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Two Essays on the Rohingya Crisis



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Two Essays on the Rohingya Crisis

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2021

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The Citizen and the Child: Rightlessness of Rohingya Refugee Children in Bangladesh

Sreetapa Chakrabarty *

Introduction

“The children of the hour of darkness were born, I’m afraid, in the midst of the age of darkness...”

Salman Rushdie, *Midnight’s Children*

Borders and citizenship define some as members and others as aliens and still render others invisible. During the last few decades, discussions on the rights of these invisible refugees and stateless children in South Asia under international law have been submerged in the mainstream Euro-centric analysis of human rights, child rights, international refugee laws, and international humanitarian laws. The roots of dispossession in the case of these refugees and stateless children, particularly the Rohingya children, who often are the greatest victims of violence and different forms of abuse, can be traced to the discriminatory citizenship laws in South Asia. Referred to as the world’s most persecuted ethnic minority, the Rohingya over time has become a contested category, even within which the children have come to occupy a marginalized position. As estimated by the UNICEF in 2017, ‘about 40,000 children have crossed the border into Bangladesh...these children crossed the border alone after their parents were killed or displaced.’¹ This category of unaccompanied children experiences what Bhabha calls *radical rightlessness*. The majority of the states in the Asian regions have not acceded to the 1951 Refugee Convention, which itself has time and again proved to be an architecture of exclusion, and these countries, therefore, have their own unique parameters of framing the rights of refugee and stateless children under International Law. The citizenship rights of these Rohingya stateless children, therefore, need a decolonial analysis. Further, as reflected by Ranabir Samaddar in *The Marginal Nation*, ‘as with regard to the other dimensions of migration, the question of rights too has to be seen in the specific context of South Asia. Since migration in South Asia is an ensemble of communal, economic, historical and environmental elements, the specific situation of the region becomes important.’²

This article in its first part reflects on the notion of rightlessness as emanating from the lack of citizenship and nationality. In its second part, the article explores in what ways Rohingya children are constructed as non-citizens in Bangladesh, with its historical trajectories located in Myanmar,

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through citizenship laws, subsequently depriving them of the rights accruing to citizenship and ultimately leading to their rightlessness and how this entire process reflects traces of colonialism. Through this objective, the analysis made in this article implores us to delve deep into the role and significance of citizenship in the life of the Rohingya child, ‘once its exclusionary potential remains exposed’³ and once its lacuna results in other forms of tortures such as arbitrary arrest and detention. The third part of this article further tries to understand these incarnations of colonialism and dispossession through the concept and practice of adoption of children in Bangladesh, which again bear a huge impact on the citizenship of the Rohingya children, a large number of whom reside in the makeshift camps in the country. The article, therefore, concludes by arguing in favour of the need for investigating and decolonizing citizenship.

The World of Rightlessness

“The function of the international human rights regime is to judge whether states are fulfilling their duties under internationally agreed upon human rights norms and, through monitoring and publicizing, to deter future abuse: in short, to change the behavior of states. The norms derive from the International Bill of Rights—the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR)—as well as the more specialized instruments related to race, gender, and children.”⁴ Article 7 of the United Nations Convention on the Rights of the Child (1989) says, “the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.” Article 8 of the convention further protects the right of the child to preserve her/his identity including nationality and directs state parties to provide appropriate assistance and protection when a child gets illegally deprived of some or all elements of her/his identity. However, the absence of *jus soli* and *jus domicili* criteria in conferring citizenship in the majority of the countries in South Asia and the prevalence of *jus sanguinis* has placed a large number of refugee and stateless children in legal limbo and has led them to a precarious edge in terms of not only an identity but basic human rights. The concept of rights in the modern nation-state system has corresponded to notions of belonging and that belonging again is understood in terms of national citizenship. Arbitrary deprivation of citizenship, in turn, leads to a deprivation of what Hannah Arendt termed “the right to have rights.” The first instance of systematic persecution is perhaps exclusion from citizenship, political membership, and from the right to have rights, which may be seen in the case of the ‘Palestinians of South Asia’, or the stateless Rohingyas. Article 1 of the 1954 Convention defines a *de jure* stateless person as someone ‘who is not considered as a national by any State under the operation of its law.’ However, since this definition by itself is very technical and legal in nature it can only address technical and legal issues. As pointed out by Manley Hudson, special rapporteur for the International Law Commission on the Subjects of Nationality and Statelessness, “purely formal solutions...might reduce the number of stateless persons but not the number of unprotected persons. They might lead to a shifting from Statelessness ‘de jure’ to Statelessness ‘de facto’.”⁵ In this context, it is perhaps significant to ask whether today’s stateless children possess the ‘right to have rights’ or not?

Citizenship Laws and Rohingya Children

1. Emergence of the Non-Citizen Rohingya Child in Myanmar: A Historical Background

“Production of national identity is...a contested process and the struggle to produce and reproduce ‘pure’ citizens out of recalcitrant people accounts for much of what happens at the borderlands of a state.”⁶ Citizenship laws constitute an important element in this entire process of production of national identity and citizenship. In this context, it is perhaps significant to point out that post-colonial notions of national identity and citizenship have largely been renewed incarnations of colonialism, which has led to precarity and dispossession of children in terms of the rights accruing to citizenship. To trace the roots of this dispossession, Myanmar’s attempt at stripping the Rohingya community of their citizenship, identity, and nationality is discussed here.

The inception of state-sponsored discrimination in Myanmar may be traced back to the period much before the 1962 military takeover by General Ne Win and the 1978 *Nagamin* operation. However, what may be significant to note here is that in 1982, three categories of citizens were constructed via the citizenship law of 1982—national, associate, and naturalized—and the Rohingya were even excluded from the list of 135 ethnic minorities in Myanmar. Thus, since then, ‘the category of *non-state* persons has come into existence with the concept of citizenship, which on the one hand indicates certain rights, and on the other hand, increases the miseries for those who are deprived of citizenship rights.’⁷ This erasure of names and identities has been reflected in the narratives of various Rohingya children who fled Myanmar in the post-1982 era. Habib, a Rohingya youth, recollects his memory as a child who fled from Myanmar, “The dictator Ne Win has presided over a reign of terror in Burma for decades. In 1982, he has a new project...henceforth, to retain Burmese citizenship, you must belong to one of the 135 recognised ethnic groups, which form part of the eight ‘national races.’ The Rohingya are not among them. With a stroke of the pen, our ethnic group officially disappears...from now on, the word ‘Rohingya’ is prohibited. It no longer exists. *We no longer exist. I am three years old and am effectively erased from existence.*”⁸ This stringent law marked its own departure from the *jus soli* principle in 1948 towards the *jus sanguinis* principle in 1982. Concerns about who were the ‘pure blood’ and who were not, who were loyal to the state and who were not, and who constituted the ‘*taing-yin-tha*’ or indigenous races and who did not, all marked a law that was supposed to be for all. In its actuality, the law reflected colonial hegemony leading to dispossession. Partition was brought about within law itself and the existence of children outside the fences constructed by the state was simply obliterated. The legacy of the 1982 citizenship law was carried further by the 1993 Child Law of Myanmar, which was a legal paradox in itself. Despite recognizing that every child has the right to life and is equal before the law, the Child Law particularly mentioned that “every child shall have the right to citizenship in accordance with the provisions of the existing law.”⁹ Thus, in its essence, the new Child Law laid down rights not for all but for only those children who were considered as citizens under the 1982 law. This kind of colonial exclusionary citizenship laws have been witnessed in other South Asian nations such as Bangladesh, Malaysia, and other Southeast Asian nations as well.

