

**Human Rights and Human Security Issues of
Virtual Stateless People in Bangladesh:
The Rohingyas and the Biharis**

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This paper focuses on the human rights and human security issues of two groups of people currently residing in Bangladesh; the Rohingyas from the Arakan region of neighbouring Burma and the camp dwelling Urdu speaking community in Bangladesh, commonly known as the 'Biharis'. Until the recent past these groups of people had the shared experience of virtual statelessness as both were denied citizenship by the states concerned. Without a defined citizenship status, they were deprived of their fundamental rights and freedoms, and in the process, their human security and dignity have been severely compromised.

The Rohingyas

The Rohingyas are the Muslim minority in Arakan. They have continued to suffer from human rights violations under the Burmese military regime for many decades and many were forced to flee to neighbouring Bangladesh as a result. In 1978 under a state decree the Rohingyas were denied their citizenship status. Subsequently the members of the community were subjected to (a) restriction on freedom of movement, (b) various forms of extortion and arbitrary taxation, (c) land confiscation, (d) forced relocation of villages, (e) eviction from and destruction of dwellings, (f) financial restrictions on marriage, and (g) forced labour for road construction and military camps.

In 1978 over 200,000 Rohingyas fled to Bangladesh, following the operation 'Nagamin' ('Dragon King') of the Burmese army. Officially the campaign was aimed at "scrutinising each individual living in the state, designating citizens and foreigners in accordance with the law and taking actions against foreigners who have filtered into the country illegally." This military campaign directly targeted civilians, and resulted in widespread killing, rape, destruction houses of worship and religious persecution. Within a short span of time, following a bilateral agreement between the concerned countries, most refugees were repatriated to Burma under "not-so desirable conditions".

During 1991-92 a new wave of over a quarter of a million of Rohingyas arrived in Bangladesh. They reported widespread forced labour, as well as summary executions, torture and rape. The asylum seeking Rohingyas reported that they were being forced work without pay by the Burmese army on infrastructure and development projects, often under harsh conditions.

The Rohingyas received a warm welcome in Bangladesh with the common people of the bordering areas providing them with food and shelter when they first arrived. Subsequently, as atrocities across the border became more widespread the Government of Bangladesh opened the borders and invited international community including UNHCR for status determination and looking after the asylum seekers. Over the subsequent years, the international community provided support through UN agencies, and national and international NGOs played an important role in looking after the refugees. Refugees were kept in the camps and were not allowed to move and work. Initially the Bangladeshi government imposed restrictions on education of the camp dwelling children. The government also opposed to NGO-led initiatives for skill development programmes for the camp dwellers. To emphasise the temporary nature of the camps, the authorities were reluctant to support any initiative that improved the facilities in the camps.

Following an agreement between Bangladesh and Burma on refugee repatriation the overwhelming bulk of the refugees were repatriated under the supervision of UNHCR. About 21,000 (the so-called hard core cases) either refused to go back for fear of persecution or were denied admission by the Burmese authorities. There were also a number of cases of 'double backers' - refugees who were repatriated but subsequently came back to Bangladesh. Over the years the repatriation process virtually stagnated and more children were born in the camps than the number of refugees opting for repatriation. The current number of registered refugees stands at around 27,000.

In addition to this formal case load, tens of thousands of Rohingyas have crossed the border to Bangladesh since 1992. Most of them settled in the lower Chittagong Hill Tracts and the Cox's Bazar districts. In the absence of a national refugee law, those crossing the border are treated as 'irregular intruders' and are generally deemed to be 'economic migrants'. So far, there has not been any effort to ascertain their exact number, nor have the root causes that triggered their movement been duly assessed. This group of people has to fend for itself by selling their labour

in the informal market and is often subjected to large scale exploitation. Unlike their refugee counterparts they do not enjoy the protection of international agencies, such as the UNHCR. Thus they maintain a very precarious existence in an alien land without any rights and entitlements, while their home country, Burma, continues to denying them their citizenship rights.

Lack of progress in the repatriation process, very limited success in the 'third country resettlement' effort and rejection of Bangladeshi authorities of any proposal of local integration have made the Rohingyas a group of unwanted, virtually stateless people living on the border between South and South-east Asia. Their problem is further compounded by 'donor fatigue' as UNHCR is finding it difficult to raise funds to maintain the operation at a desired level. Press reports inform that local people of Teknaf, Ukhia and Cox's Bazar region, the refugee hosting area, are increasingly becoming hostile towards the refugees and accusing them for causing job losses, depressing wages, hiking up of commodity prices, harming the environment and engaging in 'anti-social' activities. The Bangladeshi government from time to time demanded that the refugees should go back and deplored that the international community "was not doing enough". A number of rounds of bilateral negotiations between Bangladesh and Burma have thus far yielded few results.

