last two years, current indications are that malnutrition remains relatively high.

There are a number of reasons for this. Although the food baskets meet international standards in terms of calorific intake, they lack sufficient animal proteins and vegetables and as such are deficient in micronutrients such as Vitamin A, calcium and riboflavin. While some animal sources of protein and vegetables are available to refugees through poultry raising and kitchen gardening projects in the camps, these remain small in number and therefore do not have much impact on their diets.

Another factor contributing to the relatively high incidence of malnutrition is the lack of access to food distribution of some 5,000 persons living in the camps who are not registered, including a large number of children and newborns. Those who are registered share their food rations with those who are not, reducing the calorific intake of the population as a whole below international standards. The GoB has agreed, in principle, to adjust the figures and account for actual number of refugees and WFP is in the process of reviewing its provisions subject to donor funding for 2007/8.

Since May 2007 the *Mahjees'* practice of denying food entitlements to refugee households as punishment has been discontinued. This practice impacted on nutritional status of 15-20% of the camp population and will require continuing monitoring by UNHCR and its partners.

Food intake has also been disrupted due to the practice of refugees selling part of their basic food ration to buy condiments (garlic/onion). There have also been reported incidences of forced sale of food rations to local villagers which have been instigated and aided by camp personnel, the *Mahjees* and local bandits.



Supplementary and therapeutic feeding centres have been set up by the Office of the Civil Surgeon. The former provides supplements to malnourished children, pregnant women, lactating mothers, orphans and tuberculosis patients. The latter provides treatment and feeding to the severely malnourished as well as low birth weight babies and orphans, who have lost their

mother. Both also provide health education such as weaning practices, importance of child spacing, balanced diet, personal hygiene and breast-feeding. An outreach programme has been initiated for home visits to identify malnourished children and follow up on cases already served by the Centres.

The programme is severely limited by the absence of qualified nutritionists supervising the programme. Nor can the assistance provided remedy the deficiencies in food supply noted above.

There is an adequate supply of drinking water to refugees.

## Basic domestic and personal items

Clothes are distributed to the refugees on a yearly basis by UNHCR's implementing partner Technical Assistance International (TAI). In addition, clothes made by refugee women enrolled in the sewing/tailoring classes in camp community centres are distributed to the most vulnerable refugee families.

Sanitary material is distributed to women of child bearing age (13-49) except pregnant women, those using injectable contraceptives and those who have given birth for 6 months post delivery. These are provided through post natal clinics, the reproductive health programme, and family welfare assistants and are deemed adequate for refugees' needs.

Compressed Rice Husk (CRH) is distributed by UNHCR as cooking fuel to reduce their need to collect firewood outside the camps. The difficulty is that cooking fuel is distributed per family, irrespective of family size, thereby placing larger families at a disadvantage. In order to obtain sufficient fuel, some larger families have to resort to borrowing, selling other rations or collecting firewood outside the camps, placing them at increased risk of harassment and abuse.

## Adequate housing

Semi permanent structures were erected to house refugees in the early 1990s and there was a moratorium on the construction of new housing until a breakthrough agreement with the GoB in 2006. That agreement provided for the construction of 20 new shelters in Kutupalong camp with the help of EU funding. A donation from the CERF fund will provide construction of new shelters for a further 469 families. This work will be done in stages using refugee labourers and is expected to be completed by 2008 provided that adequate funding for the completion of all the new shelters is secured.

While these developments have alleviated the living conditions of some in the camps, with others soon to similarly benefit, the fact remains that many other refugees continue to live in overcrowded quarters in need of repair. Shelters are made of bamboo and thatch and are not resistant to heavy rains/wind and require constant repair. Some refugees reportedly have used bamboo material from latrines or bathing cubicles in order to repair some of their sheds.



Sanitation activities are the responsibility of the CiC. In Nayapara camp the ratio of latrines is 1 for 25 refugees. In Kutupalong the ratio is 1 for 20 refugees. The construction of permanent new latrines was completed by Technical Assistance International, a partner of UNHCR in both camps as well as a total of 150 garbage disposal points. TAI is responsible for the maintenance and periodical dislodging of the latrines. Community mobilization measures for sustainable latrine maintenance and waste disposal by refugees are needed.