Recent developments suggest that in the wake of the military takeover of Myanmar in February 2021, the opposition National Unity Government (NUG) has apparently promised to grant citizenship to the Rohingya. The policy statement released by the NUG on June 3, 2021, states that “the process of repealing, amending and promulgating laws, including the 1982 Citizenship Law, by the new constitution when the drafting is completed will be beneficial in resolving the conflict in Rakhine state. This new Citizenship Act must base citizenship on birth in Myanmar or birth

anywhere as a child of Myanmar citizens.”¹⁰ This newly promised policy further seeks to scrap the National Verification Cards which define the Rohingya as foreigners. However, this move has been vehemently criticized by various groups and organizations across the country in general and Rakhine state in particular. Before that, one of the coup leaders expressed his opinion in an interview with Phoenix TV in May 2021, “(t)here are no Rohingya. It is just an imaginary name. It is not an officially recognized ethnicity. We don’t recognize it.”¹¹ Thus, the existence of the Rohingya child has already been obliterated in the past as well in the present scenario within and beyond the legal fences. Perhaps this further relates to the fact that ‘the social construction of Rohingya as potential enemies of the state has been a gradual process, serving the needs of a regime which has frequently relied on scapegoats to weather domestic political crises.’¹²

The normalization of the invisibility of children has been noted elsewhere in the context of Partition by Urvashi Butalia who says, “no history of Partition that I have seen so far has had anything to say about children. This is not surprising: as subjects of history children are difficult to deal with. The historian may well ask: how do you recover the experiences of children, as children?...if women are difficult subjects and silences have built up about so much in their lives, how much more difficult it is to look at the lives of children, particularly when it is assumed, often with some justification, that they cannot speak on their own behalf...when and how shall we begin to recover the histories of these children? How shall we insert them into history?”¹³

2. Citizenship Law and Rohingya Children in Bangladesh

The context of Partition reminds us of Bangladesh. At the very outset, it is perhaps pertinent to remind the audience that “the genesis of Bangladesh’s post-colonial citizenship regime dates back to the *Pakistan Citizenship Act 1951* that later became part of the corpus of Bangladeshi law upon independence of the country. The Citizenship Act 1951... along with the Citizenship Rules 1952, framed by the then Pakistan Government under it, was adopted as an ‘existing law’. Immediately after independence, however, the President promulgated a new citizenship law, the Bangladesh Citizenship (Temporary Provisions) Order 1972.”¹⁴ Along with this historical background lies the current reality that Bangladesh, like most South Asian nations, has not acceded to the 1951 convention, the 1954 Convention relating to the status of stateless persons, or to the 1961 convention on the Reduction of Statelessness. Currently, it is only a party to the Hague Convention. On the one hand, Article 7(2) of the Constitution of the People’s Republic of Bangladesh provides that the constitution is the ‘supreme law of the Republic, and if any other law is inconsistent with this constitution and other law shall, to the extent of the inconsistency, be void.’¹⁵ On the other hand, the fact that international laws, treaties, and conventions should be incorporated in the domestic legislation of the country before they can be legally enforced has been upheld in various judgments like *Hussain Muhammad Ershad vs. Bangladesh and Others (2005)*. Thus, it has remained a norm that human rights laws, humanitarian laws, refugee law, and what is known as ‘customary international law’ are only applicable as long as those are in consonance, and do not conflict with the domestic and municipal laws of Bangladesh.¹⁶ Talking about national legislation, it can be seen that there is an absence of a common national legal framework for adjudicating the legal status of large number of refugees and stateless children currently residing in Bangladesh. With such a complex legal background, few instruments of assessing citizenship and citizenship rights on a case-by-case basis are the 1972 Constitution of the People’s Republic of Bangladesh, the Citizenship Act of 1951 and the Rules of 1952, the Citizenship Order of 1972, the Bangladesh Citizenship (temporary provisions) Rule of 1978, the Foreigner’s Act of 1946, the Naturalisation Act of 1926 and the Rules of 1961, and

other legislative and administrative rules and orders and judicial pronouncements. However, the Foreigner's Act of 1946 and the Control of Entry Act of 1952 do not explicitly talk about refugees. Further, like most other South Asian nations, Bangladesh does not provide for *jus soli* citizenship and neither do Rohingyas are considered as refugees in Bangladesh.

Currently, Bangladesh hosts the largest number of Rohingya refugees. Among them, 4,51,662 Rohingya children have been found to be in existence as of May 2021.¹⁷ However, hosting the Rohingya, the de facto stateless people of South Asia is not something new. With systematic persecution gaining ground in Burma even before the passage of the 1982 Citizenship Law, a large number of Rohingyas started fleeing Burma. Bangladesh provided refuge to around 200,000 Rohingyas in 1978 and 250,877 Rohingyas in 1991 on a 'prima facie' basis.¹⁸ However, there is no legal framework governing the citizenship status of the Rohingya as in Bangladesh. In this condition, decisions about the legal status of Rohingya children are made on an ad-hoc administrative basis and on the basis of a diverse interpretation of existing national laws and policies. Children born to a Rohingya father and Rohingya mother in Bangladesh within or outside the camps are not recognized as citizens of the country, although Article 4 of the Constitution of the People's Republic of Bangladesh provides that '*every person born in Bangladesh after the commencement of this Act shall be a citizen of Bangladesh by birth*'.¹⁹ The appellate division of the Supreme Court of Bangladesh has upheld in cases like *Bangladesh vs. Professor Golam Azam and others* (1994) that '*citizenship, though not mentioned in as a fundamental right in our constitution, is to be considered as the right of all rights as on it depends one's right to fundamental rights expressly provided for a citizenship in Part III of the constitution and his right to seek Court's protection of those rights*'.²⁰ However, Article 4 does not seem to provide for unconditional *jus soli* citizenship. There seems to be no existing provision about the citizenship of a child with unknown parentage. Bangladesh currently provides citizenship to children at least one of the parents of whom is a citizen of Bangladesh. Thus, the shifting to and laying emphasis upon *jus sanguinis* principle is evident in the 'fact that a child born to foreign parents generally or to non-citizen Rohingya parents in Bangladesh in particular do not acquire citizenship'.²¹

As far as citizenship by descent is concerned, gender inequality made it impossible for the mother to confer her Bangladeshi citizenship to the child if the father was a non-national. This provision as underlined in Section 5 of the 1951 Citizenship Act was challenged in the case of *Sayeeda Rahman Malkani vs. Bangladesh* (1997) with failure in bringing about any change in law, despite international obligations of Bangladesh under the CEDAW (Convention on the Elimination of All Forms of Discrimination against Women) being in operation at that time. However, this was amended after a decade under Section 2 of the Citizenship (Amendment) Act, 2009, with effect from 31st December 2008. Nevertheless, this amendment didn't bring much success in the case of the Rohingya children as the amendment is not retroactive. In other words, 'children born to a Bangladeshi mother prior to 31st December 2008 are not entitled to Bangladeshi citizenship. In particular, when the father is stateless, this increases the risk of the child becoming stateless as well'.²² Further, as of now, no available data is there about any Rohingya child getting citizenship despite this amendment brought into place.

