



BEYOND REFUGE

Advancing Legal Protections for Rohingya Communities in Bangladesh

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 REFUGEE SOLIDARITY
NETWORK

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FOREWORD

In the 1971 Bangladeshi War of Independence from Pakistan, an estimated 10 million people crossed the border from East Pakistan to India, due to fear of persecution from the Pakistani army. Despite a national history rooted in a massive relief operation wherein the United Nations High Commissioner for Refugees (UNHCR) played a pivotal role, and the nation's wider commitment to refugee protection and humanitarianism, Bangladesh is yet to ratify the 1951 Refugee Convention or its 1967 Protocol. Nevertheless, Bangladesh law is sufficiently progressive to afford expansive protection to non-nationals fleeing persecution from other countries, even in the absence of explicit recognition of their refugee status and a formal refugee protection regime. I feel proud to be the first Bangladeshi to have joined UNHCR and to have served the organization in various capacities for close to quarter of a century.

Although there are divergent opinions and interpretations about how the law ought to be applied, these variances are an inevitable aspect of any area of law, where different judges may have competing conceptions of the same law. As such, *Beyond Refuge* comprises a factual and legislative compendium of national laws and policies that highlights how progressive the letter of the law in Bangladesh already is with regards to the protection of non-nationals fleeing persecution from other countries on its territory.

The opportunity to honour its longstanding tradition as a nation that has always responded generously to the refugee protection crisis has never been greater than it is now, with the forceful displacement of millions of Rohingyas since October 2017. It is important to note that Bangladesh has already set an example for the region and the world, by opening its borders to over a million Rohingyas despite being faced with the many challenges that come with being a densely-populated and low-lying, riverine country that is vulnerable to various national calamities such as cyclones, landslides, and seasonal flooding, which have only been worsened by climate change. Therefore, if Bangladesh continues to honour its legacy by extending protection to refugees, it will undoubtedly cement its place as a leader in the advancement of international humanitarian response.

Dr. Shamsul Bari

Vice Chairman, BLAST;
Former Director, UNHCR

PREFACE

In a world fraught with forced migrations and mass dislocations of population, citizenship has become a contested terrain. Hence the issue of legal protection for such population has become a frontline matter. It is in this context that compendiums such as this one become a vital contribution and guide to humanitarian actors, individual and institutional at both the state and societal level.

This compendium, *Beyond Refuge: Advancing Legal Protections for Rohingya Communities in Bangladesh*, specifically focuses on Rohingya refugees in Bangladesh but as stated in the introduction, ‘the same arguments and suggested applications of law and policy can in some instances, be used to further the rights of other groups facing precarity and a denial of rights in Bangladesh’.

Historically, Bangladesh has been both receiving and sending people across its borders since its very birth. During the very emergence of Bangladesh, an estimated 10 million people fled across the borders to take refuge in neighbouring countries in response to atrocities committed by the Pakistan Army and their collaborators. An estimated 20 million, constituting 40% of the population remained internally displaced. Such horrors of the war and the miseries experienced has remained embedded in its national memory and transmitted from one generation to another. Over the years it has endeared the Bangladesh people to receiving persecuted people fleeing from other countries in a similar manner such as the Rohingyas from Myanmar.

But like other countries of South Asia, the Bangladesh state has not acceded to any of the Refugee Conventions nor enacted national legislations on asylum or refugee rights matters, the current status of Rohingya refugees is held in legal limbo, vulnerable to the swings of ad hoc policy decisions and the ambiguity of a non-cohesive legal framework that allows vested interests to dominate over principles of protection. This compendium, which offers a guideline for legal practitioners and rights defenders working in a humanitarian crisis

situation, is an attempt to meet this gap. The compendium also lays the ground for further legal advocacy that may be made to the Bangladesh state to push for a cohesive legal framework of refugee protection based on international humanitarian principles.

But more importantly, phenomena such as climate change, environmental degradation, pandemics have changed our planet in a radical way. What we perceived as local humanitarian crises have assumed a systemic character. Endangerment of surroundings, habitat, cultivable land, livelihood and lifestyles are not limited to a particular group but a reality faced by everyone. COVID 19 has demonstrated that emergency responses to affected communities are harder to harness in a situation of nationwide lockdown compared to a localized area affected by natural disasters such as floods or cyclones. This has also had implications for the traditional parameters of Disaster Risk Reduction (DRR) strategies which the Bangladesh state has been renowned for. *Beyond Refuge* takes us from the plane of an emergency response to the more systemic response of legal protection in dealing with non-citizens. Given the ‘new normal’ realities of our times, it can very well be extended to the citizenry itself. Hence lessons can be derived from a refugee response and be translated to a national policy linking protection with citizenship. In a neo-liberal world where the rise of authoritarian regimes have striven to do just the opposite i.e. delink protection from the notion of citizenship, this would indeed create an exemplar for the future we need to uphold, nationally and globally. I thank those whose hard work has gone into producing this compendium, thereby helping us to take the first steps towards such new horizons.

Meghna Guhathakurta

Research Initiatives, Bangladesh

USING THIS GUIDE

Background

The Rohingya ethnic group of Myanmar is one of the most persecuted minorities in the world, and Rohingya communities have for decades been forced to seek protection by fleeing Myanmar for countries across the Asia-Pacific region.¹ While Rohingya displacement has occurred in significant waves over decades, a major exodus occurred in August 2017, when roughly 700,000 Rohingya fled persecution amounting to what has been termed a genocide.² Most crossed the border into Bangladesh, which is currently home to close to one million Rohingya people.

There is a lack of clarity regarding the laws and policies applicable to Rohingya in Bangladesh. Rohingya who fled Myanmar for Bangladesh are not formally recognized as refugees. In addition, most countries in South and Southeast Asia, including Bangladesh, are not signatories to the Refugee Convention and its Protocol³ and there is no regional system of human rights protection.⁴ There is limited awareness of—and significant confusion regarding—the legal status of the Rohingya in Bangladesh, and the rights and protections available to them under Bangladesh’s domestic laws. But national-level protections and domestic pathways to justice are essential to the realization of rights for displaced populations such as the Rohingya communities in Cox’s Bazar and other camps for Rohingya in Bangladesh.

Gaps in awareness and understanding persist around which national laws, policies, judicial decisions, and international commitments outside of the Refugee Convention provide legal grounds that can be invoked to protect and advance the rights of refugees in Bangladesh. These gaps hinder the work of civil society actors engaged in the Rohingya response, as well as representatives of international humanitarian organizations operating in Bangladesh. The same uncertainty can be discerned from some national and local decision-making authorities and government representatives, which has led to a lack of consistency and coherence regarding the interpretation of legal texts and their applicability to non-citizens, including

the Rohingya. These questions have immediate impacts on the daily lives of Rohingya in Bangladesh, including uncertainty over their residence status, access to education and healthcare, and ability to work or get married.

This guide seeks to clarify whether and how specific Bangladesh national laws and policies pertain to Rohingya in the country. It summarizes and analyses major laws and court rulings—governing essential aspects of life, from registering births and deaths to education, labour, and marriage—and notes their applicability to Rohingya in Bangladesh. In so doing, the guide seeks to furnish legal service providers and others working with Rohingya in Bangladesh with concrete information that can benefit their clients.

Purpose of the Guide

This compendium examines relevant national laws and policies that can be employed by civil society actors and human rights advocates in Bangladesh to creatively challenge the current situation of Rohingya refugees (and in some instances of other non-citizen groups), provided they meet the requirements for legal stay in Bangladesh. Although citizenship can be a necessary condition for the enjoyment of certain rights, this guide demonstrates that it is not the sole foundation for the realization of basic rights.

The objective of this document is to support and assist actors working to secure, protect, and realize rights for Rohingya refugees by increasing awareness and knowledge of the national-level legal protections that are available to non-citizens in Bangladesh, who are governed by the Foreigners Act,⁵ which makes no distinction regarding the circumstance or reason for their presence in Bangladesh. By clarifying the applicability of domestic law and legal protections to Rohingya communities in Bangladesh, it is hoped that this document will support legal arguments, advocacy, and strategies to improve the situation of Rohingya in Bangladesh.

This document is intended primarily for frontline legal practitioners, including lawyers, paralegals, judges, and others directly involved in the Rohingya response in Bangladesh, as well as for individuals working for other bodies such as non-governmental organizations (NGOs) or international organizations, who are confronted with legal questions regarding the rights of Rohingya communities in Bangladesh.⁶ It is also intended for national decision-making authorities and the different stakeholders that play a role in securing or hindering access to justice, rights, and services for Rohingya communities in Bangladesh. This includes but is not limited to Camp in Charges (CICs), *majhis* and other community leaders, law enforcement (including police officers, detention officers, and special police officers), border guards, members of the armed forces, policymakers, and other elected officials, especially those holding the office of Refugee Relief and Repatriation Commissioner (RRRC).

Summary

Although Bangladesh has not ratified the UN Refugee Conventions, it is a signatory to several other international law treaties and instruments that provide a framework for refugee protection. The Constitution of Bangladesh provides additional safeguards for the legal protection of non-citizens in Bangladesh.

This document begins by looking at the Constitution of Bangladesh and the Legal Aid and Services Act as the most cross-cutting protections that apply to foreign nationals. The ensuing chapters then address the legal domains most relevant to the situation of Rohingya communities in Bangladesh.

The second chapter covers immigration law, including the legal status and documentation that govern the legal stay of Rohingya in Bangladesh. The analysis in this document and across subsequent chapters is based on the premise that the Foreigners Act has been applied to certain Rohingya communities,

allowing them legal stay in Bangladesh and exempting them from provisions regarding illegal entry. This understanding is based on various actions and statements that illustrate the exercise of this discretion.⁷

Subsequent chapters cover family law, criminal law, fair trial rights and victim's rights, and cyber law. The final chapter looks at education, employment, and health care through an access and inclusion lens. Each chapter opens with a summary of the main legal issue examined in the chapter, followed by an analysis of relevant legal texts. This analysis includes: (1) a summary of the legal text, policy document, or case law; (2) an explanation of whether and how it applies to Rohingya communities in Bangladesh; followed by (3) practitioner notes based on a progressive reading of the law and enriched by a range of expert insights from academics, legal practitioners, and frontline actors.

There is no regional or recognized international framework protecting refugees in Bangladesh. Therefore, this compendium focuses on national laws and policies and identifies a number of state obligations in relation to Rohingya refugees. Where relevant, judicial interpretation of such obligations is provided, shedding further light and perspective on national laws and applicable international norms. Each section concludes with an index of applicable customary principles of international law and other obligations derived from international human rights treaties beyond the Refugee Conventions. These are enumerated for reference only and are neither included as a point of focus, nor elaborated upon within the protection analysis itself.⁸

Methodology

This document was researched and formulated using a mixed-methods approach involving desk research in English and Bengali, and consultation with experts and community members. RSN, with the principal researchers Dr. Ridwan Hoque and Quazi Foysal, led the identification, organization, and analysis

of the law and policy collected in this compendium. Consultations with civil society and Rohingya community members were conducted in Bangladesh (Dhaka and Cox's Bazaar) and in Kuala Lumpur (involving civil society representatives from across South and Southeast Asia) in 2019. Several representatives of BLAST and Naripokkho assisted with the organization of a six-part virtual consultation series in 2020—which allowed for additional insights from several hundred people to inform the document's protection analysis—as well as with three open discussion sessions at the Inaugural Asia Pro Bono Virtual Conference and Access to Justice Exchange in September 2020.

This guide is not intended to be a comprehensive compendium of all relevant laws and policies in Bangladesh. It does not represent a consensus of all legal experts. National policies are not exhaustively included, but rather introduced only when and where they were perceived to communicate a national commitment to establishing universal access to rights and

protections which may be deemed to apply to Rohingya refugees in Bangladesh. This document is based on a progressive reading of the law and policy in Bangladesh and is designed to serve as a point of reference on laws relevant to the protection of the rights of Rohingya refugees on Bangladeshi territory.

The content of this guide is designed for general information purposes only and is provided “as is.” Due to the fast-moving policy environment in Bangladesh, no representations are made that the content is error-free, nor that it constitutes the most up-to-date legal or other information. This document is not intended as legal advice or as substitute for legal counsel, nor does it create an attorney-client relationship between the reader, user, authors, or their respective employers. All liability with respect to actions taken or not taken based on the content of this reference document are hereby expressly disclaimed.

INTRODUCTION

Bangladesh has become home to over one million Rohingya refugees fleeing genocide and systemic persecution in Myanmar. Following the 2017 surge of violence in Myanmar’s Rakhine State, local communities, government, and civil society in Bangladesh have sought to provide aid, food, shelter, medical treatment, and other life-sustaining necessities to Rohingya arrivals. Beyond the immediate humanitarian response, as the duration of displacement draws out and develops into a protracted crisis, rights-based approaches are becoming increasingly essential in protecting and supporting Rohingya in Bangladesh. A deeper understanding of the legal protections available to Rohingya refugees under domestic laws and policies is needed for legal service providers and legal aid practitioners to improve the situation of Rohingya and ensure the full realization of their rights.

The Term “Refugee”

Despite Bangladesh’s long tradition of sheltering and hosting refugee communities, it has no cohesive legal framework for protection-seekers. Bangladesh has not acceded to the Refugee Conventions, nor enacted national legislation on asylum or refugee rights matters. There is no determination process or formal mechanism that recognizes refugee status. However, Bangladesh has signed and ratified several other international law treaties and instruments that provide frameworks for refugee protection, supported further by judicial recognition that aspects of the Refugee Convention have become customary international law and are therefore binding upon Bangladesh.⁹

Although Rohingya are not officially recognized as “refugees” in Bangladesh, the term “refugee” is used throughout this document, in line with the international law recognition of refugee status, to indicate they fled persecution in Myanmar and have reason to fear persecution should they return. This accepted interpretation follows the understanding of “refugee” under international law, which defines as a “refugee” any person who:

[O]wing 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, is 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. (Article 1(a)(2), 1951 Refugee Convention)

Rohingya Refugees in Bangladesh

Inside Bangladesh, refugees, including Rohingya refugees, are subject to a patchwork of laws and ad hoc administrative policies that govern various elements of their treatment in Bangladesh. These existing laws and policies are shaping the Government’s refugee response, but the degree to which relevant stakeholders are aware of these frameworks remains unclear. This document seeks to

examine the current legal and policy environment, from a rights-based perspective, and clarify the availability and applicability of legal protection to the Rohingya community. It also supports the principle of progressive realization of rights.

This guide's legal analysis of the applicability of national law and policy is based on the understanding that the Government of Bangladesh has exercised its powers under Section 10 of the Foreigners Act to permit entry to and presence in Bangladesh of the Rohingya population that arrived in August 2017. Under Section 10 of the Foreigners Act, the Government has broad discretion to exempt any individual foreigner or any class or description of foreigner from any provision of the Act. This includes Rohingya who have arrived since 2017 and are currently residing in the camps in Cox's Bazar. This assumption of exemption is grounded in the Government of Bangladesh's recognition of the commission of international crimes by Myanmar state forces and gross violations of human rights, including genocide, against the Rohingya population.¹⁰

Although this document specifically focuses on Rohingya refugees in Bangladesh, the same arguments and suggested application of law and policy can in some instances be used to further the rights of other groups facing precarity and a denial of rights in Bangladesh. In other words, although the analysis in this document is textually narrow, its application is potentially broader. That said, broader application should be approached with caution, given that the analysis contained herein is both based on the assumption of recognition of legal stay, as well as grounded in the specific plight of the Rohingya population in the region and the exceptional circumstances that led to their flight. Finally, as long as nation states continue to criminalize immigration as part of complex domestic political discourse, legal stay as a gateway right to other rights and as an entry point for access to basic freedoms and services can never be guaranteed.

For the law and policy outlines in this document to be a practical tool to claim and enforce rights, it must be translated into practice and applied by those leading the refugee response domestically. It is hoped that the information that follows will provide frontline workers and advocates with a starting point for the legal empowerment of the Rohingya community and for the progressive realization of their rights.

CONSTITUTIONAL LAW AND ACCESS TO JUSTICE

Bangladesh's Constitution, adopted in 1972, grants a number of universal constitutional protections to all people on Bangladeshi territory and can therefore be applied in all instances where Rohingya encounter the law. The Constitution is considered the supreme law of the land and is a touchstone for establishing the validity of other laws, whether public or private, substantive or procedural. No provisions of any law can be inconsistent with constitutionally guaranteed fundamental rights. Where a law is found to contradict the Constitution, it can be challenged before the Supreme Court: Article 102 of the Constitution allows writ petitions to be filed before the High Court Division to review any actions of public authorities. Of the 18 fundamental rights enumerated in the Constitution, which are all civil and political rights, 11 are granted to citizens of Bangladesh exclusively (Articles 27, 28, 29, 30, 36, 37, 38, 39, 40, 42, and 43), while seven rights are granted to all persons, citizens and non-citizens alike (Articles 31, 32, 33, 34, 35, 41, and 44). All fundamental rights and freedoms are justiciable. Of these, the rights conferred under Articles 33 (safeguards as to arrest and detention), 34 (prohibition of forced labour), 35 (protection in respect of trial and punishment), and 44 (enforcement of fundamental rights) are absolute rights on which unreasonable restrictions cannot be imposed, except as provided for in the Constitution itself.

The realization and enforcement of legal rights, including constitutional rights, is contingent on access to courts to state a claim and seek redress. Bangladesh employs a common law system that recognizes access to justice and the courts as fundamental, constitutional rights. As an integral part of access to justice and in the name of implementing the right to legal assistance conferred under Article 33.2 of the Constitution of Bangladesh, free legal aid should be available in any instance where a Rohingya person meets the qualifications of the Legal Aid Services Act, 2000.

Constitution of the People's Republic of Bangladesh, 1972

SUMMARY

Provides fundamental rights and entitlements, some of which are applicable to all persons in Bangladesh, including non-citizens.

APPLICABILITY TO ROHINGYA

The rights and entitlements enshrined in Articles 31, 32, 33, 34, 35, 41, and 44 are applicable to all persons in Bangladesh; therefore Rohingya in Bangladesh are covered by these Articles of the Constitution.

PROTECTION NOTES

Rohingya in Bangladesh are guaranteed:

- right to protection of the law (Art. 31);
- right to life and personal liberty (Art. 32);¹¹
- right to safeguards during arrest and detention (Art. 33);
- right not to be subjected to forced labour (Art. 34);
- right to protection in respect of trial and punishment (Art. 35);
- right to freedom of religion subject to law, public order, and morality (Art. 41);
- right to move the High Court Division in accordance with Art. 102 to enforce fundamental rights (Art. 44).

Of particular note are the rights and protections contained within Articles 33 and 35, pertaining to those arrested, detained, and/or accused of committing crimes. These include:

- right to counsel;
- right to be informed of charges;
- right to be brought before a Magistrate within 24 hours;
- protection from ex post facto laws;
- principle of no punishment without law;
- prohibition of double jeopardy;
- right to fair, public, speedy trial;
- prohibition of torture and cruel treatment;
- protection from self-incrimination.

Legal Aid Services Act, 2000 (as amended up to 2013)

Legal Aid Provision Policy, 2014

Legal Aid (Provision) Regulations, 2015

Provision of Legal Aid (Legal Advice and Alternative Dispute Resolution) Rules, 2015

SUMMARY

Provides for the granting of legal aid to destitute litigants, and the establishment of the National Legal Aid Services Organization (NLASO), which facilitates access to justice for persons “incapable of seeking justice due to financial insolvency, destitution, helplessness and for various socio-economic conditions.” The NLASO provides services through Legal Aid Committees at the district, upazila, and union levels.

APPLICABILITY TO ROHINGYA

The Act and corresponding Rules contain no indication of jurisdiction. The eligibility requirements (as defined by the Legal Aid Provision Policy 2014) stipulate a number of circumstances that are explicitly applicable to Rohingya, including “(e) any person belonging to a small ethnic group or community,” and “(m) a person unable to establish rights or defend himself in court due to financial difficulties.” Therefore, Rohingya in Bangladesh are covered by this Act and its Rules.¹²

Neither the Regulations nor Rules appear to limit the applicability of legal aid services towards Rohingya applicants. The Rules state that legal aid service providers should, when appropriate, recommend alternative dispute resolution (ADR) over litigation, to which the applicant must agree.

PROTECTION NOTES

The Rohingya community should have access to protection under this Act, which includes legal advice and coverage of expenses for lawyers in both civil and criminal cases. Rohingya should be classified as qualifying “litigants who are incapable of seeking justice due to financial insolvency, destitution, helplessness and for various socio-economic conditions.” As per Section 16, Rohingya should enjoy the right to file an application for legal aid, and if rejected, have the right to appeal within 60 days. Such applications should be permitted to the District Legal Aid Committee as well as other relevant Committees.

A person accused of crimes who does not have legal assistance, nor sufficient means to pay for such assistance, should be assigned legal assistance free of charge.

IMMIGRATION LAW, LEGAL STATUS, AND DOCUMENTATION

Immigration and citizenship law and policy, as well as relevant administrative orders, rules, and regulations, govern the legal status of persons in Bangladesh. This includes most principally the Foreigners Act 1946, the Citizenship Act 1951, Citizenship Rules 1952, and the Bangladesh Citizenship (Temporary Provisions) Order 1972, and Rules 1978. Detailed discussions about the applicability of domestic citizenship laws and their potential in providing protection to Rohingya in Bangladesh are outside the scope of this document, which is primarily concerned with the rights of Rohingya persons who are non-citizens in Bangladesh and protection-seekers in Bangladesh. Such protection can be found through interpretation and analysis of laws and policies addressing the rights of non-citizens.

Foreigners Act, 1946

SUMMARY

Provides for the regulation of the entry to, presence in, and departure from Bangladesh by foreign nationals. This Act should be read in conjunction with the Prisons Act, 1894 and the Bengal Jail Code, 1864.