MSF-H has agreed with the GoB to invest in one time repair of water and sanitation facilities in both camps. At present the bathing cubicles are not adequately equipped for women. Male and female cubicles are adjacent to one another, and the female ones have a poorly maintained. Because of this women tend to use them at night, this places them at risk of harassment and/or violence because cubicles are not in well lit areas. This further endangers the refugee women as the location is not well lit leading leaving them vulnerable to harassment and violence.

## Primary curative health care including preventative health education

MFDM is UNHCR's implementing partner, responsible for the provision of health services. MFDM has in turn delegated this responsibility to the Office of the Civil Surgeon with whom UNHCR has no agreement. This has in the past led to poor coordination leading to confusion, delays in the release of funds, ruptures in the supplies and wages and interruption in the referral services for refugees.

The recent permission granted to several NGOs to work in the camps, including to MSF-H has led to improvements. MSF-H is responsible for the In Patient

Department (IPD) in the camps and for the delivery room in each camp. It is training 16 refugees as skilled birth attendants. UNICEF sponsors the government's national vaccination programme which also benefits refugee children. Further enhancement of the role of UN Agencies is under negotiation with the GoB. In spite of these recent encouraging developments, however, the health sector suffers from serious gaps which impact on the well being of refugees.

Each camp has an 'Out' and an 'In' Patient Department, and is equipped with a labour room, laboratory, pharmacy and emergency service. The construction of the Nayapara camp facility is nearly complete and MSF-H should commence its activities within the first half of 2007. In Kutupalong there are some contractual delays with the forestry department and construction is on hold after 60% completion. In addition, antenatal and postnatal care, immunizations, family planning, and supplementary and therapeutic feeding services are provided.

Two medical offices stationed in Cox's Bazaar, appointed by the Ministry of Health, visit the camps twice a week. In addition, each camp has two medical doctors, one medical assistant and eight nurses. They are also supported by Community Health Workers (CHWs) of which there are 16 in Nayapara and 14 in Kutupalong. CHWs receive basic and refresher training on health related topics including HIV/AIDS, personal hygiene, immunization and nutrition. Written training material is only available in regard to HIV/AIDS.

Family planning coverage is reported as 35% of married couples and 21% of the total number of women of childbearing age. Drop out rates are quite high. One reason for this may be that family planning services are offered in the same room as immunizations making it difficult for the staff involved in family planning counselling to provide their services in privacy.

Available medical staff is not sufficient to meet demand. For example, in the out patient services, doctors see on average 200 patients a day, four times the international standard. In the in patient departments, the referrals average between 150-200 patients per month with the average bed occupancy rate of 92% and average length of stay of 4 days.



There is, moreover, a serious shortage of female health care staff. The positions of nurses, nutritionists and doctors have been advertised but females do not apply. This causes significant difficulty in addressing the needs of refugee women who are often not comfortable talking freely about their health problems with male personnel. These anxieties are aggravated by reports of harassment and abuse of women by male health staff.

Financial corruption by some staff has also been reported. In addition, refugees allege that camp doctors tend to prescribe painkillers rather than medications to adequately treat ailments.

Among the most common diseases in the camps are those associated with overcrowding, poor sanitation and insufficient personal hygiene. These include respiratory problems, skin infections, diarrhoea, dysentery and malaria. They also reflect a need to focus more health activities on prevention. In regard to the HIV/AIDS, there are no reported cases.

Dental care has been absent in the camps altogether causing problems for the vast majority of refugees. Recently, TAI organised a team of dentists to provide free dental care for 5 days to all refugees. Follow-up care is envisaged although the modalities of which have yet to be decided. Similarly, the provision of ophthalmologists in camps is being discussed with TAI for the camps although nothing concrete has yet been established.

## Primary and secondary education

There is no formally recognised right to education for children in Bangladesh although the Constitution does affirm that free and compulsory education is a fundamental principle of State policy but not a judicially enforceable one.



Refugee children are prohibited from accessing formal education within or outside the camps. Education is therefore provided informally for elementary education (kindergarten – grade 6). The teachers are refugee volunteers who have received some basic and ongoing training from TAI. Classes run for two hours a

day and are based on the Myanmar curriculum focusing on Burmese, English and Mathematics. Bengali language instruction is not provided. Although the Myanmar curriculum includes classes of history, geography and general science, qualified teachers amongst refugees have not been found to teach these subjects.