Further, as Joppke says, newer conditions of granting citizenship have made citizenship more of a privilege that must be earned rather than something which should be granted automatically as a matter of right. In a neoliberal state, these newer conditions are often compounded by the privilege of citizenship being offered as an 'incentive' for investing under liberalised industrial policy, an instance of which may be found in the case of Bangladesh. Under this policy which is aimed at increasing Foreign Direct Investment, citizenship is provided in lieu of a minimum of US \$500,000 investment or by transfer of US \$1,000,000 to any recognized institution. In other cases, permanent

resident ship is also provided through an investment of a minimum of US \$75,000.²³ For the poor and stateless Rohingya including the Rohingya child, affording this privilege of *earned citizenship* (emphasis mine) is even beyond imagination. Earned citizenship or this sort of a ‘citizenship on sale’ in turn becomes precarious citizenship for them and consequently a source of ultimate rightlessness. ‘A close examination of earned citizenship demonstrates that, while ideologically heterogenous, it is predominantly neoliberal and punitive in orientation; it disciplines the putative citizen through expectations of economic productivity and moral self-governance and under threats of various sanctions...earned citizenship implicitly subscribes to the core claim of restrictionists—namely, that undocumented immigrants have committed moral transgressions that require some form of moral recompense.’²⁴

Article 8 of the United Nations Convention on the Rights of the Child (UNCRC) provides for the right to an identity. However, identity, just like citizenship, is what is being decided by state sovereignty. Further, in reality, these rights largely remain unenforceable in an alien land that may provide shelter to the people without a nation, but not much beyond that. And, this is more likely if the Rohingya refugee situation eventually turns out to be a ‘protracted refugee situation’, when the donor fatigue sets in, as it happened in the case of the Lhotshampa refugees in Nepal. “*We lost our freedom. We lost our identity*”, said Tosmin, a Rohingya teenager of 16 years old who fled Myanmar and came to Bangladesh in the event of the exodus of 2017. “*I’ve always admired my father’s profession. I want to establish my own tailoring shop, just like him, and earn enough money to return to my country and claim my nationality.*” Around half a million Rohingya children including Tosmin now reside as stateless people in Bangladesh.²⁵

Deprivation of rights, citizenship, and identity is further strengthened by difficulties in birth registration, including delays on the part of the administration. The UNCRC (1989) in Article 7(1) lays down that, ‘the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.’ For the first time, the convention treats children not merely as victims, but as independent individuals, having an agency of their own, and having the right to preserve their identities, without any unlawful interference. However, the ground realities are quite different in the overcrowded refugee camps in Bangladesh. The laws and normative principles may be there, but their enforceability remains in question. Talking about registration after birth as a cardinal principle of the UNCRC, the reality shows that there is a large number of undocumented Rohingya children lacking any legal document which makes them languish in a state of legal limbo. For instance, the district administration of Cox’s Bazar stopped issuing birth certificates since August 2017 and resumed it from September 1, 2020, after the High Court ‘asked the respondents to show cause, why their inaction to resume birth registration at Cox’s Bazar, Chakoria, Maheshkhali, and Teknaf municipalities and 71 unions of the district, should not be declared illegal.’²⁶ Apart from deprivation of citizenship, difficulty in enrolment in schools, lack of access to secondary and higher education, higher chances of falling prey to child labour and early marriage, sexual violence and trafficking are some of the risks to which the Rohingya children remain exposed on account of lack of documents and identity papers. Further, despite the introduction of the Online Birth Registration System in 2010, the prevalence of digital illiteracy and lack of access to the internet among the squalid camps in Bangladesh jeopardize the birth registration, citizenship, and the rights accruing to citizenship which all work like interrelated factors in the entire system of rights. In this regard, Australia: Administrative Appeals Tribunal (AATA) in case no. 1606601 (2016) observed the following:

*Rohingya refugees in Bangladesh are affected by a number of issues related to documentation...[including] the non-registration of refugee children with a Bangladeshi father or mother, despite the fact that the Bangladesh Citizenship Act since 2009 allows both Bangladeshi men and women to pass on citizenship. Because of this gap in the implementation of existing national laws, UNHCR keeps track of such children by entering their data into Pro Gres, as there would otherwise be no record of their existence. Unregistered refugees are unable to register their newborn children.*²⁷

Thus, whether the body of the Rohingya child is visible or invisible in the eyes of the state entirely becomes dependent on the presence of legal documents, leading to further vulnerabilities and rightlessness. The wide gap between the rights arising out of citizenship and the lack of any right arising out of non-citizenship has been legally established via the 1972 constitution providing for freedom of movement for the citizens on the one hand and the 1946 Foreigner's Act empowering the Government to impose any form of restriction on the movement of non-citizens, without exceptions for refugees on the other hand. Let us not forget that, denial of citizenship and refugee-hood, and access to basic human rights for survival has, in worst cases, led to arbitrary arrest and detention of a large number of children and youth in various countries across South Asia and elsewhere in the world, apart from restrictions on freedom of movement. Also, in the case of *RMMRU vs. Government of Bangladesh (2016)*, the Bangladesh Supreme Court adjudicated the matter of unlawful detention of a Rohingya refugee, who had been languishing in a Bangladeshi jail even after the completion of the sentence. The Court under its power of original jurisdiction observed that, 'as per Article 31 of the Constitution of the People's Republic of Bangladesh, *the liberty of any person, whether a citizen or a non-citizen* (emphasis mine), cannot be taken away without the authority of law.'²⁸ Arbitrary arrest, detention, and torture violate the 'best interest principle of the child' under the UNCRC which treats the child as a separate, independent entity, with Article 12 providing that, the child shall have the right to express his or her views and opinions with regard to any matter affecting the child and that the child shall be heard in any administrative or judicial proceeding affecting the child. Bhabha says, 'these arbitrary detention processes, apparently beyond the reach of domestic structures of accountability or the international oversight of monitoring bodies, such as the Committee on the Rights of the Child, function according to a completely different metric of "rights"...this is the extreme situation of rightlessness—the normalized state of exception—which governs the status of Arendt's children on detention centers....'²⁹

However, to cite some positive state practices, it may be pointed out that the Committee on the Rights of the Child in its consideration of the fifth periodic report of Bangladesh on the implementation of the provisions of the UNCRC, appreciated the adoption of the National Children Act of 2013 (Act No. XXIV of 2013) in consonance with the convention, especially with the 'best interests principle of the child'.³⁰ The Children's Act of 2013(Chapter V) further provides for the establishment of Children's courts in adjudicating cases involving children, including assessing cases of detention.

