

# DURABLE SOLUTIONS FOR THE ROHINGYA CRISIS IN BANGLADESH: A SOCIOLEGAL ENIGMA?

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## Abstract

*The paper discusses the durable solutions (DS) for the Rohingya crisis and examines the obstacles to reach a viable DS. It analyzes the protracted refugee situation for the Rohingya refugees and discusses the crisis from a socio-legal perspective of rights and institutions. While doing so, it focuses on the perception of the Rohingya refugees in the camp in the same matter. The protracted refugee situation legally affects the social consciousness of the Rohingya refugees. The paper discusses the 4R approaches of the durable solutions as proposed by the UNHCR and analyzes the viability of Repatriation, Local Integration and Resettlement. It shows how the geopolitical factors are preventing to avail these DS and how the Covid19 situation has worked as a catalyst in this regard. It argues that the attainment of any of the DS is failing because of the non-cooperation from the international community regarding its commitment to the situation. The paper explores the necessity of a national policy for refugees as such is absent in the country. It proposes a policy which lays down a process of status determination for the Rohingya refugees. The policy also proposes the continued assistance to the Rohingya refugees while the process of status determination is pending.*

## I. INTRODUCTION

With completing three years in August 2020, the international Rohingya Crisis seems no nearer to reaching a solution. From the onset of this crisis, Bangladesh has made continuous attempts at reaching durable solutions acceptable to all parties in case focusing on multidimensional diplomatic efforts with Myanmar and other members of the international community. The current situation in Bangladesh can be legally defined as a ‘protracted refugee situation’.<sup>1</sup> A Memorandum of Understanding signed between the Government and UNHCR in 1993 mandating UNHCR to protect refugees from Myanmar has limited the registered refugees in the original camps and kept track of the urban refugees, but failed to tackle the undocumented Rohingyas. The 2017 influx has

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<sup>1</sup> UNHCR, *Guidelines On International Protection: “Internal Flight or Relocation Alternative” within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 2003, at p. 4, available at: < <https://www.refworld.org/pdfid/3f2791a44.pdf>> [Last visited on June 01, 2020].

further complicated the situation. Bangladesh and Myanmar signed repatriation and physical arrangement deals on November 23, 2017 and January 16, 2018 respectively which set January 23, 2019 deadline for the repatriation of 670,000 Rohingyas who fled atrocities of a monumental scale in the Arakan state. But no solution has yet been reached.

This chapter discusses the durable solution (DS) efforts for the Rohingya crisis and analyzes the challenges to achieve it. The chapter starts by discussing the Rohingya crisis from a socio-legal perspective of rights and institutions as perceived by the Rohingya refugees in the camps, and how the protracted situation legally affects their social consciousness. This is followed by the 4R approaches of the durable solutions as proposed by the UNHCR. The durable solutions discussion focuses on the viability of Repatriation, Local Integration and Resettlement and the geopolitical factors that are preventing the smooth functioning of these DS options, especially now with the onset of Covid 19. The discussion will show that durable solutions are failing mostly due to the lack of commitment from the international community. The Chapter finally explores the necessity of national policy for refugees. The authors propose a policy which includes the status determination process and continued assistance to the Rohingya refugees while the process is pending.

## II. MORE THAN A CRISIS: A PROTRACTED SITUATION

Bangladesh has been hosting the Rohingya refugees, now officially termed as 'Forcibly Displaced Myanmar Nationals' (FDMN), since mid-1980s, way before the current crisis started. The systemic extermination and violence by Myanmar against the Rohingya community forced 750,000 refugees to enter Bangladesh in less than 90 days in 2017,<sup>2</sup> and current number is around 900,000. These people constitute the world's largest and one of the densest refugee camps spread across just a few kilometres in Cox's Bazar. The camps receive continuous public attention not only for poor living conditions, incessant intra-camp violence, resource mobilization challenges etc., but also because the gradual expansion of the camp posits considerable environmental, bio diversity and socioeconomic challenge to Cox's Bazar in particular and Bangladesh in general.

It has been repeatedly emphasised by both the government of Bangladesh and the humanitarian agencies that the temporary camps are not a feasible option to continue. However, given that Bangladesh is not a signatory to the 1951 Convention relating to the Status of the Refugees, and given Myanmar's denial of owning up, a sustainable arrangement is yet to be settled.

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<sup>2</sup> Fossvik, I.S., "Long-term solutions for the Rohingya response", *Norwegian Refugee Council*, 2020, at para 1, available at: <<https://www.nrc.no/expert-deployment/2016/2020/long-term-solutions-for-rohingya-response/>> [Last accessed on June 01, 2020].

### III. HUMAN COST OF LEGAL PROCESSES: REFUGEES AND THEIR IDEAS OF LAW

In emphasising the legal value of DS, what often gets ignored is the human cost behind securing a successful solution. The emphasis on credibility of suffering, administrative bureaucracy and legal debates affect the refugees' legal consciousness<sup>3</sup> as a non-beneficial protection tool as themselves as passive rights-holders.<sup>4</sup> Refugees are *expected* [emphasis added] to be vulnerable whereas demanding one's rights may be perceived as non-vulnerable entitlement attitude.<sup>5</sup> Moreover, the entire refugee management system, starting from status determination to attracting humanitarian aid to ending with DS requires credibility on the part of the refugees, who should not only be genuine victims but also need to play the part of 'victimhood' convincingly.<sup>6</sup> Even in the present crisis, the plight of the Rohingyas have been hugely publicized for raising funds as well as garnering international attention to demand a legal intervention against the textbook ethnic cleansing and extermination in Myanmar.<sup>7</sup>

Socio-legal research on legal consciousness among refugees shows that narratives about DS like resettlement can

“question our perceptions of purity and credibility embedded in the humanitarian subject, and consequently the role given to suffering in international law ... access to third-country resettlement is in essence a question of administrative discretion about whether to grant admission to the First World.”<sup>8</sup>

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<sup>3</sup> Silbey, S.S., “After Legal Consciousness”, 1 (2005) *Annual Review of Law and Social Science*, at pp. 323-68, at p. 32. (Legal consciousness is a sociological framework that studies people's subjective attitude towards the law and the ways that law manifests as 'taken-for-granted understandings and habits' within a specific cultural and social context).

<sup>4</sup> Holzer, E., “What Happens to Law in a Refugee Camp?”, 47 (4) (2013) *Law & Society Review*, pp. 837-872, available at: <<http://www.jstor.com/stable/43670361>> [Last accessed on June 01, 2020].

<sup>5</sup> Sandvik, K.B., “The Physicality of Legal Consciousness: Suffering and the Production of Credibility in Refugee Resettlement”, In R.A. Wilson & R.D. Browns (Eds.), *Humanitarianism and Suffering the Mobilization of Empathy*, Cambridge University Press, 2009, at p. 232.

<sup>6</sup> Goffman, E., *Interaction Ritual, Essays on Face-to-Face Behavior*. New York: Pantheon Books, 1967, as cited in Sandavik (2009), *ibid*.

<sup>7</sup> Nebahey, S., “U.N. sees 'textbook example of ethnic cleansing' in Myanmar”, *Reuters*, September 11, 2017, at para 7, available at: <<https://www.reuters.com/article/us-myanmar-rohingya-un/u-n-sees-textbook-example-of-ethnic-cleansing-in-myanmar-idUSKCN1BM0SL>> [Last accessed on June 01, 2020].

<sup>8</sup> *supra* note 5 at p. 224-225.