APPLICABILITY TO ROHINGYA

This Act applies to any foreign national in Bangladesh (defined as “a person who is not a citizen of Bangladesh”). Any Rohingya person in Bangladesh, who is not a national of Bangladesh, is covered by this Act. The Act does not specifically address the issue of statelessness or refugee status.

PROTECTION NOTES

Any violation of the Foreigners Act is a criminal offence per Section 14. Section 3 of this Act provides the Government with broad authority to make orders with respect to foreigners in Bangladesh, as well as with regards to their entry to (Section 3.2.a) and exit from (Section 3.2.b) Bangladesh. This includes the authority to issue orders requiring foreigners (or a class of foreigners) to reside in a particular place (Section 3.2.i) and to impose restrictions on movement (Section 3.2.ii). The Government has broad discretion in Section 10 to exempt any individual foreigner or any class or description of foreigner from any provision of the Act.

The analysis presented here is based on the understanding that the Government of Bangladesh (GoB) has exercised its powers under Section 10 to permit entry to and presence in Bangladesh of the Rohingya population that arrived beginning in August 2017. This understanding is based on various actions and statements by the Government that illustrate the exercise of this discretion. This includes, for example, the April 2018 Memorandum of Understanding between the Government of Bangladesh and UNHCR¹³ and statements by the Secretary of the Bangladesh Ministry of Home Affairs,¹⁴ which acknowledge the Government’s discretionary grant of entry to Rohingya.

The application of this exemption, which may or may not be limited to Rohingyas inside the camps and/or arriving during a specific time period, has far-reaching implications, as is demonstrated in the following entries in this document. Because this exemption is understood to have been applied, the following protections within this Act should be available to Rohingya:

- No criminal case should be filed against any Rohingya person for unlawful entry into Bangladesh under Section 3.2.a of this Act, particularly in instances where Rohingya persons are charged with or prosecuted for unrelated offences under other criminal laws.¹⁵

Refugee and Migratory Movements Research Unit (RMMRU) v. Bangladesh (High Court judgment, dated 31 May 2017)

SUMMARY

A Rohingya man was convicted in 2011 for unlawful entry into Bangladesh under Section 3 of the Foreigners Act 1946, four years after his arrest on 29 May 2007. The Trial Magistrate ordered that the time served by the convict in prison following his arrest be deducted from his sentence of five years, in accordance with Section 35.a of the Code of Criminal Procedure (CrPC), 1898, meaning he should have been released in 2012.

Despite this, however, he remained jailed until the High Court’s judgment on 31 May 2017, which ordered he be immediately released to the custody of UNHCR.

APPLICABILITY TO ROHINGYA

The Court’s ruling in this case provided important interpretation of, among other things, the rights of Rohingya detained in Bangladesh as governed by the Constitution, the Foreigners Act, 1946, and the CrPC, 1898.

PROTECTION NOTES

In this case, the defendant pleaded guilty to illegal entry since he had arrived prior to the 2017 influx. His circumstances of entry are therefore fundamentally differentiated from refugee influxes into Bangladesh from Myanmar since 2017, to which the Section 10 exemption under the Foreigners Act appears to have been applied.

Most significantly, in its ruling, the Court observed that the “[Refugee] Convention by now has become a part of customary international law which is binding upon all the countries of the world, irrespective of whether a particular country has formally signed, acceded to or ratified the convention or not.”

The Court observed that to keep a Rohingya man in jail even after the expiry of his prison term would contravene Article 32 of the Constitution, which guarantees to every person, including non-citizens, the right to life and liberty.

This judgment upholds the principle that no person should be kept in detention after the completion of a sentence or term of imprisonment for any criminal offence and confirms its applicability to non-citizens, including Rohingya individuals. Detained Rohingya should therefore be released to their normal place of residence—that is, to the camps in Cox’s Bazar or elsewhere. In its ruling, the Court held that return of released Rohingya to Myanmar was not possible in light of Bangladesh’s non-refoulement obligations. (The international law principle of non-refoulement forbids countries from returning individuals to a country where they would be in danger of persecution based on “race, religion, nationality, or membership of a particular social group or political opinion.”)

Any sentence to be served for conviction of an offence should thus be adjusted (reduced) based on time served in pre-trial detention, as per Section 35.a of the CrPC 1898.

Passport Act, 1920; and Rules, 1955

SUMMARY

Provides the Government with the authority to issue Rules requiring passports of persons entering Bangladesh and to make arrests and remove offenders in accordance with such rules.

The Rules provide that any individual entering Bangladesh must hold a valid passport and, where applicable, a valid visa. The penalty for contravening such an order is imprisonment for a term of up to three months, or a fine, or both.

APPLICABILITY TO ROHINGYA

This Act applies to the whole of Bangladesh without reference to citizenship. Therefore, Rohingya in Bangladesh are covered by this Act.

PROTECTION NOTES

Given the discretionary authority exercised under Section 10 of the Foreigners Act to exempt Rohingya from being prosecuted for unlawful entry and allowing Rohingya legal status to lawfully reside in Bangladesh, and in light of the circumstances of Rohingya arrival in Bangladesh, Rohingya should not be prosecuted for violation of the Passport Act in the course of entering Bangladesh to seek refuge.

Rohingya persons should not be prosecuted under this Act for entry into Bangladesh without valid papers. The conditions and circumstances in which Rohingya fled Myanmar, which did not allow them to be in possession of travel documents, have been widely acknowledged and recognized, therefore bolstering the argument that:

- an exception, allowed under Section 10 of the Foreigners Act, must be applied;¹⁶
- no criminal case should be started against any Rohingya individual for violation of established requirements, including under the Passport Act and Rules.

Passport (Offences) Act, 1952

SUMMARY

Provides that passport forgery and making false statements in applying for a passport are punishable offences.

APPLICABILITY TO ROHINGYA

This Act applies to the whole of Bangladesh, and also extraterritorially to all Bangladeshi citizens. Because it applies to the whole of the country, any Rohingya individual in Bangladesh is covered by this Act.

PROTECTION NOTES

This Act only covers attempted passport forgery and fraudulent statements given to acquire a Bangladeshi passport. If any Rohingya individual is charged with violation of this Act, they are protected by constitutional safeguards in criminal proceedings under Articles 33 and 35 of the Constitution, pertaining to those arrested, detained, and/or accused of committing crimes. These include the:

- right to counsel;
- right to be informed of charges;
- right to be brought before a Magistrate within 24 hours;
- protection from ex post facto laws;
- principle of no punishment without law;
- prohibition of double jeopardy;
- right to fair, public, speedy trial;
- prohibition of cruel treatment.

Bangladesh Passport Order, 1973; and Rules, 1974

SUMMARY

Provides that departing or attempting to depart from Bangladesh without a valid passport or travel document is a punishable offence, as is furnishing false information in order to obtain a passport.

APPLICABILITY TO ROHINGYA

This Order applies to the whole of Bangladesh (and also extraterritorially to all Bangladeshi citizens); therefore Rohingya in Bangladesh are covered by this Order.

PROTECTION NOTES

Article 3 of the Order establishes that no person shall depart or attempt to depart from Bangladesh without a valid passport, which is made an offence when read with Section 11, punishable by up to six months' imprisonment or a fine of up to 2,000 taka, or both.

However, under Article 15 of the Passport Order, the GoB has the discretion to issue a passport or travel document to persons who are not citizens of Bangladesh, if it is of the opinion that it is necessary to do so in the public interest. Given the widely recognized conditions in which they were forced to flee Myanmar, the Government should consider establishing criteria for granting travel documents to Rohingya, rather than applying punitive measures against them for attempting to depart from Bangladesh without valid travel documents.

Foreigners Order, 1951

SUMMARY

Provides the Government with authority to grant or refuse entry to foreigners into Bangladesh.

The Foreigners Order was promulgated under the authority granted to the Government by Section 3 of the Foreigners Act.

APPLICABILITY TO ROHINGYA

This Order applies to any foreigner in Bangladesh; therefore Rohingya in Bangladesh are covered by this Order.

Section 10 prohibits foreigners' engagement in occupations specified by the Government without the written permission of the civil authority. Under Section 11, the civil authority may impose restrictions on the place of residence and the movements of foreigners by issuing written orders.

PROTECTION NOTES

Given the discretionary authority exercised by the Government under Section 10 of the Foreigners Act to exempt Rohingya from unlawful entry and any or all provisions of the Foreigners Act and orders issued thereunder, no Rohingya should be refused entry into Bangladesh from Myanmar, nor be punished for entry.

Registration of Foreigners Act, 1939; and Rules, 1966

SUMMARY

Provides the Government with the authority to issue Rules requiring registration of foreigners entering, exiting, and/or residing in Bangladesh.

The Rules define the procedures relevant to the registration of foreigners, pursuant to the aforementioned Act. This includes the requirement for any foreigner to report their presence to a prescribed authority, upon entry and following any transit, and for any foreigner about to leave Bangladesh to report their date of intended departure, and to provide proof of identity.

APPLICABILITY TO ROHINGYA

This Act applies to any foreigner in Bangladesh (defined as “a person who is not a citizen of Bangladesh”) and therefore Rohingya in Bangladesh are covered by this Act.

PROTECTION NOTES

Rohingya in Bangladesh have been registered by UNHCR and have received registration ID cards (known as “smart cards”) bearing an official logo of the GoB. Rohingya should therefore be understood to have complied with any and all legal requirements for foreigners to register with authorities, even though there is no reference to UNHCR registration in Bangladesh’s national law. Such ID cards should be accepted as documentary proof of legal identity. Given the discretionary authority available under Section 6 of this Act, Rohingya should be exempted from the application of any punitive measures under the 1939 Act or the 1966 Rules.

In the event that new registration rules or a new registration scheme is introduced, individual rights must be respected in accordance with international and constitutional standards.

Registration of Foreigners Exemption Order, 1966

SUMMARY

Exempts certain foreigners from the obligation to register (that is, exempts them from the operation of the Registration of Foreigners Rules, 1966).

APPLICABILITY TO ROHINGYA

This Order applies to specific stated categories of foreigners, including “persons under the age of sixteen.” Therefore, Rohingya under the age of 16 in Bangladesh are covered by this Order.

PROTECTION NOTES

Given the existing implementation of a registration scheme in cooperation with UNHCR,¹⁷ Rohingya should be considered in compliance with registration rules for foreigners, and therefore no special exemption should be considered necessary.

Foreigners Parolee Order, 1965

SUMMARY

Provides for restrictions on foreigners who are declared as “parolees” and interned at parolee centres.

APPLICABILITY TO ROHINGYA

This Order only applies to “parolees.” As Rohingya have not been categorized as “parolees,” they are not covered by this Order.

A “parolee” is defined as “any foreigner in respect of whom there is in force an order under clause [3.2.e of the

Foreigners Act] requiring him to reside at a place set apart for the residence under supervision of a number of foreigners, shall while residing therein be subject to such conditions as to maintenance, discipline and the punishment of offences and breaches of discipline as the Government may from time to time by order determine.”

PROTECTION NOTES

Bangladesh has not declared Rohingya to be “parolees” by an order made under Section 3.2.e of the Foreigners Act, 1946. This indicates an approach in line with international human rights standards and the principle of non-penalization.

Rohingya should not be detained or confined for any violation of the Foreigners Act, given the discretionary authority exercised under Section 10 of the Foreigners Act.

Births and Death Registration Act, 2004; and Rules, 2018

SUMMARY

Provides for compulsory birth and death registration for all persons born in Bangladesh or born overseas to Bangladeshi parents.

APPLICABILITY TO ROHINGYA

This Act applies to all persons in Bangladesh and defines “person” as “any Bangladeshi or any foreigner living in Bangladesh and also any refugee taking shelter in Bangladesh.” Therefore any Rohingya in Bangladesh—whether a “foreigner living in Bangladesh” or “refugee taking shelter in Bangladesh”—is covered by this Act and their birth or death must be registered.

PROTECTION NOTES

Rohingya should be registered and receive birth and death registration certificates in accordance with national law and international standards, as proof of their legal personhood and identity, including name, family relations, and nationality (or statelessness). The GoB acknowledged the applicability of this Act to Rohingya in responding to a query by the UN Committee on Migrant Workers in early 2017, stating that “there is no bar on the registration of births of children of undocumented nationals of Myanmar in Bangladesh. In accordance with this 2004 Act, children born to registered refugee parents (both parents) are registered officially at the government database.”¹⁸

Cabinet Division Notifications:

Notification No. 3.00.0000.522.125.93.16.47 dated 26 January 2017

Notification No. 04.00.0000.522.125.04.18-129 dated 13 November 2019

SUMMARY

These notices issued by the Cabinet Division instruct local authorities to form committees in Chittagong, Cox's Bazar, and the Chittagong Hill Tracts (CHT), and subsequently in all districts of Bangladesh, to "Identify Illegal Immigrants of Myanmar (Rohingya)" living in Bangladesh beyond the camps in Cox's Bazar and to arrange for their return to the camps.¹⁹

APPLICABILITY TO ROHINGYA

The Notification dated January 2017 applies exclusively to Chittagong, Cox's Bazar, and the CHT. The Notification dated November 2019 instructs that similar committees be formed at the district and upazila level in the remaining districts of Bangladesh.

PROTECTION NOTES

These notifications do not make reference to any lawful order under which Rohingya refugees found outside of the camps in Cox's Bazar are to be forced to return to them, instead referring only vaguely to a "designated area" from which Rohingya individuals should not be allowed to leave.

It remains unclear whether or not the GoB has issued orders under Section 3.2.e.i of the Foreigners Act to require that members of the Rohingya community reside and remain within the camps.

Cross-References:

INTERNAL (RELEVANT LEGISLATION FOUND IN OTHER SECTIONS OF THIS DOCUMENT):

- Constitution of Bangladesh, Arts. 31, 32, 33, 35 & 44
- Legal Aid Services Act, 2000

EXTERNAL (INTERNATIONAL HUMAN RIGHTS LAW INSTRUMENTS):

- International Covenant on Civil and Political Rights (ICCPR), Acceded: 09/06/2000:
 - Right to liberty of movement and residence for individuals lawfully within the State's territory (Article 12)
 - Right to marry and establish a family (Article 23)
 - Right of children to have their birth registered and to acquire a nationality (Article 24)
 - Right to equality before the law and equal protection of the law (Article 26)
- Convention on the Rights of the Child (CRC), Acceded: 08/03/1990 & Optional Protocols on the Involvement of Children in Armed Conflict (Ratified: 08/06/2000) and on the Sale of Children, Child Prostitution and Child Pornography (Ratified: 08/06/2000):
 - Obligation of the State to duly consider the child's best interests (Article 3)
 - Right of children to have their birth registered, to a name, to acquire a nationality, and as far as possible, to know and be cared for by his or her parents (Article 7)
 - Obligation of the State to provide appropriate assistance and protection in the preservation of a child's identity, and where a child is illegally deprived of their identity, to take steps to speedily re-establish their identity (Article 8)
 - Obligation of the State to provide appropriate protection and humanitarian assistance to realize the rights set forth in the CRC and in other applicable instruments (Article 22)
 - Obligation of the State to take all feasible measures to ensure protection and care of children who are affected by an armed conflict (Article 38)
- Convention on Cruel, Inhuman and Degrading Treatment and Punishment (CAT), Acceded: 10/05/1998:
 - Prohibition on refoulement to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture (Article 3)

FAMILY LAW

There is a significant lack of clarity regarding the applicability of Bangladesh's corpus of family law towards the Rohingya community. Applying this body of law towards Rohingya claimants hinges on a range of factors, including their ability to register marriages and divorces, and subsequent access to Family Courts. There are a number of court judgments that provide further understanding of the rights afforded to those with officially registered marriages.²⁰ The vast majority of family disputes are nonetheless resolved through alternative dispute resolution (ADR) processes, widely practiced in Bangladesh, within communities and through more structured initiatives by non-governmental organizations and within the Courts as part of pre-trial processes. Although the use of ADR can be more efficient and effective than formal justice processes, the limitations of ADR can be significant, particularly in contexts of extreme power imbalances and in the absence of equal gender representation and participation.

Family Courts Ordinance, 1985

SUMMARY

Provides for the establishment of Family Courts with jurisdiction to adjudicate matters relating to the dissolution of marriage, restitution of conjugal life, dower, and the maintenance, guardianship, and custody of children.

APPLICABILITY TO ROHINGYA

This Ordinance applies to the whole of Bangladesh (except for the Rangamati Hill District, Bandarban Hill District, and Khagrachari Hill District in the Chittagong Hill Tracts), without reference to citizenship. The Ordinance has been interpreted by courts to be applicable to people of all religions in Bangladesh.²¹ Therefore, Rohingya persons, as long as they do not live in the exempted districts, are arguably covered by the Ordinance.

PROTECTION NOTES

In accordance with Section 5 of this Act, Family Courts have exclusive jurisdiction to try suits relating to/arising out of the dissolution of marriage, restitution of conjugal rights, dower, maintenance, and the guardianship and custody of children, provided that in cases involving Muslim parties, the relevant provisions of the Muslim Family Laws Ordinance, 1961 will apply to the Court's decisions on such matters.

In order to bring a suit before a Family Court:

- The cause of action should wholly or partially have arisen within the territorial jurisdiction of the Family Court concerned, or the parties should have last resided together within that jurisdiction (Section 6).
- The plaintiff must provide two true copies of the application, and pay the cost of service of summons and postal charges for notices delivered to the defendant, otherwise the plaint may be rejected by the Family Court (Section 6.8).
- Upon receiving a plaint, the Family Court will fix a date within 30 days for the defendant to appear before the Court and submit a written defence (Section 8).
- Failure to appear on the part of the defendant may result in the proceedings continuing in their absence if the Court is satisfied that the summons was delivered (Section 9.8).

A Rohingya woman undergoing divorce should be able to seek certain protections, such as maintenance from her husband for not only herself but also her child(ren).

Pochon Rikssi Das v. Khuku Rani Dasi and others **(1998) 50 DLR (HCD) 47**

SUMMARY

A special bench of the High Court Division held that “the Family Court Ordinance

has not taken away any personal right of any litigant of any faith.” The Court declared that the “Family Courts Ordinance applies to all citizens irrespective of religion.”

The judgment clarifies that the Family Courts are the sole courts with jurisdiction over family law matters and that while the Family Courts are subjected to the provisions of the Muslim Family Laws Ordinance in

the matters prescribed therein, this can in no way be interpreted to mean that *only* Muslim parties may have their family law matters heard by the Family Courts. Everyone, regardless of religion, can have these matters heard by the Family Courts.

APPLICABILITY TO ROHINGYA

The High Court makes specific reference to citizens and therefore renders applicability of the Family Court to Rohingya unclear. There is reason to believe that Rohingya are covered by virtue of the Ordinance's territorial applicability (applies to the whole of Bangladesh, except the Rangamati Hill District, Bandarban Hill District, and Khagrachari Hill District in the Chittagong Hill Tracts).

Rohingya parties should be able to have their family law matters heard by the Family Courts where they meet the substantive and territorial standing criteria.

PROTECTION NOTES

The High Court's judgment clarifies ambiguities relating to the applicability of the Family Courts Ordinance and their exclusive jurisdiction over matters of family law, and that anyone living within the territorial jurisdiction of a Family Court can seek recourse on matters of family law within the courts. Only those living within the excluded Chittagong Hill Tracts are excluded from this avenue.²² The judgment therefore seems to suggest that the Family Courts Ordinance is applicable to Rohingya, so long as they do not reside within excluded territories. Further guidance and clarification is needed to underscore the right of Rohingya persons to access Family Courts.

Muslim Family Laws Ordinance, 1961

Provides for the regulation of matters relating to inheritance, dissolution of marriage, polygamy, and maintenance under Muslim law.

This Ordinance applies to all of Bangladesh, and also extraterritorially to all Muslim citizens of Bangladesh.

If Family Courts were to hear suits involving Rohingya persons and apply this Ordinance, a number of judicial protections would be available to Rohingya women during divorce/dissolution of Muslim marriages and in relation to maintenance and the granting of child custody. More specifically, Rohingya individuals should be able to benefit from the following protections:

- A husband wishing to enact divorce through talaq must provide notice in writing to the Union Council Chairman and provide his wife a copy (Section 7.1), and the divorce will not go into effect until 90 days have passed after the written notice was provided (Section 7.3).
- In cases where the wife of a man seeking divorce is pregnant, the divorce will not take effect until the end of pregnancy or the 90-day waiting period, whichever comes later (Section 7.5).
- A wife whose husband does not adequately maintain her may seek the issuance of a certificate of maintenance, which must be paid by the husband (Section 9).
- A husband who seeks to marry an additional wife may only do so with the permission of the Arbitration Council, taking into account the views of the husband's existing wife/wives (Section 6).

Muslim Marriages and Divorces (Registration) Act, 1974 and Rules, 2009

SUMMARY

Provides for compulsory registration of Muslim marriages and voluntary registration of Muslim divorces.

APPLICABILITY TO ROHINGYA

This Act applies to “all Muslim citizens of Bangladesh wherever they may be.” Therefore, Rohingya are arguably not covered by this Act, because they are not citizens of Bangladesh.

PROTECTION NOTES

There is scope for the Government to issue statements and guidance to provide for registration of marriages among the Rohingya communities.

If this law were made applicable to Rohingya Muslims living in Bangladesh, they would be subject to compulsory registration of Muslim marriages and voluntary registration of divorces, providing Rohingya women with improved access to remedies such as maintenance. Additionally, the ability for mixed Rohingya-Bangladeshi marriages to be officially registered under this Act by Marriage Registrars would help to prevent cases where, due to spousal abandonment and/or lack of formal registration, children born of mixed parentage are unable to prove that one of their parents is a Bangladeshi citizen and thereby access their right to citizenship under the Citizenship Act, 1951.

