

**STRANGERS TO CITIZENSHIP: AN ANALYSIS OF THE DEPLORABLE
CONDITIONS OF THE URDU-SPEAKING COMMUNITY IN BANGLADESH**

by

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Abstract

The despairing position of the Urdu-speaking Community, popularly known as the ‘Biharis’, who are currently living in Bangladesh, has been an intricate issue that has not garnered enough attention from both a local and international level than it actually merits. Even though the Government of Bangladesh has declared them as citizens, there is still a predicament for achieving a permanent long-lasting solution for their rehabilitation.

This thesis asks whether it is sufficient to recognize the community’s lawful rights in Bangladesh and see this issue reciprocally from the Government of Bangladesh’s perspective. It argues for the requirements of protection and human rights that the Urdu-speakers legally deserve from Bangladesh. A major facet of the contention explores the international laws and treaties to which the Bangladesh government is obligated to for upholding the people’s rights. As the Urdu-speakers are living in a despondent situation for many decades, this thesis critically analyzes Bangladesh’s existing domestic legislation, and stresses for large-scale improvements for the settlements the community is living in, which would hopefully be a catalyst for change in governmental policy and organizational measures for dealing with them more efficiently.

The question of whether the Urdu-speaking Community can be nationally integrated within Bangladesh is further examined in this thesis. Due to the convoluted nature of the subject and lack of political will in Bangladesh, no silver bullet for the Urdu-speakers’ quandaries can be suggested, but this thesis investigates some potential ways for mitigating their sufferings.

Preface

This thesis is the original, unpublished, and intellectual product of the author, Naimul Muquim. The fieldwork reported by the author in Chapter 2 was covered by the UBC Behavioural Research Ethics Board, under the project title ‘An Appraisal of the Deplorable Conditions of the Biharis in Bangladesh’, Ethics Certificate number H16-00363.

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List of Abbreviations

AFB = Al-Falah Bangladesh, Dhaka

GOB = Government of Bangladesh

ICRC = International Committee of the Red Cross

ICCPR = International Covenant on Civil and Political Rights, 1966

ICESCR = International Covenant on Economic, Social and Cultural Rights, 1966

NGO = Non-governmental organization

RMMRU = Refugee and Migratory Movements Research Unit

UDHR = Universal Declaration of Human Rights, 1948

UNHCR = Office of the United Nations High Commissioner for Refugees

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CHAPTER 1: INTRODUCTION

1.1 The Dilemma of the Urdu-speaking Community of Bangladesh

Among the many displaced peoples in the world, the Urdu-speaking Community of Bangladesh, also known as the ‘Biharis’ or ‘Stranded Pakistanis’, are a susceptible minority group since the time they began living in Bangladesh. The majority of this Urdu-speaking minority has found themselves in a protracted situation, which continues to keep them away from a normal life in their home country for decades. In order to appreciate why and how the Urdu-speaking Community became stranded and what their nexus to Pakistan is, the issue must be viewed in its historical context. History tells us that they originally migrated as refugees from India because of the hostility and violence during the partition period of British India, and settled in East Pakistan in 1947.

By the time of the Liberation War of Bangladesh in 1971, due to the distinct cultural identity of the Urdu-speakers, which was different from the Bengalis and possibly a feeling that the division of Pakistan would strengthen India, they favored Pakistan and went against Bangladesh’s struggle for independence. After Bangladesh became independent, the Supreme Court in 1972 ruled that the Urdu-speaking Community in the country were eligible for citizenship. The Government of Bangladesh (GOB) declared Presidential Order 149 in 1972, offering citizenship to the Urdu-speaking Community for the first time. However, many of them preferred repatriation, and thus attempted to migrate to Pakistan with little success; the majority of them were unable to do this, as it was not met with positive support from Pakistan. As a consequence, the greater number of the Urdu-speakers could not go away from the country; rather they

became stranded and were later relocated to settlements throughout Bangladesh. Until 2008, the legal status of the community was in question, but the Supreme Court of Bangladesh ultimately ruled that all the Urdu-speakers living in the country had the right to Bangladeshi citizenship.

Today, the GOB in general tries to be aware of its international legal obligations in terms of protecting citizens' rights, and ensures fundamental rights under national legislation for all. Bangladesh has pledged to the principles of certain important instruments, such as the *Universal Declaration of Human Rights*, and acceded to the *International Covenant on Civil and Political Rights*, 1966 and the *International Covenant on Economic, Social and Cultural Rights*, 1966. But the Urdu-speaking Community's privileges are time and again forgotten as the country has mostly maintained ad hoc institutional practices to protect their rights. Seemingly, there are no agreed parameters and a complete lack of awareness of the bureaucracy for handling the 'Bihari' burden at present, especially in terms of providing around 300,000 community members with all their necessary legal entitlements. Consequently, Bangladesh has no specific mandate to provide them full national protection, and is yet to establish a durable solution for them as citizens.

1.2 Purpose and Structure of this Thesis

The primary research question of the thesis is this: since the Supreme Court's decision of 2008, how is the Urdu-speaking Community coping up after being granted lawful citizenship status, and to what degree are they able to enjoy fundamental and democratic rights in Bangladesh society today? The issue that is being examined here

actually goes deeper because I am specifically asking to what extent does the Urdu-speaking Community in Bangladesh enjoy full citizenship? And is citizenship really helping the community – why or why not? These are profound questions since this thesis will demonstrate that citizenship operates differently in terms of the Urdu-speaking Community, as there is a general failure of the government to properly integrate this population in Bangladesh. Citizenship in fact creates a rubric for integration, and this thesis is an assessment tool for determining the degree of achieving that for the community.

Given the intricate and protracted state of affairs of the community, this first chapter shall describe the hypothesis and methodology for the thesis, and critically evaluate the historical developments and establish who the Urdu-speakers are and how they have come upon their present conditions. It will assess whether it is sufficient to recognize the community's rights in the country and see this issue reciprocally from Bangladesh's perspective. For the purposes of this thesis, I will also explain why the term 'Urdu-speaking Community' is ideal to say instead of expressions like the 'Bihari' or 'Stranded Pakistani' at the conclusion of the first chapter. Although the GOB and national organizations are dealing with the Urdu-speakers' present living conditions, questions pertaining to what degree the standards that are being followed in practice, and the suitability of such standards of their livelihood will be inspected in Chapter 2 of the thesis. I have used empirical data through an interview process with community members and legal experts in Bangladesh to understand how the Urdu-speakers are doing, particularly after 2008, and have assessed certain impact indicators such as land rights, education, employment and healthcare to deduce people's existing legal, political, social

and economic circumstances. I will assess the Supreme Court of Bangladesh's decisions that ruled in favor of the Urdu-speaking population's citizenship in part 2.1 in order to analyze the impact indicators.

Since the expression 'refugee' is still attributed to the community, even till this day, the third chapter will concentrate on how terms like these have broad connotations under international law, and why they cannot be used for the Urdu-speakers anymore. In part 3.1, I will be investigating the entire community's change of legal status from being refugees at the time of their initial persecution in 1947, to seemingly becoming stateless after Pakistan rejected their right to an effective nationality by amending its domestic citizenship legislation in 1978; and then finally becoming apparent citizens of Bangladesh after a landmark judgment by the Supreme Court of Bangladesh in 2008. I will therefore scrutinize the court's ruling to understand the judgment's intended objective.

Albeit there is a vast amount of literature on the general protection of minorities, the specific literature on the current plight of the Urdu-speaking Community is rather limited. At present, there is no precise literature on the domestic legal and international treaty obligations owed by the GOB towards the Urdu-speaking Community. However, prior works by Sumit Sen (1999-2000)¹ examined the conditions of the Urdu-speakers when they were stateless refugees after their forced displacement to Bangladesh. This thesis considers Sen as he helps explain the historical background of the community. He contended how the community was able to claim a Convention refugee status in the

¹ Sumit Sen, "Stateless Refugees and the Right to Return: The Bihari Refugees of South Asia – Part 1" (1999) 11:4 Int'l J Refugee L 625, and Sumit Sen, "Stateless Refugees and the Right to Return: The Bihari Refugees of South Asia – Part 2" (2000) 12:1 Int'l J Refugee L 41.

context of a well-founded fear of persecution in spite of the succession of Bangladesh from Pakistan, and how the people became subsequently denationalized because of Pakistan, which relegated their status to becoming *de facto* stateless refugees again. Sen moreover inspected the nationality entitlement of the Urdu-speakers and contemplated on their right to return to Pakistan as a vital factor based on the right to return in international law. After a decade, Ninette Kelley (2010)² studied the recognition by the GOB of the Urdu-speakers' right to be registered as citizens in 2008, which is deemed an important human rights achievement. Kelley used a framework for scrutinizing the causes of public choices, and examined how ideas, interests, and institutions acted in the reversal of public policy that led to such recognition. The thesis also notes the sociological analysis of Victoria Redclift (2013),³ who comprehended the Urdu-speaking Community and the challenges of what it means to be citizens by concentrating on the displacement and experiences of space as a political concept. She finds that ideas of citizenship are temporally, socially and spatially produced and as a consequence crude binary oppositions of statelessness and citizenship are no longer relevant.⁴ Redclift further reasoned between the association of material institution of citizenship and settings of physical integration and segregation, and exposed a dissonance between Bangladesh's bureaucratic state recognition of citizenship and imaginations of that status amongst the Urdu-speakers living in settlements.⁵ In addition, this thesis considered some research

² Ninette Kelley, "Ideas, Interests and Institutions: Conceding Citizenship in Bangladesh" (2010) 60:2 UTLJ 349.

³ Victoria Redclift, *Statelessness and Citizenship: Camps and the creation of political space* (New York, United States of America: Routledge, 2013).

⁴ Ibid at 121.

⁵ Victoria Redclift, "Subjectivity and Citizenship: Intersections of Space, Ethnicity and Identity Among the Urdu-Speaking Minority in Bangladesh" (2011) 12 Int'l Migr & Integration 25 at 40.

conducted by Hannah Sholder (2011),⁶ who inquired into crucial questions about the community's rehabilitation process, especially on how the Supreme Court's ruling has affected the community's housing and land rights situation, and whether it has led to any social integration. Sholder however deduced that most Urdu-speakers are socially isolated and susceptible even after the court's decision, and stakeholders have a bigger responsibility to support an effective process for the community's integration.

Therefore, these works contain little reference to relevant domestic laws of Bangladesh that are pertinent for the Urdu-speakers; hence this thesis intends to focus on and scrutinize those significant statutory laws. This is one of the primary focuses of the thesis because helping to explain the domestic laws to which Bangladesh is obligated to shall pave the way to build a solid argument for upholding the Urdu-speaking Community's rights. In particular, I shall clarify to what extent the Constitution of Bangladesh offers protection and how Bangladesh's national legislation adopts the chief obligations of international law in part 3.2. This same section of the chapter will further provide arguments relating to citizenship and the law, and underscores a broader notion of citizenship than the more conventional legally framed definition that applies for the Urdu-speakers.

In the following fourth chapter, I shall link the thesis question to the current international legal framework, and include an analysis of international human rights law and the GOB's acceded and ratified treaties that could potentially apply for the Urdu-

⁶ Hannah Sholder, "Housing and Land Rights, The Camp-Dwelling Urdu-Speaking Community in Bangladesh" Refugee and Migratory Movements Research Unit: OBAT Helpers Inc. (2011) online: <<http://obathelpers.org/wordpress/wp-content/uploads/2015/02/HOUSING-AND-LAND-RIGHTS-Hannah-Sholder.pdf>>.

speaking Community. Part 4.1 will begin with the question of how the GOB usually sees and applies public international law and whether they exist as guarantees or mere pledges. Part 4.2 shall then elucidate that certain international legal principles might however not normatively or categorically work unless interpreted and implemented correctly by the GOB in the national laws that safeguard the rights of citizens, and also ask how appropriate or useful the international human rights law really is in terms of holding the administration accountable. As state responsibility is a key matter and bearing in mind the people's circumstances, part 4.3 is going to highlight the significance of international economic, social and cultural rights that is necessary for the community to enjoy. The chapter moreover discusses how the Urdu-speakers, as a minority in Bangladesh, can be helped under the umbrella of minority rights protection in international law in part 4.4.

Chapter 5 of the thesis initially delves into the existing political will debate concerning the community and offers some ideas on what the GOB is doing to tackle their challenges. The striking issue of whether the Urdu-speakers now deem local assimilation and reintegration in Bangladesh, or repatriation to Pakistan more tempting than lingering in the country is further investigated as a long-lasting solution. Although previous studies put emphasis on what Bangladesh needs to do to protect the community, there is a lack of analysis of what the powers and limitations of laws and policies are in terms of rehabilitating the people. I shall thus ground this analysis by laying the recommended strategies to make national integration a feasible option for the GOB and related organizations assisting the community, and specifically propose on how an

informed and hands-on rehabilitation strategy could help ease the Urdu-speakers to integrate fully in Bangladesh.

Lastly, the sixth and final chapter provides a summary of my findings of each thesis chapter. It offers some plausible conclusions on addressing the overall situation of the Urdu-speaking Community, chiefly stressing on the dearth of Bangladesh not having a definite policy for the community, which leads to gaps in their safeguard and security and how the domestic legal doctrines governing the people today might meet protection requirements for their welfare. The objective of this entire thesis is therefore to be targeted and evidence-based, whereby information on the Urdu-speaking Community's current problems that are primarily unchecked, and the risks involved therein would be revealed, and hence the discussion here intends to essentially provide answers to critical views of my overall research question and hypotheses.