3. Adoption and the Non-Citizen Rohingya Child

Acquiring citizenship through adoption is also interwoven with legal complexities in the case of Bangladesh, as Bangladeshi law permits application for guardianship of children rather than actual legal adoption, which again is guided by the colonial Guardian and Wards Act of 1890. Further, this issue is governed by family law rather than civil law and all these legal nuances have made adoption and citizenship for the Rohingya child a more complex phenomenon. Nayanika Mookherjee, in the context of the "war-babies" in the aftermath of 1971 in her work traces the historical roots of

adoption laws in Bangladesh. She points out that, ‘...in contrast to the prevalent Muslim personal law and Shariat law, which forbids adoption, the Inter-Country Adoption Law (Habiba, 1997) and the Bangladesh Abandoned Children (Special Provision) Order were passed hastily on 23 October 1972 to facilitate the adoption process....The Adoption Law, was, however, repealed by Ordinance no. 5 in 1982...with the repeal of the law, a 19th century colonial law known as the Guardian and Wards Act 1890 was reinstated...the aim was to ensure adoption of children by Bangladeshis instead of foreigners. The process of appointing a guardian was also deemed to be consistent with Muslim personal law and by birth the child belonged to the latter...henceforth, religious laws would predominate over secular laws in the case of acquiring guardianship (instead of adoption) of a child.’³¹ Currently, there is no legal provision governing adoption in Bangladesh. While adoption is forbidden in prevalent Shariat law, Hindus and Christians may opt for adoption. Contrastingly, these right less Rohingya Children God are being considered as God’s gifts by the Rohingya women themselves, and many of them have been accepted by them very willingly, especially in the aftermath of the exodus of 2017.

‘Sakhina Begum...35, a widow and mother to five daughters, had always wanted a boy. When she spotted a baby boy abandoned outside a house, splattered with blood, while foraging for food on her way to Bangladesh last year, she took the chance. “There was no one to take care of him,” she recalls while sitting in her dark hut decorated with drawings by her daughters...The boy is six months younger than Sakhina’s youngest daughter, who is two... “He’s my only son,” she explains. “He is a gift from God”...’³²

4. Conclusion: Investigating Citizenship

This article tries to talk about the disenfranchisement of Rohingya children first from Burmese then Bangladeshi citizenship and second from the rights accruing to citizenship through different ways and means. Disqualification from being a citizen-child lends sufficient cause to further discrimination, dispossession, and dehumanization owing to the temporariness of being. However, as has been seen in the case of the Rohingya children, many of whom don’t even remember their origins from Myanmar, this apparent temporariness eventually metamorphoses into a permanent state of temporariness. *“In the midst of a sprawling refugee camp in Bangladesh, Faisal, a young Rohingya boy, finds an injured bird and decides to take care of it with his sisters. Life in the camp is not always easy and the children are thrilled to have a pet to look after. But as the bird’s wing slowly heals, they face the dilemma of holding on to or losing something they dearly love.”*³³ What is it that the Rohingya children fear losing? What do they want to hold on to? Is it the bird or the larger notion of belonging to the country in which they are born, or are growing up after fleeing from their erstwhile state?

Those who remember their erstwhile state, it is even more difficult to forget those memories left behind. *“I lost access to education and my home. Leaving these things behind made me very sad, and remembering it now still make me sad”*, said Abdul in an interview with Save the Children, a 13-year-old Rohingya child in Bangladesh.³⁴ It is perhaps also significant to point out that the space of citizenship includes those who enjoy the political membership of the state and in that way, enjoy political equality. ‘Through various processes and institutions, these citizens or *de jure* political equals’, as Tendayi Achiume says, ‘collectively self-determine, shaping the conditions of their own lives within their state.’³⁵ state.’ The ones who are excluded from this space, who are deprived of citizenship are the ones who are constructed as *criminals, irregular migrants, terrorists*, and the like. Citizenship’s twin mechanisms of including some members of its polity and excluding the constructed others, more so

the children, especially when they are stateless and identity less perhaps lends more ease to the perpetuation of unfreedom and precarity in terms of child rights. There again arises the need to investigate colonial and western concepts of citizenship and the need to challenge not only the categories and new forms of domination established by race, nation, nationality, ethnicity, gender, age, and the like but the existing international legal instruments in addressing those rights. Thus, taking a cue from the Kolkata Declaration adopted by the Mahanirban Calcutta Research Group in 2018, it may be said that the experiences of postcolonial regions like South Asia call for greater attention in order to improve the said legal regime and emancipate it from hierarchy, inequality and monolithic cultural values and production of knowledge which may dispossess refugees, migrant or stateless children and undermine their individuality, subjectivity, citizenship and the ability to make political and social choices.³⁶

In this situation, citizenship needs to be investigated and sufficiently decolonized³⁷ as well, which, however, may not be that easy. The essence of the things which this article intends to explore lead us to a broader perspective beyond simply investigating citizenship—that of decolonizing the legal framework as a whole. There is still no universal way of implementing this sort of decolonization of law, citizenship, and perhaps the mind but a starting point may be to ensure justice with a recognition to the heterogeneity of displaced populations kept as a backdrop. Also, since there is no universal way, perhaps the need for investigation looms large, especially keeping in mind the legal limbo in which a large number of Rohingya children remain entrenched today. In this situation, human rights and child's rights in general and socio-political rights in particular, become citizen's rights, keeping in mind that 'citizenship is both a legal status that confers an identity on persons and a social status that determines how economic and cultural capital are *redistributed and recognized* within society.'³⁸ Unless law and citizenship are enquired into and decolonized, no place on this earth can be a safe place for any child, including the Rohingya, because ultimately—

No one leaves home unless
home is the mouth of a shark
you only run for the border
when you see the whole city running as well...
no one puts their children in a boat
unless the water is safer than the land
no one chooses refugee camps
or strip searches where your
body is left aching
or prison,
because prison is safer
than a city of fire

— *Home*, Warsan Shire

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A Stateless Population in-between Fragile Commitments: Assessing Roles of Myanmar and Bangladesh in Governance of a Protracted Rohingya Refugee Crisis

