



GRIFFITH JOURNAL OF  
LAW & HUMAN DIGNITY

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# FOREIGNERS ACT AND THE FREEDOM OF MOVEMENT OF THE ROHINGYAS IN BANGLADESH\*

ASHRAFUL AZAD\*\*

*It is estimated there are almost one million Rohingya refugees in Bangladesh. Most of these refugees are living without formal refugee status. Bangladesh has not signed the UN Refugee Convention, neither has it any domestic refugee regime. The Rohingya people are usually considered 'illegal foreigners' under the Foreigners Act 1946. Consequently, they face various restrictions in Bangladesh. This article discusses the restriction on freedom of movement of the Rohingyas within the country and internationally. Based on the legal analysis and empirical findings, this article shows that the Rohingyas in Bangladesh live in fear of arrest and detention, which deter their daily movement outside designated camps. However, despite obstacles, many Rohingyas manage to bypass the system using various informal and inconsistent ways. On the other hand, the government of Bangladesh considers the free movement of Rohingyas as a security threat and has taken measures to keep the refugees within camps.*

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## I INTRODUCTION

In January of this year, I accompanied some students from the University of Chittagong to visit Rohingya refugee camps in Cox's Bazar, following the recent mass arrival of Rohingyas fleeing persecution in Myanmar. The camps are located in Ukhiya and Teknaf Upazilla (sub-district) of Cox's Bazar. After reaching Cox's Bazar, we took a local minibus to Ukhiya and then an auto-rickshaw (locally called CNG taxi or CNG) to the "unregistered" camps in Kutupalong and Balukhali. We faced no obstacle on the way.

However, when we were returning to Cox's Bazar, we had to face several check posts guarded by police and border guards. One of the students, Mustafij, who comes from the area, explained that the security personnel were looking for two 'things': yaba (a drug) and illegal Rohingya, both coming from bordering Myanmar. I will focus here only on Rohingya.

How do they identify the Rohingya? The Rohingya apparently look like local Bangladeshi people. Mustafij continued, 'though the Rohingya can speak the local dialect, they cannot speak Bengali. Moreover, most of them have very poor clothes and lack confidence in a new country. If caught, usually they are forced to leave the vehicle and walk back to the camp'. I noticed that many men and women in shaggy clothes and mostly bare feet are standing, sitting on land, or walking beside the highway. They are mainly newcomers who have no food and shelter and are unable to earn a livelihood, as they are barred from moving to Cox's Bazar where work and possibly help is available.

This article attempts to answer the following questions:

- What are the Bangladeshi laws that regulate the freedom of movement of refugees? How are the laws implemented?

- How do the restrictions on freedom of movement impact on the life of Rohingya refugees in Bangladesh?

The article consists of three main parts. The first part provides a brief introduction to the arrival and general status of Rohingyas in Bangladesh. The second part focuses on analysing Bangladeshi laws on the movement of refugees; this part principally comes from a research project on the legal status of Rohingya in Bangladesh.<sup>1</sup> The final part addresses the impact of the restrictions on freedom of movement on the life of Rohingya in Bangladesh. This part is mostly based on qualitative interviews conducted with unregistered Rohingya refugees in the Kutupalong camp. In total, 20 interviews were conducted in January 2017. The participants were selected purposively; however, attempts have been made to ensure gender and age diversity. The interview data is presented here anonymously for the safety of participants.

It should be noted that after the fieldwork was conducted, there has been another massive influx of Rohingya refugees in Bangladesh since 25 August 2017. This new influx of more than 600 000 refugees, the largest so far, has more than doubled the Rohingya refugee population in Bangladesh. This study only includes the newspaper reports and published comments regarding the new refugees; it has not included their primary interviews.

## II ROHINGYA PEOPLE IN BANGLADESH

The Rohingya are an ethno-linguistic-religious minority group originating from the Northern Rakhine State of Myanmar. Facing persecution by Buddhist majority groups and the state authorities,<sup>2</sup> many Rohingya have fled to neighbouring Bangladesh.

In 1978, driven by *Operation Nagamin* (Dragon King) which was an attempt by the

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<sup>1</sup> Ashraful Azad, Equal Rights Trust, 'Legal Status of the Rohingya in Bangladesh: Refugee, Stateless or Status Less' in *Confined Spaces: Legal Protections for Rohingya in Bangladesh, Malaysia and Thailand* (2016) 57.

<sup>2</sup> Maung Zarni and Alice Cowley, 'The Slow Burning Genocide of Myanmar's Rohingya' (2014) 23(3) *Pacific Rim Law & Policy Journal* 683; Fortify Rights, 'Policies of Persecution: Ending Abusive State Policies Against Rohingya Muslims in Myanmar' (Report, Fortify Rights, February 2014); Office of the High Commissioner of Human Rights, 'Report of OHCHR Mission to Bangladesh' (Flash Report, Office of the High Commissioner of Human Rights, 3 February 2017); Ashraful Azad, *The Ongoing Genocide in Myanmar* (3 January 2017) Open Democracy <<https://www.opendemocracy.net/ashraful-azad/ongoing-genocide-in-myanmar>>.