1.3 Hypothesis

I firstly assume that Pakistan may continue to be politically dormant and inactive in addressing the Urdu-speaking Community's future repatriation program(s) into Pakistan. In March 2015, the Ministry of Foreign Affairs of Pakistan has said that as more than 170,000 people had been repatriated back to Pakistan; the remaining population are not its concern but rather the obligation of Bangladesh.⁷ Moreover, there is an internal issue within the country, which is yet to be addressed. This relates to the fact that it has long been observed that a percentage of the Urdu-speakers have had a friction

⁷ Hasnaat Malik "Stranded Pakistanis in Bangladesh not Pakistan's responsibility, FO tells SC" *The Express Tribune* (30 March 2015) online: *The Express Tribune* <<http://tribune.com.pk/story/861364/stranded-pakistanis-in-bangladesh-not-pakistans-responsibility-fo-tells-sc/>>.

with ‘muhajirs’ or immigrants in the Sindh province of Pakistan.⁸ For example, in October 1989, the then Pakistan Prime Minister Benazir Bhutto visited Bangladesh, but ruined hopes for the repatriation of 250,000 people. It is believed that Benazir Bhutto feared that if the Urdu-speakers were repatriated, they would predominantly end up in Karachi and its surrounding areas where there was a perilous ethnic problem between Sindh and non-Sindhs.⁹ The ‘Biharis’ in Pakistan for instance, were the targets of violent demonstrations from the Sindhs in the Karachi unrest and riots between 1994 and 1996. Thus, repatriation is of course principally successful when the members of a community are accepting and are socially, ethnically and more so politically similar, but the differences of the Urdu-speaking Community and local Sindhs exists to this day and may continue to ensue, for the Sindh province is one where cultural polarization is severe due to the existence of large ethnic groups which results in their clashes of interests. Besides, the Urdu-speaking Community of Bangladesh and the overall citizens of other parts of Pakistan do have their own societal and cultural differences too. It is equally imperative to note that as a matter of fact, the Urdu-speaking Community who are currently living in Bangladesh have not truly lived in Pakistan either.

⁸ The Sindh province in Pakistan, where the Urdu-speaking Community were supposed to be repatriated after 1972, already had a concentrated population of Indian Muslim immigrants known as ‘muhajirs’, who had originally migrated from India to West Pakistan as refugees during the partition period of 1947. See Kazi Fahmida Farzana, “An Artificial Minority: The Stateless Biharis in Bangladesh” (2009) 29:2 J Muslim Minority Aff 223 at 226. The Muslim Sindhs established a majority, while a considerable number of Hindu Sindhs, Christians, and Parsis were also living in the territory, mainly in Karachi. See also Pakistan Institute of Legislative Development and Transparency, “Ethnic Conflict in Sindh” (October 2011) online: http://www.pildat.org/publications/publication/Conflict_management/EthnicConflictinSindhOctober2011.pdf at 5.

⁹ S. Kamaluddin “Left in Limbo” *Far Eastern Economic Review* (Hong Kong, 19 October 1989) at 23 [Kamaluddin ‘Left in Limbo’].

The result of the Urdu-speakers' initial statelessness in Bangladesh has caused their troubles to remain in a limbo scenario over four decades. Because of Pakistan's persecution resulting to their preliminary statelessness, and as Bangladesh has addressed their citizenship issue after all these years, it is my assumption that most persons have a higher probability of achieving full assimilation in Bangladesh. There are individuals within the community who have, and are still trying to find an avenue for themselves. Reports from as early as over two decades ago such as in 1993, suggest that the Urdu-speaking Community have preferred to live in Bangladesh. A survey conducted by the Refugees and Migratory Movements Research Unit Bangladesh on 51 households in Dhaka's Mohammadpur Geneva Camp, Tejgaon Camp and Mirpur Camp, revealed that 59 percent of Urdu-speakers had identified themselves as Bangladeshi, and sought to receive the citizenship of Bangladesh.¹⁰ But in recent times, most of the Urdu-speaking Community deem themselves to be Bangladeshis and would like to stay in the country, even though they are cut off from the mainstream community. They simply hope and want developments and prospects for a better livelihood in terms of their living conditions.¹¹ It therefore seems fair to suggest that a large portion of the growing number of people is not really deterred, but encouraged to live within the existing, albeit poor conditions in the 116 makeshift urban settlements, popularly known as camps, throughout Bangladesh.¹² It is important to understand that the frequent persecution since the inception of Bangladesh affected the Urdu-speakers to abandon their own properties and move into these settlements in the first place. Many of these overcrowded settlements

¹⁰ Shahnawaz A. Mantoo, "Bihari Refugees Stranded in Bangladesh since 1971" (2013) 1:2 J South Asian Stud 123 at 125.

¹¹ Bijoyeta Das "Bihari migrants wish for better life in Bangladesh" *Deutsche Welle* (22 June 2011) online: Deutsche Welle <<http://www.dw.com/en/bihari-migrants-wish-for-better-life-in-bangladesh/a-6554559>>.

¹² Khalid Hussain, "The end of Bihari statelessness" (2009) 32 *Forced Migr Rev* 30 at 30.

were established on public land, and the main sections of the households are multi-storey government-owned buildings, including staff quarters, former municipal centers, and market places where the community sustain themselves. These also include camps originally established by the International Committee of the Red Cross (ICRC). The Office of the United Nations High Commissioner for Refugees (UNHCR) had also assisted in setting up the camps, and at present is only trying to ensure that they have the right to exercise citizenship in Bangladesh. The most populated camps are in Bangladesh's capital Dhaka: they include the Mohammadpur Geneva Camp in central Dhaka, and the Staff and Mymensingh camps. Other community members are mainly concentrated in the Rajshahi, Khulna and Chittagong divisions of Bangladesh.¹³ The Bangladesh administration continues to offer free accommodation, power and water supply to the settlements.¹⁴ The Urdu-speaking Community also have the liberty to travel anywhere within Bangladesh, and more and more individuals tend to find work, and try to live outside the settlement areas to avoid being 'Bihari', even though there seems to be interest in persisting to keep them as a distinctive group of people.

The main focal point of this thesis is to study the Urdu-speaking Community's current legal situation. Between the years of 1978 to 2008, the laws of citizenship that applied for the Urdu-speakers in both Pakistan and Bangladesh hold special significance. This is because they have played a critical role pertaining to their legal status. However, the starting point of this thesis suggests that the popular understanding or opinion of the Urdu-speaking Community is that they are refugees, but this is perhaps not legally

¹³ Eric Paulsen, "The Citizenship Status of the Urdu-Speakers/Biharis in Bangladesh" (2006) 25:3 Refugee Surv Q 54 at 55.

¹⁴ Ibid at 56.

defined. I therefore ask whether it is rational to think of them as refugees or not, and indicate that there is possibly a ‘legally incorrect history’ of comprehending their status today. This is especially due to a consequence of the people’s social location. It may hint that their refugee identity exists owing to how the society in Bangladesh perceives them currently, as they continue to live in the former refugee settlements. I explain that having been refugees in the past, it is hard for the Urdu-speaking Community to abandon this distinct ‘refugee’ population notion that most Bangladeshis have concerning them.

With regard to the developments of their recent citizenship, I shall argue from the point of Bangladeshi law that the Urdu-speaking Community are entitled to claim these citizenship rights as it is both valid and lawful, and they have not relinquished this new status. Since they have become citizens of Bangladesh, they should be regarded as the same to other usual citizens, Bengali or otherwise. Hence, the domestic laws and policy should not adversely affect their legitimate rights, and can provide resolution for their situation. Essentially, international law may not be particularly helpful in the Urdu-speaking Community’s case, and subsequent chapters of this thesis shall demonstrate how it may not resolve their problem. However, my hypothesis is that the correct application of international human rights law by the government could be a significant tool to achieve the protection rights, including political, economic, and social rights of the Urdu-speakers, but this would be difficult to realize and not be entirely useful for ensuring administrative or state accountability. It is critical to note that in Bangladesh, even a ratified treaty is not formally enforced in domestic courts unless incorporated into the country’s domestic laws, as established in *Hussain Muhammad Ershad v Bangladesh*

and Others (2001) 21 BLD 69 (AD).¹⁵ Nevertheless, the international obligations contained in relevant treaties that Bangladesh is a signatory of and has acceded/ratified, may be implemented through domestic laws that the government can potentially interpret and eventually apply for the Urdu-speaking Community.

Local integration of the Urdu-speakers depends in large part on the host community where they are living in. To further support my legal arguments for this thesis, I shall discuss the community's overall needs in the settlements.¹⁶ I suggest that even with an impasse where the bureaucracy is not doing enough for supporting the Urdu-speakers, they have nonetheless acquired certain basic resources that encourage their protracted situation. I will thus investigate whether the many settlements and their surrounding territories are a source of basic rights like employment and investments for the people. I shall also argue that Bangladesh, particularly the capital Dhaka, is a substantial factor in the trajectory of the Urdu-speakers' maintaining their assets (however meager they may be) that may be valuable for their self-directed integration strategies. To further test this notion, I have conducted interviews with Geneva Camp residents to meaningfully relate to their experiences in the city. Although these accounts may not fully embody all of their experiences in Dhaka or beyond, such stories could exhibit the importance for their national integration. I finally hypothesize that given the circumstances, ineffective measures to preserve the people's political and social rights is taking away their protection and economic opportunities. Thus, from a legal standpoint,

¹⁵ See especially paras. 2, 3 and 12.

¹⁶ There is relatively a lack of information regarding the present conditions of the settlements. For instance, certain particular rights are often unnoticed, which include how the women and children are being exploited, and discriminated against such as by gender-based violence. Because of this, mistreatment or issues relating to violence against the community tend to occur habitually. See "Govt will punish Kalshi violence culprits" *The Financial Express* (18 June 2014) online: The Financial Express (Dhaka, Bangladesh) <<http://www.thefinancialexpress-bd.com/2014/06/18/40307>>.

the domestic laws need to play a more pivotal role. And even though the GOB has its own way of dealing with the mechanisms of international law, this thesis will try to examine how international law, including international human rights law, can still be made to apply to the administration, so as to guarantee the Urdu-speaking Community's entitled rights.

1.4 Methodology

I intend to use a mixed methodological approach to respond to the questions presented above. The thesis aims to contribute at both the theoretical and empirical levels to the understanding of practicable legal solutions relating to the Urdu-speaking Community. As aforesaid, it shall firstly explore who they are and how they have come into their current situation. In this case, I have presented the information by analytically gathering the most relevant material through secondary sources. A review of the literature emphasizes the problems, struggles and issues in the people's situation, but rarely notes the practice of habitual local regulations or laws. For a better understanding of the role of the doctrine of state protection, the national legislation and the international law framework is examined throughout the third and fourth chapters; for this, I applied primary sources such as domestic case law, the Bangladesh Constitution, local statutes, and international law sources (human rights treaties, United Nations documents). I also relied on secondary materials, including news reports, international materials (observations and commentaries), books, and journal articles to provide evidence for my arguments. In particular, I have looked into the Bangladesh government's policies

relating to the rights of the Urdu-speakers, and reviewed the relevant information on the policies.

Furthermore, as stated, I have gathered empirical evidence to support the arguments I make for the Urdu-speaking Community, and offered their perspectives on the actual legal, political, social, and economic issues they presently face in the settlements and their lives. I am linking this to the legal scenario for their protection rights through domestic laws specifically, by paying close attention to the Urdu-speakers of Geneva Camp, and inquiring into what extent procedures exist to allow them to exercise citizenship rights. Hence, the analyses reviewed in Chapter 2 on assessing the living conditions of the community are mostly based on original data gathered by me through personal interviews in Dhaka, Bangladesh, which include two groups of people as the unit of analysis (random targeted sample). This involved six Urdu-speaking residents of Geneva Camp currently living in the settlement area, and five professional and legal experts, who are and have worked to help the community, comprising a legal scholar, members of the judiciary (lawyers and Supreme Court judges), and members of non-governmental organizations (NGOs). The personal interviews with around a dozen persons from varied socio-economic backgrounds complements the arguments of this thesis, though the responses do not naturally cover everyone living amongst the entire Urdu-speaking Community's settlements across Bangladesh.

In order to comprehend the concluding picture for the community's chances for national integration in Bangladesh that is addressed in the fifth chapter, I have examined the concepts of both political will and integration through my own interpretation and

analysis with support from reliable primary (government publications, United Nations documents relating to the Universal Periodic Review) and secondary sources. This helped illustrate the community's long-term implications of such an integration experience, and to discuss the parameters of successful integration from a theoretical and pragmatic point of view.

1.5 Historical Background: Who are the 'Biharis' of Bangladesh?

1.5.1 Chronological Narrative: Before Bangladesh's Independence

The Urdu-speaking Community, commonly known as 'Biharis' in Bangladesh, has always been in a difficult situation due to their identity crisis of being Bangladeshis and Pakistanis, and as a minority populace that is deprived of certain fundamental rights. Their unsettled repatriation problem has resulted into a consequence of intentional delay or postponement, and political indecisiveness of both the Bangladesh and Pakistan governments. When Bangladesh established itself as a sovereign nation in December 1971, it had hosted more than a million Urdu-speaking refugees. After several repatriation programs in the subsequent decades, the Urdu-speaking Community's numbers have reached approximately 300,000, and they still continue to face human rights violations with regard to their nationality and citizenship.