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1. Background

Article 1 of the 1954 Convention relating to the Status of Stateless Persons (1954 Convention) defines a 'stateless person' as someone "not considered as a national by any state under the operation of its law." The Rohingyas constitute one such group and is one of the most persecuted communities in the world. Today, about a million stateless Rohingya refugees live in the world's most densely populated camps in Bangladesh. Bangladesh, which is not a signatory to the 1954 Convention refuses to accord refugee status to the Rohingya; rather designates this population as 'Forcibly Displaced Myanmar Nationals' (FDMN). Although the government of Bangladesh was applauded for its humanitarian decision to host this significant number of stateless people, comprising mostly of women and children and to enable access to humanitarian workers to provide support to this population, the Rohingyas are still deprived of many rights. This includes the right to movement and to work, leading to lack of access to services such as health, legal, education etc. as well as impoverishment. Quite often, attempts of the government in governing this population do not take into account an assessment of their needs and wellbeing. Once such example is the relocation of Rohingyas from the camps of Cox's Bazar to Bhasan Char, a remote island prone to heavy flooding. Since their arrival in Bangladesh, especially after the 2017 exodus, the Rohingyas have been highly reliant on NGO-led services for necessities: food, shelter, healthcare, legal aid, education, etc. With no right to movement, NGO services are central to ensuring basic human rights of this population. Living in cramped settlements, in 2020 the COVID-19 pandemic came as a grave threat to this community. With a countrywide lockdown announced in early 2020, most aid workers were not allowed in the camps, resulting in hunger and economic crisis of the Rohingya, and for particularly women and girls increased risks of gender-based violence, in short, new vulnerabilities stemming from a pandemic. In this context, there have been speculations about the way this displaced population is governed in Bangladesh with respect to the no harm policy, but at the same time the limits of the humanitarian support that a host country can provide. This equally brings into attention

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the commitment made by Bangladesh to host the Rohingya population and the possible fragility of this commitment that puts the future of this stateless people at risk. Simultaneously, as the Rohingya population is on its way to become a group of refugees displaced for a longer period, the role and accountability of Myanmar with respect to this crisis needs to be reassessed, including ways in which international legal instruments and commitments may work to discourage further creation of stateless people.

In this context, this paper aims to answer the following questions:

1. How is Bangladesh operating as a system of receiving refugees and governing them? What is its mandate as a host and what are the limits to continuation of humanitarian support?
2. What is realistic in terms of ensuring accountability of Myanmar?
3. How strong is the commitment of Bangladesh as a host country in management of this displaced population?

2. Creation of a Stateless Population

The origin as well as the name of the Rohingya population have been subject to various theories and debate over the decades. To some, this group originated from Bengal but migrated to Burma during the colonial period, and to others, they are an ethnic group from Arakan in Myanmar. Regardless of whichever argument is accurate, today the Rohingyas are labelled as one of the world's most persecuted minorities, with experiences of forced displacement perpetrated repeatedly by the authorities in Myanmar. While this paper does not delve into the understanding of the origin of this group, it is however, imperative to discuss the creation of this stateless people in order to understand roles and accountability of States involved in the governance of this now displaced population.

In 1960, Buddhism was made the state religion of Myanmar. In 1962, the military rule began and there was an attempt to colour non-Muslims as accomplices to the British and their exploitation of the country. As such, Muslims were increasingly discriminated against, through lack of access to public offices and employment, social services, and they were subject to violence for practising their own religion. This was done primarily in two ways: one, through a state-led fabrication of the narrative that the Muslims were enemies of the state- 'the other', and that a religious uniformity was what the country needed to prosper; and two, through physical confinement of the Muslim group and forced displacement, to discourage and prevent any sort of integration. This portrayal of the Rohingyas as the outsider and promotion of hyper-nationalism was done to such an extent that even the human rights defenders of the country were accused of being deaf to the clear violations of human rights.

In 1977, Myanmar (then known as Burma) initiated Operation Dragon King in the Rakhine State primarily inhabited by the Rohingya and considered this group illegal. The operation was launched to persecute the minority. In 1982, the amended Myanmar citizenship law made the population officially stateless by not recognising them as one of the 135 official national ethnic groups residing in the country prior to the British rule in 1823. This denial of citizenship stems from the idea that they are undocumented people who migrated from Bangladesh and hence cannot be considered citizens of Myanmar, either through the *jus soli* or the *jus sanguinis* principle¹. Because of lack of identification, discriminatory policies were soon made against the Rohingya, such as prohibition of issuance of birth certificate to Rohingya children, confiscation of their land, and preventing their access to proper education, health and social services. No kind of identification was issued for the group that proves their place of birth. In this condition, the Rohingyas were faced with two options: one, to stay confined and be victims of violence, rape, arbitrary arrest and have no way

to exercise any citizenship right, and two, to flee the country for their own safety, if not in search of a better future.

While the plight of the Rohingyas gained international attention in the early 2000s with their influx in Bangladesh especially in 2017, they have been present since the 1970s in the country's Cox's Bazar district right across the Naff River. A vast majority of them would migrate from the Rakhine state on to the other side of the river. In Bangladesh, the Rohingyas settled in makeshift refugee camps, without any form of formal recognition as citizens of any country, and without a formal refugee status in the host country.

3. Protection of Rights of Refugees and Stateless Persons

Statelessness leads to multiple vulnerabilities leading to denial of basic human rights of a given population. In order to prevent the creation of stateless people and to ensure citizenship for all, there are several international instruments in place. The Universal Declaration of Human Rights, 1948 (UDHR) states that every individual has the right to nationality (Article 15). The UDHR also recognises the right of individuals to seek asylum from persecution in other countries (Article 14). The Refugee Convention of 1951 further builds on the work of the UDHR and provides definition of a refugee². In this definition, it identifies groups that seek asylum due to fear of persecution based on religion or race, among other factors. In the 1967 Protocol, the definition set out by the 1951 Convention was revised to remove any geographic or temporal restriction, making the rights and protections under the Convention applicable to all refugees. Given the history of persecution of the Rohingya population in Myanmar based on race and religion, these international treaties are applicable to this population as well. Furthermore, since coming into force, the 1954 Convention relating to the Status of the Stateless Persons is until date the most exhaustive doctrine for the protection of rights of stateless populations and the responsibility of States in relation to these groups. The Convention defines a stateless person as *'someone who is not considered as a national by any State under operation of its law'*. The Convention not only speaks of the human rights and entitlements of displaced individuals, but it also forms the basis of work of the largest agency for refugee protection, the United Nations High Commissioner for Refugees (UNHCR). While these protective instruments are in place, not all countries are signatory to the 1951 Convention. The two States who play a key role in the ongoing Rohingya crisis, Bangladesh and Myanmar are not party to the Convention neither the Protocol. One of the largest refugee hosting country in South Asia, India is also not a signatory. Many non-signatory countries see this Convention as a possible threat to their sovereignty and modality of accepting and governing refugee populations. Regardless, the non-signatories must also adhere to the customary international law's *non-refoulement* principle, that is, a refugee must not be forcefully repatriated to a country where there is threat to their life or freedom. In addition, while the Bangladesh government has not signed the 1951 Convention, it did however ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, where Article 3 prohibits States from expelling or extraditing a person to another state where they could possibly be in danger or subjected to torture. The country has also signed several other conventions such as the 1981 Convention on the Elimination of All Forms of Discrimination Against Women and the 1989 Convention on the Rights of the Child. More than 52% of the Rohingya population living in the makeshift camps are women and girls, while 85% are women and children. While Bangladesh does not accord the status of 'refugee' to this stateless population and instead calls them Forcibly Displaced Myanmar Nationals (FDMN), the country as a host must oblige to the commitments it made to protect any individual or community from torture,

and especially look into the wellbeing of women and children. Bangladesh is a member of the Executive Committee of the Programme of the UNHCR (UNHCR Excom) that upholds standards of refugee protection by virtue of which the country must make every effort to protect these safeguarding principles.