Dissolution of Muslim Marriages Act, 1939 (as amended up until 1986)

SUMMARY

Provides for a number of grounds on which a Muslim woman may apply for the dissolution of her marriage to a Muslim man.

APPLICABILITY TO ROHINGYA

The Act applies to the whole of Bangladesh without reference to citizenship. The Act therefore applies to any Rohingya woman married under Muslim law.

PROTECTION NOTES

This Act should allow a Muslim Rohingya woman to apply for the dissolution of her marriage to a Muslim man, provided the application is made with sufficient grounds. These grounds include maltreatment/abuse (including non-physical abuse) and failure to pay maintenance for two or more years (Section 2).

Muslim Personal Law (Shariat) Application Act, 1937

SUMMARY

Provides that in matters relating to marriage, dissolution of marriage, maintenance, guardianship, gift, trust, and succession where “parties are Muslims,” the applicable law shall be the Muslim personal law (Shariat).

APPLICABILITY TO ROHINGYA

This Act applies to “Muslims in Bangladesh” (without reference to citizenship) who satisfy certain requirements. Therefore, any Rohingya individual of Muslim faith is arguably covered by this Act, provided she or he:

- is competent to contract under the criteria in Section 11 of the Contract Act, 1872 (i.e. any person “of the age of majority” in law and of sound mind);
- a resident of Bangladesh;²³
- has made a relevant declaration before the government authorities indicating their willingness to be bound by Muslim personal law.

PROTECTION NOTES

Rohingya Muslims “of the age of majority,” that is, above the age of 18, should be able to choose that Shariat be the rule of decision in cases where the involved parties are Muslims, and therefore be permitted to access Family Courts in order to resolve relevant disputes that fall under the jurisdiction of these Courts.

If access to Family Courts to resolve family disputes is granted, Rohingya persons would be able to benefit from protection-oriented interpretation and application of Muslim personal law, which has in recent years provided the basis for some progressive judgments which grant protections to women and children.²⁴

Guardians and Wards Act, 1890 (as amended up until 1973)

SUMMARY

This Act gives courts the authority to declare an individual the guardian of a minor ward, and to make orders regarding custody of children.

APPLICABILITY TO ROHINGYA

The Act applies to the whole of Bangladesh; however, only Bangladeshi citizens may be appointed as the guardian of a Bangladeshi minor.

PROTECTION NOTES

Multiple judgments of the High Court Division have asserted that, in the context of granting custody of a minor, the welfare of the child is to be given paramount consideration.²⁵ In the event of a Rohingya minor’s custody being determined by court order, the Court must uphold this consideration.

Hindu Marriages Registration Act, 2012; and Rules, 2013

SUMMARY

Provides for the optional registration of Hindu marriages.

APPLICABILITY TO ROHINGYA

This Act is applicable to all Hindus residing in Bangladesh “irrespective of their citizenship,” and therefore Hindu Rohingya in Bangladesh should be covered by this Act.

PROTECTION NOTES

Rohingya who are of the Hindu faith and who wish to have their marriage registered should be afforded official registration.

Hindu Women’s Right to Separate Residence and Maintenance Act, 1946

SUMMARY

Provides a Hindu woman the ability to apply for court-ordered separate residence and maintenance from her husband under certain circumstances.

APPLICABILITY TO ROHINGYA

The Act extends to the whole of Bangladesh, without reference to citizenship. Therefore, Rohingya women of the Hindu faith who are married to a Hindu man should be covered by this Act.

PROTECTION NOTES

Hindu women in the Rohingya community who are living in Bangladesh and wish to apply for separate residence and/or maintenance from their Hindu husbands by court order should be afforded the opportunity to apply to the courts. It should be noted that this Act provides only limited acceptable grounds for the courts to issue such an order, including cruelty on the part of a husband, which “renders it unsafe or undesirable for her to live with him” (Section 2.1). Bangladesh currently has no legislation enabling Hindu women to dissolve their marriages via divorce.

Christian Marriage Act, 1872

SUMMARY

Provides for the solemnization and registration of Christian marriages in Bangladesh.

APPLICABILITY TO ROHINGYA

This Act is applicable “only as regards Christian citizens of Bangladesh,” and therefore Rohingya persons of Christian faith in Bangladesh are arguably not covered by this Act.

PROTECTION NOTES

Christian members of the Rohingya community who wish to have their marriage registered should be afforded official registration under the Christian Marriage Act, 1872.

Special Marriage Act, 1872

SUMMARY

Provides for the registration of interreligious marriages, as well as marriages between non-religious individuals in Bangladesh.

APPLICABILITY TO ROHINGYA

This Act applies to the whole of Bangladesh without direct reference to citizenship. There are currently no Special Marriage Courts in Cox’s Bazar and only three in the whole of Bangladesh, currently located in Dhaka, Chittagong, and Sylhet.

PROTECTION NOTES

In order to register a marriage under this law, the married couple needs previous or advance notice to be issued by a Special Marriage Registrar and must swear an affidavit on oath that they do not profess to any religion. Due to practical limitations, the rights under this Act are currently inaccessible to Rohingya.

Administrative Orders on Marriage Registration: 2002, 2004, 2014, and 2017 Circulars banning marriage with Rohingya

SUMMARY

A “strict order” issued by the Inspector General of Registration, Directorate of Registration, dated 9 July 2014, instructing *nikah* (Muslim Marriage and Divorce Registrars) registrars not to register any marriage of “local residents” with non-citizen “Rohingya refugees.” The notice warned that non-compliance with the order will result in “legal consequences” for the Muslim marriage registrars.

A similar order was issued by the Law and Justice Division of the Ministry of Law, Justice and Parliamentary Affairs on 25 October 2017, covering marriage registrars in a number of “Special Areas” where Rohingya are living, designated by the Election Commission in the context of the 2018 Voter List update.

APPLICABILITY TO ROHINGYA

The most recent Administrative Order is applicable to Bangladeshi *nikah* registrars in instances of registering marriages between Rohingya and Bangladeshi citizens. It therefore has an effect on and covers Rohingya who seek to register their marriages to Bangladeshi citizens.

PROTECTION NOTES

Generally, there is no legal bar for a Bangladeshi to marry a foreigner, with the exception of some restrictions which apply to public servants, and therefore the legal basis for restricting the registration of marriages between Bangladeshi citizens and Rohingya individuals is unclear.

The 2014 and 2017 circulars do not actually prohibit Rohingya-Bangladeshi marriages. Rather, they seek to stop the official registration of marriages between “local residents” and “members of the Rohingya community” in the Cox’s Bazar, Bandarban, Rangamati, and Chattogram districts by requiring marriage registrars to stringently check the national IDs of individuals applying to have their marriage registered. Thus these orders per se do not prohibit marriage by Rohingya in Bangladesh, and marriages regularly take place without registration. In practice, however, the above notification has created a de facto ban on registration of Rohingya-Bangladeshi marriages, and although unclear under what basis, the police reportedly pursue Bangladeshi citizens who have married a Rohingya refugee for allegedly violating provisions of the Foreigners Act.

Cross-References:

INTERNAL (RELEVANT LEGISLATION FOUND IN OTHER SECTIONS OF THIS DOCUMENT):

- Constitution of Bangladesh, Arts. 41 & 44
- Legal Aid Services Act, 2000

EXTERNAL (INTERNATIONAL HUMAN RIGHTS LAW INSTRUMENTS):

- International Covenant on Civil and Political Rights (ICCPR), Acceded: 09/06/2000:
 - Right of men and women of marriageable age to marry and to found a family (Article 23.2)
 - Prohibition on forced/coerced marriages (Article 23.3)
 - Freedom of religion and religious practice (Article 18.1)
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Acceded: 06/11/1979:
 - Obligation of the State to ensure equality before the law, including equal treatment before judicial organs (Article 5.a)
 - Obligation of the State to ensure the right to marriage and choice of spouse (Article 5.d.iv)
- Convention on the Rights of the Child (CRC), Acceded: 08/03/1990 & Optional Protocols on the Involvement of Children in Armed Conflict (Ratified: 08/06/2000) and on the Sale of Children, Child Prostitution and Child Pornography (Ratified: 08/06/2000):
 - Obligation of the State to respect and ensure the rights and protections set forth in the CRC towards all children in their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status (Article 2)
 - Obligation of the State to undertake to protect the child from all forms of sexual exploitation and sexual abuse (Article 34)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Acceded: 10/06/1984 & Optional Protocol (Ratified: 09/06/2000):
 - Obligation of the State to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women (Article 2.f)
 - Obligation of the State to take all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men (Article 3)
 - Obligation of the State to grant women equal rights with men with respect to the nationality of their children (Article 9.2)
 - Obligation of the State to take all appropriate measures, including legislation, to eliminate discrimination against women in matters relating to family law, marriage and divorce (Article 16) and to establish a minimum age for marriage (Article 16.2)

CRIMINAL LAW AND FAIR TRIAL RIGHTS

Although the applicability of criminal law to Rohingya appears more straightforward than other areas of the law, there are questions about the practical implementation of protections and safeguards, guaranteed under both statutory and constitutional law, in relation to Rohingya persons accused of crimes. Considering the potential punishments under criminal law, concerns about safeguards governing arrest, detention, and fair trial are particularly acute. In addition to criminal law, constitutional safeguards conferred under Articles 33 and 35 include the right of any person who is arrested and detained to be informed of the basis of their arrest/detention, to be provided with legal counsel, and to be brought before a Magistrate within 24 hours of arrest. While this section focuses on the rights of Rohingya individuals accused of criminal offences, legislative provisions providing guarantees towards the victims and witnesses of crimes are covered separately in the “Protections for Victims and Witnesses of Crimes” section of this guide.

Penal Code, 1860

SUMMARY

Provides definitions for a number of criminal offences and their respective penalties.

APPLICABILITY TO ROHINGYA

This Code applies to the whole of Bangladesh without reference to citizenship, and extritorially. Therefore, Rohingya in Bangladesh charged with criminal offences are covered by this Code.

PROTECTION NOTES

A criminal case should not be started against a Rohingya person where the action, which would otherwise be considered an offence, was committed in the course of self-defence from certain crimes or under other general exceptions such as resulting from accidents.

Under no circumstances should Rohingya children under the age of nine be charged with an offence under the Penal Code (Section 82).²⁶ No Rohingya child age nine²⁷ or above and under 12 years of age should be charged with an offence if the child lacks “sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion” (Section 83).

Code of Criminal Procedure (CrPC), 1898

SUMMARY

Provides the procedural framework for almost all criminal trials (excluding some special criminal laws that provide different procedures for defined crimes and those that make special provisions for certain groups such as children). The CrPC sets out the entire procedure, from the first information report (FIR/reporting of the crime to the police), through the investigation, arrest of suspects, and all stages of the trial up to sentence, conviction, and appeal. It also provides for powers of the High Court to issue habeas corpus petitions.

APPLICABILITY TO ROHINGYA

This Code applies to the whole of Bangladesh without reference to citizenship. Therefore, Rohingya in Bangladesh charged with a criminal offence are covered by this Code.

PROTECTION NOTES

Clear guidance from the Supreme Court (Appellate Division) calls for the police to follow the standard of “no arbitrary detention” when making an arrest without warrant and on “reasonable suspicion” of commission of an offence under Section 54 of the CrPC. In accordance with the Supreme Court’s guidelines, when an individual arrested without warrant is brought before a Magistrate to seek continued detention within 24 hours of their arrest (as per Sec. 61 of the CrPC), the arresting law enforcement officer must submit in writing their reasons for the inability of their investigation to be completed within 24 hours as well as for their belief that the accusations are well-founded.²⁸

The decision further instructs law enforcement officers to notify the arrestee’s nearest relative or, in their absence, a friend named by the arrestee as soon as possible, within a maximum of twelve hours’ time.²⁹ It requires Magistrates to monitor and ensure arrests in line with court directions and to order release of accused person on bond in case the arresting officer fails to produce a copy of the relevant entries in his or her case diary.³⁰

Per Section 52 of the CrPC, any female Rohingya subject to police search should be searched only by female officers, with strict regard to decency.

Rohingya charged with crimes should be evaluated for eligibility of bail, and release on bail should be afforded wherever possible. This is especially the case where Rohingya children (under the age of 18),³¹ women, or any Rohingya person experiencing illness are accused of offences (as per Section 497, CrPC). By virtue of Section 52 of the Children Act 2013, any person under the age of 18 may be released on bail by the Children's Court.

Evidence presented against a Rohingya defendant in criminal proceedings must be interpreted to them in a language they understand (Section 361). Further, upon examination the accused must have the record of the examination interpreted to them in a language they understand, and the accused must be given occasion to explain or add to their answers (Section 364).

Any sentence to be served on conviction of an offence should be adjusted (reduced) based on time served in pre-trial detention, per Section 35.a of the CrPC.

Per Section 33.1, where Rohingya are sentenced to imprisonment in default of payment of a monetary fine, the period of imprisonment proscribed in default shall not exceed one-fourth of the maximum punishment for the offence.

In terms of protections afforded to victims of offences and/or their families under the CrPC, Section 545 provides for the Court to order that punitive fines be leveraged to pay for expenses or restitution to victims. Section 174 states that the police have a duty to investigate suicide and other unnatural deaths and, when there is any doubt as to the cause of death, that they must send the body for post-mortem examination. Further, Magistrates have the duty to hold inquiry into the cause of death of any individual who dies while in the custody of police, and the authority to hold inquiry either instead of or alongside the police-led investigation in other cases of unnatural death (Section 176).

Evidence Act, 1872

SUMMARY

Governs the definition and admissibility of various forms of evidence in all court proceedings before all courts.

APPLICABILITY TO ROHINGYA

This Act applies to the whole of Bangladesh and to all judicial proceedings in or before a court (with the exception of some courts martial). Therefore, Rohingya are covered by this Act.

PROTECTION NOTES

This Act provides a number of important protections that can benefit both Rohingya victims and accused, including a prohibition on legal counsel disclosing information/communications with their clients without express consent of the client (Section 126). Per Section 127, this also applies to interpreters as well as any clerks working on the behalf of the lawyer. The confidentiality of attorney-client communications is further asserted by Section 129.

Under Section 122, communication between a Rohingya accused of a crime and their spouse is confidential and such communications may only be disclosed with the mutual consent of both spouses, other than in cases where one spouse is accusing the other of a crime.

By virtue of Section 132, while a Rohingya witness is not excused from providing answers that may prove to be self-incriminating, such answers may not be used to arrest or prosecute the witness for committing an offence.

Prisoners Act, 1900

SUMMARY

Provides for the duty of prisons to detain persons committed to their custody by a legal writ, warrant, or court order; asserts that time spent in custody of a mental health facility is to be considered time served; and outlines procedures for bringing prisoners before the courts to present testimony in legal proceedings.

APPLICABILITY TO ROHINGYA

This Act applies to the whole of Bangladesh without reference to citizenship. Therefore, Rohingya imprisoned in Bangladesh are covered by this Act.

PROTECTION NOTES

Like any other individual in Bangladesh, Rohingya individuals may only be detained in prison by virtue of a lawful order, writ, or warrant (Section 3). By virtue of Section 30, any Rohingya prisoner deemed to be “of unsound mind” (suffering mental illness) should be transferred to a mental health facility where they can receive treatment while serving the remainder of their sentence or until they are no longer deemed to be suffering mental illness, and time spent in the custody of such a facility is to be counted as time served (Section 30.3).

As per Section 48, any Rohingya imprisoned in Bangladesh must have any Criminal or Revenue Court process directed towards them shown and explained to them by a prison officer, and any request to have this process sent to another party by the prisoner must be followed, provided the prisoner pays the cost of delivery.

Prisons Act, 1894

SUMMARY

Provides rules for the regulation and administration of prisons and the rights of prisoners.

APPLICABILITY TO ROHINGYA

This Act applies to the whole of Bangladesh without reference to citizenship. Therefore, Rohingya imprisoned in Bangladesh are covered by this Act.

PROTECTION NOTES

Rohingya prisoners are entitled to a number of rights under this Act, such as separate accommodation or segregation based on age and sex (Section 27), and examination upon admission to include a record of the prisoner’s state of health, and of any wounds or marks. Examination of female prisoners should be carried out by a matron (Section 24).

All Rohingya prisoners convicted of civil offences or under trial for criminal offences may receive visitors during visitation hours, and have the right to private visitations with their duly qualified legal representative.

Bengal Jail Code, 1864

SUMMARY

Provides for a number of rights and obligations of prisoners, including visits by family and legal advisors, the release of prisoners after having served their terms of imprisonment, and repatriation to his/her country if s/he is a foreigner.

APPLICABILITY TO ROHINGYA

This Code contains no indication of jurisdiction. Therefore, Rohingya imprisoned in Bangladesh are covered by this Code.

PROTECTION NOTES

The Bengal Jail Code draws from a number of Acts, such as the Prisons Act, as well as orders and rules issued under Section 60(a) of that Act. The rights of Rohingya prisoners while imprisoned are largely drawn from this Code, in addition to relevant protections and rights afforded by the Constitution and the Criminal Code of Procedure, as follows:

- Prisoners are not to be beaten or subjected to any unlawful punishment by prison staff (Section 187), and staff are subject to dismissal and/or prosecution under Sec. 54 of the Prisons Act for doing so (Section 202).
- Prisoners are to be held in separate wards according to “male” or “female”; prisoners under trial are to be housed separately from convicted prisoners, and short-term and long-term offenders are to be housed separately (Section 616).
- Prisoners are to be afforded treatment for illness by the Chief Medical Officer (Section 94) or, if necessary, transported to an external hospital for care (Section 597).
- Prisoners are to be afforded opportunities to appeal their convictions from prison (Sec. 599).
- Prisoners are not to be precluded from education (281.b) and should be provided vocational training (261.2).
- Visits by legal advisors, family, and friends are to be afforded once a week for prisoners under trial (Section 674) and prisoners under appeal are to be allowed reasonable communication with legal advisors and allowed to sign a power of attorney (Section 601).
- Solitary confinement is limited in duration and to be applied by court order (Section 599).

Further, prisoners who have completed their sentences are to have their private property returned and to be granted a subsistence allowance for their journey “to their houses” (Paragraph 78). Rohingya who live in the camps and who are released from prison should therefore be entitled to be returned to camps at the cost of the State.

Any repatriation to Myanmar would constitute unlawful refoulement. In the RMMRU judgment, the Supreme Court’s High Court Division held that Rohingya should be sent to camps in Bangladesh after completion of their prison terms, and reaffirmed prior jurisprudence holding that foreigners are not to be kept in prison following the completion of their sentence.³² This ruling affirmed Bangladesh’s obligation under customary international law to honour the principle of non-refoulement.

Police Regulations of Bengal, 1943

SUMMARY

Provides operational guidelines for the Bangladesh Police, with reference to the Code of Criminal Procedure, 1898, including police misconduct and filing First Information Reports (FIRs).

APPLICABILITY TO ROHINGYA

These regulations apply to the Bangladesh Police, and therefore also apply to interactions between the Bangladesh Police and Rohingya in Bangladesh.

PROTECTION NOTES

Police officers are obliged to “show forbearance, civility and courtesy towards all classes” in their interactions with the public (Section 33), and “rudeness, harshness and brutality” are prohibited. These rules of conduct apply to police officers in their interactions with Rohingya individuals.

The Regulations further define procedures police officers should follow regarding complaints made by victims of or witnesses to offences, and these regulations must also be followed when a Rohingya individual wishes to file a complaint. Police officers are required to record a First Information Report (FIR) for any cognizable crime (i.e., police can arrest without a warrant) mentioned in Sec. 154 of the CrPC where information is provided either orally or in writing (Section 243). Further, police officers should not delay issuing an FIR until they have tested the veracity of the complaint (e.g., waiting until the results of a medical exam have been provided to record an FIR regarding rape). Section 244 states unequivocally: “A first information report shall be recorded in respect of every cognizable complaint referred before the police, whether prima facie, false or true, whether serious or petty, whether relative to an offence punishable under the [Bangladesh] Penal Code or any special or local law.” The mere fact that a cognizable crime occurred outside of the jurisdiction of the police office where a complaint is lodged does not relieve the police officer from responsibility to take action; rather, the police officer should inform the police office in the relevant jurisdiction (Section 248).³³

Section 260 instructs police officers conducting investigations to avoid harassment of the public, and to limit their interrogation only to necessary parties, who should generally be questioned separately and “in a manner that will not be distasteful to them.” Further, police officers have no legal power to summon any accused individual to appear before them, other than by arrest. Therefore, any Rohingya made to appear before the police in such a way that their freedom is restricted must be considered to be under arrest, and subject to all rights thereby guaranteed, such as being brought before a Magistrate within 24 hours (Section 316.b).

Torture and Custodial Death (Prevention) Act, 2013

SUMMARY

Prohibits the use of torture by law enforcement agencies to extract confessions, provides remedies in cases of torture and custodial death, including compensation, and requires measures for prevention, to implement Articles 2 and 4 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment, to which Bangladesh is a signatory.

APPLICABILITY TO ROHINGYA

This Act applies to all public officers, law enforcement agencies, and armed forces in Bangladesh. Therefore, it applies to these agencies’ and individuals’ interactions with Rohingya in Bangladesh.

PROTECTION NOTES

Under Section 2.6 of this Act, “torture” is defined as any act or omission which causes pain, whether physical or mental, to any person:

- for the purposes of obtaining information or a confession from a person or some other person;
- punishing any person for any act or omission for which that person or some other person is responsible or is suspected of being responsible;

- intimidating or coercing any person or some other person;
- on the basis of discrimination, provocation, or consent or authority of any public officer or any governmental capacity.