The word 'Bihari' in a literal sense really means a person who belongs to the state of Bihar of India. In the context of Bangladesh, any person who speaks the language of Pakistan, that is, Urdu, is assumed to be a Bihari regardless of whether such person

comes from Bihar or not.¹⁷ The historical account of this Urdu-speaking community stretches back to the partition period of India, when the British Indian empire was divided to the sovereign states of the Dominion of Pakistan (including East and West Pakistan) and Union of India on August 15, 1947. The Indian subcontinent was divided based on religion, but severe conflicts erupted between communities coming from different religions or ethnic origins.¹⁸ As a direct result of this, nearly one million Urdu speaking Muslims from Indian provinces made their way to East Pakistan.¹⁹ The majority of the refugees therefore came from the Indian state of Bihar, and their movement to East Pakistan was mainly to maintain their existing way of life, and flee from the incessant carnage and communal uprisings in India, where many Muslims were killed which had caused them to become extremely vulnerable and helpless. The issue of religion was the prime motivator for the migration of these Urdu-speakers, and they saw it as an attempt to be free from the likelihood of living within a Hindu majority India.

The influx of the people was initially not begrudged by the native Bengali population. The overall elation encompassing the formation of Pakistan however followed in positive discrimination towards them.²⁰ Between 1947-1951, a great number of elite Hindu people immigrated to India, which led to the Bengali Muslims and the Urdu-speakers to clutch Hindu properties and obtaining their positions at work in East

¹⁷ Mantoo, *supra note* 10 at 124.

¹⁸ The violence was extreme, and the alleged 'Great Bihar Killing' of 30,000 Muslims between October and November 1947 preceded this. See John R. Rogge, *Refugees: A Third World Dilemma* (New Jersey, United States of America: Rowman & Littlefield, 1987) at 220.

¹⁹ It is projected that 95.9 percent of these refugees had arrived from India's eastern states, including, Bihar, West Bengal, Assam, Orissa, Nagaland, Manipur, Tripura and Sikkim. See Sumit Sen, "Stateless Refugees and the Right to Return: The Bihari Refugees of South Asia – Part 1" (1999) 11:4 Int'l J Refugee L 625 at 626 [Sen (Part 1)].

²⁰ *Ibid* at 628.

Pakistan.²¹ Between the overall 1947-1971 phases (even with subsequent conflicts) the Urdu-speaking Community became well established within East Pakistan in the small-scale business industry, trade and commerce albeit they were not really accustomed to the Bengali culture.²² During this time, the Bengali Muslims also did not think of the Urdu-speakers as a minority. In fact, Sheikh Mujibur Rahman, who later became the first Prime Minister of Bangladesh, is believed to have wanted the ‘Bihari Muslims’ to further immigrate to East Pakistan.²³ But, by early 1948, the first Governor-General of Pakistan Muhammad Ali Jinnah proclaimed in Dhaka, the current capital of Bangladesh, that Urdu would only be the state language of Pakistan, and anyone opposing this would be an enemy of Pakistan.²⁴ The community had naturally supported the imposition of Urdu as the official language in East Pakistan, where the majority of the people spoke Bengali.²⁵ In a short span of time, the Bengali opposition to Urdu as the state language of Pakistan resulted in the Bengali Language Movement in 1952.

In just over a decade’s time, to the Urdu-speaking Community’s dissatisfaction, even with their accustomed occupations, they felt alienated in the Bengali society in terms of the language, and subsequent developments of Bengali traditions and culture.²⁶ Despite the fact that they spoke Urdu, the community eventually discovered that they

²¹ Ibid.

²² Ibid at 644.

²³ Basant Chatterjee, *Inside Bangladesh Today: An Eyewitness Account* (New Delhi, India: S. Chand & Co. Ltd., 1973) at 85.

²⁴ Stanley Wolpert, *Jinnah of Pakistan* (New York, United States of America: Oxford University Press, 1984) at 359.

²⁵ Despite their class and somewhat distinct cultural differences, the Urdu-speakers in East Pakistan accepted West Pakistan’s authoritative and influential elites as their “sole patrons and protectors”. See Sen (Part 1) *supra note* 19 at 628.

²⁶ Ibid at 626. The necessity for Pakistan to integrate large numbers of refugees from India shaped more complications, resulting in the “insider-versus-outsider syndrome”, which aggravated the difficulty of lack of acceptance of the Urdu-speakers in East Pakistan.

were a marginal part of the overall larger number of the Bengali population in East Pakistan. Such distinctions caused them to associate with West Pakistan, whose supremacy over East Pakistan convinced them of having better privileges and benefits from the Central Government.²⁷ Because of this natural relationship and the shared linguistic heritage, the Urdu-speakers ultimately related themselves and supported West Pakistan. In the late 1960s, while certain Urdu-speakers backed the quasi-military command of Pakistan, Bengali Muslims insisted and finally demanded freedom for their province.²⁸ In 1970, the Urdu-speaking Community strongly supported a united Pakistan in the general elections.²⁹

However, looking back some years before these events actually present something incongruous. The Government of Pakistan originally accepted the Urdu-speaking Community by means of the *Pakistan Citizenship Act*, 1951, which momentarily led to the end of misperceptions relating to them.³⁰ The text of the initial Citizenship Act³¹ naturally applied for the community as they had migrated into the East Pakistan territory in 1947 from the overall larger part of the Indo-Pakistan subcontinent. Yet in just over two decades' time, Pakistan chose not to identify with them when the government amended the Citizenship Act with the *Pakistan Citizenship (Amendment) Ordinance*, 1978 to refuse nationality of those Pakistanis living in Bangladeshi settlements.

²⁷ Ibid. This is because the Urdu-speakers took over key occupational positions since the West Pakistan feudal elites seized economic and political power in East Pakistan.

²⁸ Ibid at 629.

²⁹ Farzana, *supra note* 8 at 224.

³⁰ Ibid at 229.

³¹ The *Pakistan Citizenship Act* (Act II of 1951)'s Section 3(d) reads: “[who before the commencement of this Act migrated to the territories now included in Pakistan from any territory in the Indo-Pakistan sub-continent outside those territories with the intention of residing permanently in those territories.]”

1.5.2 Chronological Narrative: Bangladesh's Independence

The gradual but continuous drifting apart of East and West Pakistan between 1952 and 1971 may overall be understood as a domination and control of East Pakistan with the focused oppression of the Bengali, and maintaining the Urdu-speaking Community as the inferior echelons of society.³² The influential West Pakistani elite viewed the Bengali Muslims as “semi-Hindus, pro-Indian and disloyal to Pakistan”.³³ Meanwhile, the Bengali political elite in East Pakistan employed the Urdu-only language issue to condemn the oppression carried out by the authorities in West Pakistan. While this enthused the Bengalis in East Pakistan, it provoked and worsened the isolation of the Urdu-speakers, making them more inclined to continue supporting West Pakistan. When tensions between East and West Pakistan increased to a maximum in 1971, the Muslim League, the religiously aligned political party of West Pakistan, capitalized on the community's feelings about religion and language, in its own concern.³⁴ The Urdu-speakers therefore supported the Pakistan militia, including armed paramilitary groups like the *Razakars*, which is widely held accountable for the genocidal campaign against Bangladesh.

Nevertheless, after the 9-month long war for freedom, the capitulation of the Pakistan army took place on December 16, 1971, and Bangladesh, with the help of India, gained its independence. The entire Urdu-speaking population unsurprisingly became susceptible and exposed as it was confronted with the antagonism of the Bengali people,

³² Sen (Part 1), *supra note* 19 at 628.

³³ *Ibid.*

³⁴ The Urdu-speakers were made to believe that they would endure in East Pakistan simply by backing the pro-Pakistan and pro-Islamic forces of West Pakistan. See Farzana, *supra note* 8 at 224-25.

who were bursting with high spirits of patriotism. A Pakistan government report estimates that Bangladesh's Awami League massacred 30,000 'Biharis' and West Pakistanis during this time.³⁵ And a beaten Islamabad, reeling from the loss of Pakistan's eastern half, was beginning to be in the nature of not being cooperative or accepting of the Urdu-speaking Community of Bangladesh, who had never actually lived in West Pakistan.³⁶ The Urdu-speakers, who feared threats of the Bengalis' hostile reactions, also asked the Indian army for asylum, but their appeal was rejected.³⁷ Sheikh Mujibur Rahman was equally intent on swapping the Bengalis in Pakistan for the Urdu-speaking Community in Bangladesh, but Pakistan's repatriation blueprint was very politicized and planned to leave out the majority of the community.³⁸ After the creation of a new secular Bangladesh, the Urdu-speaking Community was offered citizenship, but their decision in obtaining it was very polarized.

1.5.3 Repatriation to Pakistan in the Post-Independence Years

The statistics of the repatriation of the Urdu-speakers into Pakistan after the creation of Bangladesh varies from source to source. In general, the UNHCR first became involved in the repatriation programs for the people in March 1973 at the request of Sheikh Mujibur Rahman.³⁹ The ICRC worked alongside the UNHCR, and registered the Urdu-speakers for their repatriation to Pakistan and kept them in the settlements for their

³⁵ Adam Jones, *Genocide: A Comprehensive Introduction* (London and New York: Taylor & Francis e-Library, 2006) at 231.

³⁶ S. Kamaluddin "Bangladesh: Country of Choice" *Far Eastern Economic Review* (Hong Kong, 25 June 1992) at 23 [Kamaluddin 'Country of Choice'].

³⁷ Sumit Sen, "Stateless Refugees and the Right to Return: The Bihari Refugees of South Asia – Part 2" (2000) 12:1 *Int'l J Refugee L* 41 at 55 [Sen (Part 2)].

³⁸ *Ibid.*

³⁹ Farzana, *supra note* 8 at 225.

protection.⁴⁰ On August 28, 1973, the governments of Pakistan and India, in accord with the GOB, signed the New Delhi Agreement.⁴¹ As an immediate outcome of the agreement, numerous stages of repatriation took place. Between 1973 to April 1974, around 170,000 Urdu-speakers were initially repatriated to Pakistan with support from the ICRC.⁴² Although government reports show that 600,000 people accepted citizenship in Bangladesh, there were 539,669 who had listed and registered themselves with the ICRC as a means to return to their country of nationality.⁴³ In the meantime, President Zulfikar Ali Bhutto of Pakistan discussed the terms and negotiated 93,000 Prisoners of War who were held in Bangladesh, but was similarly concerned and apprehensive to see that the majority of a million people's return into Pakistan did not transpire.⁴⁴ The International Red Cross Society, which operated together with the UNHCR, denotes that 163,072 refugees were repatriated to Pakistan within 1974,⁴⁵ although the majority of 371,720 persons still continued to live in the camps.⁴⁶ Owing to economic and financial burdens, Sheikh Mujibur Rahman brought up the 'Bihari' issue in the Third World Committee of the United Nations General Assembly in December 1974, and in the Commonwealth Leader's conference in Jamaica in May 1975,⁴⁷ though his political and

⁴⁰ Ibid.

⁴¹ Sen (Part 1), *supra note 19* at 640.

⁴² Saleem Samad "Urdu-speaking community marginalised, but reconciling" *The Daily Observer* (9 September 2015) online: The Daily Observer (Dhaka, Bangladesh) <<http://www.observerbd.com/2015/09/09/109658.php>>. However, the UNHCR revealed that about 108,750 people were repatriated to Pakistan by the time it completed its repatriation operation in June 1974. See Sen (Part 2), *supra note 37* at 55.

⁴³ Sen (Part 1), *supra note 19* at 640. The ICRC estimated that 60 percent of the Urdu-speaking Community wanted to go back, but the people apparently indicated that around 95 percent of them wanted to return to Pakistan.

⁴⁴ Ibid.

⁴⁵ Sen (Part 2), *supra note 37* at 56.

⁴⁶ Ibid.

⁴⁷ Mantoo, *supra note 10* at 126.

diplomatic initiatives did not come into fruition. Besides, the assassination of Sheikh Mujibur Rahman in 1975 further stalled and upset the process of repatriation.

By 1977, Pakistan's Foreign Secretary visited Dhaka, and arranged to take 25,000 "hardship cases",⁴⁸ but only 4,790 Urdu-speakers were repatriated.⁴⁹ But the Government of Pakistan arranged the return of 58,000 people including military personnel, former civilian servants and some members of divided families.⁵⁰ With a goal of securing the Urdu-speaking Community's repatriation to Pakistan, the Stranded Pakistani General Repatriation Camp was subsequently established on December 2, 1977.⁵¹ Several protests, such as hunger strikes took place; besides, a number of assemblies and meetings with Pakistani officials comprising heads of state occurred, but this entire process was at a loss too, since the offers which were discussed by both the Governments of Pakistan and Bangladesh did not bear fruit, as they were heavily reluctant, which resulted in the temporary suspension of further repatriation.⁵²

In 1978, the then Pakistan President Muhammad Zia-ul Huq, promulgated an ordinance, as aforementioned, known as the *Pakistan Citizenship (Amendment) Ordinance*, 1978, which prohibited the repatriation of the Urdu-speakers;⁵³ albeit conversely in 1985, President Huq acknowledged and recognized the Urdu-speaking Community as Pakistani nationals, and suggested Pakistan would take them back, but this was said to happen only if the government had adequate financial resources for their

⁴⁸ Sen (Part 2), *supra note* 37 at 55.

⁴⁹ Mantoo, *supra note* 10 at 126.

⁵⁰ Sen (Part 2), *supra note* 37 at 55.

⁵¹ Mantoo, *supra note* 10 at 125.