4. Bangladesh –A System of Hosting and Governing the Rohingya

Since the Operation Dragon King was launched, the Rohingya started fleeing to the neighbouring Bangladesh. In the 70s, Bangladesh opened refugee camps to host the Rohingya supported by crisis response agencies and workers. Following the violence inflicted upon this minority, there was an influx of more than 250,000 Rohingya to Bangladesh. As a result, a joint agreement was signed in April 1992, between Bangladesh and the State Law and Order Restoration Council of Myanmar for the purpose of repatriation. The agreement received international criticism as it was done bilaterally without the involvement of the UNHCR. The terms were also quite restrictive as only individuals who could provide documents of residency were allowed to return to Myanmar. The Awami League government in Bangladesh pushed for repatriation and the agreement was done in a haste, notwithstanding the fact that the return may not be safe for the minority group. This deal came into being after there were accusations of ethnic cleansing by international actors, and critics labelled it as a diplomatic stratagem. This repatriation process was unsuccessful and even though in the following years many Rohingyas could return, the 2017 spasm of violence inflicted by the Myanmar army upon this population, led to a new surge of incoming refugees to Bangladesh and a bold statement that Myanmar would not accept this community on their territory. While in the late 90s and early 2000s, the Bangladesh government was directly hesitant in accepting this community, this attitude shifted after the August 2017 influx. By 2018, there were more than one million Rohingyas residing in Bangladesh and the Prime Minister Sheikh Hasina was given the title of Mother of Humanity at home as well as received international appreciation, for agreeing to host and support the Rohingya. In this whole crisis, there could be two ways of looking at the role of Bangladesh: first, its diplomatic role in terms of advocating for accountability of Myanmar and safe repatriation of the Rohingya; and second, its role strictly as a system of hosting and governing a large number of refugees in its own land. The latter is discussed in this section.

With a population of over 164 million, Bangladesh is one of the most densely populated countries in South Asia and globally. About 20% of the population still live below the poverty line. The major challenges faced by the government include fighting poverty, unemployment, and climate change as well as ensuring rural development and education. In addition, the country is now hosting over one million Rohingya in its territory, that too, in the still underdeveloped south-western region of the country, especially the district of Cox's Bazar where there is already shortage of resources and economic opportunities at the community level. The Government of Bangladesh has been leading a multi-national aid programme to provide services to the Rohingya. About 90 percent of the Rohingya population currently live in Bangladesh in collective sites and in dispersed areas. The majority of the camps are managed by the UNHCR, International Organization for Migration (IOM) and other NGOs, while a few are registered by the government. While Bangladesh immediately hosted this population following the events of August 2017, there was no concrete plan in place that would help govern the crisis in the long run. The crisis was managed in an ad hoc basis involving immediate decisions made by domestic ministries and advisers. For instance, there was no proper system of registering the refugees or keeping record of births, deaths and marriages. Access to the camps was given to the intergovernmental organisations in order to administer campsites, provide shelter, food,

medicine and other necessities. However, soon, these institutions started to go beyond relief provision and initiated policy changes in the management of the crisis. IOM initiated an Inter-Sectoral Coordination Group to manage the crisis in a comprehensive manner and facilitate flow of information between service providers in different sectors. These institutions work closely with the Refugee Relief and Repatriation Commissioner (RRRC) in administering the crisis response. The UN agencies along with partner NGOs have also formed a Joint Response Plan, to cover all areas of intervention such as addressing Sexual and Reproductive Health and Rights (SRHR) of women, protection of children and persons with disabilities, to ensure that intersectional vulnerabilities are properly addressed. There have been many such developments in the governance of the Rohingya in the campsites since their arrival in 2017. Most of these initiatives were led by aid agencies and were implemented due to pressure from national Civil Society Organisations (CSOs) and international humanitarian organisations. While initially, the focus of these organisations was to ensure primary relief services to the Rohingya and the government supported these initiatives provided it lacked the capacity to support the services alone, overtime the focus shifted from service provision to policy advocacy. This implies pushing for educating Rohingya children, enabling livelihood opportunities, ensuring birth registration and proper identification, bringing the population under the protection of government legal aid and most importantly recognising them as ‘refugees’ instead of FDMN. In this area of policy changes, Bangladesh has been reluctant to comply. However, looking at the continuation of the crisis, the government must have a medium to long-term plan in place. As of now, there is ongoing service provision to the camps, with various violations of human rights of the population, failed attempts at repatriation and the absence of a solid plan. In this situation, a protracted displacement is foreseeable and the limits to the humanitarian support inevitable.

5. Continuation of Humanitarian Support: What are the Limits?

While the majority of the Rohingya live in the campsites, there are many who reside outside and do not receive the dedicated services available in the camps. Severe restrictions are imposed on the camp based population, especially in terms of movement, that strips them of many basic services and opportunities. When it comes to recognising complete socioeconomic rights of the Rohingya, the country takes a step back on the account of the challenges it faces in catering to its own citizens. At the same time, there is an argument that creating sustainable living conditions would encourage more inflow of refugees. The services provided to the Rohingya now, can be called the bare minimum. As there is no proper dialogue or commitment to make Myanmar accountable for its actions and ensure safe repatriation, the Rohingya may have to live in Bangladesh for a longer period, leading to a protracted refugee situation. This would also mean birth of new generations of stateless children if there were no permanent solution to the existing crisis. Governance of this refugee crisis is largely dependent on international aid and services, and over time depletion of which would mean scarcity of resources for the population. As a crisis becomes protracted, it is difficult to ensure international support. Quite recently, following the US pull-out from Afghanistan, the UN Resident Coordinator in Dhaka shared the challenge of keeping international attention on the Rohingya issue, as the crisis in Afghanistan becomes more prominent and mediatised. In addition, if the Rohingya population remain displaced for a longer period, the ongoing violations of their rights may also continue, especially if the host nation does not adopt changes in policy and governance. With the current restrictions in place, there is no way for Rohingya children to have a certified education and the government is reluctant to set it up insisting on the fact that these children would be repatriated ‘eventually’. There is a ban on formal employment and livelihood opportunities for this community