Burmese Army to clear out alleged “illegal migrants”, approximately 222 000 Rohingya people from Northern Arakan, fled to neighbouring Bangladeshi territories.<sup>3</sup> Negotiations between the Burmese and Bangladeshi governments resulted in 187 250 refugees being returned to Burma by December 1979.<sup>4</sup>

In 1991–92, following the increased military presence in frontier areas, there was widespread forced labour, torture, rape, and killing of Rohingya resulting in around 250 000 Rohingya Muslims seeking asylum in Bangladesh.<sup>5</sup> Between 1992 and 2008, 236 599 refugees were repatriated to Myanmar.<sup>6</sup> In 1997, it was noted that the process of repatriation did not follow due process, with reports of forced repatriation.<sup>7</sup>

As of March 2017, there were 33 148 registered Rohingya refugees in Bangladesh, living in two official camps, Nayapara and Kutupalong, in the district of Cox’s Bazar. These camps are administered by the Government of Bangladesh with the assistance of the United Nations High Commissioner for Refugees (UNHCR).<sup>8</sup>

As noted, there are concerns about the repatriation process. In particular, it has been noted that many refugees were repatriated without their free, informed consent.<sup>9</sup> Moreover, there have been no effective changes to the situation in the Rakhine State,<sup>10</sup> resulting in many of the repatriated Rohingya once again crossing the border back to Bangladesh. On re-entry, many of these Rohingya were refused registration, or they did not seek it at all.<sup>11</sup> Lacking any formal legal status, these Rohingya built their makeshift huts or mingled with local Bangladeshi people in villages and slums. These Rohingya people, together with new arrivals are the so-called “unregistered” refugees.

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<sup>3</sup> K Maudood Elahi, ‘The Rohingya Refugees in Bangladesh: Historical Perspectives and Consequences’ in John R Rogge (ed), *Refugees: A Third World Dilemma* (Rowman & Littlefield, 1987) 227.

<sup>4</sup> C R Abrar, Refugee and Migratory Movements Research Unit, *Repatriation of Rohingya Refugees* (1996), cited in Carl Grundy-Warr and Elaine Wong, ‘Sanctuary under a Plastic Sheet — The Unresolved Problem of Rohingya Refugees’ (1997) 5(3) *IBRU Boundary and Security Bulletin* 79.

<sup>5</sup> Grundy-Warr and Wong, above n 4.

<sup>6</sup> Imtiaz Ahmed (ed), *The Plight of the Stateless Rohingyas: Responses of the State, Society & the International Community* (The University Press Limited, 2010) 101.

<sup>7</sup> Grundy-Warr and Wong, above n 4.

<sup>8</sup> United Nations High Commissioner for Refugees, *Bangladesh: Factsheet* (March 2017) <<http://www.unhcr.org/50001ae09.pdf>>.

<sup>9</sup> Grundy-Warr and Wong, above n 4.

<sup>10</sup> For information on the recent situation in the Rakhine State, see Fortify Rights, above n 2.

<sup>11</sup> Chris Lewa, ‘Invisible Refugees: Study on the Self-Settled Burmese Rohingyas in Bangladesh’ (Report, Embassy of the Kingdom of the Netherlands, Dhaka, August 2008).

There are now about one million unregistered Rohingya refugees in Bangladesh.<sup>12</sup> In 2014, it was estimated that there were between 200 000 and 500 000 unregistered Rohingya in Bangladesh.<sup>13</sup> This number continued to increase as the Rohingya have continued to flee Myanmar. Following ethnic violence in Myanmar in 2012, there was another influx. In response to the violence in October 2016, it was estimated by the United Nations (UN) that around 74 000 new Rohingya have fled to Bangladesh.<sup>14</sup> The largest flow of Rohingya refugees started to enter Bangladesh since 25 August 2017. From 25 August to 28 October, 607 000 new refugees have arrived in Bangladesh and the number is increasing every day.<sup>15</sup> The government of Bangladesh has allowed the refugees to stay in designated camps and is facilitating humanitarian aid in cooperation with local and international non-governmental organisations (NGOs) and the UN. However, the government has refused to provide them 'refugee status'. Rather, it is conducting a bio-metric registration and providing them a 'Myanmar National's Registration Card'.

Some unregistered Rohingyas live in visible camps in Cox's Bazar. Until recently, there have been two such camps: one is on the fringes of the official Kutupalong camp, and another in the Leda area, seven kilometres from the Nayapara camp.<sup>16</sup> I observed another new unregistered camp being built in the Balukhali area during the field visit in January 2017. Outside of these camps, other unregistered Rohingya are less visible, as they live alongside Bangladeshi citizens. Indeed, some came many years ago and have now

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<sup>12</sup> Max Bearak, 'Bangladesh Is Now Home to Almost 1 Million Rohingya Refugees', *Washington Post* (online), 25 October 2017

<[https://www.washingtonpost.com/news/worldviews/wp/2017/10/25/bangladesh-is-now-home-to-almost-1-million-rohingya-refugees/?utm\\_term=.b3493e74b0c5](https://www.washingtonpost.com/news/worldviews/wp/2017/10/25/bangladesh-is-now-home-to-almost-1-million-rohingya-refugees/?utm_term=.b3493e74b0c5)>.

<sup>13</sup> United Nations High Commissioner for Refugees, *Bangladesh: Factsheet* (September 2014). The Government of Bangladesh has recently conducted a census to determine the actual number of 'undocumented Myanmar nationals' (UMN) living in the country. However, the outcome of the census has not been published yet. See Sheikh Shahariar Zaman, 'Final Rohingya Census Report by Nov', *Dhaka Tribune* (online), 20 June 2016 <<http://archive.dhakatribune.com/bangladesh/2016/jun/20/final-rohingya-census-report-nov>>.