Complaints of torture can be submitted either through the normal process for complaints outlined in the CrPC, or directly before the courts, in which case the complainant will be immediately sent for a medical examination, after which a report should be submitted to the courts within 24 hours (Section 4). Upon reading the report, the courts may direct the Superintendent of Police or a police officer of higher rank to register a case (Section 5), and the investigation must be completed by an officer of at least equal rank to the alleged perpetrator (Section 5.5). Reports of torture may also be made by third parties either by bringing a complaint directly before a court (Section 6), or by bringing the complaint to a Court of the Sessions Judge or to a police officer of the rank of Superintendent of Police or higher (Section 7). Importantly, the burden of proof lies with the accused if harm is caused by the negligence or carelessness of a public officer or person acting on the behalf of a public officer (Section 19).

Complainants may file a petition to the Court of Sessions Judge for a protection order against any alleged perpetrator under this Act, and the Court should pass an order on the petition within 14 days (Section 11). Protection orders made under this Section can include detention of the alleged perpetrator for a minimum period of seven days, which may be extended as necessary (Section 11.4). The Court may also direct the investigating officer to ensure compliance with any protection order (Section 11.5) and can take other necessary orders to safeguard complainants, including relocation, security detail, or restriction orders against the alleged perpetrator (Section 11.6).

Torture is defined as an offence under Section 13.1, and anyone who attempts, assists/provokes, or conspires to commit any of these offences is also considered to have committed the offence of torture (Section 13.3). The punishment for torture is a minimum of five year's rigorous imprisonment or a minimum fine of 50,000 taka, or both, in addition to compensation to the victim(s) in the amount of 25,000 taka (Section 15.1). Torture resulting in death is punishable by rigorous imprisonment of a minimum life term or a minimum fine of 1 lakh taka, or both, in addition to compensation to the victim(s) amounting to a minimum of 2 lakh taka (Section 15.2). Unless monetary fines ordered by the courts are paid within 14 days from the passage of a judgment, no appeal against the judgment will be allowed (Section 15.4).

Any removal/extradition of Rohingya to Myanmar under Section 18 of this Act (for any offence committed under this Act) would be a violation of the principle of non-refoulement, an obligation recognized by High Court jurisprudence in the Court's *RMMRU* judgment.

Children Act (Shishu Ain), 2013 (as amended up to 2018)

SUMMARY

Provides special measures applicable to children in conflict with or in contact with the law, including that the trial of a child must be held in a Children's Court.

APPLICABILITY TO ROHINGYA

This Act contains no indication of jurisdiction. Therefore, Rohingya children in conflict or in contact with the law in Bangladesh are covered by this Act (Section 4).

PROTECTION NOTES

This Act provides broad protections to children who are in contact with the law (victims and witnesses) as well as in conflict with the law (accused of a crime). These protections should be made available to Rohingya children accused or convicted of a crime or who are victims of or witnesses to a crime.³⁴

Where accused of committing a crime, Rohingya children may exclusively be tried by Children’s Courts (Section 17). The trial and punishment of children by Mobile Courts and their detention in juvenile correction centres is unlawful, as per a recent (31 October 2019) interim ruling by the Supreme Court’s High Court Division.³⁵

The various provisions of this Act aimed at providing children in conflict with the law alternatives to undergoing formal trial should be applied wherever possible in cases involving Rohingya children, such as:

- release by the police with a warning (Section 47.2);
- alternative dispute resolution (Section 37);
- diversion (Section 48).

Under no circumstance may Rohingya children under the age of nine be arrested or detained (Section 44.1), and where children nine years or older are arrested or detained, police are prohibited from using handcuffs to restrain them (Section 44.3). Upon the arrest of a child, police officers must inform the parents or guardians of the child (Section 45) and administer necessary first aid/medical attention. Police must also provide necessary mental support, and alert the relevant probation officer with whom diversionary or bail measures should be assessed. As a last resort where other measures are not possible, police should arrange for the immediate placement of the child in a Safe Home (Section 14.e), separate from adults and from children who have been convicted of a crime until the child can be brought before the Children’s Court (Section 44.5). In no case should a charge sheet accusing a child of an offence be submitted jointly with any adult accused (Section 15). The probation officer assigned to the accused child must ensure that the child has access to legal advice and representation, either by an NGO or under the Legal Aid Services Act, 2000 (Section 6.b(v)). In proceedings before the Children’s Courts, Rohingya children must be provided with interpretation services free of charge (Section 27.2).

Where release with a warning or diversion are not possible, police officers should release any child accused of an offence on bail (with or without sureties) into the custody of their parents, caregiver/guardian, extended family, or probation officer, regardless of whether the offence of which they are accused is deemed bailable by other acts of law (Section 52). Arrested children should only be denied bail by police officers if the nature of the offence they are accused of is heinous or if the granting of bail would go against the best interests of the child (e.g., due to likelihood of reprisal) or the interest of justice would otherwise be jeopardized by doing so (Section 52.3). Where not released on bail, children should be brought before the courts within 24 hours and the Children’s Courts should either grant bail (Section 52.4) or order the child be kept in a Safe Home or Child Development Centre until and during trial (Section 52.5).

With respect to sentencing, children found guilty of an offence normally punishable with death or imprisonment for life may be ordered to be detained in a Child Development Centre (Juvenile Correction Centre) for a minimum of three years and a maximum of ten years, whereas all other offences carry a maximum detention period of three years (Section 34.1). The Children’s Courts may release children on admonition or probation in lieu of detention (Section 34.6), under the supervision of a probation officer, their parents, or caregiver (Section 34.7). Furthermore, all orders issued by the Children’s Courts must provide for periodic review and release with or without conditions (Section 35). Where Rohingya children are ordered to reside in a Child Development Centre for the duration of judicial proceedings or under corrective detention, vocational training including proper education is to be provided (Section 63.4). Under no circumstance may Children’s Courts impose the death sentence or life imprisonment on a child, and imprisonment of a child is only possible in cases of such heinous offences that the Courts are satisfied that detention in a certified institute would be unsuitable (Section 33.1). In this case, the child sentenced to imprisonment must still be kept separate from adult prisoners (Section 33.2).

Recognizing the vulnerable position of Rohingya refugee children living in Bangladesh, Children’s Courts should consider the use of alternative care in lieu of detention as authorized under Section 84, and where Rohingya children cannot be provided alternative care under the custody of their own parents, caretakers, or extended family, they should be considered “disadvantaged children” under Section 89, thereby qualifying for institutional care such as residence in government children homes and participation in training and rehabilitation programmes (Section 85).

Probation of Offenders Ordinance, 1960 and Rules, 1971

SUMMARY

Provides for alternative sentencing and the discretionary availability of conditional discharge (for first time offenders who would receive a punishment of less than two years in prison) or probation (as opposed to custodial detention).

APPLICABILITY TO ROHINGYA

This Ordinance applies to the whole of Bangladesh without reference to citizenship. Therefore, Rohingya charged with criminal offences in Bangladesh are covered by this Ordinance.

PROTECTION NOTES

The protections provided under this law should be applied to Rohingya who are first-time offenders for minor crimes (punishable by less than two years' imprisonment). Many Rohingya may be given a probation order by the Court rather than a sentence of imprisonment, or may be provided an order of discharge. Lawyers would need to make such applications.

Special Powers Act, 1974

SUMMARY

Provides for preventive detention of individuals with a view to preventing them from doing any “prejudicial act” against the State. The term “prejudicial act” is defined broadly, encompassing a number of offences regarding, *inter alia*, public safety, national security, and Bangladesh’s “friendly relations with foreign States.”

APPLICABILITY TO ROHINGYA

This Act applies equally to citizens and non-citizens, with the exception of the provision to issue removal orders, which is solely applicable to non-citizens. Therefore, Rohingya accused of committing or suspected of planning to commit the following crimes are covered by this Act:

- “prejudicial acts” against the State;
- sabotage;
- managing, promoting, or assisting the operation of a suspended association;
- forming, being a member, or taking part in the activities of an association which pursues a political purpose in the name of or on the basis of any religion;
- trespassing in protected areas;
- violating an official curfew;
- hoarding or dealing in the black-market;
- counterfeiting currency-notes and government stamps;
- adulteration or sale of adulterated food, drink, drugs, or cosmetics.

PROTECTION NOTES

The Act contains very few explicit protections for detainees. Constitutional protections (such as the presumption of innocence and right to consult a lawyer) in criminal processes should continue to be granted and applied.

Under Section 8, Rohingya detainees must be informed of the grounds for their detention within 15 days.

Under Section 12, an Advisory Board, appointed by the Government, should examine any case of detention of a Rohingya detainee after six months.

Under Section 30, the right to appeal may be exercised within 30 days from the date of, delivery, or passing of any order, judgment, or sentence.

Rohingya detainees have the right (under Article 102 of the Constitution) to challenge any preventive detention order issued by the Government by means of a writ petition (in the nature of habeas corpus) filed at the High Court Division, or (under Section 491 of the CrPC) by way of a criminal miscellaneous petition. No Rohingya may be subjected to preventive detention for a period exceeding six months, unless an Advisory Board (consisting of two present/former Judges of the Supreme Court or individuals otherwise qualified to be appointed as such, and a senior officer in the service of the Republic) agrees that further preventive detention is warranted, per Article 33 of the Constitution.

It is important to note that the High Court Division has instructed police not to arrest individuals under Section 54 of the CrPC with a view to preventively detain that individual under Section 3 of this Act.³⁶

Particular attention should be given to Rohingya persons who are actively engaged in organizing, demonstrating, or other forms of community mobilization and association, given that individuals engaged in such activities may potentially face consequences under the Act.

Any removal of Rohingya to Myanmar by an order issued under Section 3 of this Act would be a violation of the principle of non-refoulement, an obligation recognized by High Court jurisprudence in the Court's *RMMRU* judgment.

The Mobile Courts Act, 2009; and Rules, 2019

SUMMARY

Provides for the establishment of Mobile Courts administered by the Executive Magistrate³⁷ and grants limited powers for these Mobile Courts to impose penalties instantaneously. However, this is restricted to cases in which the accused confesses to having committed the alleged offence, and where punishment is limited to a maximum of two years' imprisonment.

APPLICABILITY TO ROHINGYA

This Act applies to the whole of Bangladesh without reference to citizenship. Therefore, Rohingya in Bangladesh accused of offences are covered by this Act.

PROTECTION NOTES

Due process rights and protections, including the core rights articulated above, are severely curtailed in Mobile Courts. Efforts should be taken to prevent Rohingya from being brought before such Courts until and unless changes are made to ensure Mobile Courts comply with domestic guarantees of due process and human rights.³⁸ Importantly, the High Court has firmly reiterated that under no circumstances are children to be tried by Mobile Courts.³⁹

Crimes Disrupting Law and Order (Speedy Trials) Act, 2002 (as amended up to 2019)

SUMMARY

Defines a set of offences as “crimes disrupting law and order,” which are to be exclusively tried by Speedy Trial Courts established under this Act to expedite their disposal.

APPLICABILITY TO ROHINGYA

This Act applies to any person without reference to citizenship, and therefore applies to Rohingya accused of committing a “crime disrupting law and order,” including:

- extortion;
- obstructing free passage of individuals/vehicles on public through-ways;
- intentional destruction/vandalism of vehicles and of any government, institution, or person’s property;
- mugging/pickpocketing;
- rioting/inciting fear or anarchy as an individual or group;
- extortion/obstruction related to the issuance of tenders; and
- intimidation/extortion/blackmail of government officials.

PROTECTION NOTES

All offences under this Act are punishable by a minimum of two years’ imprisonment and a maximum of seven years’ imprisonment, and offenders may be subject to monetary fines, including restitution of damages (Section 4). These offences are cognizable (Section 12.3), and the accused may only be released on bail by the Court, which must record its reasons for doing so (Section 13).

The Speedy Trials Act has been criticized for the short time allotted for disposal of cases brought to the Speedy Trial Courts under this Act, and therefore for the accused to mount a defence: Speedy Trial Courts are allotted just 30 working days per case, and the police are given only seven working days following an arrest to submit a charge sheet (Section 10).⁴⁰

If charged under this Act, Rohingya who are eligible should be provided legal assistance under the Legal Aid Services Act, and be afforded legal and constitutional guarantees of presumption of innocence, prompt notification of charges, and the right to appeal as per Articles 31, 32, 33, 35, and 44 of the Constitution, and in accordance with the provisions of the CrPC.

Speedy Trial Tribunal Act, 2002

SUMMARY

Provides for the establishment of Speedy Trial Tribunals, as well granting the Government the authority to transfer any ongoing criminal proceedings to the jurisdiction of a Speedy Trial Tribunal to expedite the disposal of “sensational” cases.

APPLICABILITY TO ROHINGYA

This Act applies to any person without reference to citizenship, and therefore applies to Rohingya accused of a crime in Bangladesh.

PROTECTION NOTES

By virtue of Section 6, the Government is authorized “in the public interest” to transfer any case involving murder, rape, firearms, explosives, or narcotics to the jurisdiction of the Speedy Trial Tribunal, with notification in the Official Gazette. Such transferred cases are to be resumed at the same stage as when they were transferred (including admitted evidence), and should be disposed of within 90 working days, with the possibility of extending this deadline by 30 days (with written notification sent to the Supreme Court and Government), and an additional 15-day extension upon request to the Supreme Court (Section 10). Failure to dispose of a case within this timeframe results in the case being returned to the originating court (Section 10.3).

Cases transferred to a Speedy Trial Tribunal are subject to the procedures for Summary Trials as laid out in Chapter 23 of the CrPC, unless the offence in question carries a maximum sentence of more than seven years’ imprisonment, in which case the procedures for trials by Magistrate in Chapter 20 are to be followed. If charged under this Act, Rohingya who are eligible should be provided legal assistance under the Legal Aid Services Act and be afforded legal and constitutional guarantees of presumption of innocence, prompt notification of charges, and the right to appeal as per Articles 31, 32, 33, 35, and 44 of the Constitution, and in accordance with the provisions of the CrPC. Indeed, Rohingya who are tried by a Speedy Trial Tribunal have the right to appeal any judgment or order issued by the Tribunal with the High Court Division within 30 days, not counting the number of days needed to receive a signed copy of the judgment from the Tribunal (Section 13).

By virtue of Section 16, while video/audio recordings are admissible as evidence in cases being heard by a Speedy Trial Tribunal, such evidence may not provide the sole grounds for conviction.

Given the constitutional and human rights implications raised by the Speedy Trial Tribunal Act,⁴¹ Rohingya accused of committing crimes under this Act should wherever possible not be tried in Speedy Trial Tribunals. Discretion should be exercised to return such cases to originating courts for normal procedures.

Pornography Control Act, 2012

SUMMARY

Defines a number of offences related to the production, dissemination, supply, sale, purchase, display, and advertisement of pornographic materials, including the use of pornography to blackmail or extort.

APPLICABILITY TO ROHINGYA

This Act applies to any person, without reference to citizenship. Therefore, Rohingya in Bangladesh charged with the following offences (defined in the Act as cognizable and bailable) are covered by this Act:

- Production or contracting the production of pornography.
- Harming the “social or personal status” of a person through pornography or extortion through possession of pornography.
- Dissemination of pornography via the internet, mobile phone, or other electronic device.
- Creating a public nuisance by displaying pornography.
- Selling, renting, distributing, supplying, displaying, and promoting pornography.
- Use of a child to produce, distribute, print and/or publish, sell, supply, advertise, or display child pornography.
- Aiding and abetting any of the above offences.

PROTECTION NOTES

Punishments for the offences defined in this Act range from a maximum of five years' imprisonment and fine of 200,000 taka to a maximum of ten years' imprisonment and fine of 500,000 taka for offences involving children.

If charged under this Act, Rohingya who are eligible should be provided legal assistance under the Legal Aid Services Act and be afforded legal and constitutional guarantees of presumption of innocence, prompt notification of charges, and the right to appeal as per Articles 33, 35, and 44 of the Constitution, and in accordance with the provisions of the CrPC. In accordance with Section 12, Rohingya convicted of an offence under this Act should be entitled to appeal their conviction to the appropriate court within 30 days of receipt of the relevant judgment or order.

It should be noted that, while Section 4 of this Act states that “pornography may not be produced, stored, marketed, carried, supplied, purchased, sold, retained or displayed,” the mere possession or viewing of pornographic material is not explicitly made a punishable criminal offence by this Act. The Act defines pornographic materials in an expansive manner, including “any obscene dialogues, performances, gestures, nude or half-naked dances that cause sexual arousal that are captured and displayed in movies, video images, audio-visual images, still images, graphics or any other means and which have no artistic or educational value; pornographic books, periodicals, sculptures, statues, cartoons or leaflets that cause sexual arousal” (Section 2.c).

Narcotics Control Act, 2018

SUMMARY

Provides that certain acts related to the production, supply, and smuggling of narcotics are punishable offences. Also provides for the treatment and rehabilitation of “drug addicts.”

APPLICABILITY TO ROHINGYA

This Act applies to the whole of Bangladesh without reference to citizenship. Therefore, Rohingya charged with the following offences in Bangladesh are covered by this Act: production of narcotics except alcohol, encompassing cultivation, production, processing, carrying, transportation, import, export, supply, purchase, sale, possession, preservation, warehousing, exhibition or use.

PROTECTION NOTES

If charged under this Act, Rohingya who are eligible should be provided legal assistance under the Legal Aid Services Act and be afforded legal and constitutional guarantees of presumption of innocence, prompt notification of charges, and the right to appeal as per Articles 31, 32, 33, 35, and 44 of the Constitution, and in accordance with the provisions of the CrPC. Additionally, the provisions of the Children's Act are to apply where a child is accused of an offence under this Act (Section 52).

All searches and seizures conducted by police in the investigation of narcotics offences are subject to the provisions of the CrPC (Section 21), and illegal or harassing searches, seizure, or arrests by police are punishable by a maximum of one year's imprisonment and/or fine (Section 39).

Section 44 grants the Government authority to establish Anti-Narcotics Tribunals by notification in the Official Gazette, and until such tribunals are established, offences under this Act are to be tried by an Additional District Judge (or in their absence, a Sessions Judge), with the same powers as those of Sessions Judges (Section 45). Although Section 57 states that Mobile Courts may try offences committed under this Act, the High Court Division has challenged the legality of this provision of the law.⁴² Bail may be granted by the court/tribunal where the State has been given an opportunity to hear the accused's application for release and the tribunal does not believe that the trial will result in a conviction, as well as in the case of women, children, or

physically ill defendants where the tribunal is satisfied that their release on bail will not impair justice (Section 47). Cases heard by Anti-Narcotics Tribunals are to be disposed of within 90 days, with the possibility to extend for 30 days with notification of the Supreme Court and an additional 15 with notification of the Supreme Court and the Government, but they must absolutely be completed by the end of these additional 15 days (Section 51). Appeals to any orders, judgments, or sentences imposed by these tribunals may be made within 30 days to the High Court Division, and the time necessary to produce a copy of the judgment will not be counted towards this deadline (Section 53).

As per Section 18(8), where a Rohingya person is mandated by authorities to participate in a compulsory addiction treatment, the GoB should bear all expenses for such treatment.

Anti-Terrorism Act, 2009 (as amended up to 2013); and Rules, 2013

SUMMARY

Provides that the commission of “terrorist activities” (including financing, aiding, and abetting) is a punishable offence, as well as measures for its prevention and punishment. Section 6 describes “terrorist activities” to be those carried out to create public panic, with the intent to threaten and disrupt the unity, integration, public security, or sovereignty of Bangladesh.

APPLICABILITY TO ROHINGYA

This Act applies to the whole of Bangladesh without reference to citizenship, and extritorially, as well as to all persons on ships and aircrafts registered in Bangladesh, irrespective of their location. Therefore, Rohingya charged with the following offences in Bangladesh are covered by this Act:

- terrorist activities, encompassing numerous actions committed for the purposes of threatening the unity, integration, public security, or sovereignty of Bangladesh;
- knowingly using terrorist property;
- terrorist financing;
- membership in a prohibited entity;
- supporting a prohibited entity;
- attempting, conspiring to attempt or to commit, and aiding and abetting any of the above offences.

PROTECTION NOTES

All offences under this Act are cognizable and non-bailable, and sentences range from four years' imprisonment to imprisonment for life. Charges of offences under this Act may either be tried by a Sessions Judge in accordance with the procedures outlined for Sessions Courts in the CrPC (Section 27.1), or by special Anti-Terrorism Tribunals which may be established by the Government via notification in the Official Gazette and are to be presided over by a Sessions Judge or Additional Sessions Judge appointed by the Government in consultation with the Supreme Court (Section 28).

Where ordered by a Magistrate under Section 26, Rohingya being investigated by the police for an offence under this Act may only be held on remand in police custody for up to ten days, plus an additional five days if an extension is granted.

If charged under this Act, Rohingya who are eligible should be provided legal assistance under the Legal Aid Services Act and be afforded legal and constitutional guarantees of presumption of innocence, prompt notification of charges, and the right to appeal as per Articles 31, 32, 33, 35, and 44 of the Constitution, and

in accordance with the provisions of the CrPC. Indeed, per Section 31 of this Act, all orders, judgments, and sentences passed by an Anti-Terrorism Tribunal may be appealed within 30 days to the High Court. While the offences defined in this Act are generally not bailable, a Magistrate or judge may release any individual accused where they have reason to doubt the convictability of the accused and the State has been granted an opportunity to hear the accused's bail application (Section 32). Proceedings of any Anti-Terrorism Tribunal must be concluded within six months from the date on which charges were framed, with the possibility of up to a three-month extension, and thereafter an additional maximum three-month extension with written notification to the High Court Division and the Government (Section 33).

Extradition Act, 1974

SUMMARY

Provides the Government with the authority to extradite individuals accused or convicted of a crime to another State where the extradition offence for which they are sought would also be an offence for which they could be convicted, were it to have been committed in Bangladesh.

APPLICABILITY TO ROHINGYA

This Act applies to all individuals accused or convicted of defined extradition offences by a foreign State seeking their extradition from Bangladesh. Therefore, Rohingya accused or convicted of qualifying offences who are sought for extradition from Bangladesh by Myanmar or another State are covered by this Act. However, extradition of Rohingya to Myanmar is not possible, as this would constitute a violation of the non-refoulement principle.