as well as exclusion from the financial and banking system. Mobility outside the camps is prohibited and within the camps, it is restricted. This prevents communication among members of the community, which is further limited by imposing internet shutdown in the camps. These measures have marginalised this population and kept them away from the centre of power and opportunities. Many Rohingya households have incurred debt since moving to Bangladesh and many have to support residual family members back in Myanmar and without any access to livelihood, there is no way for them to escape the situation. The COVID-19 pandemic brought forward new challenges and vulnerabilities. There are numerous reports of the community's hardships being amplified during the crisis. Living in cramped settlements there was the obvious risk of infection, but a lockdown meant absence of aid workers and services inside the camps. This led to food insecurity, decrease in income generation within the camps, and increased cases of gender-based violence among others. More than half of the population living in the camps are women and children and the lockdown restrictions reduced their access to emergency SRHR and medical services. Presence of COVID-19 testing facilities and later on administration of vaccines in the camp were also part of sedated bureaucratic processes. At this rate, a longer-term response to this crisis does not look any different: a system where only minimal services are provided as long as international funding flows and no significant change in socioeconomic rights of the population. The looming question is how long will Bangladesh be able to continue hosting this community and in what conditions. While the focus is primarily on Bangladesh to improve its system of governing this displaced people and grant them more rights, is Myanmar being let off the hook in terms of its accountability towards this crisis and the population in question?

6. Accountability of Myanmar: What is Realistic?

Ensuring accountability of Myanmar towards the persecuted population has been a complex discussion since the beginning. The State Counsellor of Myanmar has been dismissing any allegations against her state authorities in relation to the crisis. In a historic judgment of 23 January 2020, following a lawsuit brought by Gambia, the International Court of Justice (ICJ) ordered Myanmar to implement immediate measures to protect the Rohingya population from further violence. The Court had further ordered Myanmar to take all measures possible to prevent acts prohibited under the 1948 Genocide Convention. The judgment also requires Myanmar to submit a periodical report on its progress in terms of implementing the court ruling. While this is a major victory for the Rohingya but also a sign of hope for Bangladesh as the country pushes for repatriation, the major caveat is that the ruling cannot be enforced and the ICJ cannot ensure that Myanmar complies and thus the implementation is solely voluntary. The Myanmar government also did not fully accept the ruling, stating that it does not give the right picture and there was no attempt of genocide. From its past records of failed negotiations, it is doubtful that Myanmar will wholeheartedly comply with the new ruling. In 2017, following the atrocities of August, Bangladesh engaged in bilateral agreement with Myanmar for repatriation of the Rohingya, which ended up in a failed attempt. The repatriation efforts were unsuccessful not only because Myanmar authorities were unwilling to take the Rohingya back, but also because the Rohingya did not feel safe to go back to Rakhine State. In early 2021, following a tripartite discussion spearheaded by China, two main decisions were made: Myanmar would initiate the repatriation process by middle of the year, and it would involve international actors in the process of repatriation. This repatriation plan was again pushed back by Myanmar on the grounds of logistical limitations and no concrete date was given for initiation. In hindsight, since 1992 Myanmar has engaged in bilateral discussions with Bangladesh on repatriation without

intending to do so. Even when some Rohingya refugees could return to Myanmar in the 90s, they faced the same violent fate in 2017. In this situation of denial of attempts of genocide by the Myanmar government, as well as no intent to commit to safe repatriation of the Rohingya, the expectations from Myanmar in regards to the future of the persecuted population should be realistic. The Myanmar authority, as well as many nationals believes that the ICJ ruling is biased. According to them, it does not take into account the fact that the incident of August 2017 occurred as a counterattack on the Arakan Rohingya Salvation Army (ASRA) and thus was an act of defence. While the Burmese narrative supports the attempt to curb terrorism, it does ignore the violent crimes committed against the population, such as rape, arson, and killing of civilians including women and children. If it is solely a fight against terrorism, women, children, and civilians should not be the ones suffering and there is no reason to deny them access to their homes and provide a safe environment for their return. However, looking at the long history of denial of rights and services to the Rohingya population in Myanmar including citizenship, it is highly unlikely that the Myanmar authorities only see ARSA as a threat. With another electoral victory of the National League for Democracy, a safe return of the Rohingya anytime soon and enhanced accountability of Myanmar is also unlikely. This regime has repeatedly ignored international push for safety of the Rohingyas and with renewed support of the people for the government; it is very hard to imagine a sudden change of mind and heart to accept the Rohingya and ensure their safety. A protracted displacement of the Rohingya population in Bangladesh is thus more likely than a safe and voluntary repatriation. Bangladesh Foreign Ministry's position is quite clear in this regard- repatriation is the only answer to this crisis and there is no other solution. The memorandum of understanding for repatriation of the Rohingya, signed between Bangladesh and Myanmar, in 2017, did not see any progress. The calls for bilateral solution only seem one sided.

7. Fragility of Humanitarian Commitments and Future of A Protracted Refugee Situation

Bangladesh's act of solidarity with the Rohingya population was globally applauded. However, the government also did not have much choice in this regard, as thousands of people flocked in groups escaping the violence in Myanmar. Some scholars have also suggested that there were reasons beyond the grounds of humanity that propelled the nation to host the refugee community despite its own shortcomings, when other countries closed their doors. Rohingyas have been marginalised in Myanmar because of their faith and as a primarily Muslim country, in Bangladesh, a sentiment of religious solidarity was strong. Besides, the Rohingya exodus and the experiences of violence in the community that pushed men, women and children to seek refuge in Bangladesh through any means, invoked memories of the 1971 war of independence when thousands of Bangladeshis sought refuge in India. These sentiments were strong when the Rohingyas moved to Bangladesh in thousands, and what the Bangladesh government saw was a short-term support. The pressure to ensure liveable conditions for the Rohingya and their basic rights came mainly from CSOs and rights groups. Now that the presence of the Rohingya has crossed a million and there is no concrete development on repatriation, Bangladesh government's stance has also shifted. The government insisted that the terms of repatriation agreed upon in 1992 that allow for repatriation of only those with proof of residence in Myanmar should no longer be applicable given the current context. When Bangladesh accepted the Rohingya as a country that has not signed the Refugee Convention, the commitments were verbal and emotion-driven. Soon after the Rohingyas settled in the Cox's bazar district and international aid and support flowed in, there was a growing sentiment of hostility among the

