



The Equal Rights Trust

126 North End Road
London W14 9PP
United Kingdom

Tel.: +44 (0) 20 7610 2786
Fax: +44 (0) 20 3441 7436
info@equalrightstrust.org
www.equalrightstrust.org

Board of Directors

Bob Hepple (Chair)
Sue Ashtiany
Tapan Kumar Bose
Sonia Correa
Hywel Ceri Jones
Asma Khader
Claire L'Heureux-Dubé
Gay McDougall
Bob Niven
Kate O'Regan
Michael Rubenstein
Stephen Sedley
Theodore Shaw
Sylvia Tamale

The Equal Rights Trust is a company limited by guarantee incorporated in England and a registered charity. Company number 5559173. Charity number 1113288.

Dimitrina Petrova
Executive Director

The Equal Rights Trust (ERT)

Stakeholder Submission to the:

Universal Periodic Review of The People's Republic of Bangladesh

9 October 2012

The Human Rights of Stateless Rohingya in Bangladesh

1. Introduction

The Equal Rights Trust (ERT) is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice.

Since May 2008, ERT has been carrying out research and advocacy on the human rights of stateless persons around the world. Over this period, ERT has focused on the Human Rights of Stateless Rohingya in various countries including Bangladesh and has conducted field research on the Bangladesh/Myanmar border since 2009, including the collection of over 50 testimonies from Rohingya fleeing violence in Myanmar since June 2012. ERT's research on Rohingya in Bangladesh has contributed to two publications, *Unravelling Anomaly: Detention, Discrimination and Protection Needs of Stateless Persons*,¹ and *Burning Homes, Sinking Lives: A situation report on the violence against stateless Rohingya in Myanmar and their refoulement from Bangladesh*.²

In this submission, ERT highlights some of the most significant concerns and challenges with regard to the human rights protection of Rohingya in Bangladesh relating to the populations of Rohingya that arrived since the recent violence in Myanmar in June 2012. The most significant concerns relate to:

- a. The *refoulement* of Rohingya fleeing the recent violence in Myanmar since June 2012; and
- b. The treatment of Rohingya refugees inside Bangladesh, including lack of access to protection and humanitarian aid for Rohingya.

ERT also remains concerned about the treatment of the long-standing Rohingya population in Bangladesh including their lack of access to a regularised status, security of the person and protection and their susceptibility to arbitrary detention and labour exploitation.³

2. The Rohingya in Bangladesh

Historically, Bangladesh has been for Rohingya both a place of refuge and of human rights abuse. Many of those who arrived in large numbers in the 1970s and 1990s were forcibly removed and those who remain in Bangladesh lack adequate access to protection or humanitarian aid, and thus live in impoverished conditions with little security. There are currently approximately 29,000 registered Rohingya refugees in Bangladesh and more than 300,000 unregistered persons of concern who are without adequate protection and denied access to humanitarian support. Since June 2012, fleeing persecution and violence in Myanmar, boatloads of Rohingya refugees have attempted to cross the border into Bangladesh. The Government of Bangladesh responded by sealing the border and strengthening the presence of border guards. Foreign Minister Dipu Moni is reported to have stated on 12 June that:

¹ The Equal Rights Trust, *Unravelling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons*, July 2010, available at: <http://www.equalrightstrust.org/ertdocumentbank/UNRAVELLING%20ANOMALY%20small%20file.pdf>

² The Equal Rights Trust, *Burning Homes, Sinking Lives: A situation report on the violence against stateless Rohingya in Myanmar and their refoulement from Bangladesh*, June 2012, available at: <http://www.equalrightstrust.org/ertdocumentbank/The%20Equal%20Rights%20Trust%20-%20Burning%20Homes%20Sinking%20Lives.pdf>

³ See above, note 1, pp. 150–159.