<sup>14</sup> United Nations High Commissioner for Refugees, above n 8.

<sup>15</sup> International Organization for Migration and Inter Sector Coordination Group, *ISCG Situation Update: Rohingya Refugee Crisis, Cox's Bazar —29 Oct 2017* (29 October 2017) Relief Web <<https://reliefweb.int/report/bangladesh/iscg-situation-update-rohingya-refugee-crisis-cox-s-bazar-29-oct-2017>>.

<sup>16</sup> Esther Kiragu, Angela Li Rosi and Tim Morris, 'States of Denial: A Review of UNHCR's Response to the Protracted Situation of Stateless Rohingya Refugees in Bangladesh' (Review, PDES/2011/13, United Nations High Commissioner for Refugees, December 2011) 8.

integrated into Bangladeshi society.<sup>17</sup> After the recent arrival of refugees, the government has allocated 2000 acres of forest land near the Kutupalong camp to build new shelters.<sup>18</sup>

### III LAWS REGULATING FREEDOM OF MOVEMENT

Freedom of movement is recognised in several international instruments, including the *International Covenant on Civil and Political Rights* (ICCPR).<sup>19</sup> The UNHCR has emphasised that aliens whose status has been regularised are entitled to enjoy the right to move freely.<sup>20</sup> Despite being a signatory to most UN human rights instruments, Bangladesh follows domestic legal provisions and administrative procedures regarding the movement of refugees.

#### *A The Foreigners Act and Status of Rohingya in Bangladesh*

Bangladesh has not ratified the 1951 Refugee Convention,<sup>21</sup> nor either of the two Statelessness Conventions;<sup>22</sup> nor does it have any domestic law governing refugee status or the granting of asylum. Consequently, the legal status of Rohingya is governed by the national law on the entry and residence of foreign aliens, rather than laws which cater for their particular vulnerabilities. In the absence of any legal regime on refugees and stateless persons, the vast majority of Rohingyas are dealt with under the general law applicable to all non-citizens, and many aspects of their lives are controlled through administrative measures rather than standard legal procedures.

In the absence of domestic law specifically regulating the status of the Rohingya in national law, the rights of Rohingya to enter and remain in Bangladesh are set out in the

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<sup>17</sup> Lewa, above n 11. See also Ahmed, above n 6.

<sup>18</sup> Hannah Beech, 'Bangladesh Plans to Build Huge Refugee Camp for Rohingya', *New York Times* (online), 16 September 2017 <<https://nyti.ms/2y5FUtQ>>.

<sup>19</sup> *International Covenant on Civil and Political Rights*, opened for signature on 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 12.

<sup>20</sup> Human Rights Committee, *General Comment No 27: Article 12 (Freedom of Movement)*, 67<sup>th</sup> sess, UN Doc CCPR/C/21/Rev.1/Add.9 (2 November 1999).

<sup>21</sup> *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954).

<sup>22</sup> *Convention Relating to the Status of Stateless Persons*, opened for signature 28 September 1954, 360 UNTS 117 (entered into force 6 June 1960); *Convention on the Reduction of Statelessness*, opened for signature 30 August 1961, 989 UNTS 175 (entered into force 13 December 1975).

*Foreigners Act 1946*;<sup>23</sup> the *Foreigners Order 1951*;<sup>24</sup> the *Foreigners (Parolees) Order 1965*;<sup>25</sup> the *Registration of Foreigners Act 1939*;<sup>26</sup> the *Registration of Foreigners Rules 1966*;<sup>27</sup> the *Control of Entry Act 1952*;<sup>28</sup> and the *Passport Act 1920*.<sup>29</sup> However, the laws are applied differently for registered and unregistered Rohingya.

The only Rohingya in Bangladesh who have secured official recognition are those living in the two official camps. These are the Rohingya who entered Bangladesh during the 1991–1992 influx and were accepted as refugees on a prima facie basis,<sup>30</sup> under executive decisions.<sup>31</sup>

The Refugee Relief and Repatriation Commissioner (RRRC) under the Ministry of Disaster Management and Relief of Bangladesh is responsible for administering the registered refugee operation, while UN agencies such as the World Food Programme and UNHCR coordinate humanitarian assistance. Each camp has a ‘Camp-In-Charge’ (CiC), the civil service cadres of the Bangladeshi government under the auspices of the RRRC, who live in and administer the camp.

Registered refugees living in the camps typically prove their legal residency through UNHCR photo-identity cards which are issued to all refugees above the age of five. Though these cards do not grant immunity from arrest nor do they give the cardholders the right to freedom of movement, refugees in possession of a card stand a better chance of being released and/or granted bail once arrested.<sup>32</sup> The CiC is the legal and administrative guardian of the refugees in the assigned camp: for example, the issue of refugee ration books and travel passes, permission to file a police case, and marriage and divorce are all

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<sup>23</sup> *Foreigners Act 1946* (Bangladesh).

<sup>24</sup> *Foreigners Order 1951* (Bangladesh).

<sup>25</sup> *Foreigners (Parolees) Order 1965* (Bangladesh).