PROTECTION NOTES

Following the judgment of the High Court Division in the *RMMRU* case,⁴³ any procedure to return Rohingya prisoners to Myanmar is prohibited, as it would constitute a breach of the peremptory norm of non-refoulement. No extradition treaty between Bangladesh and Myanmar exists.

Currently, Bangladesh has an extradition treaty in effect with only two States, India and Saudi Arabia, and extradition of individuals to non-treaty States by the GoB is only possible by notification in the Official Gazette (Section 4.1). Further, no individual sought for extradition may be surrendered to a foreign State if the grounds for their extradition is deemed to be political in character, if the individual would have been eligible for discharge or acquittal if they were to be tried in Bangladesh, as well as if it appears that, upon surrender, the individual would face prejudice in trial or be punished, detained, or restricted in personal liberty by reason of race, religion, nationality, or political opinions (Section 5).

Cross-References:

INTERNAL (RELEVANT LEGISLATION FOUND IN OTHER SECTIONS OF THIS DOCUMENT):

- Constitution of Bangladesh, Arts. 31, 32, 33, 35 & 44
- Legal Aid Services Act, 2000

EXTERNAL (INTERNATIONAL HUMAN RIGHTS LAW INSTRUMENTS):

- International Covenant on Civil and Political Rights (ICCPR), Acceded: 09/06/2000:
 - Right to life/prohibition on arbitrary deprivation of life (Article 6)
 - Prohibition on torture, inhuman or degrading treatment or punishment (Article 7)

- Right to personal freedom and liberty, prohibition on arbitrary arrest and/or detention and obligation of the State to inform of charges and bring arrested/detained individuals promptly before a judge (Article 9)
 - Right to inherent human dignity of those detained, including separate accommodation for detained juveniles (Article 10)
 - Right a fair and impartial trial (Article 14)
 - Prohibition on extrajudicial punishment (Article 15)
 - Right to equality before the law and equal protection of the law, without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status (Article 26)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Acceded: 10/05/1998:
 - Prohibition on the use of torture and other cruel, inhuman or degrading treatment or punishment (Article 2.1), including prohibition on the use of war or a threat of war, internal political instability, or any other public emergency (Article 2.2), or an order from a superior officer or a public authority to justify torture (Article 2.3)
 - Prohibition on refoulement to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture (Article 3)
 - Right of victims of torture, or in the case of their death, of their family members, to redress and compensation (Article 14)
 - Convention on the Rights of the Child (CRC), Acceded: 08/03/1990 & Optional Protocols on the Involvement of Children in Armed Conflict (Ratified: 08/06/2000) and on the Sale of Children, Child Prostitution and Child Pornography (Ratified: 08/06/2000):
 - Obligation of the State to inform parents/guardian of a child under arrest/detention (Article 9.4)
 - Right of the child to be heard in any judicial and administrative proceedings affecting the child (Article 12)
 - Obligation of the State to limit maximum sentencing for children in conflict with the law, to apply arrest/detention of children as a last resort and for the shortest appropriate time and to detain children separately from adult offenders (Article 37)
 - Obligation of the State to implement a minimum age of criminal liability and to provide age-appropriate judicial procedures for children in respect of their right to privacy, right to free translation when necessary, and to establish where possible alternatives to judicial proceedings for children in conflict with the law (Article 40)
 - Obligation of the State to prohibit the sale of children, child prostitution and child pornography (Optional Protocol to the CRC on the sale of children, child prostitution and child pornography, Article 1).
 - Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Acceded: 10/06/1984 & Optional Protocol (Ratified: 09/06/2000):
 - Obligation of the State to repeal all national penal provisions which constitute discrimination against women (Article 2.3)
 - Convention on the Rights of Persons with Disabilities (CRPD), Ratified: 11/30/2007 & Optional Protocol (Acceded: 05/12/2008):
 - Obligation of the State to provide procedural accommodations in order to facilitate the effective role of persons with disabilities as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages (Article 13)

PROTECTIONS FOR VICTIMS AND WITNESSES OF CRIMES

Although the applicability of criminal law to Rohingya appears more straightforward than other areas of the law, there are questions about the practical implementation of protections and safeguards, guaranteed under both statutory and constitutional law, in relation to Rohingya persons accused of crimes. Considering the potential punishments under criminal law, concerns about safeguards governing arrest, detention, and fair trial are particularly acute. In addition to criminal law, constitutional safeguards conferred under Articles 33 and 35 include the right of any person who is arrested and detained to be informed of the basis of their arrest/detention, to be provided with legal counsel, and to be brought before a Magistrate within 24 hours of arrest. While this section focuses on the rights of Rohingya individuals accused of criminal offences, legislative provisions providing guarantees towards the victims and witnesses of crimes are covered separately in the “Protections for Victims and Witnesses of Crimes” section of this guide.

Prevention of Women and Child Repression Act (*Nari O Shishu Nirjatan Daman Ain*) 2000, (as amended up to 2020)

SUMMARY

Provides for the suppression and punishment of violence against women and children through the definition of a number of punishable offences as well as the authority to investigate offences defined therein.

APPLICABILITY TO ROHINGYA

This Act contains no indication of jurisdiction. Therefore, Rohingya women and children (defined in this Act as any person under 14 years of age) victims of the following crimes in Bangladesh are covered by this Act:

- attacks with flammable, corrosive, caustic, or poisonous substances;
- kidnapping of women and/or children;
- taking ransom;
- rape or death resulting from rape;
- sexual oppression;
- causing death for dowry;
- impairing any limb of a child for the purpose of begging.

PROTECTION NOTES

Rohingya women (and children/or their guardians) may bring cases against any person, whether Bangladeshi citizen or non-citizen, on the territory of Bangladesh, under this Act.

Where Rohingya women and children are the victims of offences defined under this Act, they should be provided the protections laid out therein:

- the identities of victims/complainants should not be made public (Section 14);
- punitive fines shall be awarded to the victim(s) or their successor(s) (Section 16);
- the opinions and views of women and children as victims and witnesses are to be taken into consideration by tribunals in order to protect their welfare and interests (Section 20.7);
- where protective custody is ordered by the tribunal, victims/witnesses are not to be held in prisons but rather in the custody of a government authority or authorized institution (Section 31);
- the maintenance of children born of rape are to be borne by the State (Section 13.c);
- failure to properly investigate complaints by police officers (Section 17.8) and failure of doctors (Section 32.3) to conduct timely medical examinations of victims are grounds for disciplinary actions

Offences under this Act are adjudicated solely by specially-established Nari O Shishu Nirjatan Daman Tribunals (Section 20.1). Section 25 calls for the CrPC to be applied in submission of a complaint, investigation, and trial. Pursuant to Section 27, these tribunals may initiate criminal proceedings either with the written report of a police officer or on the basis of a direct complaint with sworn affidavit that the police refused to record their complaint.⁴⁴

Investigations must be conducted within 60 days and although crimes under the Act are non-bailable, circumstances are outlined for the release on bail of accused if sufficient grounds do not exist to convict and the complainant has been afforded an opportunity to be heard (Section 19).

Dowry Prohibition Act, 2018

SUMMARY

Protects women who face harassment or violence from their spouses over dowry and provides that demanding or giving dowry is a punishable offence, as is filing a false case alleging harassment based on claim of dowry.

APPLICABILITY TO ROHINGYA

This Act contains no indication of jurisdiction. Therefore, Rohingya in Bangladesh should be covered by this Act.

PROTECTION NOTES

Rohingya women who face harassment or violence over a dowry payment from their spouses, family members, or related persons, should benefit from the protections of this Act, while Rohingya victims of false claims should also be provided the protections therein. The 2018 Act introduced stricter punishments, including a life term or 12 years' imprisonment for any individual inflicting harassment or violence on a woman over dowry, and 14 years' imprisonment and fines for any individual who incites a woman to commit suicide over dowry. Female Rohingya victims of crimes related to dowry should be able to institute criminal proceedings against their abusers and avail themselves of the same procedural protections.

Acid Control Act and Acid Crime Prevention Acts, 2002

SUMMARY

Provides licensing legislation for the import and sale of acid in open markets and introduces higher punishments, including capital punishment, for perpetrators.

APPLICABILITY TO ROHINGYA

This Act applies to all persons in the territory of Bangladesh, without reference to citizenship. Therefore, Rohingya charged with the following offences in Bangladesh are covered by this Act:

- causing death by acid;
- causing hurt by acid;
- throwing or attempting to throw acid;
- abetting or inciting an acid crime;
- lodging a false case or claim under this Act.

PROTECTION NOTES

The Act provides under Section 9 that any money realized as a fine from the convicted person shall be given to the affected person or the heirs of that person. As the Act makes no reference to citizenship, Rohingya persons and families affected by an acid crime should similarly be entitled to compensation under this Act.

Where the acid attack is prosecuted under the Prevention of Women and Child Repression Act (*Nari O Shishu Nirjatan Daman Ain*) 2000, Amended 2003 and 2020 (Section 9), that Act supersedes the 2002 Acid Control Act. Prosecution under the 2000 Prevention of Women and Child Repression Act is favoured, where applicable, for it provides broader protections and is equally applicable to Rohingya.

Domestic Violence (Prevention and Protection) Act, 2010; and Rules, 2013

SUMMARY

Provides measures aimed at prevention and protecting women and children from violence by their family members. Defines domestic violence as physical abuse, psychological abuse, sexual abuse, or economic abuse of a woman or child by another family member. Enables any victim seeking protection from domestic violence to submit a complaint with a Judicial or Metropolitan Magistrate.

The Rules provide a process whereby any victim or person acting on their behalf can submit information regarding domestic violence and related issues to an enforcement officer and seek corresponding remedies and protections.

APPLICABILITY TO ROHINGYA

This Act contains no indication of jurisdiction. Therefore, Rohingya women and children (defined in this Act as any person under 18 years of age) victims of domestic violence in Bangladesh are covered by this Act.

A petition under this Act can be filed in any court under whose local jurisdiction,

- the applicant resides;
- the respondent resides;
- the place where the domestic violence occurred is located; or
- the place where the victim temporarily resides.

PROTECTION NOTES

This Act includes sexual abuse under the definition of domestic violence, defining the term as “any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of the victim.” Despite broad terms, this arguably includes sexual coercion within marital relationships. In other words, one could argue that the inclusion of sexual abuse within the definition provides the opportunity for complaints in relation to marital rape.

A Rohingya victim of domestic violence should be entitled to a number of protections including:

- where applicable, the right to legal aid under the Legal Aid Act, 2000;
- access to residence in shelter homes;
- access to medical aid;
- protective order against their spouse or any other perpetrator of domestic violence;
- ability to proceed with ancillary relief (e.g., divorce and maintenance).

The Act does not provide for any punishment for the offence, leaving sentencing to previously existing options. It provides for a penalty for breach of a protection, residence, maintenance, or custody order.

Any Rohingya victim of domestic violence and related issues can avail themselves of the protections and safeguarding processes provided under the Act’s implementing Rules. The enforcement officer is required to:

- Inform the victim about their rights and remedies, free of charge.
- Take the necessary steps to ensure the victim is provided legal aid under the Legal Aid Act, 2000, and make available the application form along with other facilities free of cost.
- Where necessary, assist the victim or person acting on their behalf in completing the required form.
- Extend cooperation to those with disabilities.
- Assist in court proceedings, as requested by the Court.
- Follow up on any domestic violence proceedings.

Child Marriage Restraint Act, 2017 and Rules, 2018

SUMMARY

Provides that marriage to a child, solemnizing such a marriage, and commissioning such a marriage are punishable offences.

APPLICABILITY TO ROHINGYA

This Act contains no indication of its personal scope of application. Therefore, Rohingya children facing child marriage in Bangladesh are covered by this Act.

PROTECTION NOTES

This Act should be used to offer the following protections from child marriage to Rohingya minors:

- No marriage involving a child (where the bride is under 18 and/or the groom is under 21) should be solemnized (Section 9) or registered (Section 11), and doing so is a cognizable, bailable, and non-compoundable criminal offence (Section 14).
- Officials, such as CiCs, who know of/are informed of child marriages taking place have a duty to intervene to stop them (Rules, Section 15).
- Marriage registrars must refrain from registering marriages unless the ages of the bride and groom are verified by a birth certificate, national identity card, school certificate, or passport (Section 12).
- Where the provisions of this Act are contravened, all fines are to be paid as compensation to the minor involved in the child marriage (Section 13).
- Courts may conduct their own local inquiry to ascertain the truth of any complaints received, or may direct any government official or local government representative to make such an inquiry (Section 16).
- Section 19 provides for the solemnization of a marriage involving a child only under such circumstances as may be deemed to be in the best interests of the minor, upon the Court's direction and with the consent of the minor's parent/guardian. The implementing Rules further provide that such an exception is subject to approval by a Verification Committee (Section 17.1), and is to be considered a last resort in cases that do not involve forced marriage or marriage on account of rape/abduction (Section 17.3.c).

Prevention and Suppression of Human Trafficking Act, 2012; and Rules, 2017

SUMMARY

Provides a number of measures for the prevention and punishment of human trafficking in Bangladesh and beyond.

APPLICABILITY TO ROHINGYA

This Act contains no indication of jurisdiction. Therefore, Rohingya victims of human trafficking in Bangladesh are covered by this Act. This Act has extraterritorial application, and therefore applies not only to those in Bangladesh, but also abroad.

The Act defines human trafficking as:

- the act of the selling or buying, recruitment or receiving, deporting or transferring, sending or confining or harbouring of any person;
- for the purpose of sexual exploitation or oppression, labour exploitation or any other form of exploitation or oppression;
- by means of (a) threat or use of force; (b) deception or abuse of socioeconomic or environmental or other types of vulnerability; (c) exchange of money to procure consent of a person having control over him/her.

The means element becomes immaterial where the victim of trafficking is a child (under 18 years or age) by law.

PROTECTION NOTES

Rohingya victims of human trafficking should be able to file complaints against any individual or group of individuals involved in human trafficking, and to be temporarily housed in a public or private protective home during trial and/or before prosecution separate from the accused, to request the appointment of an interpreter at the Tribunal, and to receive compensation from the convicted offender(s). Rohingya victims of human trafficking should also be informed of the actions taken against the traffickers by the relevant authorities at least once a month, of their victim rights to compensation and legal aid, and of other benefits available under this Act. Rohingya victims of human trafficking should also be allowed to institute a civil suit in any civil court for compensation alongside criminal proceedings, and to receive compensation from the (yet to be established) Human Trafficking Prevention Fund.

As reported by the National Human Rights Commission, the practice of charging Rohingya victims of human trafficking with violations of the Foreigners Act must be ended.⁴⁵ Section 37(1) of the Act explicitly states, “Any person or agency dealing with the subject-matter of this Act shall endeavour to ensure that any victim of the offence of human trafficking is not subjected to conviction or punishment under this Act or any other existing law.”

Special Benefits for Women Convicted in Prisons Act, 2006 and Rules, 2020

SUMMARY

Provides a number of special considerations (including conditional release) for women convicted of crimes and sentenced to a prison term exceeding one year (Section 4), excluding female prisoners sentenced to death, life imprisonment, convicted of treason, or convicted under the Explosives Act, the Arms Act, or any law relating to narcotics (Section 5).

APPLICABILITY TO ROHINGYA

Under this Act, any woman (without reference to citizenship) sentenced to more than one year’s imprisonment who has completed one-half of her sentence is eligible to apply to the relevant national or district committee to receive the special benefits. Therefore, Rohingya women who have been sentenced to more than one year’s imprisonment and completed one-half of their sentence are covered by this Act.

PROTECTION NOTES

Rohingya women who are sentenced to more than one year’s imprisonment and who have completed one-half of their sentence (subject to the ineligibility criteria laid out in Section 5) should be able to apply to the relevant district or national committee to be granted special benefits, including:

- conditional release;
- vocational training;

- post-release reintegration services (provided by the Department of Social Services);
- any other special benefit introduced via a notification in the Official Gazette under this Act.

Under Section 5(2), in determining whether or not to grant special benefits to an imprisoned Rohingya woman, the district or national committee should take the following factors into account:

- whether the prisoner is incarcerated with a child;
- whether the child of the prisoner stays at home;
- whether the prisoner suffers from any particular illness, including her personal condition;
- whether the prisoner is disabled;
- the educational qualifications of the prisoner;
- the age of the prisoner;
- the socio-economic status of the prisoner;
- the type of case, the term of imprisonment, and the term of imprisonment with a waiver;
- information on receiving vocational training; and
- other matters (if applicable).

Pursuant to Section 12 (2), prison authorities are also instructed to, upon demand by the probation officer, ensure adequate rooms, equipment, and materials to provide vocational training to beneficiaries.

Where a Rohingya woman is granted a special provision that is later revoked under Section 15, she must be allowed to apply to the Ministry of Home Affairs for a review of the revocation order within 30 days of its receipt.

Bangladesh National Women Lawyers Association v. Government of Bangladesh and Others (Writ Petition No. 5916 of 2008).

SUMMARY

Provides guidelines on the prevention of sexual harassment until a law on the prevention of sexual harassment is adopted. The ruling found sexual harassment of girls and women to be illegal. This includes harassment over multimedia messaging, text messaging, email, and phone. The Court also ordered to use the term “sexual harassment,” instead of “Eve teasing.”

APPLICABILITY TO ROHINGYA

These guidelines, laid out by the Supreme Court of Bangladesh on 14 May 2009, apply to workplaces and educational institutions across the whole of Bangladesh. Therefore, Rohingya in Bangladesh should be covered by these guidelines.

PROTECTION NOTES

Rohingya women and girls who face sexual harassment should benefit from these guidelines, which require employers and educational institutions to investigate complaints. The same normative standards and mechanisms for submitting complaints by and for Rohingya women and girls facing sexual harassment should be established by all organizations and state agencies operative in the camps. Upon establishment of sufficient evidence of harassment, appropriate action should be taken in accordance with the organization’s or agency’s disciplinary rules, within 30 days, and/or a referral made to the appropriate court or tribunal where the act constitutes an offence under any penal law.

BLAST and Others v. Bangladesh and Others ***[Prohibition of the “Two Finger Test”]*** **(2014 High Court Decision)**

SUMMARY

The Court prohibited the “two-finger” test on women and girl survivors of rape.

APPLICABILITY TO ROHINGYA

This prohibition applies to the whole of Bangladesh. Therefore, Rohingya in Bangladesh should be covered this decision.

PROTECTION NOTES

The Court reportedly prohibited the practice and ordered medical providers to use the Ministry of Health-issued “Health Protocol for Victims of Sexual Violation,” which follows World Health Organization (WHO) guidelines. In addition, the Court reportedly prohibited lawyers from asking questions during trial that would affect the dignity of victims of rape.

Cross-References:

INTERNAL (RELEVANT LEGISLATION FOUND IN OTHER SECTIONS OF THIS DOCUMENT):

- Constitution of Bangladesh, Arts. 32, 33, 35 & 44
- Legal Aid Services Act, 2000
- Police Regulations of Bengal, 1943 (esp. Sections Sec. 243, 244, 248 & 260)

EXTERNAL (INTERNATIONAL HUMAN RIGHTS LAW INSTRUMENTS):

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Acceded: 10/06/1984 & Optional Protocol (Acceded: 09/06/2000):
 - Obligation of the State to take all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men (Article 3)
 - Obligation of the State to take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women (Article 6)
 - Obligation of the State to accord women equality with men before the law (Article 15)
- Convention on the Rights of the Child (CRC), Acceded: 08/03/1990 & Optional Protocols on the Involvement of Children in Armed Conflict (Ratified: 08/06/2000) and on the Sale of Children, Child Prostitution and Child Pornography (Ratified: 08/06/2000):
 - Obligation of the State to prioritize the best interest of the child (Article 3)
 - Obligation of the State to protect children from all forms of sexual exploitation and sexual abuse (Article 34)
 - Obligation of the State to adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the CRC at all stages of the criminal justice process (Optional Protocol to the CRC on the sale of children, child prostitution and child pornography, Article 8)

CYBER LAW IN CRIMINAL AND CIVIL CONTEXTS

Between September 2019 and August 2020, 3G and 4G mobile phone services were restricted in the areas surrounding the Rohingya refugee camps in the Ukhia and Teknaf Upazilas of Cox's Bazar in accordance with directives issued by Bangladesh's national telecommunications regulator, the Bangladesh Telecommunications Regulatory Commission (BTRC). The restrictions effectively made mobile data/internet access largely non-functional in those areas, affecting the Bangladeshi host community, NGO and civil society aid workers, and Rohingya refugees living in the camps.⁴⁶ Following a meeting of the National Taskforce on Rohingya Refugee Repatriation, on 31 August 2020, Foreign Secretary Masud bin Momen confirmed reports that 3G and 4G mobile phone services would be restored in these areas, citing internal and external pressures as a reason for lifting the restrictions on connectivity.⁴⁷ The Government's decision marks an important milestone and introduces new possibilities for providing Rohingya communities with additional access to information and protections. However, a number of questions remain, including with regards to access to SIM registration for Rohingya refugees, online censorship, and potential restrictions on mobile phone services under Bangladeshi law.

Code of Civil Procedure (CPC), 1908

SUMMARY

Provides the framework for procedures of civil courts.

APPLICABILITY TO ROHINGYA

This Code applies to the whole of Bangladesh, and Part IV, Section 83, provides that foreigners may sue in Bangladeshi courts “as if they were citizens.” Therefore, Rohingya in Bangladesh are arguably covered by this Code.

PROTECTION NOTES

The CPC provides that civil courts can exercise jurisdiction over any civil dispute if the “cause of action” arises in Bangladesh or if the defendant resides in Bangladesh.