⁵² *Ibid.*

⁵³ Kamaluddin 'Country of Choice', *supra note* 36.

relocation and rehabilitation.⁵⁴ With limited funds from the UNHCR, the entire year of 1979 saw 9,872 people being repatriated again to Pakistan.⁵⁵ In 1980, a former British Member of Parliament, Lord David Ennals, met President Ziaur Rahman of Bangladesh and President Zia-ul-Huq of Pakistan; this followed UNHCR helping repatriate another 7,000 people.⁵⁶ In 1982, 750 families, including 4,800 people were able to return to Pakistan.⁵⁷

By August 1985, Pakistan signed a trust agreement with the Mecca-based *Rabitat al-Alam al-Islami*, a humanitarian organization to promote funds from overseas for the Urdu-speakers' repatriation at an estimated \$300 million.⁵⁸ However, for reasons unknown, the Pakistan government did not respond to their orderly departure program,⁵⁹ and this was ultimately not fulfilled as President Zia-ul-Huq was killed subsequently in the same year. Meanwhile, the previous migrants from India, most of whom who had settled in the Sindh province of Pakistan, formed the Muhajir Qaumi Movement, an intimidating and formidable opposition to Zulfikar Ali Bhutto's Pakistan People's Party.⁶⁰ This led to the repatriation process to become slower, demonstrating Pakistan's antipathetic attitude, as internal political opposition materialized within the country. The Sindh province, where the Urdu-speakers were considered for repatriation, had a great number of immigrants or 'muhajirs' who traveled from India to West Pakistan as refugees during the partition period. In the following years, the then Prime Minister Benazir Bhutto's administration in Pakistan became more and more constrained and

⁵⁴ Kamaluddin 'Left in Limbo', *supra note 9*.

⁵⁵ Sen (Part 2), *supra note 37* at 56.

⁵⁶ Mantoo, *supra note 10* at 126.

⁵⁷ Sen (Part 2), *supra note 37* at 56.

⁵⁸ Kamaluddin 'Left in Limbo', *supra note 9*.

⁵⁹ Sen (Part 2), *supra note 37* at 58.

⁶⁰ Kamaluddin 'Country of Choice', *supra note 36*.

faced difficulties from many Sindhi nationalist organizations, which strongly refused further repatriation of 'Biharis'.⁶¹ As a consequence, all these issues impacted the role of Benazir Bhutto's government. During her visit in Dhaka in 1989, Bhutto subtly steered clear of the Urdu-speaking Community issue by identifying it as "a very complex problem", and further disregarded them during her stay and had also declined to meet or receive a memorandum from a delegation of local community leaders.⁶² Several of her national political problems were positioned around cultural and ethnic pressures, and this encouraged her to be rigid against admitting the Urdu-speaking Community to settle in Pakistan, which indeterminately put off the repatriation, thus contributing support to the Sindhi groups.⁶³ Benazir Bhutto is further thought to have appealed to Dhaka to resettle them perpetually in Bangladesh, with funds from Pakistan and other Islamic countries to support them, although the authorization of this offer was never produced. Moreover, Benazir Bhutto even indicated that if she were to hold the Prime Minister's Office again, one of her first acts would be awarding citizenship to the Urdu-speakers from Bangladesh. Though, upon attaining office in her non-consecutive term, she did not allow citizenship rights to either the Urdu-speaking Community in Bangladesh or the 100,000 people who had returned to Pakistan and were living illegally at the time.⁶⁴

By the mid-1990s the repatriation levels acutely declined, and only about 325 people were again repatriated to Pakistan in January 1993.⁶⁵ This had nevertheless

⁶¹ Mantoo, *supra* note 10 at 127. The opposition leader Nawaz Sharif during this time became the Chief Minister of Punjab, and took the upper hand of Benazir Bhutto's quandary. However, the Urdu-speakers continued to become victims of ethnic Sindhs particularly in the Karachi riots of the 1980s. See generally, Charles H. Kennedy, "The Politics of Ethnicity in Sindh" (1991) 31:10 *Asian Surv* 938 at 938.

⁶² Kamaluddin 'Left in Limbo', *supra* note 9.

⁶³ Sen (Part 2), *supra* note 37 at 60.

⁶⁴ *Ibid.*

⁶⁵ *Ibid* at 61.

happened because of Nawaz Sharif, who assumed office as Prime Minister of Pakistan initially in 1990, and had usually supported the Urdu-speaking Community. Sharif reconstituted the Trust, and the Punjab province was prepared to accommodate everyone from Bangladesh. The Trust also helped to build 45,000 non-transferable houses that would ensure the Urdu-speakers from getting into the Sindh province.⁶⁶ In April 1993, Nawaz Sharif was removed from power and Benazir Bhutto was once again reinstated as Prime Minister, and though her government agreed to uphold the preceding government's commitment to repatriate, this process suffered a full obstruction.⁶⁷ Nonetheless, when Nawaz Sharif returned to power in 1997, the Pakistan government once again proposed the same settlement process, but subsequently no policy had ever materialized. Therefore, after all such events, according to Sumit Sen, a confirmed 178,069 Urdu-speakers have been repatriated to Pakistan between 1972 till January 10, 1993.⁶⁸

1.5.4 Situation in Bangladesh and Pakistan since 1972: A Succinct Outlook

After Bangladesh's independence, the majority of the Urdu-speakers were left out of employment from their works and trades by numerous pretenses. Children were expelled from schools, and people's bank accounts, annuities and savings were taken away and grabbed by the new regime. Their households and trades were proclaimed as abandoned or enemy properties and were consequently confiscated under the veil of the law. The administration declared the *Bangladesh Abandoned Property Order (Control, Management and Disposal)*, 1972, by which it acquired power over the Urdu-speaking Community's properties, which resulted in the disposal of their properties. The Order

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid at 62.

explicated that properties would be seized regardless of whether they belonged to a citizen of the state, or those who participated in the army and military operations against Bangladesh. All the people hence lived in tremendous hardship for years to come.

As a least developed country, Bangladesh had and continues to have limitations of its resources. The Urdu-speakers' economic situation became alarming as they turned out to be relegated and employed in inadequately paid jobs in the informal sector;⁶⁹ further, there has always been a need for them to receive proper education and achieve a better standard of living.⁷⁰ But after three decades following several repatriation programs, in May 2003, the High Court Division of the Supreme Court of Bangladesh allowed to hear a petition of a group of Urdu-speakers, and afterwards permitted ten stateless people to obtain citizenship and voting rights for the first time.⁷¹ On September 6, 2007, the government gave its approval to offer citizenship to the Urdu-speaking Community.⁷² In August 2008, the Election Commission of Bangladesh positively initiated to register the Urdu-speakers in the settlements, which was a significant step towards integrating them.⁷³ Residents, mainly in the camps, were given national identity cards, but are still sometimes deprived of access to a Bangladeshi passport.⁷⁴ Hence, the dilemma of the Urdu-speaking Community within Bangladesh and the bureaucracy's responsibility to

⁶⁹ Kelley, *supra note 2* at 358.

⁷⁰ This is a significant issue that needs to be addressed by the GOB; for example, the early 1990s saw the settlement areas' populace having higher rates of disease due to the appalling conditions of living. See Rosie Majid Ahsan & Shahnaz Huq Hussain, "A Review of Socio-Economic and Nutritional Issues of Bihari Camp Dwellers in Bangladesh: A Micro Study" (1990) 20:3 *GeoJournal* 285 at 285.

⁷¹ Waliur Rahman "Vote for stranded Pakistanis" *BBC News* (6 May 2003) online: BBC News <http://news.bbc.co.uk/2/hi/south_asia/3003949.stm>. Bangladesh's caretaker government in January 2007 however, declared this list as void and restructured the Election Commission to make a new list of eligible voters. See also Khalid Hussain, *supra note 12* at 30.

⁷² Khalid Hussain, *supra note 12* at 30.

⁷³ *Ibid.*

⁷⁴ *Ibid.* Even with such developments, a few Urdu-speakers have continued with groups such as the Stranded Pakistani General Repatriation Committee, which still seeks to persuade others for repatriating to Pakistan.

protect them from systemic neglect has been at issue before the judiciary. The Supreme Court of Bangladesh in 2008 formally gave a ruling that the Urdu-speakers had the right to Bangladeshi citizenship.⁷⁵

Thus, the division of India and the following creation of Pakistan in 1947, and mass killings of the Bengali population led to the preliminary displacement of the Urdu-speakers; and with the formation of Bangladesh in 1971, the people were once again forced to escape a second time. It is clear that instantly after the 1971 war, and in the four subsequent decades that followed, Pakistan came under compulsion to take the Urdu-speakers back. Even though the country took back a considerable number of people, its moral commitments slowly debilitated because of its political reluctance to take account of the rest of the people. Likewise, the denationalization of the Urdu-speakers and Pakistan's unwillingness to integrate them back was satisfactory evidence of their previous persecution.⁷⁶

The people who were forced to abandon their homes and fled to the settlements in East Pakistan due to persecution by the greater number of the Bengali population, are currently in Bangladesh, and are still expecting a resolution to their unreasonably protracted crisis. At present, the community members are living horribly in the neglected settlements, particularly the camps, without proper recognition, and the administration and its agencies have not yet implemented the 2008 court order. Moreover, the UNHCR

⁷⁵ *Md. Sadaqat Khan (Fakku) and others v Chief Election Commissioner, Bangladesh Election Commission* (Bangladesh) Writ Petition No. 10129 of 2007, 18 May 2008.

⁷⁶ The denationalization of the Urdu-speaking Community by Pakistani authorities led them to become stateless. Such an allusion therefore establishes that they had few alternatives but to reside in the settlements. At the time, Pakistan should have identified the norms of international law as enumerated in the *Nottebohm Case (second phase)* (Judgment) [1955] ICJ Rep 4, by satisfying its duty to award effective nationality to the Urdu-speakers.

does not recognize the Urdu-speaking Community as refugees anymore.⁷⁷ The people while enduring to live in squalor-like makeshift settlements after decades of non-recognition continue to be confronted by institutionalized prejudices related to their nationality status in spite of latest developments pertaining to their citizenship, right to vote and identity registration. There is no pragmatic identification of whether their new rights bode true for them, and there is no rehabilitation strategy to ease their sufferings yet. Furthermore, there is hardly any interest amongst the international agencies, or the majority of human rights and non-governmental/legal aid organizations, and civil society institutions regarding their present circumstances.

1.5.5 The 'Bihari' Identity: Revisiting History

I have examined how the Urdu-speaking Community came to be in Bangladesh in the above section. Now, with respect to the interviews and empirical data collected and assessed broadly in Chapter 2, I am only going to clarify here why the term 'Bihari' should not apply for the Urdu-speakers who now live in Bangladesh. In this regard, the term 'Urdu-speaking Community' would be ideal to identify this group of people. Two professional respondents of the interviews⁷⁸ suggest that nomenclature is a key concern that persists where most Bangladeshi people distinguish the residents living in Geneva Camp and across the country as 'Bihari', which is a stigma in a certain sense.

⁷⁷ The UNHCR recognizes a total of 231,855 refugees currently living in Bangladesh, and the Urdu-speaking Community do not form part of this list under the countries of origin, which only includes Myanmar. Even though the UNHCR focuses on refugee status determination of other applicants, which consists of 96 refugees from various nationalities, none of them are of 'Bihari' origin. See Office of the United Nations High Commissioner for Refugees, *Bangladesh Factsheet: August 2015* (2015) <<http://www.unhcr.org/50001ae09.html>>.

⁷⁸ Mr. Ahmed Ilias and Mr. Mohammad Hasan of Al-Falah Bangladesh, a Dhaka-based non-governmental organization working for the marginalized Urdu-speaking Community. More details about the respondents and the interview process are stated in Chapter 2.

Expressions like ‘Stranded Pakistani’, ‘Muhajir’ or ‘non-Bengali’ also exist within the social and communal perception in the country.

As aforesaid, the Urdu-speakers have a linguistic heritage. While they could not bring their properties or possessions from neighboring India, they had indeed brought their language and culture to then East Pakistan in 1947. It is critical to remember that the entire community did not only migrate from the state of Bihar in India but from other parts. This included their migration from several eastern states, including West Bengal, Assam, Orissa, Nagaland, Manipur, Tripura and Sikkim.⁷⁹ Many Muslims had also migrated to India at the time. Following the partition period in 1947, India had absorbed all those people who migrated to its region, and provided them with Indian citizenship. But the case was different for the Urdu-speaking Muslims who had migrated to East Pakistan (between 1947 and 1965). They became the ‘Muhajir’, a name that meant a migrant or refugee. The word ‘Muhajir’ means ‘emigrant’ in Arabic, and was used for several Muslim communities which were uprooted during the partition of British India in 1947, owing to socio-political pressures.

Meanwhile, the democratic demand of Bengali as a state language with Urdu was not met prior to 1950, even though approximately 56 percent of the population in East Pakistan spoke the language. According to respondents Mr. Ilias and Mr. Hasan, the Pakistan administration at the time controlled the state media via newspapers and radio. As the Language Movement transpired when the Bengalis (people from East Bengal comprising today’s Bangladesh are commonly known as ‘Bangalees’) were pursuing their freedom of expression, most of the information was communicated in ‘Bangla’

⁷⁹ Sen (Part 1), *supra note* 19 at 626.

within the Bengali community in East Pakistan. Because the ‘Muhajirs’ spoke Urdu, this group of people was unable to learn about what was happening in the Language Movement. As a consequence, they were uninformed of the democratic movement of the Bengalis that had commenced. Thus, most of the Urdu-speakers could not lend support to the Bengali people’s movement. Nonetheless, Mr. Ahmed Ilias in his book⁸⁰ states that some Urdu-speakers did support the Bengalis during the 1952 Language Movement, and even partook in this major event. For example, a considerable number of Urdu poets, writers, journalists, lawyers, teachers and students strongly opposed the attempt to make Urdu the only state language of Pakistan. Prominent supporters of the Language Movement included Dr. Yusuf Hasan, Arif Hushyarpuri, Ayaz Asmi, Massod Kalim, Akhtar Payami, Akhtar Hyderabad, Adeeb Sohail, Khwaja Mohammed Ali Qamar, Manzoor Rahman, Salahuddin Mohammed, Badruddin Ahmed (Engineer), Perwez Ahmed (Barrister), Hasan Sayeed, Abu Sayeed Khan and Zainul Abedin.⁸¹ However, the events of February 21 in 1952 substantially changed the political process in Pakistan, which led the Pakistan Constituent Assembly to adopt a bill in 1954 to make both Urdu and Bengali the state languages of the country. The 1956 Constitution of Pakistan declared both languages as the national languages of Pakistan.