impoverished local host community against the Rohingya and the support they were given. To mitigate these tensions, the government instructed NGOs and aid agencies to allocate funding and support for the host community as well. In addition, there were concerns of damage caused to the environment and local ecosystem because of deforestation for setting up the campsites, creating yet another case of human-wildlife conflict. Along with these factors, another important aspect to consider was overcrowding of the campsites, as well as rising presence of ARSA militants threatening security of the region. Citing these reasons, the government initiated a relocation plan for the Rohingyas to a silt island called Bhasan Char (*floating island*), which was formed only two decades ago and is still considered an unstable and inhabitable island. Despite this, the government supported by the army, established housing facilities for Rohingyas, aiming for relocation of 100,000 Rohingyas to the remote island. Besides housing facilities, the government has also set up cyclone shelters on the island. Climate induced risks such as rising sea level and storms are inevitable and the relocation was planned even though these risks are known. The relocation process started from December 2020, and thousands of Rohingyas have been moved to the island already. This decision did not take into account complete risk assessment, involvement of UN safeguarding bodies, and consultations with climate experts. This remote island is also cut-off from opportunities imposes more restriction on movement. Given the lack of accessibility to the island and the quite unsafe sea route, there is a high chance of aid workers and volunteers dropping out, and reduction in overall support system for the Rohingya. When the first batch of Rohingyas were moved to the island, they were only promised a less congested home with better living conditions. Few months down the line, news of Rohingyas trying to escape the island made headlines. In August 2021, a trawler carrying around forty Rohingya men, women and children capsized and most of them went missing, due to high current. This group attempted to flee the island. According to the government, moving to the island and fleeing the island were both voluntary attempts by the Rohingyas. While the government puts forth the voluntariness of the situation, they are also bound by international agreements namely the Paris Agreement to protect this population, especially according to Article 7 of the Agreement, which states that Parties should work to reduce vulnerability to climate change. There has been no proper information on mitigation and climate risk preparedness by concerned authorities. Relocation to a cyclone-prone island would mean adaptation to new challenges and the necessity of new skills development among the population. As of now, no such plan has been reported that would help build adaptive capacity of the Rohingya once relocated to the island. In pushing for relocation of the Rohingya to Bhasan Char, the Bangladesh government is increasing vulnerability of the population to climate change and risking the creation of a new group of climate refugees on top the existing crisis. The plan of relocation seems to be a rushed decision focusing on the short-term benefits. However, it also speaks volumes about the fragility of the Bangladeshi government's commitment to ensure safety of the population it hosted. In trying to deal with this complex situation, the government is breaching the *no harm principle*, by risking lives of thousands of people, including children. This is also in direct breach of right to life and personal liberty of the population that is constitutionally protected in the country. With this new move and the growing push for repatriation, regardless of the unsafe situation in Myanmar, Bangladesh is making a point that it is not ready to take care of this displaced population for long. The commitment of Bangladesh towards protection of this population is thus marked by fragilities and it is only a matter of time that the Rohingyas will find themselves in unliveable conditions in the country. There is no long-term plan of providing accredited education to Rohingya children or initiating their economic insertion. The existing governance system is looking at short-term solutions for the problem, while a protracted displacement is highly likely, given the lack of effort from Myanmar to resolve the crisis.

8. Conclusion

The UDHR recognises nationality as a human right. For decades, the UNHCR has been working to reduce statelessness and ensure that no child is born stateless. No matter where they find themselves, stateless people are always more vulnerable, and are deliberately made politically voiceless. For instance, communication and access to the internet in the Rohingya camps are restricted, making them cut-off from the world, and alienating them from getting involved in decisions that affect their lives. This community is seen as passive refugees, dependent on aid and bound to follow decisions imposed on them for their 'wellbeing', and as such, their agency as well as potential is denied. There is a high chance that the displacement of this population lasts longer than envisioned, in which case the push for resolving their statelessness should be stronger. Bangladesh has for a very long time denied citizenship to the urdu-speaking community living in the country, until 2008 when a court ruling propelled by youth-led community activists movement, recognised them as nationals. Years of denying citizenship to this population did not bring any advantage to the country; rather an important group was marginalised who could have made bigger contributions to economy and development, using their particular skills and legacy as a community. There is only one recipe to resolve statelessness of the Rohingya and ensure their safe repatriation: political will. Political will of all parties involved, that is the country from where the refugees fled and the neighbouring countries where they could seek protection, as well as major global forces. Unfortunately, a significant number of countries in the Asia-Pacific have not signed the Refugee Convention yet, and it shows poor political will in actively trying to protect refugees and prevent creation of stateless people. The most effective way in case of the Rohingya population would be to amend the legal framework in Myanmar and recognise the Rohingya as nationals, a step which would also build confidence among the population in the system leading to a safer and voluntary return. Looking at the current political stance of Myanmar, this seems unlikely. There have been suggestions of stronger international boycott of Myanmar, but this may only create further tension, as any decision that follows will be as a result of a boycott and hence lack self-motivation. Not all hope is lost; the ICJ ruling is a major achievement for the Rohingya but also for persecuted communities all over the world. Before pushing for recognition of the Rohingya, smaller steps such as advocating for implementing the commitments of international safeguarding instruments such as the UDHR, CEDAW, and CRC should be continued, for both Myanmar and Bangladesh. While the Rohingya reside in Bangladesh and safe repatriation takes time, Myanmar could facilitate humanitarian assistance to the Rohingya and play an active role in providing support to the community, until their safe repatriation. In the meantime, Bangladesh with its stretched resources must not lose sight of humanitarian commitments and the protection of right to life. Not allowing proper education or economic opportunities to the Rohingya is counterproductive. As we possibly look at years of displacement, the Rohingya children and adolescents deprived of proper education will be likely to engage in harmful activities for themselves, their own community as well as the host nation. This may include increased usage of drugs in the settlements and among the youth and likelihood of engaging in violent extremism as the ARSA, even in small numbers, remains reportedly active in the camps. Criminal activities is on the rise in the camps and not facilitating livelihood and income generation opportunities as well as proper education, will definitely not help the situation.

While financial and technical support from big powers have been crucial for Bangladesh in governing the Rohingya crisis, as the situation becomes prolonged, countries with more resources and developed infrastructure must think beyond development funding, i.e. open their doors to Rohingya refugees residing in Bangladesh, should they choose to seek asylum. In addition, in absence

of a durable political solution with Myanmar, stronger lobbying within the ASEAN countries could be a pathway to a possible distribution of the population. While the ICJ ruling did not see much light, it is still worth pursuing besides the investigation processes.

It is important to take a step back from a singular focus, either insisting on accountability of Myanmar, or asking Bangladesh to do better. Accountability and recognition of the atrocities committed against the population is undoubtedly important, as much as making conditions in the host country safer and conducive to proper development of the community is, but for a sustainable solution, looking at these as isolated situations and a problem of Myanmar or Bangladesh is not enough.

Notes:

¹ According to the *jus sanguinis* principle, citizenship is acquired by the nationality or ethnicity of one or both parents. Citizenship acquired through *jus solis* is determined on the basis of the place of birth.

²Article 1 of the Convention states that the status of the refugee is accorded to persons who because of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear is unwilling to return to it. The temporal and geographical restrictions were later lifted.

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