Civil courts should permit claims by Rohingya under jurisdictional provisions of the CPC and through liberal interpretation of those jurisdiction clauses found in Sections 9-24 and Section 83.

If they are permitted to access civil courts, this law would provide a number of important protections to Rohingya, including ensuring their access to lowest-tier civil courts situated in districts, as well as the ability to resort to Alternative Dispute Resolution processes (as per Section 89 and others).

Contract Act, 1872

SUMMARY

Provides for the governance of contracts and defines remedies in case of breach of contracts.

APPLICABILITY TO ROHINGYA

This Act applies to the whole of Bangladesh without reference to citizenship. Therefore, Rohingya in Bangladesh are arguably covered by this Act.

PROTECTION NOTES

Any civil dispute that has its origin in Bangladesh can be litigated by foreigners. All protections available under this law should be available to Rohingya, including the right to enter into contracts, enforce contracts, and sue and receive compensation if contracts are violated.

Digital Security Act, 2018 and Rules, 2020

SUMMARY

Provides for measures to prevent digital crimes and to arrest, try, and punish those involved in the commission of digital crimes. Sets out a number of procedures, including for arrest without warrant, investigation and trial by the Cyber Tribunal, and conditions for grant of bail.

APPLICABILITY TO ROHINGYA

This Act applies to the whole of Bangladesh without reference to citizenship, as well as extrterritorially. Therefore, Rohingya accused of committing any of the following offences in Bangladesh (and outside) are covered by this Act:

- illegal entrance into critical information infrastructure;
- illegal entrance into a computer, digital device, computer system;
- damage to a computer, computer system;
- digital or electronic forgery or fraud;
- digital identity fraud;
- publishing/sending of offensive, false, or fear-inducing messages/information;
- unauthorized collection of personal data;
- publication/broadcast of information in any electronic format that “hampers the religious sentiment or values”;
- publication/broadcast of defamatory information;
- deterioration of law and order;
- hacking.

PROTECTION NOTES

Sections 42 and 43 of this Act grant police officers broad authority to investigate, search, and seize evidence, including without a warrant. As per Section 53, most offences under this Act are considered cognizable (i.e., police can arrest without a warrant) and non-bailable. Offences under the Digital Security Act are exclusively triable by Cyber Tribunals (Section 49), established under the provisions of Section 68 of the Information and Communication Technology Act, 2006. As a result, the bail and appeals procedures applicable to the Cyber Tribunals as stipulated in that Act will apply to offences defined in the Digital Security Act.

If charged under this Act, Rohingya who are eligible should be provided legal assistance under the Legal Aid Services Act and be afforded legal and constitutional guarantees of presumption of innocence, prompt notification of charges, and the right to appeal as per Articles 31, 32, 33, 35, and 44 of the Constitution, and in accordance with the provisions of the CrPC. Any Rohingya individual convicted of an offence under this Act has the right to appeal the Cyber Tribunal’s judgment to the Sessions Court.

Furthermore, although Section 61 of this Act repealed Section 57 of the ICT Act, 2006, which defined the crime of “publishing fake, obscene or defamatory information in electronic form,” the Digital Security Act in Sections 27, 28 and 31 has in effect reincarnated Section 57 of the ICT Act. According to commentators, Section 57 “was widely used to silence online activists and the media mostly in the name of regulating ‘defamatory’ comments against political high-ups and anti-religious writing,”⁴⁸ which raises several human rights and freedom of expression concerns that bring into question the constitutionality of Sections 27, 28, and 31 of the Digital Security Act.⁴⁹

Right to Information (RTI) Act, 2009 and Rules (Receipt of Information), 2009; Rules (Data Protection and Management), 2010; Rules (Complaint and Disposal), 2011; Rules (Disclosure and Dissemination), 2011

SUMMARY

Provides Bangladeshi citizens the right to demand and receive access to information from public bodies, including from the executive and legislative branch, as well as organizations that undertake a public function (including NGOs, international organizations, and other private bodies).

APPLICABILITY TO ROHINGYA

This Act applies to all citizens of Bangladesh. Therefore, Rohingya in Bangladesh are arguably not covered by this Act.

PROTECTION NOTES

While this Act explicitly provides for the right to information for citizens, it does not foreclose the possibility of citizens signing applications on behalf of persons who cannot sign themselves, which includes illiterate persons and people without citizenship.

Public-Interest Information Disclosure (Provide Protection) Act, 2011 and Rules, 2017

SUMMARY

Provides protections for whistleblowers who disclose information relevant to the public interest to competent authorities.

APPLICABILITY TO ROHINGYA

This Act applies to the whole of Bangladesh without reference to citizenship. Therefore, Rohingya in Bangladesh are arguably covered by this Act.

PROTECTION NOTES

Under this Act, any individual may disclose information to a competent authority on irregular/unauthorized use of public funds; mismanagement of public resources; misappropriation/misuse of public funds or resources; abuse of power/maladministration; commission of a criminal offence/illegal or prohibited actions; conduct that is harmful or dangerous to public health, safety, or to the environment; or corruption by any agency in Bangladesh (Section 4). Importantly, “agencies” are defined in Section 8 to include both governmental agencies/ departments/ministries/organs as well as any NGO/non-governmental institution, including foreign-funded NGOs and non-governmental agencies performing governmental duties under governmental agreements. Competent authorities include the chiefs/ chief executives of any agency or municipality, as well as the Register of the Supreme Court (for disclosures related to a member of the judiciary), the Anti-Corruption Commission,

the Comptroller and Auditor General (for issues related to public funds), and any Officer-in-Charge of the relevant police station for disclosure of criminal/unethical acts (Section 2.1).

Whenever an individual (whistleblower) discloses such information to a competent authority with the belief in the veracity of the information (or without reasonable grounds for believing its veracity, where the significance of the allegation justifies its disclosure), a whistleblower is shielded from having their identity disclosed without their consent (Section 5.1), as well as from criminal/civil suits (Section 5.2). Whistleblowers have the right to be informed of what actions, if any, were taken based on their disclosure (Section 8).

Frivolous and patently false disclosures are punishable with a minimum of two years' imprisonment and maximum of five years' imprisonment, a fine, or both (Section 10.1). Government officials found to have submitted false disclosures are also subject to departmental disciplinary action (Section 10.2).

Bangladesh Telecommunication Regulation Act, 2001 (as amended up to 2010)

SUMMARY

Establishes the Bangladesh Telecommunication Regulatory Commission (BTRC), which is granted broad authorities including the ability to suspend/revoke operator licenses, issue enforcement orders to telecommunication providers, impose administrative fines for noncompliance, investigate offences under this Act, and issue orders for operators to block the sending of messages deemed criminal under this Act. Furthermore, the Act provides the Government with the authority to, in the interest of public order, investigate or order law enforcement agencies to investigate offences under this Act.

APPLICABILITY TO ROHINGYA

This Act extends to the whole of Bangladesh without reference to citizenship. Therefore, Rohingya in Bangladesh charged with the following offences (defined in the Act as cognizable and bailable) are covered by this Act:

- sending false messages via radio or telecommunication;
- conducting activities “contrary to national unity and solidarity” through the use of telecommunication or radio equipment;
- causing interference in or intercepting radio communication and telecommunication without permission;
- sending obscene, threatening, or grossly insulting messages;
- causing annoyance by telephone calls;
- eavesdropping on telephone conversations.

PROTECTION NOTES

The BTRC is the regulatory body of the Telecommunications Act. The regulator can limit bandwidth as required by the State. Because the BTRC and the Telecommunications Act govern the relationship between telecommunications licensees and the Government (rather than focusing on obligations the State and service providers have to consumers), consumers have few avenues for leveraging either the BTRC or national legislation to advocate for fewer restrictions on accessing telecommunications services.

The lack of national legislation enshrining rights of consumers to access telecommunications services has enabled the GoB to institute restrictive measures such as cell phone bans, which were only recently lifted following directions by the National Taskforce on Rohingya Repatriation to the BTRC, which in turn notified mobile phone operators to reinstate 3G and 4G services in the Ukhia and Teknaf Upazilas.⁵⁰

It is currently unclear how Rohingya individuals will be able to access SIM cards and mobile phones, as since April 2016 a mandatory biometric registration scheme requires that customers provide a national ID or passport in order to purchase a SIM card from mobile phone service providers. Adherence to this registration scheme is imposed on the mobile phone operator,⁵¹ rather than the individual subscriber/purchaser, by virtue of the [Cellular Mobile Phone Operator Regulatory and Licensing Guidelines, 2011](#) and appears to remain in force.

By virtue of the powers granted to the BTRC in Section 31 of the Telecommunication Regulation Act, the BTRC can enforce adherence to the stipulations in these guidelines by mobile phone operators via orders, administrative fines, and license suspension or revocation. Section 28 of the Guidelines states that “[t]he Licensee shall be responsible if it fails to adopt appropriate measures for mandatory SIM/RUIM/Service Connection registration as directed by the commission from time to time.”

The strict ID requirements of the mandatory SIM registration scheme violate the obligation of telecommunications network operators not to act in a discriminatory manner towards any groups in providing telecommunications services (as per Section 37.g). It also runs counter to the BTRC’s own stated duty of “protect[ing] the social and economic interests of the consumers, to respond[ing] to their needs, and to control and abolish the existing and probable oppressive or discriminatory conduct or activities of the telecommunication service providers” (Section 29.d). The Cellular Mobile Phone Operator Regulatory and Licensing Guidelines should be amended to specify alternative SIM registration methods for Rohingya refugees.

The Information and Communication Technology Act, 2006 (as amended up to 2013); and National ICT Policy, 2018

SUMMARY

Provides for regulation of the use of information and communication technologies, and defines a number of offences and the procedures for investigation, arrest, prosecution, and punishment.

APPLICABILITY TO ROHINGYA

This Act applies to the whole of Bangladesh without reference to citizenship. Therefore, Rohingya charged with the following offences in Bangladesh are covered by this Act:

- unauthorized access to protected systems;
- damaging a computer or computer system;
- tampering with computer source code when the computer source code is required to be kept or maintained by law;
- hacking a computer system;
- using a computer to commit an offence.

PROTECTION NOTES

In accordance with Section 68, the Government has the authority to establish a Cyber Tribunal to dispose of offences defined under this Act. The Cyber Tribunal has the same powers as Sessions Courts. The Cyber Tribunal may grant bail where the State has been given an opportunity to hear the accused’s application for release and the Tribunal does not believe that the trial will result in a conviction and where the Tribunal is satisfied that, even if convicted, the punishment for the offence would be relatively light (Section 71). The Cyber Tribunal is to dispose of cases within six months of charges being framed, with the possibility for a three-month extension with written reasons and additional time necessary upon submission of a report to the High Court Division and the Controller (Section 73).

The orders and judgments of the Cyber Tribunals may be appealed to the Cyber Appellate Tribunal, to be established under the authority granted in Section 83, which may retain, revoke, alter, or rectify verdicts issued by the Cyber Tribunal (Section 83.3). The Cyber Appellate Tribunal's rulings are final (Section 83.4).

If charged under this Act, Rohingya who are eligible should be provided legal assistance under the Legal Aid Services Act and be afforded legal and constitutional guarantees of presumption of innocence, prompt notification of charges, and the right to appeal as per Articles 31, 32, 33, 35, and 44 of the Constitution, and in accordance with the provisions of the CrPC.

Bangladesh's National Information and Communication Technology (ICT) Policy outlines the State's vision for the development of the nation's ICT infrastructures and services and sets a number of goals to be achieved by 2021, 2030, and 2041. "Social Equity and Universal Access" is listed as the third objective of this policy, defined as "establishing social equality at all levels through the use of information and communication technology and ensuring universal access to information flow in the State" (Section 2.2.1). This goal is further defined to encompass "bringing people from all walks of life, especially the underprivileged, women and the disabled and those in need of special assistance into mainstream society through the use of information technology" (3.3.1), "non-discriminatory access to public and private digital services for the public" (3.3.3), and "the development of the language, culture and heritage of people of all regions, including ethnic minorities" (3.3.8).

Courts Use of Information Technology Act, 2020

SUMMARY

Enables courts to conduct any judicial proceedings (trial or judicial inquiry, or the application or anticipatory hearing, or the taking of evidence, or the taking of arguments, or the giving of orders or judgments) via audio-visual or any other electronic means.

APPLICABILITY TO ROHINGYA

This Act applies to all subordinate courts or tribunals in Bangladesh, including the Appellate Division of the Supreme Court and the High Court Division. It therefore applies to Rohingya who are party to any such court proceedings in Bangladesh.

PROTECTION NOTES

This Act stipulates that virtual presence "through audio-video or any other similar electronic means" of any individual shall fulfil the requirement of personal presence in or before a court in the Code of Civil Procedure or the Code of Criminal Procedure (Section 4).

Section 3 grants courts the authority to conduct proceedings virtually, following the procedures and safeguards laid out in the Code of Civil or Criminal Procedure, in all other aspects.

Cross-References:

INTERNAL (RELEVANT LEGISLATION FOUND IN OTHER SECTIONS OF THIS DOCUMENT):

- Constitution of Bangladesh, Arts. 31, 32, 33, 35 & 44
- Legal Aid Services Act, 2000

EXTERNAL (INTERNATIONAL HUMAN RIGHTS LAW INSTRUMENTS):

- International Covenant on Civil and Political Rights (ICCPR), Acceded: 09/06/2000:
 - Right to hold opinions without interference and of freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice, subject only to lawful restrictions made in the interest of respecting the rights or reputations of others or for the protection of national security, public order, health or morals (Article 19)
- International Covenant on Economic, Social and Cultural Rights (CESCR), Acceded: 10/05/1998:
 - Right to take part in cultural life and to enjoy the benefits of scientific progress and its applications (Article 15)
- Convention on the Rights of the Child (CRC), Acceded: 08/03/1990 & Optional Protocols on the Involvement of Children in Armed Conflict (Ratified: 08/06/2000) and on the Sale of Children, Child Prostitution and Child Pornography (Ratified: 08/06/2000):
 - Right of the child to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally or in writing or in print, in the form of art, or through any media of the child's choice, subject only to lawful restrictions made in the interest of respecting the rights or reputations of others or for the protection of national security, public order, health or morals (Article 13)
 - Right of the child to access information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health (Article 17)
- Convention on the Rights of Persons with Disabilities (CRPD), Ratified 11/30/2007 & Optional Protocol (05/12/2008):
 - Obligation of the State to promote access for persons with disabilities to new information and communications technologies and systems, including the Internet (Article 9.2e)
 - Right of persons with disabilities to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice (Article 21)

ACCESS TO EDUCATION, EMPLOYMENT, AND HEALTHCARE

Enforcing economic and social rights in a context of inequality and endemic poverty presents many difficulties. Despite this, the January 2020 decision by the Government of Bangladesh to lift the long-standing ban on education for young Rohingya refugees, to allow schooling for children aged 11-13, is momentous and provides a timely opportunity to encourage entrenchment and enforcement of other economic and social rights. Given the Supreme Court's historical record of judicial activism towards safeguarding constitutional guarantees by issuing orders to the Government to enforce these rights, Bangladesh's judiciary is capable of asserting and extending entitlements and protections towards Rohingya living in Bangladesh which stem from domestic law, the Constitution, and international human rights instruments.

Bangladesh Labour Act, 2006 (as amended up until 2018); and Rules, 2015

SUMMARY

Provides for the regulation of minimum hours of wages; payment of wages; compensation for injuries to workers; formation of trade unions; raising and settlement of industrial disputes; health, safety, welfare, and working condition and environment of workers; employment of workers; and relations between workers and employers.

APPLICABILITY TO ROHINGYA

This Act applies to the whole of Bangladesh without reference to citizenship. Therefore, Rohingya in Bangladesh who meet the following definition of worker are arguably covered by this Act:

“any person including an apprentice employed in any establishment or industry registered under the Companies Act, 1994, either directly or through a contractor, to do any skilled, unskilled, manual, technical, trade promotional, or clerical work for hire or reward, whether the terms of employment are expressed or implied, but does not include a person employed mainly in a managerial, administrative [or supervisory] capacity.”

A number of specific types of employees are excluded from the jurisdiction of this Act, including but not limited to employees of institutions not run for profit or gain.

PROTECTION NOTES

Rohingya employed by registered establishments in Bangladesh (e.g., within the formal economy) are entitled to the protections and rights of workers as outlined in the Act (minimum working hours, compensation for injuries sustained while working, maternity benefits, etc.).

Under the 2018 amendment, an exception allowing for the employment of children ages 12-13 in light work has been abolished from Section 44. As such, the minimum age for employment in an establishment or industry in Bangladesh registered under the Companies Act, 1994 is now 14 years or older.

Regardless of whether employed in the formal or informal sector, the following constitutional protections apply equally to citizens and non-citizens:

- In accordance with Art 14, the State has the fundamental responsibility “to emancipate the toiling masses, the peasants and workers ... from all forms of exploitation.”
- In accordance with Art 34(1), there is an absolute prohibition on forced labour, with the exception of individuals sentenced to rigorous imprisonment or as required by law for public purposes. The prohibition on forced labour has been implemented by Section 374 of the Penal Code, 1898, which declares forcing an individual to engage in non-voluntary labour is a punishable offence.

Bangladesh Export Processing Zones Labour Act, 2019

SUMMARY

Governs the rights and obligations of employers and workers in establishments registered under the Companies Act, 1994 operating within declared Export Processing Zones (EPZ).

APPLICABILITY TO ROHINGYA

This Act applies to declared EPZs in Bangladesh without reference to citizenship. Therefore, Rohingya in Bangladesh who meet the following definition of worker are arguably covered by this Act:

“any adult (including a person employed as an apprentice) who does not fall within the definition of employer, regardless of whether his terms of employment are public or implied, who, on the basis of wages or rewards, is skilled in any industrial establishment in a zone, excluding executive and administrative staff with supervisory responsibilities.”

PROTECTION NOTES

Rohingya employed by factories/establishments registered under the Companies Act, 1994 and operating within EPZs in Bangladesh are entitled to the protections and rights of workers as outlined in the Act (minimum wages, compensation for injuries sustained while working, maternity benefits, etc.).

In accordance with Section 189, workers and employers are prohibited from engaging in obscene, demeaning, and indecent conduct towards women in the workplace.

Section 196 establishes the right of “equal pay for equal work,” expressly prohibiting gender-based wage discrimination.

Regardless of whether employed in the formal or informal sector, the following constitutional protections apply equally to citizens and non-citizens:

- In accordance with Art. 14, the State has the fundamental responsibility in principle to emancipate the toiling masses, the peasants and the workers from all forms of exploitation.
- In accordance with Art. 34(1), there is an absolute prohibition on forced labour, with the exception of individuals sentenced to rigorous imprisonment or as required by law for public purposes. Forced labour is also criminalized by Section 374 of the Penal Code, 1898, which declares forcing an individual to engage in non-voluntary labour to be a punishable offence.

Bangladesh Labour Welfare Foundation Act, 2006; and Rules, 2010 (as amended up until 2015)

SUMMARY

This Act and the related Rules provide for the establishment of the Labour Welfare Foundation, a national organization charged with establishing a welfare fund to provide financial protections to workers in the informal and formal economy.

APPLICABILITY TO ROHINGYA

The Act applies to all workers in Bangladesh without reference to citizenship and explicitly includes workers in both the informal and formal sectors. Therefore, Rohingya in Bangladesh who meet the following definition of worker are arguably covered by this Act: “any person employed in the formal or informal sector who is or was employed in an organization or industry directly or through a contractor in exchange for wages or money for any skilled, unskilled, manual or technical, business development or clerical work; however, this does not include any person engaged in administrative or managerial responsibilities.”

PROTECTION NOTES

Rohingya employed in Bangladesh are entitled to apply to receive the protections and benefits provided by the Bangladesh Labour Welfare Foundation as outlined in Section 5 of this Act and further defined in Section 4 of the implementing Rules, including:

- being provided medical treatment in medical camps established by the Foundation to treat workers, especially workers affected by accidents or environmental causes;
- being provided financial allocations to cover the medical expenses of visiting a medical clinic or hospital (up to 500,000 taka);
- receiving assistance for the education of their children (up to 25,000 taka for general education and up to 300,000 taka for higher education);
- receiving one-time assistance in case of permanent physical or mental disability or death due to an accident (a lump sum of up to 200,000 taka to the worker or, in the case of death, family; and up to 50,000 taka for emergency medical care);
- for Rohingya female workers in the informal sector, receiving assistance for maternal welfare (up to 25,000 taka);
- receiving necessary assistance for the treatment of chronic diseases (up to 100,000 taka);
- receiving financial incentives in recognition of special skills (up to 25,000 taka).

Domestic Workers Protection and Welfare Policy, 2015

SUMMARY

This Policy provides a number of protections to domestic workers, including requiring that their employers provide an employment contract, sufficient rest and leave including 16 weeks of maternity leave, and setting out the applicability of the minimum age for employment per the Bangladesh Labour Act, 2006.

APPLICABILITY TO ROHINGYA

This Policy applies to all domestic workers in Bangladesh without reference to citizenship. Therefore, any Rohingya domestic workers in Bangladesh are arguably covered by this Policy.⁵²

PROTECTION NOTES

Rohingya employed as domestic workers should be provided a number of protections and rights outlined in this Policy.

Domestic workers' employers should ensure that full-time workers receive a liveable wage, and that where provided, the maintenance and clothing of a domestic worker is to be in addition to any wages (Section 7.1a). Part-time domestic workers' wages are to be set in accordance with the principle of a liveable wage, albeit with respect to the number of hours employed (Section 7.1b).

By virtue of Section 7.2, the minimum age for employment laid out in the Bangladesh Labour Act should also apply to domestic workers, meaning that no children under the age of 14 should be employed as domestic workers.⁵³

Section 7.4 sets out that domestic workers should be assigned working hours in such a way that allows for proper opportunities for rest and recreation, including access to a safe and healthy area to sleep and paid leave to be taken with the employer's permission.