<sup>26</sup> *Registration of Foreigners Act 1939* (Bangladesh).

<sup>27</sup> *Registration of Foreigners Rules 1966* (Bangladesh).

<sup>28</sup> *Control of Entry Act 1952* (Bangladesh).

<sup>29</sup> *Passport Act 1920* (Bangladesh).

<sup>30</sup> Pia Prytz Phiri, ‘Rohingyas and Refugee Status in Bangladesh’ (2008) 30 *Forced Migration Review* 34, 34.

<sup>31</sup> Uttam Kumar Das, ‘Legal Protection for Refugees: Bangladesh Perspective’ in Mizanur Rahman (ed), *Human Rights and Good Governance* (ELCOP, 2004) 179. See also Arpeeta Shams Mizan, *Analyzing the Legislative Gaps in the Detention Scheme of the Foreigners in Bangladesh: The Released Prisoners* (National Human Rights Commission, 2014).

<sup>32</sup> Das, above, n 31.

authorised by the CiC.<sup>33</sup> In the absence of any legal standards, the protection is provided in an 'ad hoc, arbitrary and discretionary system'.<sup>34</sup>

In addition to the Rohingya living in the camps, there are many unregistered Rohingya living in villages and towns across Bangladesh who do not have any legal status.<sup>35</sup> The government and media typically categorise such persons as 'refugees', 'Rohingya intruders', 'illegal foreigners', 'illegal Burmese', 'undocumented Myanmar nationals (UMN)', and 'economic migrants'.<sup>36</sup>

Various sources and observations during field visits confirm that the International Organization for Migration ('IOM') is playing the leading role in the humanitarian operations for the unregistered Rohingya population.<sup>37</sup> However, it has not been possible to verify the extent of activities performed by IOM and its partner agencies.

Entry, exit, and stay of non-citizens in Bangladesh are mainly determined by the *Foreigners Act* (the *Act*).<sup>38</sup> The *Act* regulates all foreigners staying in Bangladesh, irrespective of the individual grounds for such a stay. For example, it does not differentiate between a foreigner who entered Bangladesh for business purposes and a persecuted asylum seeker. The *Act* was enacted during the British colonial era to manage migration movements initiated by the British plantation owners.<sup>39</sup> Both India and Bangladesh use the law, and it has been a source of constant constitutional debate in the sub-continent.<sup>40</sup>

Article 2(a) of the *Act* defines a 'foreigner' as 'a person who is not a citizen of Bangladesh'. In accordance with this definition, Rohingyas are treated as 'illegal foreigners', as the *Act*

<sup>33</sup> Azad, above n 1. This information was gathered in Equal Rights Trust's interviews with UNHCR staff members on 10 October 2015.

<sup>34</sup> Phiri, above n 30.

<sup>35</sup> Kiragu, Rosi and Morris, above n 16.

<sup>36</sup> In the National Strategy Paper published by the Bangladeshi government, the government has officially used the term 'undocumented Myanmar nationals' (UMN). See Inter Sector Coordination Group (ISCG), *National Strategy on Myanmar Refugees and Undocumented Myanmar Nationals*, Government of Bangladesh <<http://cxbcoordination.org/resources/policy/>>.

<sup>37</sup> See, eg, International Organization for Migration, *Featured Stories* (2017) International Organization for Migration <<https://iom.org.bd/press-room/featured-stories/>>; Inter Sector Coordination Group, *Humanitarian Response* (2017) Humanitarian Response <<http://cxbcoordination.org/>>.

<sup>38</sup> Foreigners Act 1946 (Bangladesh).

<sup>39</sup> Law Commission of India, *175th Report of the Indian Law Commission on the Foreigners (Amendment) Bill, 2000* (2000) <<http://lawcommissionofindia.nic.in/reports/175thReport.pdf>>.

<sup>40</sup> Aju John, *Foreigners Act Defective* (30 May 2012) MyLaw <<http://blog.mylaw.net/foreigners-act-defective/>>.

requires that any foreigner 'shall not enter Bangladesh, or shall enter Bangladesh only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed'.<sup>41</sup> Under the *Act*, the government can require a foreigner to reside in a particular place, impose restrictions on movement, and prohibit him or her from engaging in specific activities.<sup>42</sup> The *Act* also authorises a police officer 'to take such steps and use such force as may in his opinion, be reasonably necessary for securing compliance' with the provisions of the *Act*.<sup>43</sup>

Breach of the provisions of the *Act* is punishable by a prison term of up to five years or a fine.<sup>44</sup> Although the government does not arrest many of the unregistered Rohingya for their 'illegal entry' into Bangladesh, as evidenced by the presence of a large number of unregistered Rohingya concentrated in specific areas, some people are arrested and sentenced under this *Act*. Moreover, some individuals prosecuted and convicted under the *Act* are not released after having served the full five-year term, as they are required to be transferred to authorities of his or her country of nationality or habitual residence. As Myanmar refuses to recognise any Rohingya, these individuals may remain in detention notwithstanding the expiry of his or her sentence. In 2012, there were 90 prisoners whose sentence had expired in four district prisons, among whom 83 persons were identified as 'Burmese' — suggesting they may have been Rohingya.<sup>45</sup> This practice amounts to arbitrary detention and 'undoubtedly amounts to a violation of the Constitution'.<sup>46</sup> Further, should an individual prosecuted under Article 3 of the *Act* be released, he or she is liable to immediate re-arrest for the same offence.<sup>47</sup>

Very recently, the High Court Division of the Supreme Court of Bangladesh provided a series of judgements in response to four Writ Petitions filed by the Refugee and Migratory Movements Research Unit (RMMRU) in favour of five Rohingya who had already served their sentence. On 31 May 2017, the court declared that the detentions of the five Rohingya in jail were without lawful authority. The judgments ordered the release of the concerned Rohingyas and directed that they be handed over to the Petitioner RMMRU so

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<sup>41</sup> *Foreigners Act 1946* (Bangladesh) art 3(2)(a).