Under the circumstances, with the Bangladeshi government refusing to agree to any form of local integration, the international community's lukewarm interest in third country resettlement and little progress in repatriation (with the source of oppression still in power, violations of rights still being reported and continued denial of citizenship rights) to their country of origin, the Rohingya community in Bangladesh faces a bleak future.

The Biharis

It is estimated that around 160,000 Urdu speaking people reside in 116 'settlements' spread around different parts of Bangladesh. Many of them have been in Bangladesh for generations, having migrated primarily from the states of Bihar, Uttar Pradesh and West Bengal in India, particularly in the wake of the partition of the subcontinent in 1947. While these 'refugees' occupied a privileged position in what had been East Pakistan, following the liberation of Bangladesh, they were branded as Pakistani collaborators. While some opted to place their loyalties with Bangladesh and managed to rebuild their lives, a large number found themselves

in temporary camps set up around the country by the International Committee for the Red Cross (ICRC).

In 1973, a survey conducted by the ICRC suggested that most of the Urdu-speakers, or Biharis as they came to be known in Bangladesh, sought to move to Pakistan. But with little progress made in their repatriation to that country, these people have become forced migrants in Bangladesh, without any citizenship rights for about 36 years.

The 116 'Bihari settlements' are located largely in urban areas in thirteen districts across the country, all under conditions of severe overcrowding, poor sanitation, and lacking basic facilities. Following the departure of ICRC in 1973, the Bangladesh Government took over management of the camps, transferring responsibility to the Ministry of Relief and Rehabilitation from 1975. Initially set up as temporary quarters, the last 36 years have seen the 'slum-like' conditions in these settlements worsen as the population has grown. As many as 12 individuals are said to reside in a room ten feet by eight feet in size. With inadequate provision for clean water, waste disposal and sewage systems, chronic hygiene problems have been created. To make matters worse, in 2004, the already erratic monthly supply of wheat was discontinued. Land evictions, encroachment and from time to time the withdrawal of power supply have created further problems, while a severe lack of educational and healthcare facilities hamper community development.

As against the backdrop of deprivation and insecurity members of the young generation of camp dwellers moved the higher judiciary for recognition of their citizenship rights. In 2003, they filed a writ in the High Court demanding enrollment in the national voter list that was being prepared by the National Election Commission. The State opposed the claims of the petitioners on the grounds that the camps enjoyed special status where Bangladeshi laws are not operational and thus the citizenship law of the land was not applicable to the community. It further argued that the members of the community forfeited Bangladeshi citizenship by opting for Pakistan. In its support the State cited the fact that in 1973 they filled up an ICRC form expressing their option to go to Pakistan.

The High Court rejected the government plea asserting that the camps were within the domestic jurisdiction of the government. It observed "We do not think that only because of the concentration of Urdu speaking people, who were citizens of the erstwhile East Pakistan, the so-

called Geneva Camp has attained any special status so as to be excluded from the operation of the laws of the land including ... the Electoral Rolls Ordinance, 1982 or the Citizenship Act, 1951. So mere residence at the Geneva Camp ... cannot be termed as allegiance to another state by conduct.” The Court further observed that the “petitioners are citizens of Bangladesh and their residence in the Geneva Camp Mohammadpur is not a bar to be enrolled as voters, and therefore they are entitled to be in the electoral roll and registered as voters”. (*Md. Abid Khan and others V Government of Bangladesh 55, DLR (1992) 318*)

On the question of members of the community opting for Pakistan by filling up ICRC form the High Court reiterated its earlier observation that “The mere fact that he filed an application for going over to Pakistan cannot take away his citizenship ... So, the petitioner, is on the same footing as any other citizen. His citizenship, therefore, clings to him.” (*Mukhtar Ahmed V Govt. of Bangladesh and other, 34, DLR (1982) 29*)

In its 2008 verdict the Court observed that the “(Q)uestion of citizenship of Urdu-speaking community has got another aspect, which is very important from the constitutional perspective. Miseries and sufferings of such people due to statelessness were time to time reported in the national media, electronic and print. ... (T)hey are constantly denied the constitutional rights to job, education, accommodation, health and a decent life like other citizens of the country.” The Court further noted that “(B)y keeping the question of citizenship unresolved on wrong assumption over the decades, this nation has not gained anything rather was deprived of the contribution they could have made in the nation building. The sooner the Urdu-speaking people are brought to the mainstream of the nation is the better.”