Section 7.5 stipulates that female domestic workers who are pregnant should be afforded a total of 16 weeks paid maternity leave (four weeks prior to expected delivery, 12 weeks after delivery) and should not be assigned physically strenuous tasks during maternity. Moreover, the employer should assist in contacting a government hospital to provide maternal healthcare.

Section 7.7 sets out that sick domestic workers should not be assigned work and their employer should arrange for them to receive proper medical treatment at the employer's expense.

By virtue of Section 7.9, domestic workers who are injured while performing work duties should be compensated by their employer in accordance with the type of accident and any damages/losses sustained, as well as covering the costs of appropriate medical treatment where necessary.

Where Rohingya domestic workers are the victims of physical or mental sexual assault or harassment by their employer, or their employer's family members or guests, they should be entitled to file a case and to have the Government cover the costs of their case, and the guidelines on sexual harassment laid out by the High Court in its ruling in *BNWLA vs. Government of Bangladesh* (2011 BLD (HCD) 31) would apply (Section 7.10d).

Domestic workers should be entitled to participate in and benefit from the Bangladesh Labour Welfare Foundation Act, 2004 by virtue of Section 7.12.

Domestic workers and their employers should provide 30 days advanced notice of intention to terminate the terms of employment. If an employer instead immediately terminates a domestic worker, the employer should pay 30 days' wages as severance (Section 15).

Regardless of whether employed in the formal or informal sector, the following constitutional protections apply equally to citizens and non-citizens:

- In accordance with Art. 14, the State has the fundamental responsibility in principle to emancipate the toiling masses, the peasants and the workers from all forms of exploitation.
- In accordance with Art. 34(1), there is an absolute prohibition on forced labour, with the exception of individuals sentenced to rigorous imprisonment or as required by law for public purposes. Forced labour is also criminalized by Section 374 of the Penal Code, 1898, which declares forcing an individual to engage in non-voluntary labour to be a punishable offence.

Administrative Notifications regarding the Employment of Rohingya as Volunteers by NGOs operating in Cox's Bazar:

Bureau of NGO Affairs Memorandum No. 03.07.2666.661.51.019.17-10 of 23 September 2019 and NGO Affairs Memorandum No. 03.07266660.66.341.18-03 of 1 January 2020.

SUMMARY

These memoranda issued by the Bureau of NGO Affairs form the basis for the Government's allowance of "Cash for Work" and daily labour schemes implemented by NGOs for Rohingya refugees living in the camps in Cox's Bazar.

APPLICABILITY TO ROHINGYA

These memoranda apply to NGOs providing humanitarian assistance to Rohingya refugees living within the camps in Cox's Bazar, and therefore have a direct impact on available livelihood opportunities for Rohingya refugees.

PROTECTION NOTES

On 23 September 2019, the Bureau of NGO Affairs issued Memorandum No. 03.07.2666.661.51.019.17-10 with the subject line "Formulation of Framework for NGOs working on behalf of forcibly displaced Myanmar nationals, revising the existing framework dated 6 March 2018." Article 11 of the revised framework stated: "As far as possible, priority should be given to Bangladeshi nationals in hiring workers for emergency relief projects. Under no circumstance may Rohingya nationals be recruited." Article 12 stated: "Under no circumstances can any cash disbursement scheme be accepted. Punitive action will be taken against the organization if any kind of cash payment is found."

However, responding to a memorandum issued by the Ministry of Foreign Affairs regarding complications in cleaning, sewage, and waste management in the camps due to this prohibition, the Bureau of NGO Affairs issued instructions in Memorandum No. 03.072666660.66.341.18-03, dated 1 January 2020, to all NGOs to "take necessary action in coordination with the Commissioner for Refugees, Relief and Repatriation" in Cox's Bazar. Therefore, Rohingya refugees living in the camps continue to be able to avail themselves of cash for work and day labour schemes implemented by NGOs, although such opportunities have been increasingly limited.⁵⁴

Guideline: Guidance on Rohingya Volunteer Incentive Rates, July 2018

SUMMARY

These guidelines, formulated by the Inter Sector Coordination Group (ISCG) and approved by the Refugee Relief and Repatriation Commissioner, outline the wages to be paid to Rohingya volunteers participating in cash for work (CFW) and daily labour schemes.

APPLICABILITY TO ROHINGYA

These guidelines apply to all cash for work schemes implemented by NGO members of the Cash Working Group (later renamed the Transfers Working Group) operating in the camps.

PROTECTION NOTES

Rohingya volunteers engaged in cash for work programmes are entitled to a daily wage of 350 taka/day, and may work for a period of 16 days for 5-6 hours/day (including a one-hour lunch break) or for 32 non-consecutive days within a three-month period.

Unskilled work is to be remunerated at a rate of 50 taka/hour, while semi-skilled work (community outreach, enumerators, site management assistants) receive 50-70 taka/hour for sporadic work engagements or 7,200-12,600 taka/month for regular work over a longer time period.

All cash for work schemes should include an on-site first aid kit, a washroom facility for every 20 employees/volunteers, and a childcare nursery to look after participants' children. In addition, all CFW schemes should adhere to International Labour Organization (ILO) principles on decent work.

Rights and Protection of Persons with Disabilities Act, 2013

SUMMARY

This Act provides for the implementation of the Convention on the Rights of Persons with Disabilities (CRPD), including provisions for non-discrimination and the duty of special treatment to persons with disability.

It also affirms the right of persons with disabilities to equal education in every school in Bangladesh as well as equal access to all facilities without obstacles, including social services such as infrastructure, communication, transportation, information, and technology.

APPLICABILITY TO ROHINGYA

This Act applies to all persons with disabilities in Bangladesh without reference to citizenship. Therefore, Rohingya in Bangladesh with disabilities are arguably covered by this Act.

PROTECTION NOTES

Rohingya with disabilities should be ensured equal access to all facilities, including equality before the law, participation in education at all levels, access to healthcare and to participate fully and effectively in social and economic life without obstacles (Section 16).

Rohingya with disabilities should benefit from the right to complain against any kind of discrimination and, should this complaint be accepted, have a right to receive compensation (Section 36). Discrimination includes every act that prevents the person with disability from receiving fair and equal treatment, infringes upon their enjoyment of rights, or upon their access to facilities provided by the State. Where compensation is not paid, litigation can be submitted against the convicted persons either directly or indirectly by the person with disability, their parent or legal guardian, or by a disabled persons' organization on behalf of the person with disability.

Protection of Persons with Neuro-Developmental Disability Trust Act, 2013

SUMMARY

This Act provides for the establishment of a trust and national committee with the objective of providing support to individuals and families/guardians of individuals with neuro-developmental disability.

APPLICABILITY TO ROHINGYA

This Act applies to all individuals with a neuro-developmental disability (including autism or autism spectrum disorder, Down syndrome, intellectual disorders, and cerebral palsy) without reference to citizenship. Therefore, Rohingya with neuro-developmental disabilities are arguably covered by this Act.

PROTECTION NOTES

Rohingya with neuro-developmental disabilities and, where applicable, their family members or caretakers should be included and benefit from initiatives undertaken by the Neuro-Developmental Disability Protection Trust (established by virtue of Section 8) to promote their social and cultural inclusion and provide them

with physical, mental, and financial support, as well as to benefit from activities undertaken by civil society organizations receiving financial support from the Trust (in accordance with Section 22.3).

Rohingya individuals with neuro-developmental disabilities should, where necessary, be entitled to benefit from the appointment of a guardian (either an individual or registered organization providing support to neuro-developmentally disabled individuals) under the procedures defined under Section 23.

Bangladesh Medical and Dental Council Act, 2010 and Code of Professional Conduct, Etiquette and Ethics

SUMMARY

This Act re-enacts and amends the Medical and Dental Council Act, 1960, providing for the establishment of the Medical and Dental Council, the statutory body responsible for setting the minimum requirements for becoming a licensed medical/dental practitioner/assistant and which has the power to revoke qualifications and discipline medical/dental practitioners in the case of fraud or malpractice.

APPLICABILITY TO ROHINGYA

This Act applies to all hospitals, dental institutions, or other institutions which provide medical/dental training and degrees in Bangladesh and to all medical/dental practitioners registered to provide services in Bangladesh.

PROTECTION NOTES

In accordance with Section 5 of this Act, the Bangladesh Medical and Dental Council established by this Act is assigned with the duty of taking administrative and disciplinary action against persons practicing medicine/dentistry without proper registration (Section 5.19) or using a fraudulent degree to register (Section 5.20). Furthermore, the Council has the duty to determine standards for professional conduct which must be adhered to by all medical/dental practitioners (Section 22).⁵⁵

Individuals who practice medicine/dentistry without proper registration are subject to three years' imprisonment, a fine of up to one lakh taka, or both (Section 22). Medical/dental practitioners found guilty of violating the prescribed Code of Professional Conduct may have their registration revoked by order of the Council (Section 23.1).

In accordance with the Code of Professional Conduct, Etiquette and Ethics formulated and published by the Bangladesh Medical and Dental Council, medical/dental practitioners must, among other obligations:

- Uphold one's duty to the patient and not discriminate on the grounds of race, religion, sex, disability, custom, financial condition, nationality, or political belief (2.3.1).
- Ensure patient consent/valid authority prior to carrying out any examination/investigation, providing treatment, or involving a patient in teaching/research activities (2.3.1).
- Take all possible steps to alleviate pain and distress, even when a patient's condition may not be curable (2.3.1).
- Defend the interest of minors within one's capacity as a medical/dental practitioner (2.3.1).
- Respect patients' right to privacy and the confidentiality of medical records (2.4).
- Take prompt action to ensure that serious risks to patient safety, dignity, or comfort are alleviated (2.5.3).
- Offer help if emergencies arise in clinical settings or in the community, taking account one's own safety, competence, and the availability of other options for care (2.5.3).
- Do not use one's professional position to pursue a sexual or improper emotional relationship with a patient or someone close to them (2.8.1).

- Do not express personal beliefs (including political, religious, and moral beliefs) in a way that is exploitative of the vulnerabilities of the patient or likely to cause them distress (2.8.2).
- Inform patients of any medical accidents which occur, make corrective measures (where possible), offer an apology, and explain fully and promptly the situation and any likely short/long-term effects (2.8.3).
- Inform patients, to the best of one's knowledge, of all charges/fees before the provision of services (4.1.1).

Rohingya individuals who face medical or dental malpractice should be afforded the opportunity to file a complaint with the Registrar of the Medical and Dental Council to seek disciplinary action.

Bangladesh Nursing and Midwifery Council Act, 2016 and Ethical and Professional Code of Conduct for Registered Nurses / Midwives, 2003

SUMMARY

The Act re-enacts and amends the Bangladesh Nursing Council Ordinance, 1983, providing for the establishment of the Bangladesh Nursing and Midwifery Council, the statutory body responsible for setting the minimum requirements for becoming a registered nurse/midwife (and other related/auxiliary professions) and which has the power to revoke qualifications and discipline registered nurses/midwives in the case of license fraud or malpractice.

APPLICABILITY TO ROHINGYA

This Act applies to all nursing and midwifery institutions or other institutions which provide nursing/midwifery training and degrees in Bangladesh and to all nurses/midwives registered to provide services in Bangladesh. The Code makes no reference to citizenship or jurisdiction and reiterates the concept of health as a fundamental right.

PROTECTION NOTES

In accordance with Section 5 of this Act, the Bangladesh Nursing and Midwifery Council is assigned with the duty of taking administrative and disciplinary action against persons practicing without proper registration (Section 5.15). It criminalises providing nursing/midwifery services without proper registration (Section 27) and using falsified accreditations or other fraudulent means to register (Section 27) as offences punishable by one year's imprisonment, a fine of up to 50,000 taka, or both. Furthermore, the Council may revoke the registration of any nurse or midwife who violates the standards for professional conduct formulated by the Council (Section 22).

In accordance with the Professional Code of Conduct for Registered Nurses and Midwives formulated and published by the Bangladesh Nursing and Midwifery Council, nurses and midwives must, among other obligations:

- Treat patients as an individual and with respect and refrain from acting without their consent (2.1).
- Show sympathy and sensitivity towards the patient, including ensuring compassionate care especially to the most vulnerable groups, communicating in an appropriate manner and with the appropriate tone, and providing gender-sensitive care (2.2).
- Maintain patient confidentiality and privacy (2.3).
- Serve all patients equally, regardless of religion, gender, age, race, nationality, or economic class (2.4).
- Act as an advocate for the patient in all matters relating to their care, including resolving interpatient/client conflicts which may interfere with the patient's rights/recovery and respecting previous wishes of the patient while consulting close family/friends where the patient is unable to give consent/make medical decisions on their own; defend patients who are vulnerable and/or incapable of protecting their own interests (2.5).

- Respect the legal right of patients to be informed about their diagnosis, treatment, and prognosis and bring any evidence/statements to the immediate attention of authorities if they may help in the course of a legal process (2.6).
- Provide a safe environment to promote early recovery and prevent complications (2.7).
- Ensure and uphold a basic standard of nursing and professional care, including safeguarding patients from incompetent practice from others (2.8).
- Refrain from undertaking any nursing practice without the required authority (2.9) or without the requisite training/skills (2.10).
- Refuse to participate in any unethical medical/nursing practice (2.11).
- Use appropriate restraint only in circumstances where the patient is in danger of harming themselves or others, using restraint techniques that will not harm the patient (2.12).
- Refrain from engaging in a sexual/intimate relationship with any patient (2.16).
- Refrain from engaging in political activities/attempt to unduly influence patients politically (2.17).

Rohingya individuals who face malpractice by registered nurses/midwives should be afforded the opportunity to file a complaint with the Registrar of the Bangladesh Nursing and Midwifery Council to seek disciplinary action.

The Infectious Diseases (Prevention, Control and Eradication) Act, 2018

SUMMARY

Provides for the establishment of an Advisory Committee to the Department of Health to report on infectious diseases, as well as governing other procedures for preventing, controlling, and eradicating infectious diseases such as malaria, tuberculosis, HIV, and Middle East Respiratory Syndrome (MERS).

APPLICABILITY TO ROHINGYA

This Act applies to all individuals within Bangladesh, irrespective of their nationality. Therefore it applies to Rohingya in Bangladesh.

PROTECTION NOTES

In accordance with Section 11 of this Act, the Director General of the Department of Health has the authority to declare areas (territories of Bangladesh, individual buildings, etc.) “infected areas” and to restrict movement of/ contact among individuals within such areas, subject to approval by the Government.

Sections 12-22 provide for further diagnostic/control measures, such as testing and temporarily isolating individuals, ordering the disinfection of buildings/areas, and proscribing rules for funerary services aimed at preventing the spread of contagion.

The intentional spreading and/or concealing of contagious disease is an offence punishable by up to six months’ imprisonment, a fine of up to one lakh taka, or both (Section 24). In addition, deliberate obstruction of health officials’ duties and refusal to comply with orders is an offence punishable by up to three months’ imprisonment, a fine of up to 50,000 taka, or both (Section 25). Finally, knowingly providing false information regarding an infectious disease is punishable by up to two months’ imprisonment, a fine of up to 25,000 taka, or both (Section 26). All of these offences are non-cognizable, bailable, and compoundable by virtue of Section 28.

The Vaccination Act, 1880

SUMMARY

The Act provides for a declaration for mandatory vaccinations to be made by publication of a notification in the Official Gazette.

APPLICABILITY TO ROHINGYA

Mandatory vaccination declarations may be issued covering “any town or selected local area in Bangladesh,” and such declarations will apply to all inhabitants of the affected area. Therefore, a mandatory vaccination order, if made, should apply to Rohingya living in the affected area.

PROTECTION NOTES

In accordance with Section 8, public vaccinators in mandatory vaccination areas are obliged to provide vaccinations free of charge at public vaccination stations. Where the GoB institutes mandatory vaccination regimes, Rohingya living in the affected area(s) should be included in such efforts and inoculated free of charge.

Policy: National Health Policy, 2011

SUMMARY

This Policy defines the goals of the Government in the field of healthcare.

APPLICABILITY TO ROHINGYA

This Policy states that one of its main goals is to “establish medical rights as a right for people from all walks of life, in accordance with the Constitution and international charters.” As such, it should be applicable to Rohingya living in Bangladesh.

PROTECTION NOTES

Rohingya living in Bangladesh should have an enforceable right to access primary health and emergency medical care, both from non-governmental service providers and state institutions.

Syed Saifuddin Kamal and Another v. the Government of Bangladesh (High Court Division, Supreme Court of Bangladesh, Writ Petition No. 1509 of 2016)

SUMMARY

In this judgment, the High Court Division directed the Ministry of Health and Family Welfare to devise and implement guidelines on “[Emergency Medical Services for Road Accident Victims and Protection of Good Samaritans](#),” mandating the provision of emergency healthcare services to victims of road accidents and protecting good Samaritans rendering aid in good faith.

APPLICABILITY TO ROHINGYA

The Guidelines apply “in case of accidents on all roads and highways of the country” with no reference to citizenship. Therefore, the Guidelines apply to Rohingya individuals who fall victim to roadway accidents in Bangladesh, as well as Rohingya good Samaritans who render aid to such accident victims.

PROTECTION NOTES

The Guidelines published as a result of this High Court judgment require that all hospitals in Bangladesh provide immediate first aid and necessary medical intervention to individuals injured in road crashes without delay on account of potential legal liabilities or consideration of the injured person’s financial capacities (Clause 6).⁵⁶ If the hospital which has received the patient does not have adequate medical service facilities or capacities, it may refer the patient to another hospital with adequate facilities, following the provision of first aid (Clause 7, read with Clause 8). Failure to provide emergency medical services on the part of physicians/health care providers is deemed misconduct (Clause 9.3) and the certifying/licensing authority is to take disciplinary action against hospitals which fail to abide by these guidelines (Section 9.4).

The Guidelines also deal with the subject of good Samaritans who provide aid to persons injured in road accidents, shielding such individuals from being detained or otherwise harassed by hospital authorities beyond recording the individual’s name and, where applicable, their telephone number (Clause 11). Law enforcement officers are prohibited from harassing good Samaritans who provide assistance to an injured individual (Section 12.5).

Finally, the Guidelines prohibit law enforcement officers from bringing individuals injured in road accidents to a police station for questioning before they have received medical care (Section 12.1) and to arrange for transport of the injured person to the nearest hospital if no ambulance is available (Section 12.4).

The Primary Education (Compulsory) Act, 1990

SUMMARY

This Act provides the Government with the authority to declare primary education compulsory for children residing in any area.

APPLICABILITY TO ROHINGYA

This Act applies to all children between the ages of six and ten who live in an area where primary education

has been declared compulsory. Therefore, Rohingya children aged six to ten living in such an area are arguably covered by this Act.

PROTECTION NOTES

Where the GoB has declared primary education compulsory for children residing in an area, access to primary education for Rohingya children should be ensured according to this law. The territory of the camps in Ukhiya and Teknaf should be considered areas where such a declaration has been made.

Policy: The National Education Policy, 2010

SUMMARY

This Policy defines the goals of the Government in the field of education.

APPLICABILITY TO ROHINGYA

This Policy states, “equal opportunities will be created to ensure access of all sections of children to primary education irrespective of ethnicity, socio-economic conditions, physical or mental challenges and geographical differences. This is the constitutional responsibility of the State.” This Policy explicitly mentions “foreigners” in Paragraph 4 relating to secondary education, noting the importance of Bangla lessons for foreigners. It should thus be applicable to Rohingya children in Bangladesh.

PROTECTION NOTES

Rohingya children should be provided access to primary education, in line with the stated objective to make primary education “universal, compulsory, free and of uniform quality for all.” This would align with the constitutional directive under Article 17 for the State to adopt effective measures for the purpose of “establishing a uniform, mass-oriented and universal system of education and extending free and compulsory education to all children to such stage as may be determined by law.”

Rohingya adolescents and adults should also be enabled and encouraged to enrol in secondary and higher education. In particular, Rohingya women should benefit from initiatives aimed at promoting equal access of women to educational opportunities in line with the aims and objectives of the Policy as laid out in Chapter 16 on Women’s Education.

Bangla language instruction should be made available for Rohingya as per the Policy on Secondary Education (Chapter 4). This will enable them to better understand their rights and obligations in Bangladesh and under Bangladeshi laws. Importantly, this will help them implement their right to education.

Policy: Foreign Minister Momen's Statement on Access to Formal Education for Rohingya Children following the Myanmar Curriculum, 2020

SUMMARY

In January 2020, Minister for Foreign Affairs, Mr. A.K. Abdul Momen, stated that Rohingya children would be allowed to receive a formal education in the Burmese language and following Myanmar's national curriculum.

APPLICABILITY TO ROHINGYA

This policy will apply to Rohingya children living in Bangladesh ages six-14.

PROTECTION NOTES

In accordance with this positive development, all Rohingya children living in Bangladesh should be enrolled in formal educational settings.

While this policy change is a welcome and positive development, in view of the likelihood that Rohingya refugees will not be able to return to their homes in Myanmar in the near future, it is imperative that Rohingya children also receive instruction in Bangla and that the educational certification they receive upon completion of primary education provides access to furthering their studies.

Abid Khan v. Bangladesh (2003) 55 DLR (HCD) 318 (High Court Division, Bangladesh Supreme Court, Writ Petition No. 3831 of 2001)

SUMMARY

A legal challenge was made on behalf of the Urdu-speaking community (Biharis) in 2003 to the refusal of election officials to include names of Urdu-speaking community members in the electoral roll.

APPLICABILITY TO ROHINGYA

This case provides precedent for the applicability of the rule of domestic law with regard to residents of camps in Bangladesh.