<sup>42</sup> *Ibid*.

<sup>43</sup> *Ibid* art 11(2).

<sup>44</sup> *Ibid* art 14.

<sup>45</sup> Mizan above n 31, 20.

<sup>46</sup> *Ibid*, 17.

<sup>47</sup> *Ibid*.

that UNHCR can take appropriate steps to accommodate the released Rohingyas in the two Rohingya camps in Cox's Bazar.<sup>48</sup>

The Rohingyas were all charged with violating the *Act* and were tried by the different courts of judicial magistrates of Chittagong, Cox's Bazar, and Rangamati. They were found guilty and sentenced to imprisonment for various terms ranging from one to five years under s 14 of the *Act*. The magistrates had ordered for their expulsion/push back to Myanmar after the end of their respective prison terms. Regarding the judicial magistrates' order for expulsion, the High Court

referred to art 33 of the *Refugee Convention of 1951* to hold first, that the court can take judicial notice of the persecution, torture, killing and other atrocities systematically committed upon the Rohingyas in Myanmar and that tens of thousands of them have sought refuge in Bangladesh and the government with the help of UNHCR is providing food and shelter to thousands of these Rohingyas. Secondly, though Bangladesh has not ratified the refugee convention, art 33 of the convention has become a part of customary international law. Hence Bangladesh was obliged not to violate art 33 by forcing these detainees back to Myanmar. Furthermore, the court also noted that, Bangladesh was a signatory to the 1984 convention against torture and art 3 of that convention also prohibits refoulement. Consequently, the court held that the detention of these Rohingyas were without lawful authority and ordered for their settlement in the Rohingya refugee camps of Cox's Bazar.<sup>49</sup>

Importantly, article 10 of the *Act* also provides that the government may exempt individuals from liability under the *Act* by passing an order:

The Government may by order declare that any or all of the provisions of this *Act* or the orders made thereunder shall not apply, or shall apply only with such modifications or subject to such conditions as may be specified, to or in relation to any individual foreigner or any class or description of foreigner.<sup>50</sup>

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<sup>48</sup> 'HC Orders Release of Five Rohingyas: They Are in Jail after Serving Sentences', *The Daily Star* (Dhaka), 2 June 2017. See also, Refugee and Migratory Movements Research Unit, 'Breaking News: High Court Declares Detention of 5 Rohingyas Unlawful' (Press Release, 31 May 2017).

<sup>49</sup> Refugee and Migratory Movements Research Unit, above n 48.

<sup>50</sup> *Foreigners Act 1946* (Bangladesh) art 10.

Thus, although Bangladesh does not have a legal regime on refugees, the government has scope under article 10 of the *Act* to exempt Rohingya refugees from the provisions of the *Act* (particularly the provision of detention for illegal entry into and stay in Bangladesh).

#### IV IMPACT OF THE RESTRICTIONS ON FREEDOM OF MOVEMENT

Rohingyas in Bangladesh face considerable restrictions on their freedom of movement. The restriction on movement impacts on other rights, most importantly the right to seek a livelihood. This section provides an analytical description of the experiences of the Rohingya in Bangladesh under restrictions on movement dividing it into two parts — local and international movement.

##### *A Local Movement*

In 1993, the Bangladeshi government signed a Memorandum of Understanding (MoU) with the UNHCR; conditions in this MoU included that refugees would be restricted to the area of the camps and that refugees would refrain from engaging in economic activities.<sup>51</sup> Refugees can apply for a one-day pass from CiC to travel to seek medical care or to visit other refugees living in another camp; passes for more than one day are infrequently issued and whilst passes are free of charge in principle, in practice refugees are often required to pay for them.<sup>52</sup>

For the unregistered stateless Rohingya, there is no official permission to move freely. For those living in the makeshift camps, stepping outside of the camp places them at risk of arrest and detention under the *Act*. Though the police do not always detain them, most of the refugees who were interviewed expressed fear and anxiety about the restrictions on movement. The following statements by refugees illustrate the situation:

I feel so scared for fear of getting arrested by police ... I do not have any legal document. So do not even know what I have to do if someday I get caught.'  
Halim (18 y/o)

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<sup>51</sup> Kiragu, Rosi and Morris, above n 16, 9.

<sup>52</sup> *Ibid.*

I know many people who did not come back after going to work. Later, we knew that they were arrested. Now their wife and children are suffering ... I feel scared of being arrested at any time. I feel scared when the police get near to the car ... The Imam of our mosque is in jail now. He was arrested at a check point when he went to see relatives. Our kids' study has been affected due to the arrest of the Imam.' Ali (28)

I do not go outside that much. Once my husband and I went to my aunt's house in Cox's Bazar. There, police arrested my husband and beat him very much ... In Burma, we have many relatives who helped us with money. After giving the money to police, they released my husband.' Laila (24)

It is not practical for the police to detain all the unregistered refugees due to their high number. When they are caught at a check point, they are usually asked to go back to the camp area. Yasmin (33) said, 'We can only go up to Ukhiya. If we go further, BGB (Border Guards Bangladesh) stop us and ask to go back to the camp.'