Children learn about basic health and hygiene practices at school, however, life skills and social awareness education are not included in the curriculum. Recreational activities for children in the schools are also limited.

There are eight elementary schools in each camp. Of the 81 refugee teachers 11 are female as of May 2007. Classes are full with an average student/teacher ratio of 32:1. Many classrooms are overcrowded. Previously, most schools lacked adequate furniture; a situation that has been remedied in 75% of the classrooms with Canadian funding. There remains, however a shortage of books and other learning materials.

Recent surveys showed that 80% of children between 5 -12 yrs of age attend school. Disaggregated data by sex is available with 3526 male and 3412 female children attending (April 2007). Data on the percentage of children who finish their elementary education is not, however, available.

Teachers receive three months training before recruitment, followed by periodic ongoing training organised by TAI. This training mainly focuses on the basic subject matter to be taught, with some instruction on teaching techniques. Teaching in the camp schools mainly relies on rote learning. Participatory, student-centred learning techniques are rarely employed.

There are no separate latrines for girls and boys. There are no facilities for children to wash their hands.

The fact that many children are not adequately fed has made learning difficult and hindered performance. The absence of lighting is also not conducive to learning for children are unable to study at night. WFP, in 2006, began providing energy biscuits and water flasks as incentives to refugee children during school hours. Water tanks have also now been made available by TAI at the schools.

Secondary education is not permitted. Classes, however, are provided by some refugees for a small stipend to enable those who wish to study beyond Grade 6. In addition, madrassas are run in the camps that are neither recognised by the GOB or UNHCR where refugee children are taught Arabic, Bangla and English.

Focus groups discussions with refugees highlighted the concern of many youth (both male and female) about not being provided access to recognised secondary education and the very limited opportunities provided for skills training. Refugee girls in particular requested further access to vocational skills, language and literacy training. Refugee parents speak of their general dissatisfaction with the informal education system including the shortage of books and other education materials and the lack of access to education opportunities outside the camps.

The right to formal education is a subject of ongoing discussion between UNHCR and the GoB given the importance of education to the empowerment of refugees.

## 6. DOCUMENTS CONFIRMING PROTECTED CIVIL STATUS

### Identity documents for asylum seekers

The GoB does not recognise asylum seekers in Bangladesh, and therefore does not issue them with identity documents. All those who register with UNHCR have been and continue to be provided with a UNHCR letter equivalent to an Asylum Seeker Certificate. UNHCR certificates will be made available in 2007 once urban asylum seekers are registered in the ProGres database and will be renewable monthly. The existing UNHCR letter does not have security features such as a digital photograph but once the certificate is issued this will be remedied. The letter and certificate are recognised by the GoB.

### Identity documents for refugees

The GoB similarly neither recognises refugees nor provides identity documents to them.

Urban refugees are provided UNHCR Refugee Identity cards with photographs once recognised as mandate refugees. These are in the process of being converted to UNHCR Refugee Certificates with digital photographs that will be drawn directly from the new database being implemented by UNHCR worldwide-ProGres. These certificates are renewable yearly although not automatically and only upon presentation to UNHCR by the refugee.

Camp based refugees were initially provided with temporary ration cards which were later replaced by a system known as 'family books'. Having one's name recorded in a family book indicated an entitlement to assistance (e.g. food and non-food items, medical records, vaccination). The front page of a family book contains the names of all family members and their relation to the head of family. Over the years, many generations of family members have come to be recorded in one family book. There is thus no formal identification for individual refugees independent of their families.

The family book system is problematic and has been subject to abuse. The information provided in the books does not ensure an accurate picture of family composition. For example, in families where the head of household has several wives, a number of the latter may be recorded not as wives but as single heads of households. Moreover, CiCs and *Mahjees* have arbitrarily removed names from family books as a means of extortion and/or punishment. Refugees have themselves bartered with names on family books.

UNHCR and the GoB have agreed on a means to remedy some of these problems through the issuing of individual ration cards, based on the verification exercise recently undertaken and now regularly updated. Ration cards will be issued per household. Special attention will be paid to refugee women as they are often vulnerable to abuse. In particular, ration cards will be issued to the refugee male head of family (for himself) and for the female head of family (for herself and her family).