By 1965, Pakistan’s premier General Ayub Khan pronounced a law called ‘Son of the Soil’. The Pakistan government provided public support to all individuals who were deemed citizens, which included different groups of people such as the Punjabi, Sindhi,

⁸⁰ Ahmed Ilias, *Bihari The Indian Émigrés in Bangladesh: An Objective Analysis*, 2d ed (Syedpur, Bangladesh: Shamsul Huque Foundation, 2013). Some of the historical analysis in this part is derived from the book as well my interview with Mr. Ilias.

⁸¹ Ibid at 38.

Pashto, Bangalee – but not the Muhajir community.⁸² Even while facing such circumstances and apparent prejudice, the Muhajirs did fairly well both socially and economically in the subsequent years. But by 1971, their situation greatly changed because of the Bengali community's demand in East Pakistan. Mr. Hasan suggests that in early 1971, the Government of Pakistan did not outright declare to the Urdu-speakers that there was a war brewing, or that the Bengali community was taking an oath to create a new government after March 26, 1971; rather the Urdu-speakers believed that there was a negotiation happening between the Government of Pakistan and the Bengali people. According to the respondent, most of the Urdu-speakers knew this only because of the censorship in the Urdu media. Consequently, there were just a few Urdu-speaking individuals who knew the Bengali language and had learnt the “real news” regarding Bangladesh's declaration of independence from Pakistan through the Bengali media forums.

In late 1971, the use of the ‘Muhajir’ term came to an abrupt end, and the same Urdu-speakers essentially became the ‘Biharis’ when Bangladesh gained its independence. The expression ‘Bihari’ is also an ethnic word applied to the Urdu-speakers who migrated particularly from the state of Bihar in East India. However, as aforementioned, it is imperative to note that several Urdu-speaking Muslim people also migrated to Bangladesh from other Indian states like Assam and West Bengal. While the ‘Bangalees’ were in the process of becoming citizens of the newly established country of Bangladesh in December 1971, and so were these Urdu-speakers from India, but the overall community never tried to seek their citizenship rights owing to the hostility of the

⁸² Nadeem F. Paracha “The evolution of Mohajir politics and identity” *Dawn* (20 April 2014) online: Dawn (Karachi, Pakistan) <<http://www.dawn.com/news/1100948>>.

‘Bangalees’ who believed that the Urdu-speakers had supported and collaborated with Pakistan.⁸³

In hindsight, it is crucial to bear in mind that before Bangladesh achieved its sovereignty, the Father of the Nation, Sheikh Mujibur Rahman in his historic liberation speech of March 7, 1971 mentions about minorities. Even though the terms ‘Muhajir’ or ‘Bihari’ are unuttered, he refers to minorities as “non-Bengalis”. In his speech, Sheikh Mujibur Rahman expresses:

Hindus, Muslims, Bengalis and non-Bengalis, all those who live in this Bangla are our brothers. The responsibility of protecting them is on you.⁸⁴

The 1974 Tripartite Agreement between Bangladesh, India, and Pakistan also specifies minority groups in the region as “non-Bangalees”.⁸⁵

The phrase ‘Stranded Pakistani’ came into being during the repatriation years of the Urdu-speakers in Bangladesh. In my interviews with members of AFB and Mr. Mohammad Shahjada Qadri (a Geneva Camp respondent), I learned that the ICRC had originally offered an ‘Option Form’ to the Urdu-speakers in 1972. This repatriation form was an informal document. It came with three possible courses of action for the community: return to India (the ICRC intended to negotiate with the Government of India in this case), remain in Bangladesh, or return to Pakistan. Two of six respondents of Geneva Camp (more discussion in Chapter 2) have stated that they had filled and signed

⁸³ According to Al-Falah Bangladesh, the enlisted local ‘Bihari’ collaborators of Pakistan included an estimated 10-15 percent of the total Urdu-speaking population at the time.

⁸⁴ Department of Films and Publications: Government of the People’s Republic of Bangladesh, “The historical 7th March speech by Bangabandhu Sheikh Mujibur Rahman” online: <<http://www.7thmarch.com/the-speech-text/>>.

⁸⁵ See Clause 12-14, International Committee of the Red Cross, “Bangladesh – India – Pakistan: Agreement on the Repatriation of Prisoners of War and Civilian Internees” (9 April 1974) online: <<https://www.icrc.org/casebook/doc/case-study/bangladesh-india-pakistan-1974-agreement-case-study.htm>>.

this form. According to AFB, several people planned to go to Pakistan because of the recurring persecution they were facing in Bangladesh, but the fear of further harm in both Pakistan and India had also led many to stay back in Bangladesh. Most of the Urdu-speakers did not have any land or property to acquire in India either. In the ensuing years after 1972, the Government of Pakistan did not accept the ICRC forms, but provided its own application with four options for the Urdu-speakers to return to Pakistan. These options encompassed for those who were initially employed by the Central Government of Pakistan and their relatives, persons born in Pakistan, divided families, and 25,000 hardship cases. The phrase ‘Stranded Pakistani’ was ultimately given to the Urdu-speakers around 1978, as many people could not repatriate and were left behind and interned in the settlements in Bangladesh (albeit 178,069 Urdu-speakers were repatriated to Pakistan between 1972 and 1993 with the help of both the ICRC and the Pakistan administration).⁸⁶

Therefore, this evaluation tells us that the nomenclature for the Urdu-speakers has gone through a significant number of changes in the decades since 1947. The terms ‘Muhajir’, ‘Bihari’ or ‘Stranded Pakistani’ do not seem applicable for the Urdu-speakers in the present context of Bangladesh. Yet, the most ubiquitous term associated with the community is still ‘Bihari’ today, and according to a respondent from the judiciary (full discussion in Chapter 2), this is almost a pejorative expression. The Urdu-speaking Community undeniably has its own culture, language, and tradition, so they may be recognized as a distinctive population in Bangladesh. As an observation, they may perhaps be deemed as a linguistic minority in this respect. The same respondent from the

⁸⁶ Sen (Part 2), *supra note 37* at 62.

judiciary stresses that Bangladesh needs to be more multi-ethnic and less monolingual in order to uphold the dignity of the Urdu-speaking Community and other minorities in the country, and naturally implement the Urdu-speakers' citizenship rights.

CHAPTER 2: EXAMINING THE URDU-SPEAKING COMMUNITY'S PREDICAMENTS

2.1 The Supreme Court's Rulings on the Urdu-speaking Community

The High Court Division of the Supreme Court of Bangladesh has delivered two significant verdicts concerning the Urdu-speaking Community who now reside throughout Bangladesh. These are the backbone of the entire thesis, as the current circumstances of the community's citizenship status follow from these decisions. This is in terms of comprehending a number of things, including the usefulness of citizenship for the Urdu-speaking population, the role and extent of law in facilitating social change for the people, and understanding the limits of judicial decisions in general. With regards to the next sections, I will now briefly discuss the background of these rulings below.

The first judgment was decided in 2003 in the case of *Md. Abid Khan and others v The Government of Bangladesh and others*.⁸⁷ It pertains to the rights of ten Urdu-speaking petitioners who were to be enrolled on the electoral roll, in order to become registered voters of the Mohammadpur area of Dhaka.⁸⁸ Two petitioners (Group 1) were born in Mymensingh and Dhaka in 1967 and 1969, while eight other petitioners (Group 2) were born in Dhaka in 1977 and in different years subsequently.⁸⁹ With due regard to the question of their voting rights, the court clearly indicates here that mere residence of the petitioners at Geneva Camp cannot be termed as allegiance to another state by conduct. Justice Zinat Ara clarifies that the petitioners did not contravene Article 2B⁹⁰ of

⁸⁷ *Md. Abid Khan and others v The Government of Bangladesh and others*, Writ Petition No. 3831 of 2001, 5 May 2003.

⁸⁸ *Ibid* at 1.

⁸⁹ *Ibid* at 3.

⁹⁰ Article 2B: "(1) Notwithstanding anything contained in Article 2 or in any other law for the time being in

the *Bangladesh Citizenship (Temporary Provisions) Order, 1972*. It is integral to note that in this regard the petitioners did not apply for citizenship to another country, nor did they apply for repatriation to Pakistan. As a result, the court distinctly mentions that the first group of petitioners are citizens of Bangladesh because they were not found disqualified under Article 2B(1) of the *Bangladesh Citizenship (Temporary Provisions) Order*. Similarly, the second group was also found eligible to become citizens of Bangladesh, and became entitled to be enrolled on the electoral roll and registered as voters. The court therefore directed the GOB to enroll the names of the petitioners on the electoral roll.

It is evident that the Supreme Court acknowledges that the Urdu-speaking petitioners were born and brought up in Bangladesh, and they live in Geneva Camp and elsewhere in the country. While the petitioners contended and were found eligible to be included in the voting list, the court however does not address the overall population of Urdu-speakers in Bangladesh. Nevertheless, this decision is the first major milestone that led to the declaration of the ten petitioners to be enrolled as voters (thus they were immediately qualified to obtain citizenship rights) according to the Bangladesh Election Ordinance. In terms of the extent and limits of this decision, it can be said that this was a first step to recognize the citizenship rights of the community, but at the same time, it was a very exceptional ruling and did not address the total population at the time and was

force, a person shall not, except as provided in clause (2), qualify himself to be a citizen of Bangladesh if he-

- (i) owes, affirms or acknowledges, expressly or by conduct, allegiance to a foreign state, or
- (ii) is notified under the proviso to Article 2A:

Provided that a citizen of Bangladesh shall not, merely by reason of being a citizen or acquiring citizenship of a state specified in or under clause (2), cease to be a citizen of Bangladesh.

(2) The Government may grant citizenship of Bangladesh to any person who is a citizen of any state of Europe or North America or of any other state which the Government may, by notification in the official Gazette, specify in this behalf.”

therefore only limited to the ten petitioners. The judgment also had no political support and was appealed by the government, as it was unwilling to abide by the court's verdict. Still, it did create hope amongst the people and especially the younger generation in the community. Following the judgment, the UNHCR expedited the situation by liaising between national campaigners, the international community and the GOB to take attention of the people's status, which helped pave the way for the 2008 ruling after a writ petition was filed in 2007. This second decision now addresses the legal status of all members of the community in Bangladesh.

The second judgment of the Supreme Court was decided in 2008 in the decision of *Md. Sadaqat Khan (Fakku) and 10 others vs. The Chief Election Commissioner, Bangladesh Election Commission*.⁹¹ It is important to note that this ruling was decided during the interim period of the Caretaker Government in Bangladesh in 2008 (previous administrations did not fully decide on the overall community's right to citizenship). The *Rule Nisi* asked the respondents, the Election Commission to show cause as to why the Urdu-speaking people of Bangladesh could not be enrolled on the electoral roll and be registered as voters in the country.⁹² The court assessed the situation of 300,000 Urdu-speakers living in Bangladesh, and ultimately states with great significance that as the Urdu-speakers have been residing in Bangladesh since before and after its liberation, they are citizens of the country by birth.⁹³ In addition, the court elucidates how the newer

⁹¹ *Md. Sadaqat Khan (Fakku) and 10 others vs. The Chief Election Commissioner, Bangladesh Election Commission, Block-6, Sher-E-Bangla Nagar, Dhaka and others*, Writ Petition No. 10129 of 2007, 18 May 2008.

⁹² *Ibid* at 1.

⁹³ *Ibid* at 2.

generation has accepted the emerging reality and swore their allegiance to Bangladesh by merging with the mainstream society and polity.⁹⁴

The *Citizenship Act*, 1951, which offers citizenship to those who are born in Bangladesh, or are descendants of permanent residents, and/or those who migrated or were registered and incorporated within any territory of the country, is also examined in the judgment.⁹⁵ The court specifically states:

Every person who or whose father or grandfather was born in the territories now comprised in Bangladesh and who was a permanent resident of such territories on the 25th day of March, 1971 and continues to be so resident shall be citizen of Bangladesh. Such people have accordingly become eligible with the attainment of majority for entitlement as voters under Article 122(2) of the Constitution and the Election Commission is under constitutional obligation to enroll them in the electoral rolls as voters.⁹⁶

The court however maintains that those who are termed and still call themselves “Stranded Pakistanis” by “owing, affirming and acknowledging, expressly or by conduct allegiance to a foreign state, say, Pakistan, would belong to this class and cease to be citizens of Bangladesh,”⁹⁷ and those “who had renounced their citizenship and/or are waiting to leave for Pakistan may be left to their fate.”⁹⁸ Conversely, it denotes that the people who want to become citizens of Bangladesh should be mainstreamed into the population as soon as possible.⁹⁹ The Supreme Court therefore declares in this landmark judgment that the petitioners are citizens of Bangladesh and accordingly, eligible, and

⁹⁴ Ibid at 8.

⁹⁵ Ibid at 10.

⁹⁶ Ibid at 13.

⁹⁷ Ibid at 14.

⁹⁸ Ibid.