Though there is no legal mechanism to allow freedom of movement, it is found that there are some informal ways that provide some protection against arrest, which include census cards, student identity documents (IDs), and marital relations with Bangladeshi citizens. It should be noted that as these are informal possibilities; they may not be applied consistently for everyone and at all times.

Several refugees said that the 'census card', which has been issued recently, provides them protection from arrest.

Before getting census card, there were problems, but from when I got this card, there is no problem in movement'. Rojina (28)

'We have a census card. We have to take the card with us while going out. Otherwise the police/BGB detain us. A few days ago, I went to Balukhali for working in the field but unfortunately forgot my card. In the way of returning, camp police kept me detained till 10 pm.' Halima (42)

One refugee mentioned that a student ID ensures freedom of movement. Atullah (26) said that 'when I used to study in Patiya Madrasha, I had a student card. By this card, I

could move everywhere. If any police inquired me, then I would say that I studied in Patiya Madrasha and showed the card.'

It was also found that patients are allowed to go to bigger hospitals in Cox's Bazar and Chittagong. Ataulah (26) further said, 'any serious patients are sent to Chittagong if needed'.

There is no income-generating activity available in the camps, and the many unregistered Rohingya are not in receipt of food aid.<sup>53</sup> As a result, many Rohingya seek informal employment in Cox's Bazar. The risk of being arrested results in them living in a constant state of fear and some unscrupulous employers take advantage of the situation of unregistered Rohingya to pay them less.<sup>54</sup>

In addition to arrest and detention by the police, Rohingya are at risk of being bullied, harassed, and beaten by the local population. They are harassed as 'kalar' and 'Bengali' in Myanmar;<sup>55</sup> in Bangladesh "Burmaya" is a derogatory term for the Rohingyas that is frequently used in the streets of Cox's Bazar. The 'Rohingya Resistance Committees' in different areas of Cox's Bazar lead hate campaigns against Rohingya.<sup>56</sup>

'After coming here, my husband went to cut wood to the western jungle and sold those in the camp. But he stopped going there after extortion by some local people. The Rohingya who go to that jungle have to pay them 40/50 taka.' Halima (42)

'There are also some local people who take money and mobile phone forcefully ... last year they took the money and a new mobile phone from me. I bought the phone by conducting tarawih prayer in Ramadan.' Sabur (20)

As a result of the stigmatisation faced by Rohingya, they keep a low profile and do not expose their identities.<sup>57</sup> All of these factors contribute to the sense that freedom of

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<sup>53</sup> Chris Lewa, 'Unregistered Rohingya Refugees and the Kutupalong Makeshift Site' (Report, Canadian High Commission, Dhaka, February 2011); Physicians for Human Rights, 'Stateless and Starving: Persecuted Rohingya Flee Burma and Starve in Bangladesh' (Emergency Report, Physicians for Human Rights, March 2010) 6-7.

<sup>54</sup> Ashraf Azad and Tazrin-A-Jakea, 'Employment and Integration of the Stateless: The Case of Rohingyas in Cox's Bazar' (2013) 28 *The Chittagong University Journal of Social Sciences* 179.

<sup>55</sup> Fortify Rights, above n 2, 16.

<sup>56</sup> Chris Lewa, *Unregistered Rohingya Refugees in Bangladesh: Crackdown, Forced Displacement and Hunger* (11 February 2010) Burma Library 7 <<http://www.burmalibrary.org/docs08/Bangladesh-Crackdown.pdf>>.

<sup>57</sup> Lewa, above n 53.

movement is severely restricted. It should also be mentioned that after the mass arrival of refugees, thousands of local Bangladeshi people flocked to the camps and border areas with lifesaving aid that helped the newly arrived refugees survive until international aid arrived. The relationship between Rohingya and their host community is complex, intertwined with many factors. Uddin has identified this as a 'hosting' and 'hurting' relationship depending on the time and situation.<sup>58</sup>

A recent study on the mental health of registered refugees found that freedom of movement was a top concern for the refugees. The quantitative study interviewed 148 adult refugees and found that:

The most common daily stressors cited by participants included concerns about attaining food (95 per cent), lack of freedom of movement (82 per cent), general lack of fair access to services within the camps (78 per cent), and concerns about safety or protection (77 per cent). When asked to rank their top three concerns, the majority of participants indicated problems with attaining food, lack of freedom of movement, and safety or protection concerns.<sup>59</sup>

If stopped or questioned by police, the refugees try to save themselves by providing a fake local address. However, this approach might not always be successful. A young refugee explained: 'We memorise the name of member and chairman [of Union Council] to tell where needed. Though many are behind bars now trying this way.'

The experienced police members can usually differentiate between a local and a Rohingya by noticing the small differences in accent. When asked how the police recognised whether they were Rohingya, Senowara (19) replied, 'by the language'.