In the context of the voter registration exercise for citizens that it expected to take place in Bangladesh in 2008-2009, UNHCR has also opened discussions with the GoB for the issuing of official identification cards to refugees.

## Travel documents

No refugee in Bangladesh is issued a 1951 Convention travel document. However, refugees who are accepted for resettlement are provided with the Universal International Committee of the Red Cross (ICRC) travel document upon receipt of an exit permit, an entry visa by the destination country and a letter requesting the travel of the refugee by UNHCR.

The ICRC travel documents can be extended and/or renewed but are only valid for one time use. Some destination countries also issue a national travel document.

There are reports that refugees are able to procure false passports illegally, enabling them to travel onwards from Bangladesh, particularly to the Gulf States. In part to address the problem of illegal migration, the GoB has implemented measures making it more difficult for Bangladesh citizens to obtain passports or renewals. There has been little progress in identifying the agents who facilitate irregular migration movements.

## Documents confirming civil status

Urban newborn refugees receive birth certificates from the hospital they are born in and provided with UNHCR refugee certificates. Camp based newborns are included in the family book, and UNICEF is in the process of providing birth certificates retroactively to all refugee children who have been born in the camps.

Marriages among refugees are formalised in a religious ceremony but a certificate is not issued. There may be adverse effects on family unity due to the absence of marriage certificates although no concrete conclusion can be drawn, particularly since, under the Islamic faith, a religious ceremony is sacrosanct. A refugee woman who marries a male Bangladeshi national acquires the same rights as her husband and their children are recognised as Bangladesh nationals. A refugee man who marries a Bangladeshi woman, however, is not accorded the same entitlement.

Deaths of camp based refugees are recorded by the GoB but no death certificates are provided.

## 7. EQUAL BENEFIT AND PROTECTION OF THE LAW

### Access to effective remedies in law

As noted earlier, Article 31 of the Constitution of Bangladesh provides that non citizens are entitled to the protection of the law. In practice, however, access to effective remedies in law is hampered by the weak administration of justice in Bangladesh. Refugees and asylum seekers, like citizens, face problems redressing violations of their rights due to inefficiency and corruption among law enforcement personnel and judiciary.

UNHCR provides funds to BLAST for the provision of legal services to refugees in need, and is frequently called upon to intervene on behalf of refugees to ensure that their claims are heard and not subject to undue delay.

### Other dispute resolution that respects international legal principles

Arbitration mechanisms exist in refugee camps to address the complaints of refugees and are governed by camp personnel, the RRRC, CICs and UNHCR. The *Mahjees* were originally involved in arbitration although their role is of late being kept to a minimum by UNHCR. Although arbitration goes some way towards keeping a check on the various actors within camps, it is insufficient to systematically address the multiple problems associated with law and order that refugees face. Pervasive corruption among camp officials and refugee leaders dictates that solutions tend to be *ad hoc* in nature and may deter refugees from seeking redress.

A comprehensive approach to improving security and access to justice which includes greater accountability in camp administration is required, in order to restore the confidence of refugees.

## 8. ABILITY TO ACHIEVE SELF RELIANCE

### Wage earning employment

Refugees and asylum seekers are not legally entitled to work in Bangladesh. Consequently, camp based refugees have been dependent on foreign aid for 16 years with little possibility to achieve self reliance. To date the government has not taken steps to facilitate refugee self reliance, citing the poor overall economic situation in Bangladesh and the possibility that such action might lead to local integration.

Given the unlikely prospect of large-scale repatriation to Myanmar in the near future, and the limited prospects for resettlement, the absence of opportunities for self-reliance leaves refugees with very poor future prospects. Moreover, as discussed in previous chapters, inactivity and resort to illegal employment contribute to an insecure environment for refugees and one in which systematic abuse and exploitation are rife.

A high proportion of refugee men, some assisted by their adolescent sons, resort to informal work to supplement humanitarian assistance. This includes work as unskilled labourers, fishermen, rickshaw pullers and salt and brick factory workers. Refugees working illegally are open to exploitation by local employers and *Mahjees* who have imposed a 'tax' for exit and re-entry to the camps, and mete out harsh punishments for failure to pay. It has been estimated that the tax amounts to over 250,000 US a year.