⁹⁹ Ibid at 15.

entitled to be enrolled as voters in the electoral roll.¹⁰⁰ Thus, the court directed the Election Commission to ensure the enrollment of the entire Urdu-speaking Community in Bangladesh (except for those who wanted to opt out), and to provide them with national identity cards.¹⁰¹

It is clear that this decision has recognized the Urdu-speaking Community as citizens, and ensures people to join the mainstream society. The judgment explains that Urdu-speakers can include themselves in the Election Commission's voting list, but those who want to remain 'Stranded Pakistanis' would have to deal with their own fate. In this instance, the Election Commission is still under no obligation to enlist them as voters so there is possibly an obligation for the people to declare themselves. Under the law, the option lies with a citizen to enroll as a voter.¹⁰² While the court has established the issue of citizenship by recognizing the overall community, the challenge currently lies with the GOB to truly rehabilitate the people. In conclusion, it may be said that the Urdu-speaking Community have always been denizens of Bangladesh under different circumstances, but their status was never truly established or legally defined until this milestone verdict.

2.2 Assessment of the Urdu-speaking Community's Current Conditions

2.2.1 Interview Process

The analysis in this part is based on empirical data gathered through personal interviews. The purpose behind this is to further explore and trace the Urdu-speakers' story and to understand the current political, social and economic circumstances of their

¹⁰⁰ Ibid at 16.

¹⁰¹ Ibid.

¹⁰² Ibid.

lives. Thus, the main research question as aforesaid is: are the Urdu-speakers, who have been granted citizenship status in Bangladesh since 2008, able to exercise their fundamental and democratic rights in a just manner? The research interviews were conducted in Dhaka, Bangladesh between May and August 2016. They include two groups of people as the unit of analysis (random targeted sample). The first group comprises Urdu-speaking residents living in Bangladesh's largest settlement called Geneva Camp in Mohammadpur District (a major locality of Dhaka city), while the second group comprises certain professionals such as legal scholars, members of the judiciary including lawyers and judges, and members of NGOs. An expected limitation of this study is that the responses do not embody the opinions of the overall Urdu-speaking population who are living in different settlements located across Bangladesh, and the Bangladeshi society at large.

In the case of the Urdu-speakers, the interviews are based on their situation in order to comprehend to what extent the GOB and related organizations are guaranteeing their day-to-day legal rights, and to identify key challenges to those rights. The views expressed include various issues pertaining to the social, economic and political circumstances of the community. On the other hand, the professional experts were asked to participate in this research because they possess the knowledge and expertise regarding the community's present conditions and are actively involved in advocating for their rights. It is important to note that some of the respondents are identified in this writing, while others are not, according to the University of British Columbia's Behavioral Research Ethics Board policy.

The study population includes six Urdu-speaking residents of Geneva Camp. They are Sazzad Ali (age 20), Dil Mohammad, Mohammad Shahjada Qadri, Mohammad Sajid (all three of these individuals are senior generation Urdu-speakers aged between 42 and 70 years), and Shama Parvin Baby and Seema Naz (new generation Urdu-speakers). Professional respondents include members of Al-Falah Bangladesh, Dhaka (AFB), a non-profit social and welfare development NGO. The organization's interviewees are namely Ahmed Ilias, Executive Director (a senior generation Urdu-speaker), as well as Mohammad Hasan, Chief Coordinator of AFB, and Secretary General of Association of Generation of Urdu-Speaking Community (a new generation Urdu-speaker). Mr. Hasan is also one of the petitioners of the 2003 Supreme Court decision. Some of the information discussed in the following part is also gathered from the Refugee and Migratory Movements Research Unit (RMMRU).¹⁰³ Other professional respondents comprise Dr. Borhan Uddin Khan, Professor and Chairman, Department of Law, University of Dhaka, and two members of the judiciary who wish to remain unidentified in this writing.

The process of the selection of the interviewees occurred in two ways. In the case of the Urdu-speakers, I went to the field and visited Mohammadpur, where many of the Urdu-speakers live at Geneva Camp, which is the biggest settlement of the Urdu-speaking Community in Bangladesh. The preliminary contact with the respondents occurred after I introduced myself to the participants and provided them with a letter of initial contact outlining the study. The mode of communication was in Bengali. I further went on to describe the nature of the project with interested individuals that I came across

¹⁰³ AFB respondents Mr. Ilias and Mr. Hasan acknowledge Dr. C. R. Abrar's contribution in this regard. Dr. Abrar directs the Refugee and Migratory Movements Research Unit at the University of Dhaka, and is one of the key campaigners in the legal battle to win the right to vote for the Urdu-speaking Community.

and informed each person that there would be no incentives offered. I mentioned that each person was allowed to withdraw from the interview at any time. I then stated what was required of them, and then proceeded to recruit those individuals who were willing and consented (via verbal and written/signed consent forms in both English and Bengali) to express their opinions. The snowball method was utilized in this process as well. I also specifically sought any person from the community aged between 19 and above in order to represent findings of differing social and political factors of each individual's experience.

On the other hand, the professional participants were contacted via e-mail or by my visit to their local offices in Dhaka. My primary interest was to conduct interviews strategically of members of the judiciary such as lawyers and judges, academics, and activists/members of human rights/non-governmental organizations based in Dhaka. Much like the Urdu-speakers, I similarly explained my project through a recruitment letter and a letter of initial contact and mentioned what was required of each professional respondent, and informed them that there would be no incentives offered, and that each person could withdraw from the interview at any time. The method of communication was in English in this case and consent was given through the signing of written forms. Further, I employed the snowball method in this regard and asked each person whether they knew of others who were willing to participate in the research. I ensured that contacts did not provide the names or details about potential participants without first obtaining permission from those participants. In the case of these interviewees, I was seeking persons aged between 21 and above.

2.2.2 Evaluation of the Community's Living Conditions

This section is divided into a number of parts appraising the Urdu-speaking Community's current living situation. It offers the views of certain interview respondents, and portrays the underlying challenges the community faces today. The respondents were asked about the adequacy of existing support systems that are being provided in Geneva Camp. Each resident respondent has denoted that they were not fully satisfied due to lack of opportunities, and inadequacies within several criteria, including property and settlement life standards, nutrition and food, education, and healthcare. With respect to this, the impact indicators that are considered and discussed below are: national identity, the quandary of politics, language and culture, land rights and accommodation, food, education, employment, health, corruption and violence, involvement of organizations in Geneva Camp, and integration practices. These impact indicators are considered because they are a helpful anchor for thinking about the challenges that are being faced by the community. One of the key reasons for which I selected these specific indicators is due to the fact that they are a meaningful way to relate to the community members' day-to-day life situation, and to assess what really matters for the people. This in turn allowed me to interpret the national and international legal framework in the following chapters, and to comprehend a way to determine the people's legal status by thinking through the law and deducing the standards that need to be met for the community to attain full citizenship. It should also be noted that these impact indicators function as useful measurements but are differently comprehended in international and national law frameworks. This means that political and civil rights are almost universally better received and implemented than

social and economic rights. Undoubtedly, economic and social rights are not guaranteed in the most prosperous states of the Global North, let alone the states of the Global South.

2.2.2.1 National Identity

Firstly, it is palpable that the Supreme Court's judgments concerning the Urdu-speaking Community act as precedents in the Bangladesh legal system for the entire community. Two respondents of the judiciary state that while the Urdu-speakers have answered to this particular legal status by becoming voters, the bureaucracy has not responded to treat them as citizens, and local authorities "knowingly" stay desensitized about the Urdu-speakers' present legal status. Further, it is sometimes evident in Bangladesh that when rules are not enforced (for example, the state fails to fully ensure workers' safety,¹⁰⁴ or where the state is unable to tackle domestic violence¹⁰⁵), the people of the country have actively opposed these events through public protests and demonstrations, which the GOB tried to address eventually. Unfortunately, the same cannot be said about the Urdu-speakers' rights' infringements, as it is possible that certain people in Bangladesh remain unaware about their status. Nevertheless, the judgments of the Supreme Court have helped the community to make a life in Bangladesh instead of going to Pakistan. In this sense, the Urdu-speakers accordingly thought of settlement in Bangladesh for the long-term, and tried to forge an identity for themselves and negotiated with the state to acquire the legal rights to becoming citizens.

¹⁰⁴ Katie Forster "Rana Plaza: rallies in Bangladesh as victims await compensation" *The Guardian* (18 April 2015) online: The Guardian (London, United Kingdom) <<http://www.theguardian.com/world/2015/apr/18/rana-plaza-bangladesh-compensation-anniversary-factory-disaster>>.

¹⁰⁵ Denise Ryan "Rumana Manzur beaten, blinded by husband" *Global News* (22 June 2011) online: Global News (Burnaby, BC Canada) <<http://globalnews.ca/news/124136/rumana-manzur-beaten-blinded-by-husband-2/>>.

All six interviews with the Urdu-speakers¹⁰⁶ suggest that people are generally aware regarding their own Bangladeshi citizenship status, and have some knowledge of the 2008 decision.¹⁰⁷ This is a primary reason why most individuals continue to become voters. According to AFB, 90 percent of the Urdu-speakers in Geneva Camp are in the GOB's voter list and have applied or hold national identity cards. During the interview process, I inquired about what people have been thinking or anticipating after hearing about the judgment for the first time. One of the respondents, Mr. Qadri, mentions as follows:

People rejoiced when they first heard about it. This was what I had hoped for decades and it was an extraordinary day. Thinking of it now, I wonder what was the point of this? On the one hand, a general confusion still exists on a social level where Bengalis shun us for 'being different', and now there are questions about whether we should leave the camps because we are entitled to citizenship. The administration did not endorse the Supreme Court's judgment in Parliament for our rehabilitation as recognized citizens. As a result, our settlement lives have not ended, and our human rights in terms of access to education, health, and jobs remain scarce. I also recently learned that the Supreme Court has given us a status quo to ensure that we remain in Geneva Camp, but what would be the position of the administration later? I cannot leave this place under my circumstances because this is the only home I have ever known.

When I asked what the Geneva Camp respondents thought about Bangladesh and its people, the responses were mostly positive. Mr. Dil Mohammad, a respondent, states:

Even with our conditions, I have to say that there is no other country like this. This is my motherland. We are fine when it comes to living here, and I have good friends, including both Bengalis and Urdu-speakers. Still, I just wish we were properly recognized as citizens – both by the people of this country and by the bureaucracy.

All respondents of Geneva Camp have mentioned that they do not feel persecuted, but are still mistreated on several occasions just because they are a part of the Urdu-speaking Community. Mr. Ahmed Ilias, a senior generation Urdu-speaker states that the

¹⁰⁶ AFB respondents have additionally stated this.

¹⁰⁷ Because of the limits of this study, it is not possible to suggest to what extent the 2008 decision is publicized in the overall Urdu-speaking Community in Bangladesh.

community's situation today is still like the 'refugee' in some cases, albeit they are receiving certain legal rights from the state. At the same time, Mr. Sazzad Ali, a new generation Urdu-speaker indicates that the newer generation of Urdu-speakers believes that the phrase 'Stranded Pakistani' is not applicable to them, as they have not come from Pakistan to become stranded in Bangladesh.¹⁰⁸

With regard to national identity, Ms. Parvin mentions that she does not know why the Urdu-speakers' circumstances are challenging, even though many people have received national identity cards in Geneva Camp after the decision of the court. For instance, acquiring national identity cards outside Geneva Camp has been both convoluted and frustrating. Normally, national identity cards are not easy to obtain, even for the average citizen of Bangladesh.¹⁰⁹ Recently, an unwarranted number of service seekers and mismanagement of the authorities have led to office premises to become disordered, owing to swindlers who have benefitted and are selling "new" national identity cards.¹¹⁰ It is difficult to know all the factors, but issues like these act as barriers for the Urdu-speakers.

In one interview, a member of the judiciary tells that it remains to be seen whether the Urdu-speaking people at large are injected with the spirit of the 2008 ruling. With respect to this, I inquired the respondents in Geneva Camp whether they felt that their community could go to the Supreme Court once more to establish further rights. In particular, Mr. Sajid states about this and his rights situation:

¹⁰⁸ Ahmed Ilias, *The Bangladeshi Urdu-speaking Community - New Generation: New Challenges* (Dhaka, Bangladesh: Al-Falah Bangladesh, 2014) at 65.

¹⁰⁹ Pankag Karmakar "NID card not easy to get" *The Daily Star* (13 March 2016) online: The Daily Star (Dhaka, Bangladesh) <<http://www.thedailystar.net/backpage/nid-card-not-easy-get-790351>>.

¹¹⁰ Ibid.

Quite often, I have seen that national identity cards do not work. This includes problems such as when we cannot apply for passports, or difficulties when looking for jobs. Our camp identity is also the biggest problem. Even when people find jobs and provide a fake address, how long can we be expected to hide our camp identity? Hiding one's identity is common, although this hurts our morals as we are citizens and are constantly playing hide-and-seek. Yes, some of us are able to get national identity cards and are able to open bank accounts, but it is for not much else really. Due to our circumstances, bank loans are impossible to obtain, and insurance facilities are limited.

Going to the Supreme Court and filing for contempt against the judgment may seem promising, but it is in fact not feasible because I think political will is urgently needed, and we as a community, have to work for it. We voted in the general election in 2008 after the court's decision. The local constituency representatives pledged that they would help us, but the help received has been good but not entirely satisfactory. I recall a delegation went to the forming administration in 2008 with a memorandum, and it requested to provide our community some necessary resources, but the bureaucratic problems and red tape in all these years have stalled developments critically.¹¹¹

After talking to the respondents of Geneva Camp, it may be said that some Urdu-speakers still feel perceived as 'the other' in society. Nonetheless, according to a member of the judiciary, there are lobby groups and various associations that sensitize, not only the community itself, but liaise between the community and civil society research groups to ensure publicity and dissemination of information about the status and the rights of the Urdu-speaking Community. One primary research entity that is engaged in this is the Refugee and Migratory Movements Research Unit.¹¹²

It is thus obvious that in terms of citizenship and national identity, the Urdu-speakers are still fighting for it. The interviews lead to the belief that the people are generally committed to live in Bangladesh at present as they have embraced themselves in the country. But it appears that the Bangladesh establishment continues to take the view that the members of this community, especially those who were in the age of

¹¹¹ The delegation mentioned by Mr. Sajid included respondent Mr. Mohammad Hasan of AFB.