The restrictions on movement increased after the arrival of a large number of refugees since 25 August 2017. This is indeed a humanitarian, national security, and diplomatic challenge for Bangladesh. The government instructed refugees to stay in designated camps and set up 27 check posts on the way out from camp areas to other parts of Bangladesh. Police stations all over the country are instructed to look for Rohingya.<sup>60</sup>

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<sup>58</sup> Nasir Uddin (ed), *To Host or To Hurt: Counter-Narratives of Rohingya Refugee Issues in Bangladesh* (Institute of Culture & Development Research, 2012).

<sup>59</sup> Andrew Riley et al, 'Daily Stressors, Trauma Exposure, and Mental Health among Stateless Rohingya Refugees in Bangladesh' (2017) 54(3) *Transcultural Psychiatry* 304, 315.

<sup>60</sup> Pinaki Roy and Mohammad Ali Jinnat, 'Rohingyas Fan Out', *The Daily Star* (Dhaka), 17 September 2017.

Rohingyas detained in other districts have been sent back to the camps,<sup>61</sup> and some were sent to jail.<sup>62</sup> In a statement on 16 September 2017, a police spokeswoman said, 'they should stay in the designated camps until they return to their country ... they cannot travel from one place to another by roads, railways or waterways ...'<sup>63</sup> She also said, as Al Jazeera reports, 'Rohingya were also asked not to take shelter in the homes of their friends or acquaintances and locals have been asked not to rent houses to the refugees.'<sup>64</sup> It is not hard to understand that the concern of the Bangladeshi government is dictated by the huge task of managing a staggering one million refugees in an already densely populated and resource-poor country.

It is also reported that there are many brokers (locally called 'dalal') who help Rohingya to move out of the camps. These brokers move Rohingya to other parts of Bangladesh in exchange for money. Following the recent mass arrival of refugees and subsequent increased activity of brokers, police have arrested 280 brokers.<sup>65</sup>

### *B International Movement*

If Rohingya wish to travel internationally, they must seek assistance from human traffickers/smugglers or bribe corrupt officials to obtain a Bangladeshi passport.<sup>66</sup> The UNHCR estimates that 170 000 people have moved from the coasts of Myanmar and Bangladesh to Thailand, Malaysia, and Indonesia by boat from 2012 to 2015. The majority of those seeking to undertake such a perilous journey are from Northern Myanmar or Southern Bangladesh. The ultimate destination for these individuals is Malaysia which hosts a large number of Rohingya and Bangladeshi people.

During these perilous journeys, around 2 000 people died because of hunger, dehydration, drowning, and beating by smugglers or traffickers. Following a long, arduous journey through the Bay of Bengal and the Andaman Sea, passengers are taken

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<sup>61</sup> '103 Rohingyas Detained in Chittagong', *Daily Prothom Alo* (online), 18 September 2017 <<http://en.prothom-alo.com/bangladesh/news/159903/103-Rohingyas-detained-in-Chittagong>>.

<sup>62</sup> '20 Rohingyas Found in Manikganj', *The Daily Star* (Dhaka), 15 September 2017.

<sup>63</sup> Roy and Jinnat, above n 60.

<sup>64</sup> *Ibid.*

<sup>65</sup> Nur Uddin Alamgir, 'Many Brokers Trying To Spread Rohingyas', *The Daily Sun* (Dhaka), 21 September 2017.

<sup>66</sup> Azad, above n 1. This information was gathered in Equal Rights Trust's telephone interviews with several people from host communities in Cox's Bazar in November 2015.

to camps in the jungles of Thailand near the Malaysian border. These camps are essentially used as prisons where the passengers are detained and tortured until their relatives pay ransom money to the traffickers. People in these camps die from a variety of causes including beatings, illness, and starvation. Hundreds are suspected to have died in the transit camps in Thailand: indeed, there has been significant media coverage of the discovery of mass graves in the Thai jungle.<sup>67</sup> The trafficking of Rohingya is a hugely profitable business for 'transnational criminal networks'. UNHCR estimates that this illegal business has generated as much as US\$100 million in revenues at its peak.<sup>68</sup>

This illegal journey is locally called the "boat line". Farzana argues that refugees are very aware of the risks and dangers of this journey but choose this out of desperation. A young refugee said:

I know that the boat line is risky. They [the brokers] say that they will take us to Malaysia, but we never know where we will end up. They might take us to Thailand, Indonesia, or even Burma. If God is kind on me, I will survive on this sea journey ... If I don't take the risk now, I have to live in refugee camp my whole life!<sup>69</sup>

The instances of boat journeys of Rohingya and Bangladeshi have largely reduced after the discovery of mass graves in Thailand. In the following investigation and trial, a Thai court convicted dozens including a Thai Lieutenant General in July 2017.<sup>70</sup>

The Bangladeshi government has enacted an anti-human trafficking law in 2012, titled *Prevention and Suppression of Human Trafficking Act*.<sup>71</sup> The law prescribes severe punishments for human trafficking including fines, imprisonment, and the death sentence. However, the 2017 *Trafficking in Persons* report by US State Department notes that 'the Government of Bangladesh does not fully meet the minimum standards for the

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<sup>67</sup> 'Emmanuel Stoakes, 'Thailand Human Trafficking Death Toll Far Greater than Feared, Claims Rights Group', *The Guardian* (online), 6 May 2015 <<http://www.theguardian.com/global-development/2015/may/06/thailand-human-trafficking-mass-grave-burma-rohingya-people>>.