PROTECTION NOTES

In this case, the High Court Division interpreted the application of the Citizenship Act and the Court's own jurisprudence on citizenship for this community, holding that their residence in the Geneva Camp in Dhaka did not signify allegiance to a foreign State and that in fact no bar existed to their acquisition of Bangladeshi citizenship. With regards to those born in Bangladesh, the Court interpreted Section 4 of the Citizenship Act as applicable to the Urdu-speaking community born in the Geneva Camp, which was recognized as not being excluded from the operation of the laws of the land. The Court's rationale concerning the applicability of domestic law to those residing in camps could and should similarly be extended to Rohingya.

Cross-References:

INTERNAL (RELEVANT LEGISLATION FOUND IN OTHER SECTIONS OF THIS DOCUMENT):

- Constitution of Bangladesh, Arts. 13, 31, 32, 33, 34, 35 & 44
- Penal Code, 1860 (Sec. 374)
- Legal Aid Services Act, 2000

EXTERNAL (INTERNATIONAL HUMAN RIGHTS LAW INSTRUMENTS):

- International Covenant on Economic, Social and Cultural Rights (ICESCR), Acceded: 10/05/1998:
 - Obligation of the State to recognize the right of all persons to enjoy the highest attainable standard of physical and mental health (Article 12)
 - Obligation of the State to recognize the right to education, including free primary education, for all persons (Article 13)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), Ratified: 08/24/2011:
 - Although the CMW does not automatically apply to refugees and stateless persons in accordance with Article 3(d), it may be made applicable to these populations in the implementing national legislation, in which case the following rights and protections would apply:
- Right of migrant workers and their families to leave any State, including their State of origin; and the right to enter and remain in their State of origin at any time (Article 8)
- Prohibition on torture, or cruel, inhuman or degrading treatment or punishment (Article 10)
- Prohibition on slavery, forced or compulsory labour, other than in the context of a sentence of rigorous imprisonment issued by a competent court or compulsory service as part of civil obligations also applicable to citizens (Article 11)
- Right to practice their religion or beliefs of choice (Article 12)
- Right to freedom of expression and opinion (Article 13)
- Prohibition on arbitrary or unlawful interference with privacy, correspondence or other communication (Article 14)
- Prohibition on arbitrary deprivation of property (Article 15)
- Right to personal liberty and security/prohibition on arbitrary arrest/detention and enforceable right to compensation in case of violation of this right (Article 16)
- Right to inherent human dignity of those detained, including separate accommodation from convicted persons and for detained juveniles (Article 17)
- Right to equality before the law, to the presumption of innocence, and to basic minimum guarantees such as being informed of charges in a language understandable to them and to the provision of legal aid (Article 18)
- Prohibition on collective expulsion/right to individual examination (Article 22)
- Right to equal treatment with nationals of the State of employment in regards to remuneration and other conditions of work (Article 25)
- Right to equal access to take part in the activities of trade unions (Article 26)
- Right to equal participation and benefit regarding social security (Article 27)
- Right to receive emergency medical care (Article 28)
- Right of migrant workers' children to a name, birth registration and to a nationality (Article 29)

- Convention on the Rights of the Child (CRC), Acceded: 08/03/1990 and Optional Protocols on the Involvement of Children in Armed Conflict (Ratified: 08/06/2000) and on the Sale of Children, Child Prostitution and Child Pornography (Ratified: 08/06/2000):
 - Prohibition on discrimination against children on the basis of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status (Article 2)
 - Right of the disabled child to special care and the enjoyment of a full and decent life in conditions ensuring dignity, promoting self-reliance and facilitating the child’s active participation in the community (Article 23)
 - Right of the child to education, obligation of the State to make primary education compulsory and free to all and to make secondary and higher education accessible to all (Article 28)
- Convention on the Rights of Persons with Disabilities (CRPD), Ratified: 11/30/2007:
 - General obligation of the State to undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability, including the adoption of legislative, administrative and other measures (Article 4)
 - Right to equal recognition before the law (Article 12)
 - Right to effective access to justice (Article 13)
 - Right to personal liberty and security (Article 14)
 - Prohibition on torture or cruel, inhuman or degrading treatment or punishment (Article 15)
 - Prohibition on exploitation, violence and abuse (Article 16)
 - Right to freedom of expression and opinion and to access information through all forms of communication (Article 21)
 - Right to education (Article 24)
 - Right to enjoy the highest attainable standard of health (Article 25)
 - Right to an adequate standard of living and social protection (Article 28)

CONCLUSION

The situation of over one million Rohingya in Bangladesh is dire. Driven from their homes in Myanmar, they have suffered loss and hardship beyond comprehension. Today, they live an uncertain existence, beset by a lack of clarity regarding their status and rights, and the laws and policies that may (or may not) apply to them.

However, the situation is not hopeless. As this guide has sought to document, there are numerous national laws and policies that apply to Rohingya in Bangladesh, which can be used to improve their circumstances. If progressively and systematically applied, the laws and policies detailed in this compendium would empower Rohingya in Bangladesh and enable access to a much-broadened (yet still incomplete) set of rights and entitlements, rather than maintaining their exclusion, precarity, and deprivation of agency under the ad hoc and informal systems under which they currently live.

This compendium seeks to increase awareness and knowledge of both duty bearers and rights holders regarding the legal protections that are available to non-citizens in Bangladesh. While preparation of this document was catalysed by the historic plight of the Rohingya, which has since 2017 assumed new proportions, we hope it will support actors in guiding and strengthening rights-based approaches to all non-citizens in Bangladesh, who are entitled to protection and freedom based on their humanity. Today—over three years after the mass exodus in 2017—Rohingya communities continue to inhabit a legal limbo that both reflects and exacerbates their precarious living conditions. Against this backdrop, it is the authors' hope that this document can stimulate legal advocacy and strategies, and inspire progressive applications of national law to secure, protect, and realize the rights of Rohingya and other refugees.

ENDNOTES

- 1 United Nations Human Rights Council, “[Human Rights Council Opens Special Session on the Situation of Human Rights of the Rohingya and Other Minorities in Rakhine State in Myanmar](#),” 5 December 2017.
- 2 [Republic of the Gambia v Republic of the Union of Myanmar \(Application Instituting Procedures and Requesting Interim Measures\) 2019](#).
- 3 Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137; Protocol relating to the Status of Refugees (adopted and entered into force 4 October 1967) 606 UNTS 267.
- 4 Saul B., Mowbray J., and Baghoomians I., “The last frontier of human rights protection: Interrogating resistance to regional cooperation in the Asia-Pacific,” (2011) 18.
- 5 The Act contains provisions that criminalize violations such as irregular entry, and provides for detention in various situations (Sec. 3(2), read with Sec. 14).
- 6 A note on informal justice and other alternatives to the formal justice system, as the authors recognize their importance in this context. Although this protection note does not directly address informal and hybrid justice mechanisms, the authors remain cognisant of their significance, which is central to lived experiences of justice and the rule of law. The authors encourage high legal principles and standards to be applied in any adjudication process, whether informal, formal, or hybrid, for which this protection note can provide a benchmark for practice. For more information see: [Access to Justice for Rohingya and Host Community in Cox’s Bazar](#), International Rescue Committee, 8 July 2019.
- 7 This includes the April 2018 Memorandum of Understanding between the Government of Bangladesh and the UNHCR (UNHCR, “[Bangladesh and UNHCR agree on voluntary returns framework for when refugees decide conditions are right](#),” 13 April 2018) and statements by the Bangladeshi Home Affairs Secretary (Humayun Kabir Bhuiyan, “[Bangladesh not to let in Rohingyas anymore](#),” *Dhaka Tribune*, 8 September 2019). While this exemption is understood to have been applied, there continues to be significant legal uncertainty surrounding legal stay and documentation and consequent legal implications. While this lack of clarity is perhaps both intentional and strategic, there are several arguments that advocates can put forward, as exhibited through various case law included in this document, to support this position and acknowledge the availability and applicability of legal protections.
- 8 For example, the principle of non-refoulement, while the cornerstone of refugee protection under the 1951 Convention, is enshrined in several international and regional human rights instruments, including in Article 3 of the Convention Against Torture, Articles 6 and 7 of the International Covenant on Civil and Political Rights, Article 16 of the International Convention on the Protection of All Persons and Enforced Disappearances, the Convention on the Rights of the Child (e.g. GC 6), and the Convention on the Elimination of all Forms of Discrimination Against Women (e.g. GC 32). Refugee protection obligations that arise under various international human rights treaties beyond the 1951 Refugee Convention are sometimes referred to as “complementary protection regimes” or subsidiary forms of protection.
- 9 [Refugee and Migratory Movements Research Unit \(RMMRU\) v Bangladesh](#) (High Court judgment, dated 31 May 2017).
- 10 [Refugee and Migratory Movements Research Unit \(RMMRU\) v Government of Bangladesh](#) (WP No 10504 of 2016 dated 31 May 2017) (SC HCD) 9; [Application of The Convention on the Prevention and Punishment of the Crime of Genocide](#) (The Gambia v Myanmar) (Request for the Indication of Provisional Measures: Order) 2020 23.
- 11 This was confirmed in the case of [Refugee and Migratory Movements Research Unit \(RMMRU\) v Bangladesh](#) (High Court judgment, dated 31 May 2017), in which the Court observed that to keep a Rohingya man in jail even after the expiry of his prison term would contravene Article 32 of the Constitution that guarantees to every person, including non-citizens, the right to life and liberty.[0][0]
- 12 Discussing the case of a Nigerian national jailed in Bangladesh who lacked the financial means to acquire legal counsel, Minister of Law, Justice and Parliamentary Affairs, Mr. Anisul Haque clarified in 2019 that there is no legal impediment to providing Legal Aid to destitute foreigners under the Legal Aid Services Act: “Our law calls for the provision of legal aid to helpless and indigent prisoners behind bars. There is no mention here as to whether or not the prisoner is a citizen of Bangladesh or not.” See Abu Saleh Rony, “Helpless Foreign Prisoners too will Receive Free Legal Aid,” *Samakal*, 9 October 2019.
- 13 UNHCR, “[Bangladesh and UNHCR agree on voluntary returns framework for when refugees decide conditions are right](#),” 13 April 2018.
- 14 Humayun Kabir Bhuiyan, “[Bangladesh not to let in Rohingyas anymore](#),” *Dhaka Tribune*, 8 September 2019.
- 15 United States Department of State, “[2020 Trafficking in Persons Report](#),” (June 2020) 93-97; Arpeeta Shams Mirzan, “[The Released Prisoners: Analyzing the Legislative Gaps in the Detention Scheme of the Foreigners in Bangladesh](#),” (June 2014) 18.
- 16 See e.g., ICC Pre-Trial Chamber III, “[Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar](#),” UN Human Rights Council, “[Myanmar: UN Fact-Finding Mission releases its full account of massive violations by military in Rakhine, Kachin and Shan States](#).”
- 17 UNHCR has issued biometric ID cards to Rohingya who arrived in Bangladesh from August 2017 onwards under the Biometric Identity Management System (BIMS), see UNHCR, “[More than half a million Rohingya refugees receive identity documents, most for the first time](#),” 9 August 2019.
- 18 UN Document [CMW/C/BGD/Q/1/Add. 1](#).
- 19 It is of note that such orders do not clearly identify under what authority the Cabinet Division is acting, leaving open possible constitutional challenges.
- 20 See, for example, *Pochon Rikssi Das vs Khuku Rani Dasi 50 DLR (1998) (HCD) 47*; *Meher Nigar v Mujibur Rahman 47 DLR (1995) (HCD) 18*; *Nirmal Kanti Das v Srimati Biva Rani 47 DLR (1995) (HCD) 514*.
- 21 As clarified in the opinion of the High Court Division in *Pochon Rikssi Das v Khuku Rani Dasi 50 DLR (1998) (HCD) 47*.
- 22 See Zahidul Islam, [Strengthening Family Courts: An Analysis of the Confusions & Uncertainties Thwarting the Family Courts in Bangladesh](#), BLAST, November 2006: 8.

- 23 The legal definition of the term “resident” is unclear; however, the [Income-Tax Ordinance](#), 1984 defines residents and non-residents for the purposes of this Act and, in the absence of other jurisprudence, may provide guidance on this issue. For the purposes of determining tax liability, individuals who spend more than 182 days of a year in Bangladesh are deemed residents (Section 2.55). Despite this, the applicability of “resident of Bangladesh” towards Rohingya remains unclear, since the GoB has the authority to declare that Rohingya do not qualify under the section 10 of the Foreigner’s Act, 1946. Given the inability of Rohingya refugees to return to Myanmar, all Rohingya living in the camps should be categorized as residents of Bangladesh.
- 24 See e.g.: Hoque, Ridwanul, and MD. Morshed Mahmud Khan, “Judicial Activism and Islamic Family Law: A Socio-Legal Evaluation of Recent Trends in Bangladesh.,” *Islamic Law and Society* 14, no. 2 (2007): 204–39; Yasmin, Taslima, “Judicial Trends in Child Custody Cases in Bangladesh: Traditional Islamic Law Rules versus Welfare Considerations.,” *Asian Journal of Comparative Law* 12, no. 2 (December 2017): 233–56.
- 25 [Md. Abu Baker Siddique v. S.M.A. Bakar & others](#), 38 DLR (AD) (1986) 106.
- 26 To this effect, the Supreme Court issued a [Circular](#) in 2016 instructing police officers to take special care to abide these provisions.
- 27 The minimum age of criminal responsibility in Bangladesh is nine years of age (Penal Code, Section 83).
- 28 [Bangladesh and others v. Bangladesh Legal Aid and Services Trust \(BLAST\) and others](#) (Civil Appeal No. 53/2004), Supreme Court of Bangladesh (Appellate Division, dated 24 May 2016). p 291, Par. X.
- 29 *Ibid.* p. 349.
- 30 *Ibid.* p. 392 (Par. A).
- 31 While Section 497 of the CrPC refers to children under the age of 16, this must be read as 18, and irrespective of the nature of the offence, by virtue of Section 52 of the Children Act 2013 (which has an overriding effect over the CrPC, 1898).
- 32 Most recently in [RMMRU v Bangladesh](#) (High Court judgment, dated 31 May 2017), p. 9-10. See also [Faustina Pereira v. State](#), 53 DLR (2001) 414.
- 33 This requirement has been reiterated in caselaw: [Naripokkho & Others v Bangladesh & Others](#) (WP No. 5541/2015), Supreme Court of Bangladesh (High Court Division, dated 18 February 2016), p. 37; reported in 25 BLC (2020) 659.
- 34 “Children” are defined, for the purposes of this Act, as all persons up to the age of 18 (Section 4 of the Children Act 2013).
- 35 Following this, 11 children under 12 were released from detention while others were released after being granted bail by the Children’s Court: [Suo-Moto Rule No. 07 of 2019](#), Supreme Court High Court Division.
- 36 [Bangladesh & others v. Bangladesh Legal Aid Service Trust \(BLAST\) & others](#) (Civil Appeal No. 53/2004), Supreme Court of Bangladesh (Appellate Division, dated 24 May 2016) p. 290, para. V; reported in 69 DLR (2017) 63.
- 37 In the High Court ruling in the [Kamruzzaman Khab v Bangladesh](#) case, which also disposed of WPs 10482/11 and 4879/12, this was [struck down as unconstitutional](#). However, the law in question has not yet been amended. The operation of the High Court’s judgment [continues to be stayed](#) by the Supreme Court, allowing for the [Mobile Courts to continue operating](#) under the administration of the Executive Magistrate, as demonstrated by recent Mobile Court orders [reported on in the media](#).
- 38 In 2017, the Supreme Court’s High Court Division held the law authorizing Mobile Courts to be unconstitutional, ruling that empowering Executive Magistrates with judicial powers was “a frontal attack on the independence of the judiciary and violates the theory of separation of powers.” The judgment is under appeal before the Appellate Division of the Supreme Court: [“It’s frontal attack on judiciary independence: HC,” The Independent](#), 8 June 2017.
- 39 See: [Suo-Moto Rule No. 07 of 2019](#), Supreme Court of Bangladesh, High Court Division.
- 40 M. Rafiqul Islam and S. M. Solaiman, [“The New Speedy Trial Law to Maintain Order in Bangladesh: Its Constitutional and Human Rights Implications,”](#) 46 *Journal of the Indian Law Institute* 79-98.
- 41 *Ibid.*
- 42 [Suo Moto Rule No. 7/2019](#), Supreme Court of Bangladesh (High Court Division, dated 11 March 2020), p. 23.
- 43 [RMMRU v Bangladesh](#), Supreme Court of Bangladesh (High Court Division, dated 31 May 2017).
- 44 The High Court has upheld that these tribunals have broad authority to initiate criminal proceedings, remarking that “the Tribunal has [been] given unfettered power to take cognizance of the offence against an accused assigning cogent reasons.” [Md. Nazmul Huda v the State](#) (Criminal Misc. Case No. 25614/2019), Supreme Court of Bangladesh (High Court Division, dated 3 February 2019), p. 3; reported in 18 ALR (HCD) 135-136.
- 45 Arpeeta Shams Mirzan, [“The Released Prisoners: Analyzing the Legislative Gaps in the Detention Scheme of the Foreigners in Bangladesh,”](#) *National Human Rights Commission, Bangladesh* June 2014, p. 18; see also US Department of State, [“2020 Trafficking in Persons Report,”](#) (June 2020) 93-97.
- 46 Restrictions on cellular service in and around the camps were originally framed as (national) security measures aimed at preventing organized crime, especially narcotics trafficking across the Bangladesh-Myanmar border. See [“Bangladesh Orders Cellphone Operators to Block Internet Services in Rohingya Camps,”](#) *Radio Free Asia*, 3 August 2019, accessed 7 November 2020.
- 47 Al-Masum Molla, Mohammad, [“Rohingya Camps: 3G, 4G mobile services to resume soon,”](#) *The Daily Star*, 28 August 2020.
- 48 Ridwanul Hoque and Sharawat Shamin, [“Bangladesh”](#) in 2017 *Global Review of Constitutional Law: I-CONNECT-Clough Center*, ed. Richard Albert et al. (Clough Center for the Study of Constitutional Democracy, 2018), 18–22.
- 49 The High Court Division has heard a writ petition challenging the legality of Sections 25, 28, 29 and 31 of the Digital Security Act, 2018 as unconstitutional on the grounds that they encroach on the right to freedom of speech guaranteed by Article 39 of the Constitution, and a hearing is pending: [“High Court questions two sections of Digital Security Act,”](#) *The Business Standard*, 24 February 2020.
- 50 Mohammad Al-Masum Molla, [“Rohingya Camps: 3G, 4G mobile services to resume soon,”](#) *The Daily Star*, 28 August 2020.
- 51 The mandatory biometric SIM registration scheme was unsuccessfully challenged by a Writ Petition submitted to the High Court District, and the scheme was upheld with the Court’s decision on 12 April, 2016. See [“Biometric SIM registration legal,”](#) *The Independent Bangladesh*, 13 April 2016.

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- 52 While national policies do not carry the force of law, they do have an important agenda-setting role and serve as guidelines for the drafting and implementation of new legislation and/or amendments to existing legislation. Various national policies have also been cited by the High Court in cases of judicial activism, reading certain rights and entitlements into broader constitutional guarantees.
- 53 In [BNWLA vs. The Cabinet Division and Others \(WP No. 3598 of 2010\)](#), the HCD directed the Government to ensure mandatory registration of all domestic workers by employers at the Municipal Corporation level as well as a registration scheme for parents who send their children from villages and rural areas to work as domestic workers in urban areas in order to prevent child trafficking and exploitation (p 33); however, these directives have yet to be implemented beyond the formulation of the national policy.
- 54 Asia Foundation and the Center for Peace and Justice, BRAC University, [“Navigating the Margins: Family, Mobility and Livelihoods amongst Rohingya Refugees in Bangladesh,”](#) August 2020.
- 55 Within the purview of its guideline-issuing competency, the BMDC has also recently issued guidelines on conducting “telemedicine” via phone/internet: Bangladesh Medical and Dental Council, [“Telemedicine Guidelines,”](#) July 2020.
- 56 Although the High Court Division ordered that these Guidelines be implemented and despite having been published in 2017, difficulties in accessing emergency healthcare for road crash victims continue to be widespread. After BLAST filed a contempt of court petition, the HCD issue a Rule on the Ministry of Health and others, to show cause why disciplinary action should not be taken against them for failure to effectively implement the Policy: “High Court rules against Health Secretary DG,” *Ittefaq*, 18 August 2020.

REFUGEE SOLIDARITY NETWORK

The Refugee Solidarity Network (RSN), a New York-based non-profit association, protects the rights of people uprooted from their homes and strengthens the communities where they seek safety. RSN employs a partnership model with advocates and local stakeholders in the Global South, to develop national capacities and advance legal frameworks as a means to refugee protection. RSN has contributed to projects involving the provision of legal assistance, information dissemination, training, and strategic litigation for refugees in Turkey, Bulgaria, Greece, Bangladesh, and Mexico and engages in research and advocacy on a regional and global level.

BANGLADESH LEGAL AID AND SERVICES TRUST

The Bangladesh Legal Aid and Services Trust (BLAST) is the leading non-government, not-for-profit legal aid provider in Bangladesh, with its staff lawyers, paralegals, researchers, and a network of over 2,600 pro bono lawyers working in 20 offices spread across the country. Founded in 1993 and working with the mission of making legal aid accessible to all, particularly the poor and the marginalized, BLAST is the only legal services organisation in the country to provide advice and assistance in criminal, family, civil, land, and constitutional law matters, and operates at all levels of the justice system – from village courts and Magistrate's Courts to the Supreme Court. Over the years, it has broadened its mandate to include alternative dispute resolution, public interest litigation, legislative advocacy, capacity building, and research. Some of the donors BLAST has worked with include UNDP, Save the Children International, US State Department, GIZ, Royal Danish Embassy, and Diakonia. It also has partnerships with 144 local organisations and works directly with numerous ministries and government institutions, while also maintaining active participation in several national and regional alliances on various legal and rights issues.