¹¹² Dr. C.R. Abrar who directs the Unit at the University of Dhaka is the driving force in much of the litigation that the Urdu-speaking Community has seen in the courts.

majority at the time of independence in 1971, must share the blame and responsibility of what had transpired. However, it may be argued that this is somewhat of a warped view in the sense that this community had also suffered at the hands of the majority of Bangladeshis in 1971. As a consequence, national identity remains a pivotal issue as this community was and still is on the losing side because they continue bearing the brunt of the circumstances.

It may be said that the contemporary idea of citizenship respects political participation, and embodies a specific system of political representation, usually in a democracy. Immanuel Wallerstein suggests that inhabitants of a country should enjoy the rights of passive citizens, such as the protection of their freedom, but everyone does not have a right to play an active role in the creation of public authorities.¹¹³ As a result, each member has her or his status under custom or law and the lawful rights (with limitations) to political, economic, and social benefits, and accordingly owes a legal duty towards the sovereign state. The concept of nationality is also embedded with these. Moreover, *jus soli*, *jus sanguinis*, *jure matrimonii*, and naturalization equally play roles in the regulation of citizenship. Thus, the Urdu-speakers should likewise receive their respective entitlements.

2.2.2.2 *The Quandary of Politics*

According to AFB, the court's ruling in 2008 has helped to ensure more than twenty public facilities for the Urdu-speakers. Yet there are specific ideological problems, especially in the attitudes between the state, the general population, and the

¹¹³ Immanuel Wallerstein, "Citizens All? Citizens Some! The Making of the Citizen" (2003) 45:4 *Comp Stud Soc & Hist* 650 at 651-2.

Urdu-speakers. One respondent from the judiciary remarks that there is a distorted interpretation regarding the Urdu-speaking Community's status in Bangladesh. At the same time, there is a question that if the Urdu-speakers have already acquired citizenship rights, why are they entitled to special benefits from the state? The same respondent explains that the Urdu-speakers are still unable to exercise rights mainly for two fundamental reasons: discrimination, and the fact that political parties do not truly recognize the people as citizens. Conversely, there is a very pronounced divide in how the judiciary looks at the Urdu-speakers' situation. The judiciary has mostly been sympathetic towards the community and acted within the boundaries of the law. Thus far, the bureaucracy and the local government have not kept up in the same way. In the opinion of the respondent, the empathy of the authorities or establishment in the case of the Urdu-speakers is very little. On top of all this, the politics aided by local goons and lawmakers (for reasons other than citizenship of the Urdu-speakers) has acted in a way that is prejudicial towards the community. Nonetheless, lobby groups have grown from within the Urdu-speaking Community itself, and now assert and take pride in their heritage as Urdu-speakers, including their historical status in Bangladesh. It is thus natural that the community still seeks accommodation within the mainstream society and is asking for the recognition of their Pakistani heritage. As per the respondent, the societal view is that the Urdu-speakers are trying to break into the mold, and this has developed in Bangladesh over the course of the last forty years and more. The respondent particularly also states that the Bangladesh society has increasingly become a mono-cultural and mono-ethnic society, and has shunned the concept of being "Bangladeshi" and moved gradually to becoming or building a dominant "Bangalee, Sunni and Muslim

identity”. Inevitably, other groups or communities, including minority groups are getting edged out, and the Urdu-speakers are likewise suffering for that.

The AFB respondents point out that the Urdu-speaking Community feels threatened and is tensed about their situation at times, but they are not being persecuted. Even so, fears in the current political scenario do not end there. In 2017, the GOB is intending to amend the existing citizenship law.¹¹⁴ The Cabinet has given its final approval to draft and enact the *Citizenship Bill*, 2016, which will consolidate but repeal the present *Citizenship Act*, 1951 and the *Citizenship Temporary Provisions Order*, 1972.¹¹⁵ After examining various provisions of the new law, jurists and rights activists agree that there is a probable scope that it may create statelessness for several groups of people.¹¹⁶ These include existing citizens whose parents died before 1971, ‘enemy aliens’ and their children, and unregistered dwellers of Bangladesh’s recently exchanged enclaves.¹¹⁷ The administration would be empowered to nullify one’s citizenship because of specific threats to birth rights as well, since Section 4(2)(b) and Section 11(c) in the bill denies or puts at risk the citizenship of a child if her or his parents or grandparents is dubbed an alien enemy.¹¹⁸ It is also likely that if there were any decree or judgment of the Supreme Court pertaining to the Urdu-speakers’ citizenship (existing currently or in the future), they would become null and void because of the proposed bill. There is one concerning

¹¹⁴ This thesis was completed on March 12, 2017 at which time the status of the *Citizenship Bill* was still in the draft stages and not passed in the Bangladesh Parliament. The author anticipates forthcoming changes of the citizenship law in the course of 2017 or afterwards.

¹¹⁵ C.R. Abrar “The curious contents of the Citizenship Law” *The Daily Star* (4 June 2016) online: The Daily Star (Dhaka, Bangladesh) <<http://www.thedailystar.net/op-ed/politics/the-curious-contents-the-citizenship-law-1233943>>.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Staff Correspondent “Citizenship bill poses threat to basic rights: speakers” *New Age* (29 December 2016) online: New Age (Dhaka, Bangladesh) <<http://www.newagebd.net/article/5837/citizenship-bill-poses-threat-to-basic-rights:-speakers>>.

provision for the Urdu-speaking Community in the proposed Article 28(2)(a) of the draft, which states:

Notwithstanding such repeal ... citizenship of the persons who obtained citizenship under the repealed Acts shall prevail, subject to consistency with the provisions of this Act. All activities done under the Act shall be considered as legal.

Therefore, the new citizenship legislation as put forward has the chance to override the 2008 judgment that reaffirmed Bangladeshi citizenship of the Urdu-speaking Community.¹¹⁹ Some parts of the legislation may be deemed discriminatory, and can conflict with the Constitution and international treaties that Bangladesh has ratified.

At the same time, Dr. Borhan Uddin Khan, a professional respondent from the University of Dhaka, believes that the Supreme Court of Bangladesh has undoubtedly settled the matter of the Urdu-speakers' status as citizens and the scope of integration, and thus the policy decision is established. This is especially true since the current administration, which came to power in 2008, and again in 2014, positively continues to recognize the Urdu-speakers as citizens. Hence, there is a political acceptance of the ruling party, which has formed the majority government. According to Dr. Khan, there is no revised legislation yet that could sidetrack the two judgments by excluding the Urdu-speakers from citizenship or integration, although integration itself remains difficult for the Urdu-speakers.

2.2.2.3 Language and Culture

Before I begin the discussion in this part, I must share some remarks on my observations during the camp visits. Firstly, while walking within the areas of Geneva

¹¹⁹ Abrar, *supra note* 115.

Camp, I witnessed that the majority of the people was speaking in Urdu. Throughout the interviews, I also heard two public announcements that were said in Urdu. Further, while conducting the interviews, it was sometimes apparent that a few resident respondents spoke with a different dialect of Bengali than the average Bangladeshi. One inherent reason for all these may be the fact that the community members have lived their lives with their linguistic Urdu-heritage within the confines of the settlement's home environment. Ms. Parvin, a resident respondent, says that this has been a habitual "problem" that distinguishes the community from other citizens. Thus, in a cultural sense, the people continue to speak the Urdu language, in addition to Bengali in some cases. Another example of the community's distinct culture is when the Urdu-speakers celebrate specific festivals in accordance with the Islamic calendar each year. Because such events are quite frequent, most Geneva Camp respondents have revealed that they seldom face restrictions to celebrate these occasions outside the settlement, and are even prohibited to observe festivals within the camp. One of these festivals is known as 'Muharram', which is also celebrated by other Bangladeshis. It is an occasion to remember the grandson of the Prophet Mohammad, and is the first month of the Islamic calendar. Bengali Muslims normally observe it with prayers at home or at mosques for one day. But it is of greater significance to Urdu-speaking Muslims in Bengal, and the Urdu-speaking Community in Bangladesh. Geneva Camp residents celebrate it for three full days with community processions (people bang drums, wave flags, hold fire plays at evenings) and wear special clothing for the occasion.

Mr. Ilias (a senior generation Urdu-speaker) mentions that he sees the Urdu-speaking Community's Geneva Camp as a kind of "Chinatown" which is enclosed within

the Mohammadpur district of Dhaka, but where the population predominantly speaks a different language, and has its own customs. The blend of cultures is also rapidly growing, especially with the new generation. In my interview with Mr. Ilias, he specifies that his children have married Bengalis, and lives with one of his sons in Dhaka. Everyone speaks Bengali in his son's household, except for himself and his son who also speak Urdu. While the respondent knows four languages (Urdu, Bengali, English, and Arabic), he states that he visits relatives and friends to communicate in Urdu, which is the native language he first learnt as a child almost 70 years ago.

In terms of the law, one professional respondent elucidates that Article 28 of the Constitution of Bangladesh stipulates not to discriminate against any citizen on the grounds of 'religion, race, caste, sex, or place of birth'. Yet, the provision does not refer explicitly about 'language'. Based on this statement, it may be said that the Urdu-speakers and other linguistic groups in Bangladesh may become vulnerable. For instance, if an Urdu-speaker's fundamental right is violated, the courts can offer a number of safeguards, but if there were questions concerning language, the protection right under the Constitution may possibly be insufficient. For that reason, it may be suggested that the Constitution needs to be aptly amended to encompass a nondiscriminatory clause in respect of language.

2.2.2.4 Land Rights and Accommodation

There are two important aspects to appreciate the Urdu-speaking Community's legal entitlements to land and their current housing situation. I will first briefly explain the inception of the Urdu-speakers' accommodations in the region.

Between 1947-1965 (after the Urdu-speakers' migration from India), the Urdu-speakers were living in a number of colonies, which comprised government houses and quarters. According to my interviews with AFB respondents, the East Pakistan administration provided these facilities. The Muhajir Welfare Fund also assisted at this time to rehabilitate the Urdu-speakers after the post-partition period. It is interesting to see that prior to 1970, none of the Urdu-speakers actually lived in today's settlements. But during the wartime in 1971, the administration relocated the same people forcibly to different settlement areas like the Geneva Camp, which is the Urdu-speaking population's biggest settlement in Bangladesh at present. The disintegration of the community thus started from 1971. In the opinion of a member of the judiciary and AFB respondents, many people in the community were unaware of what was occurring during Bangladesh's war for independence. For those who knew, the respondents mention that most of the Urdu-speakers (who were part of the minority population) did not actively oppose Bangladesh's independence since they feared for their own safety. One respondent, Mr. Hasan of AFB, in this respect contends that the Urdu-speakers were close to being well privileged till early 1971, but the Bangladeshis, particularly those people who were destitute or in the low-income category, wanted to take those resources away from the community as a backlash of the war. The widespread persecution in that time hence led the Urdu-speakers to accept their fate and escape their homes to avoid potential dangers. Consequently, the former colonies or districts that were established since 1947 for the Urdu-speakers started to become uninhabited.

The Urdu-speakers living in Dhaka were and still are situated in two distinct areas of the main metropolitan city. As per the interviews with AFB respondents, Dhaka's Mirpur 1, 2 and 6 were initially colonies where the Urdu-speaking people had lived until early 1971. These were known as the 'Muhajir Colony'. Later in 1971, the same people moved to Mirpur's 10, 11 and 12 zones, which were mostly empty land. The people gathered together in the following areas to save their lives during wartime. By 1972, the ICRC had arrived in Bangladesh to aid people with post-war rehabilitation. It identified those affected, which included the Urdu-speaking Community of Dhaka. The ICRC then made an agreement with the GOB to place the Urdu-speaking people in Mohammadpur for an interim basis. Certain areas in Mohammadpur were vacant during that time. The ICRC then helped many Urdu-speakers to move in the new areas, which ultimately led to the creation of the Geneva Camp. The ICRC considered unconstructed town halls and undeveloped community/staff centers as possible housing venues for the community. With a total of six settlement zones in Mohammadpur (four on public land and two on private land), the Urdu-speakers were thus accommodated. Apart from Geneva Camp, the areas surrounding the aforementioned colonies (specifically in Mirpur) that were created between 1947-1971 eventually became the residences for the remaining Urdu-speakers in the subsequent years after 1971. Among the 116 settlements (conducted by AFB as of May 2006), the major areas in which the Urdu-speakers live are situated in Dhaka, Saidpur, Chittagong, Khulna, Pabna, Rangpur, Bogra, and Mymensingh. According to Mr. Hasan of AFB, the Urdu-speaking Community is residing on both public and private lands across Bangladesh.