<sup>68</sup> UNHCR Regional Office for South-East Asia, *Mixed Maritime Movements in South-East Asia* (2015) United Nations High Commissioner for Refugees, 5 <<https://unhcr.atavist.com/mmm2015>>.

<sup>69</sup> Kazi Fahmida Farzana, 'Voices of the Burmese Rohingya Refugees: Everyday Politics of Survival in Refugee Camps in Bangladesh' (2016) 24(1) *Pertanika Journal of Social Sciences & Humanities* 131, 139.

<sup>70</sup> Ryn Jirenuwat and Russell Goldman, 'Dozens Found Guilty in Thailand Human Trafficking Case', *The New York Times* (online), 19 July 2017 <<https://www.nytimes.com/2017/07/19/world/asia/thailand-human-trafficking-case.html>>.

<sup>71</sup> Prevention and Suppression of Human Trafficking Act 2012 (Bangladesh).

elimination of trafficking; however, it is making significant efforts to do so'.<sup>72</sup> The report downgraded Bangladesh to the Tier 2 Watch List.<sup>73</sup>

Bangladesh does not have any law specifically concerned with migrant smuggling. The illegal migration and violation of migrants' rights are usually addressed under the *Overseas Employment and Migrants Act 2013*.<sup>74</sup>

However, Rohingya are not confined solely to ocean or land travel. A large number of Rohingya live in the Gulf States, mainly in Saudi Arabia.<sup>75</sup> These countries are largely only accessible by air. If Rohingyas seek to move to Saudi Arabia, or other Gulf states, they must therefore obtain 'legal' documents. As they are stateless, the only option available is to procure fake or forged documents from corrupt officials. There is no reliable data available on the number of Rohingyas who managed to obtain Bangladeshi passports to go abroad, but the Expatriates Welfare and Overseas Employment minister estimates that there are 50 000 Rohingya people living abroad on Bangladeshi passports.<sup>76</sup> Bangladeshi police have also arrested Rohingya who attempt to pass through airports on a Bangladeshi passport.<sup>77</sup>

#### IV CONCLUSION

This paper has shown that the Rohingya refugees in Bangladesh live in an uncertain legal space. They are allowed to stay in Bangladesh through administrative decisions in the absence of any domestic refugee regime. Though many refugees live, move, and work

<sup>72</sup> United States Department of State, *Trafficking in Persons 2017 Report: Country Narratives, Bangladesh* (2017) <<https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271142.htm>>.

<sup>73</sup> *Ibid.*

<sup>74</sup> *Overseas Employment and Migrants Act 2013* (Bangladesh).

<sup>75</sup> Al Jazeera reports that there are an estimated 200 000 Rohingya in Saudi Arabia and 10 000 in the United Arab Emirates (UAE). See 'Persecution Path: Following Myanmar's Fleeing Rohingya', *Al Jazeera* (online), 15 March 2017 <<http://www.aljazeera.com/indepth/interactive/2017/03/persecution-path-myanmar-fleeing-rohingya-17031412533337.html>>.

<sup>76</sup> '50,000 Rohingya People of Myanmar Staying Abroad with Bangladeshi Passports, Says Minister', *Bdnews24.com* (online), 13 August 2015 <<http://bdnews24.com/bangladesh/2015/08/13/50000-rohingya-people-of-myanmar-staying-abroad-with-bangladeshi-passports-says-minister>>. See also Kamran Reza Chowdhury, 'Rohingyas in KSA Must Forgo Bangladeshi Passports', *Dhaka Tribune* (online), 20 July 2013 <<http://www.dhakatribune.com/bangladesh/2013/07/20/rohingyas-in-ksa-must-forgo-bangladeshi-passports/>>.

<sup>77</sup> 'Rohingyas with Green Passports', *The Daily Star* (Dhaka), 12 August 2012; 'Chittagong Airport Police Stops 22 'Rohingyas' from Flying', *Bdnews24.com* (online), 18 June 2017 <<http://bdnews24.com/bangladesh/2017/01/18/chittagong-airport-police-stops-22-rohingyas-from-flying>>.

outside of designated camps, this leaves them at risk of arrest, detention, or deportation to camps. Some refugees have managed to invent various informal, and often illegal, coping strategies in collaboration with local networks to bypass official restrictions and move within and beyond the border of Bangladesh. The coping strategies and function of this collaboration require further research.

Rohingya have taken asylum in Bangladesh because they experience increased security compared to their country of origin, Myanmar. The statement made by a refugee, Rojina (28), reflects this: 'whatever the situation, we are grateful here because there is no fear of military'. However, restrictions on movement limit their human rights, as obstacles in accessing employment, education, entertainment, and other necessities of life are created. On the other hand, the Bangladeshi government sees the free movement of Rohingya as a security threat, particularly as it is not hard for Rohingya people to mix with local Bangladeshi and obtain fake identity documents through illegal means. The government is also concerned with the possibility that the permission to move and work may discourage the refugees to go back to Myanmar when there is an agreement on repatriation.

This is indeed a welcome initiative on the part of the Bangladeshi government, as it has allowed approximately one million refugees to stay in the country on humanitarian grounds, despite being a densely populated developing country. The camp provides safety of life for persecuted people. However, in the long run, it also wastes life by not just limiting Rohingya people's movement, but also destroying their hope of leading normal lives.

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