UNHCR's interventions have gone some way to protecting refugees against such harsh penalties but in the absence of lawful sources of income, refugees remain susceptible to the abuse by *Mahjees*, camp personnel and local residents. They can, in principle, be sanctioned by law for illegal work although in practice this is tolerated.

The need for income, and insufficient means to earn it, has led many refugees to sell portions of their food rations. Many local residents have become used to this trade and are not eager to see refugees afforded more income generating possibilities for fear that this source of food from the humanitarian aid will be diminished.

The absence of legal means to achieve self reliance has a particularly negative impact on refugee women. It is estimated that 40% of refugee households are headed by women. Largely excluded from illegal channels of employment, many women are therefore entirely dependent on humanitarian aid. Their social and economic vulnerability puts them at greater risk of sexual exploitation and abuse.

WFP have introduced basic self-reliance programmes in the camps, with a focus on improving the status of vulnerable refugee children and families. Food for Work initiatives have provided much-needed supplementary food in return for labour on social works.

Urban asylum seekers have easier access to the informal labour market as they are not subject to the same limitations on movement that apply to refugees.

## Social security and just and favourable conditions of work

Refugees and asylum seekers do not benefit from laws and regulations governing social security. As noted, in the absence of legitimate channels of employment, they are subject to exploitative working conditions and remuneration.

## Trade and self-employment

The restrictions on wage earning employment extend to trade and self-employment.

## Recognition of foreign diplomas

There are no procedures for the recognition of foreign diplomas of refugees and asylum seekers.

## Right to own property

Refugees do not have the right to own moveable or immovable property.

## Educational and vocational programmes

Refugees and asylum seekers do not have access to government sponsored educational and vocational training programmes. WFP and its partner TAI organise skills training in both camps to enhance the capacity of extremely vulnerable refugee women and adolescent girls to become self reliant through trades such as tailoring, soap-making and book-binding. Tailoring workshops for refugee men are being built as follow-up initiatives to UNHCR Participatory Assessments.



TAI also organizes literacy classes for adults and adolescents who did not benefit from the informal school curriculum provided to children under 12 years of age. These programmes mark a positive step towards the increased self-reliance of refugee populations in Bangladesh but will remain limited in impact unless they can be made accessible to a far larger number of refugees. A broad package of vocational training and self-reliance programmes engaging all relevant actors including the Government, is required if the long term self-sufficiency of the refugee population is to be achieved.

## 9. OPPORTUNITIES FOR DURABLE SOLUTIONS

### Comprehensive durable solutions strategy

Existing Government policy identifies voluntary repatriation as the only durable solution available to refugees, ruling out the possibility of local integration. The use of resettlement as a strategic tool to provide durable solutions to vulnerable refugees was first employed by UNHCR in 2006.

A Memorandum of Understanding signed between the Government and UNHCR in 1993 stipulates that UNHCR should provide protection to refugees from Myanmar and cooperate with the Government to ensure their safe and voluntary repatriation. The Government of Bangladesh has explained its reluctance to integrate Rohingya refugees in terms of the limited capacity of the country to absorb a large refugee population. Bangladesh faces overwhelming problems of human development and poverty.

In light of continuing human rights violations in Myanmar, the drastically reduced interest of refugees in repatriation as well as the unwillingness of GoM to accept refugees for return outside those placed on an arbitrarily drawn 'cleared list' in 1997, the need for a comprehensive strategy encompassing self reliance pending voluntary repatriation, and resettlement has become acute. In 2006 only 3 refugees requested repatriation to Myanmar. Human rights reports on the treatment of Rohingya in Myanmar and the ongoing phenomenon of return migration to Bangladesh dictate that voluntary repatriation cannot presently be promoted although voluntary repatriation remains the optimal durable solution when the conditions so allow.

The large number of 'illegal migrants' from Myanmar who reside in Bangladesh also points to the absence of conditions conducive to sustainable return. Many of this 'self-settled' population share profiles substantially similar to those of refugees. Although they are largely tolerated by the authorities, the lack of possibilities to regularise their status remains an obstacle to full integration. Policies of eviction, where they have been employed, have had grave humanitarian effects. Forced evictions in Teknaf district in 2002 have resulted in the construction of a make-shift camp sheltering some 9500 Rohingya in deplorable conditions. The GoB profiled this population in April 2007 and has agreed to move them to new, safer government land.