[T]he recent Rohingya influx does not help our interests. We're in consultation with Myanmar, to send back the Rohingya refugees to their homeland (...) The presence of Rohingyas is taking its toll on society, environment and the law and order situation.⁴

The Foreign Minister also stated that Bangladesh had no legal obligation to provide refuge to the fleeing Rohingya as it is not party to the 1951 Convention Relating to the Status of Refugees or its Protocol,⁵ thus demonstrating a lack of understanding of the nature of Bangladesh's obligations under international law.

3. The International Law Obligations of Bangladesh

Under international law, all persons within the territory or subject to the jurisdiction of Bangladesh must be protected by the state. A state has a right to control its borders but it may not violate fundamental human rights in doing so.

Bangladesh is a Member of the United Nations and a state party to several principal human rights treaties, notably:

- a. International Covenant on Civil and Political Rights (ICCPR);
- b. International Covenant on Economic, Social and Cultural Rights (ICESCR);
- c. International Convention on the Elimination of all forms of Racial Discrimination (ICERD);
- d. Convention on the Elimination of all forms of Discrimination Against Women (CEDAW);
- e. Convention on the Rights of the Child (CRC); and
- f. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

4. Refoulement of Rohingya refugees since June 2012.

The first boat with Rohingya refugees arrived and was pushed back - *refouled* - on 11 June 2012. The following testimony sheds light on the journey undertaken by Rohingya fleeing violence in Myanmar:

Riots broke out at the night. We could not stay there anymore. The fishing boats were beached on the shore. Terrified people rushed into those boats. We did not hire them, we just found them and used them. Those boats belonged to Burmese people. There were more or less 100 people in the boat with all the kids and females.

We sailed to the sea at night. I do not know what happened to the others. We were in the middle of the sea for three days. On the fourth day we beached on the shore. One of the members of the local government council [of Bangladesh] gave us rice to eat. After that it started to rain.

⁴ Cited in "Dhaka takes firm stance over Rohingya influx", *The Independent*, 13 June 2012, available at: <http://www.theindependentbd.com/paper-edition/frontpage/129-frontpage/115054-dhaka-takes-firm-stand-over-rohingya-influx.html>.

⁵ Cited by Hussein, M., "Rohingya refugees leave Burma to seek help in Bangladesh", *The Guardian*, 22 June 2012, available at: <http://www.guardian.co.uk/global-development/video/2012/jun/22/rohingya-refugees-burma-bangladesh-video>.

However, we were not allowed to take shelter in Bangladesh. They pushed us back to the sea. After we were pushed out, we tried to get to the shore individually at one's own risk. Nobody knows if everyone made it. We were all on our own. And we had to swim for some time to reach Bangladesh. So I do not know who went in which direction.⁶

A ten year old girl told ERT how she arrived in Bangladesh with her grandmother. They fled Myanmar on a boat when fighting broke out. The Bangladeshi border guard did not allow their boat to get close to the shore, so they drifted further along and when they found an appropriate place near the embankment, they decided to swim for the shore. In the process, the girl said that some adults and children including toddlers who were on the same boat drowned in the river Naf. She was unsure how many finally made it to Bangladesh, as it was dark when they arrived.⁷

According to media reports, around 1,500 Rohingya refugees had been forcibly turned away from Bangladesh by 12 June 2012, and Bangladesh had pushed back at least 16 boats from Sittwe.⁸ By 14 June, media access was much more restricted, perhaps as a result of criticism levelled at Bangladesh after news of the push backs broke.

On 18 June, ERT researchers were able to document in detail the push back of 139 persons in eight boats from Teknaf. The refugees who had arrived earlier in Bangladesh were detained, provided with water and food, then asked to get back on their boats and escorted back into Myanmar waters. This happened despite the pleas of the Rohingya that they would be killed if returned, as well as the extremely unsafe condition of some of their boats. In order to avoid being arrested upon entry to Myanmar, the boats went out to high sea with the intention of making their way back to Bangladesh during the night. On 19 June, ERT researchers learned that only two boats carrying 33 persons arrived safely back in Bangladesh. No information on the plight of the six other boats has been received and, given the condition of some of them, it is feared that they may have sunk.