It was only in 2008 that this community’s right to Bangladeshi citizenship was acknowledged by the State when it acted on directive of the higher judiciary advising the National Election Commission to enroll the camp dwellers as voters. However, in practice, although an overwhelming bulk exercised their right to franchise in the last general elections of 2008, very little has changed for this community and 'effective' citizenship rights are far from having been achieved. In the following section the problems encountered by the members of the community in accessing their rights as citizens are discussed.

Employment: Equal access to employment was cited most frequently as the right the community currently cannot access. Not only are they denied all government positions but due

to their camp address and undefined status, wider discrimination in the job market remains a prime concern. Camp residents are not in a position to produce the kinds of documentation that employers require to prove potential employees' legal status (these may take the form of a 'local commissioner's certificate' or character reference from a local representative). Indeed, those who do find formal employment often face wage discrimination and inequality of treatment. As a result the vast majority are pushed into the informal sector, working as rickshaw-pullers, drivers, butchers, barbers, mechanics and craft workers, earning meagre wages.

Education: Although no formal restriction prevents access to government schools, camp addresses do cause problems for 'Bihari' children seeking admission. Although this appears to be changing, rules vary between institutions, and access is dependent on the attitudes of individuals in charge. More significantly, rampant discrimination within mainstream society as a whole, and continued bullying on the part of teachers and classmates alike continues to discourage attendance. Together with the lack of resources for school fees or materials, educational facilities remain inaccessible to the majority.

Security: Issues of insecurity in the camps were also regularly reported by the community. In Dhaka, insecurity took the form of camp gangs, drugs and a lack of police protection, while in locations outside the capital security issues related to encroachments onto camp land by Bengalis, and the camp residents' inability to complain, appeal or fight against the dominant community. Without legal support the Urdu-speaking community remains vulnerable to exploitation and abuse.

Healthcare: Problems experienced with regard to healthcare also revolve around social discrimination. Camp residents report Bengalis being given priority in hospital waiting lines or 'Biharis' being made to pay 'speed money' in government clinics. The majority find themselves dependent on under-funded NGO services, most of which have been discontinued in recent years. Due to unsanitary living conditions, and with very little education in relation to healthcare among the community, there is an urgent need to provide medical facilities.

Property Rental/Bank Accounts/ Passports: A number of respondents reported difficulties in trying to access or rent offices or living space in attempts to leave the camps and be assimilated in the wider society. Access to bank accounts is also denied because they lack a permanent

address. Camp dwellers also desire passports, and the opportunities associated with labour migration, but these too are inaccessible given their camp status.

Constant Threat of Eviction: Despite the overwhelming desire for Bangladeshi citizenship, fear of eviction from the camp if citizenship is formally announced is a very real concern among many residents, and an issue that generates a good deal of confusion among the community. The recent crackdown on illegal property by the Caretaker government has generated a new set of concerns as many slum-dwellers and some 'Bihari' communities around the country have already felt the brunt of these efforts, posing a new challenge for integration with dignity.

It is in this context this paper proposes that the State in Bangladesh engages in developing a strategy for rehabilitation with dignity with active participation of the members of the community. Any successful rehabilitation policy would need to address affordable basic housing, access to quality education, access to health care, sanitation and water services, improved and stable income and marketable skill development, and reduction of insecurities including personal insecurities.

Conclusion

The case studies presented above highlight the experiences of insecurity and denial of rights of the Rohingyas and the Biharis in Bangladesh. In both situations the communities were dislocated and forced to move. In the Rohingya case the movement was international in nature, while in the Bihari case it was internal. In both instances the concerned states refused to acknowledge the rightful claims of their citizens and thus the groups concerned suffered from protracted insecurity. Within the Rohingya community in exile, those who received refugee status enjoyed minimum protection, while others have to fend for themselves and live under the constant fear of being apprehended and deported. While the Bihari community after decades of uncertainty was successful in claiming its rights through the intervention of higher judiciary, no such option appears to be available for the Rohingya community with the Burmese state remaining impervious to their plight. At this stage, the struggle of the Bihari community would be to effectively articulate the demand for rehabilitation with dignity, shelter, education, health and livelihood as major pillars, while the Rohingyas must try to voice their citizenship claims in the broader Burmese democratic process, however nascent the state of such politics may be.