Initial discussions between UNHCR and the Government of Bangladesh on the present *impasse* provide a positive platform for developing a comprehensive and coherent strategy to provide durable solutions for the forcibly displaced from Myanmar. The sustained engagement and support of the donor community in addressing the situation of Rohingya refugees and 'self-settled' is required to ensure that momentum is not lost in assisting the Government to assume greater responsibility in facilitating solutions for displaced Rohingya communities.

## Voluntary repatriation

UNHCR does not actively promote voluntary repatriation to Myanmar for reasons noted above. However, UNHCR continues to facilitate the return of those who freely and voluntarily express a wish to repatriate and the Office maintains its monitoring presence in Myanmar. An enhanced return package, provided at the request of the GoB, has had little impact as the interest to return has steadily declined.

Negotiations are currently underway for possible tripartite meetings between the GoB, the Government of Myanmar (GoM) and UNHCR on the issue of voluntary repatriation. The GoM does not view its Rohingya residents as citizens but rather illegal immigrants from Bangladesh. As a result, the Rohingya are effectively stateless. The unwillingness of the GoM to extend its protection to Rohingya is a serious obstacle to any durable solutions strategy that prioritizes return. At present, Myanmar has only agreed to repatriate 8000 refugees who they cleared for return in 1997 of which only 5000 remain in the camps. The other 'cleared' refugees are deemed to have returned or moved onwards.

Any future promotion of voluntary repatriation should be based on meaningful guarantees of fundamental rights and reintegration in Myanmar and the provision of objective return information to refugees taking into account age and gender considerations. With these safeguards in place, the risk of premature or coercive repatriation, as characterized the movements in 1991 and 1992 could be avoided.

## Local integration

The Government of Bangladesh does not presently permit the local integration of refugees. There are no legislative provisions facilitating access to permanent residence or citizenship or measures promoting the social integration or self-sufficiency of refugees.

The Government's policy is based on concerns about the severely limited capacity of Bangladesh to integrate a vulnerable refugee population and the possibility of creating a pull-factor for new migratory movements to its territory. In recent discussions the Government has, however, indicated a willingness to engage with UNHCR on the gradual realisation of basic rights of refugees such as freedom of movement, without which self reliance cannot be attained.

A new UN inter-agency community based development programme is being developed to promote livelihoods and community structures in regions hosting refugees and "illegal migrants". By enhancing the capacities of local communities as a whole it is hoped that self-settled Rohingya and refugees will have increased opportunities to achieve self sufficiency. This approach has the added value of increasing the potential for sustainable livelihoods in Myanmar, if and when voluntary repatriation becomes a meaningful option for the Rohingya.

## Resettlement

UNHCR has pursued resettlement strategically as a durable solution for Rohingya refugees since 2006. This has included the identification for resettlement of extremely vulnerable refugees with compelling protection concerns.

To date, 23 refugees have been accepted for resettlement by the Government of Canada, based on their vulnerability as well as on their local integration potential. A further 200 cases have been identified by UNHCR as potential resettlement candidates. The New Zealand Government has opted to take 50 individuals for resettlement in 2007. The UK Government has also expressed an interest although no specific bid has as yet been made.

As part of its use of resettlement strategically, UNHCR has successfully advocated for skills training of refugees as one means for improving their prospects for resettlement on the basis of their enhanced integration potential. The further engagement of the GoB in improving access of refugees to employment, educational and vocational programmes, would assist UNHCR and its partner IOM in presenting Rohingya refugees as attractive candidates to a wider portfolio of resettlement states.

In tandem with these developments has been the increased interest in refugees in improving their skills as a means to enhance their prospects of being selected for resettlement. There has been also a corresponding impatience with the ongoing restrictions on their rights, and the poverty of their circumstances in Bangladesh. This underscores the necessity to pursue resettlement as part of a comprehensive approach to solutions in concert with initiatives to expand possibilities for refugee self-reliance and thereby improve their living conditions and potential contributions in Bangladesh.