Despite the Bangladeshi policy to push back – *refoule* – Rohingya refugees, more continued to arrive in desperation, fleeing the violence in Myanmar. As stated by one Rohingya interviewed within Myanmar:

We know that we are not allowed to enter Bangladesh. But people want to run away and we understand that that is not our home. We don't want to settle there, we just want a peaceful life at our own place. But this is very upsetting and we don't know what will happen. People are worried and scared that they will be killed at any time. The general community, they don't trust the government and now we cannot trust the Rakhine people so we don't know where to go, we don't have a safe place now.⁹

Another refugee stated that:

⁶ ERT Interview with B., 21 June 2012, place of interview withheld.

⁷ ERT Interview with C., 20 June 2012, place of interview withheld.

⁸ See Associated Press, "Rights Group urges Bangladesh to keep border open", 12 June 2012, available at: <http://www.google.com/hostednews/ap/article/ALeqM5hydUJnhjddHINV-04ciNKyGdyPEw?docId=db7162c60c3546f68b69daf8c3ae42a3>

⁹ ERT Interview with D., 21 June 2012, place of interview withheld.

Death by NaSaKa is also waiting for us if we are pushed back to Burma. NaSaKa will kill us just like a street dog. We prefer to die here, we will get the proper funeral that a Muslim should get. Even if the police kill us here, they will properly bury us religiously. We will never go back to Burma. There we will not get even a tiny place for a grave.¹⁰

5. The Treatment of Rohingya Refugees

Not surprisingly, given the length and the porous nature of the border between Bangladesh and Myanmar, many refugees have found ways to get into the country. As stated by an ERT researcher:

Most of the boats were trying to reach Bangladesh near the island of Shahpuri Dip. But the border guards and coast guards are strictly protecting that area. As a consequence, after 18 June, for a few days, there were no boats. The rough sea also played a role in this. But the Rohingya are now using many different routes to get into Bangladesh. The number entering the country could be 200-300 people a day.¹¹

In the face of heavy criticism both domestically and internationally, Bangladesh has allowed particularly vulnerable refugee families with young children to enter the country. On 24 June, ERT interviewed three such families (13 people in total) who had been put up, clothed and fed in shelters run by the border guard in Teknaf. Another family of five that fled Sittwe was also in the custody of the Border Guard. One of the three children was a new-born boy named Sangram (meaning “struggle”), who was born on or around 13 June on St Martin’s Island in Bangladesh, after the family was detained. Others who arrived on the same boat were sent back to Myanmar.

After a state of heightened security in the Cox’s Bazar district from 14 to 25 June, some temporary check points have been removed in the district. However, the number of border guards patrolling the Naf river correspondingly increased and push backs continued to occur in June and July 2012, albeit on a smaller scale. This may be attributed to the fact that Rohingya are now entering Bangladeshi territory in smaller groups than before.

In July 2012 in response to the new influx of Rohingya refugees from Myanmar, Bangladesh blocked aid agencies from providing aid and healthcare to both long and short term Rohingya populations, claiming that humanitarian aid was encouraging Rohingyas to seek refuge in Bangladesh.¹²

6. Human Rights Violations by Bangladesh

- a. ***The rights to seek and to enjoy asylum and not to be subjected to refoulement*** are entrenched principles of customary international law. Accordingly, everyone has the right to seek and to enjoy in other countries asylum from persecution and no persons may be expelled into a territory where they would be at risk of persecution. Article 14 of the UDHR and Article 22 of the CRC to which Bangladesh is a party provide this right which is particularly relevant to the history of Bangladesh, as the war of liberation in 1971 created approximately 10 million

¹⁰ ERT Interview with E., 24 June 2012, place of interview withheld.

¹¹ Internal situation report submitted to ERT by a researcher, 25 June 2012.

¹² BBC News Asia, “Bangladesh orders charities to stop aid to Rohingyas”, 2 August 2012, available at: <http://www.bbc.co.uk/news/world-asia-19092131>.

refugees who were given asylum in India. The right is also enshrined in the Convention Relating to the Status of Refugees 1951 and its Protocol of 1967. While Bangladesh is not party to the Convention, it is a member to the Executive Committee of the UNHCR and may be expected to uphold the highest standards of refugee protection. The Executive Committee has appealed to Governments “to follow, or continue to follow, liberal practices in granting permanent or at least temporary asylum to refugees who have come directly to their territory”.¹³ It has also extended coverage of international protection for women asylum seekers and refugees who are to be considered as a “particular social group”.¹⁴ The actions of Bangladesh described in this submission amount to violations of this right.

- b. *The right to be free from torture or cruel, inhuman or degrading treatment or punishment*** under Article 7 of the ICCPR and Article 3 of CAT is an absolute right which cannot be derogated from in any circumstances. Article 37 of CRC protects all children from torture or cruel, inhuman or degrading treatment or punishment. This right is recognised as a peremptory norm of international law and is therefore universally applicable. The principle of *non-refoulement* has been incorporated in human rights law and Article 3 of CAT provides that no state party shall expel, return or extradite a person to another state where there are substantial grounds for believing that s/he would be in danger of being subjected to torture. The basic criterion for this is: “to take into account various relevant considerations, such as consistent patterns of gross, flagrant or mass violation of human rights”.¹⁵ Therefore, Bangladesh has acted in violation of its obligation to protect and specifically not to *refoules* Rohingya fleeing torture and other cruel, inhuman or degrading treatment or punishment in Myanmar.
- c. *The right to life*** of all persons is protected under Articles 6 of the ICCPR and CRC; the arbitrary deprivation of life is prohibited in any circumstances. Article 32 of the Bangladesh Constitution also guarantees the right to life and personal liberty for all persons, regardless of nationality or lack thereof. Pushing back – *refouling* – Rohingya refugees, including children in boats that are not seaworthy, to a situation where they are at heightened risk of death by drowning is a violation of the right to life.
- d. *The right to liberty and freedom from arbitrary detention*** as articulated under Article 9(1) of the ICCPR ensures to all persons the right to liberty and security of the person and prohibits any discrimination in the enjoyment and exercise of the right not to be subjected to arbitrary arrest or detention. In addition, Article 9(5) provides that any persons unlawfully detained have an enforceable right to compensation. Article 33 of the Bangladesh Constitution enshrines this right for all persons in Bangladesh. The detention of Rohingya refugees prior to push backs may amount to a violation of this right.
- e. *The right to food and shelter including the fundamental right to be free from hunger*** is protected by Article 11 of the ICESCR and Article 27 of the CRC. The failure to provide adequately for the basic needs of refugees including refugee

¹³ UN High Commissioner for Refugees, *Asylum*, No. 5 (XXVI) – 1977.

¹⁴ UN High Commissioner for Refugees, *Refugee Women and International Protection*, No. 39 (XXXVI) – 1985.

¹⁵ Trakroo, R., Bhat A., and Nandi, S., *Refugees and the Law*, New Delhi: Human Rights Law Network, UD, 2005, p. 50.

children, and the withdrawal of permission to humanitarian organisations to provide such aid is a violation of this right.

- f. ***The right to the highest attainable standard of health*** is enshrined in Article 12 ICESCR and Article 24 CRC. The failure to provide primary healthcare to Rohingya refugees including children is a violation of this right.

7. ERT Recommendations

ERT Recommends that the member states call on Bangladesh to:

- a. At all times respect, protect and fulfil the human rights of stateless Rohingya persons subject to its jurisdiction.
- b. Ratify and take all necessary steps to implement the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.
- c. Refrain from *refoulement* or forcible return of all refugees, asylum seekers and persons of concern.
- d. Take all necessary steps to prevent further escalation of this humanitarian tragedy by opening its borders to Rohingya refugees fleeing violence and persecution in Myanmar.
- e. Fully cooperate with UN agencies and international NGOs to enable the provision of humanitarian assistance and support to all refugees.
- f. Fully cooperate with the international community in providing humanitarian support and protection in a fair and non-discriminatory manner to all long-term Rohingya refugees and persons of concern within Bangladesh.