I will now discuss and analyze the current conditions of the Urdu-speakers' land rights. At present, some would say that the settlements in Bangladesh resemble a 'warehousing' situation for the Urdu-speakers, since there are so many people living across the country, including over 35,000 people residing at Geneva Camp alone. One professional respondent from the judiciary claims that the state has taken a fine art form (mainly through law) of disenfranchising minority people, and this is a sort of legacy derived from Pakistan since 1947, and perfected more after the 1965 Indo-Pakistani War. The respondent suggests that at the time of independence, Bangladesh had virtually deprived the Urdu-speakers of one basic element that was essential for citizenship and the right to belong in a state: the right to property and continued residence. This was enforced by the administration through laws like the *Abandoned Property (Control, Management and Disposal) Order*, Bangladesh (President's Order No. 16 of 1972), and the settlement areas that later came consequently sustained with the permission of authorities. It is thus apparent that the Urdu-speakers were deprived by the state from exercising their citizenship in terms of legal, political, economic, and social benefits. In the respondent's view, the Urdu-speaking Community is unlike any other, and the strongest parallel of their circumstances may be drawn with Warsaw's ghettos at the time when the Nazis had stranded Jewish people during the Second World War. In certain ways, this echoes the Urdu-speakers as they, as an entire community, were deprived of their dignity, and the right to property. The respondent thinks that much like the Polish scenario, Bangladesh has created a ghetto and restricted the Urdu-speakers in a defined area, especially in terms of Mohammadpur's Geneva Camp. As per my visits to the settlement, it seems evident that the territorial limits of the Geneva Camp are still well defined even today. It

is also indicated by the respondent that the Hindu people living in Bangladesh were also deprived of land after the 1971 war, and land grabbing of Hindus and other minorities continues to occur. Non-Bengalis have therefore faced these situations as a result of the *Abandoned Property (Control, Management and Disposal) Order, 1972*. It may be said that these are blotches in Bangladesh's jurisprudence where the GOB is yet to revisit this era. Currently, the restoration of the vested property for Hindus is underway, although it is yet to be entirely implemented due to bureaucratic and other legal hurdles.

The Urdu-speakers' households are still urban-based as opposed to rural as per RMMRU and AFB. In Dhaka city, there are a total of 32 settlements, which are located in the Mirpur and Mohammadpur areas.¹²⁰ After nearly half a century, these have become flourishing neighborhoods with bustling markets and shops that fill the settlements' main arteries.¹²¹ Settlements beyond Dhaka look more like independent towns, with mud-brick houses, and are dotted with cottage industries and shops.¹²² In terms of size, Geneva Camp has approximately 235,000 square feet of land, and is divided into nine residential sectors.¹²³ Another small settlement at this location is the Central Relief Organization (CRO) Camp, which is located across from the Town Hall.¹²⁴ As per the interviews with the Geneva Camp respondents, the government now owns the vast majority of the lands. To see a detailed view of the map and surroundings of Geneva Camp in Mohammadpur, Dhaka, see the following Google Maps link as available at:

<https://www.google.com/maps/place/Geneva+Camp,+Dhaka,+Bangladesh/@23.768756>

¹²⁰ Sholder, *supra note 6* at 2.

¹²¹ *Ibid.*

¹²² Bijoyeta Das & Khaled Hasan "In Pictures: Plight of Biharis in Bangladesh" *Al-Jazeera* (26 March 2014) online: Al-Jazeera (Doha, Qatar) <<http://www.aljazeera.com/indepth/inpictures/2014/03/pictures-plight-biharis-bangla-2014325152839952229.html>>.

¹²³ Sholder, *supra note 6* at 2.

¹²⁴ *Ibid* at 3.

[5,90.3603731,1634m/data=!3m1!1e3!4m5!3m4!1s0x3755c0a602fc50ad:0x8a995c9a61a9e00a!8m2!3d23.7684317!4d90.3651262?hl=en-US](https://www.theguardian.com/global-development/gallery/2014/aug/11/stranded-pakistanis-camps-bangladesh-bihari-in-pictures)>.

Small houses are divided by two-foot (61 centimeter) wide passageways and shared by a number of families.¹²⁵ According to the interviews, rooms are typically 8x8 feet in size. Floors are frail and susceptible to collapsing in Geneva Camp and in many other settlements in Dhaka. There are gaps in the walls and under the stairways, which expose rusted structural steel and rotting concrete.¹²⁶ Electrical lines hang in webs above the hallways and are hazardously frayed.¹²⁷ Besides, when walking down the narrow lanes of the camp, mud, open drains, and garbage is visible.¹²⁸ During my visits in Geneva Camp, I detected that the sewerage system in many parts throughout the settlement was blocked with garbage.

Professional respondents, including AFB members reveal that as the day-to-day population of the settlements increases, there may be more accommodation problems due to overcrowding. In my interview with resident respondent Ms. Parvin, I learned that many residents are unaware about family planning, which is resulting to an increased population growth. Reports suggest living conditions are so overcrowded that 5 to 15 people (usually extended families) share one or two rooms,¹²⁹ and an average of 90 families use one single latrine.¹³⁰ Moreover, people are creating vulnerable huts or

¹²⁵ “‘Stranded Pakistanis’ living in camps in Bangladesh – in pictures” *The Guardian* (11 August 2014) online: The Guardian (London, United Kingdom) <<http://www.theguardian.com/global-development/gallery/2014/aug/11/stranded-pakistanis-camps-bangladesh-bihari-in-pictures>>.

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ Das & Hasan, *supra note* 122.

¹²⁹ Khalid Hussain, *supra note* 12 at 31.

¹³⁰ Mark Rafferty & Anna Gilmer “Bangladesh’s forgotten students: The Biharis struggle” *GlobalPost* (26

buildings to dwell in (including tin-shed houses which are common), without permission from Dhaka's development authority *Rajdhani Unnayan Kartripakkha*. Mr. Ilias of AFB nonetheless mentions that in the last five to ten years, the administration has informally allowed Geneva Camp residents to build two-to-three storey buildings. However, there is no actual legal sanction for this.

The existing Geneva Camp conditions were renovated in the last seven years, and some construction is still ongoing albeit the general housing situation remains poor. In an interview with resident respondent, Mr. Mohammad Shahjada Qadri, I inquired about the circumstances of his residence. Mr. Qadri expresses that:

This cannot even be called a house because it is a mere 8x8 feet in size. Back in the 1970s, there were two of us in my family. Now we are 10 people, including my grandchildren, living in this one small space, and sharing two beds. Occasionally my eldest son's in-laws stay here as well. There is little to no privacy because of the lack of physical accessibility within the space. Sometimes, I am awake till the middle of the night. Once I go to bed, one of my sons wakes up and stays sleepless until dawn to keep our home secure.

The following pages illustrate some photographs taken by me during my camp visits:



Illustrations 1 & 2: Narrow alleys mark the walkways for most Geneva Camp residents



Illustrations 3 & 4: The dilapidated settlement is home to some 35,000 Urdu-speakers

Both the settlement and AFB respondents have indicated that the GOB provides Geneva Camp with free power and electricity, as well as water. However, there is no gas supply in the entire community. On some occasions, there are also shortages in the water supply. Due to the absence of gas facilities, residents are mostly using wooden stoves for cooking. Many families use a single can of kerosene each day only to cook food, and do not feel it is worth spending their money to purchase a second can for boiling water on a daily basis.¹³¹ Families who do boil their water tend to use wood as fuel because it is cheaper as opposed to kerosene.¹³² The camp respondents further state that fires are not common in the settlement, but there was one several years ago. Nowadays, accidents seldom occur due to risky gas blockages, and people who suffer burns are typically women (and sometimes children) who do the majority of the cooking at households.

The streets and walkways within Geneva Camp are also substandard and in poor conditions. When there is rain, especially in the monsoon season between June and October, the Camp is prone to flooding, and according to AFB, camp leaders generally repair the damaged infrastructure such as flooded footpaths and toilets.

Other issues such as the deprivation of residents from opening bank accounts or enrolling in schools or applying for jobs due to the lack of a permanent address arise frequently. It should be noted in this case that the resident cardholder's address is listed on the identity card. But as per the respondents, people write 'Geneva Camp' because there is no proper postal address to state. Thus, some people are using false addresses. One respondent, Mr. Dil Mohammad, mentions:

¹³¹ Sholder, *supra* note 6 at 28.

¹³² *Ibid.*

If I go to the local administration with my grievances, they do not pay proper attention. We, as a people, are stuck in a sort of prison. The local Member of Parliament does not help us much. If you use the address of the Camp, nothing moves forward. I cannot apply for a passport. Also, my daughter, who is currently a second-year student, goes to college now, but is forced to provide a fake address. During the prior application period, other college administrators did not allow her to put the Camp's address. My daughter was adamant to put her real home address then, and did not ultimately go to college for a year.

Furthermore, some Geneva Camp respondents have said that owning property is unusual mainly because of poverty. The equal means to the right to property according to the Constitution of Bangladesh is thus largely overlooked. AFB respondents state that a number of pronouncements of the higher judiciary in property related cases have also been ignored. Respondents like Ms. Naz suggest that the Urdu-speakers' citizenship status since 2008 has increased the probability for eviction from the settlements. For example, in May 2016, the Supreme Court of Bangladesh has directed authorities to maintain the status quo on the eviction of unauthorized Urdu-speakers living illegally in the settlements (some Urdu-speakers are living in areas without the permission of public agencies that are responsible for managing property development) in different places of the country.¹³³ Earlier on March 29, 2016, the High Court Division discharged a 2003 rule against the eviction of unauthorized people living *outside* the settlements, thus clearing the way for ousting certain members of the community.¹³⁴ However, the High Court Division has currently stayed these Urdu-speakers' removal (for those residing both in and outside the settlements), but it can still be challenged at the Appellate Division of the Supreme Court in the future. The Urdu-speaking residents would therefore not know where to go then.

¹³³ UNB "SC status quo on unauthorised Bihari eviction" *The Independent* (17 May 2016) online: The Independent (Dhaka, Bangladesh) <<http://www.theindependentbd.com/post/44174>>.

¹³⁴ Ibid.

Although most people do not have direct access to the ownership of land, the respondents have nonetheless indicated that some residents pay rent to live in their houses. These are not paid to any housing authority, but rather to those who sublet their property. Apart from subletting property in a few cases, there is no actual possession of land, and the dwellings of individuals are under no formal agreement. There are no specific legal documents for housing, apart from the national identity cards provided by the government. Nevertheless, rations/relief cards (provided until 2004) and prior repatriation forms that are decades old are used as documents for proof of residence. But those people who already had these types of identity cards (in some cases they mention a fake address) have continued to use them rather than acquiring real identity cards.

On the other hand, the AFB interviews denote that the number of people, who have been able to reacquire their former property, ie in the pre-1972 period, is very less (a mere 5-10% of the total population).¹³⁵ Many people were not able to recover what was deemed ‘enemy property’ according to the *Abandoned Property (Control, Management and Disposal) Order, 1972*. Also, it may be possible that only a few people wanted to recover their lands since many Urdu-speakers thought that they would repatriate to Pakistan. Notably, the 2008 decision of the Supreme Court also does not mention regarding the Urdu-speaking Community’s entitlements to recover their property.

A member of the judiciary points to the fact that there is a power structure in the Urdu-speaking Community, which especially entails the issue of land. The interviewee refers that if the community is encouraged to be accommodated in Bangladeshi society,

¹³⁵ According to Mr. Hasan of AFB, there was a brief period in 1982 where ownership of certain lands was recovered by the Urdu-speakers.

the bureaucracy must help them to find suitable housing now. Additional support to the community in terms of getting jobs and healthcare is equally vital. That said, each of these sectors (such as jobs and healthcare) is proportionately competitive in nature, and there is a dearth of supply in each sector as opposed to the community's demand. Hence, local members of parliament and leaders must cater to their constituencies where the Urdu-speakers reside. This may be achievable as it should not be difficult for leaders to cater to their own constituencies. It should also not act to the detriment of the people who are mostly marginalized and quite vulnerable. In the past, the Local Government and Rural Development Ministry, in conjunction with the Dhaka City Corporation made a plan to rehabilitate about 40,000 camp residents in new buildings but without any consultation with community members.¹³⁶ A different and more careful approach is required since urban renewal and redevelopment projects are often known to go bad, and such a project in the future may be met with doubts, especially without any participation of the Urdu-speakers or by planning and development professionals.¹³⁷

Therefore, it may be said that the land rights situation was not a choice made by the Urdu-speaking Community; rather it was the people's circumstances, especially after the 1971 war, that have led them to live in these settlements. There are two crucial reasons for which the people are essentially stuck in the settlements today. According to all professional and Geneva Camp respondents, if the Urdu-speakers were to live outside the settlements, they would undeniably have to rent a place for their family. But most people do not have the adequate money or resources to do this. On top of that, as certain

¹³⁶ Sholder, Hannah. *Physical Rehabilitation and Social Integration: The Camp-Dwelling Urdu-Speaking Community in Bangladesh* (Master of City Planning, University of California, Berkeley, 2014) at 1.

¹³⁷ Ibid.

cultural differences like language exist, many respondents like Ms. Parvin have said that this is a major reason for which residents do not choose to move. Nevertheless, residents like Mr. Dil Mohammad and Mr. Qadri state that their one demand to the bureaucracy and local government is to help ensure their rehabilitation outside Geneva Camp, as they do not want to live there anymore. Rehabilitating over a possible 100,000 camp dwellers in the country would require sufficient funding and effective strategies by the GOB and organizations. Perhaps in the near future, Bangladesh will come forward to tackle this for the Urdu-speakers since some reconciliation is long overdue.

2.2.2.5 Food

Each respondent of Geneva Camp has stated that there were monthly distributions of relief supplies until 2004. These were provided by the local administration in settlements throughout Dhaka. The World Food Programme and the Relief Ministry supported the camp. But the food programs have stopped for a long time. The respondents of AFB believe that the GOB took a positive step by discontinuing food and rations aid to Geneva Camp residents in 2004, since the relief made most people overly dependent on the government. However, the relief provided was basic as each adult received 3.5 kilograms of rice or wheat per month. Half of this said quantity was offered to minors.

Today, the community has come out of dependency but still faces challenges. The interviews suggest that there are no organizations currently involved in providing Geneva Camp residents with food, and thus people are preparing food for themselves. With a basic income, families are capable of buying necessary food for the month, but for not

much else.¹³⁸ Food staples include gram flour, rice, wheat, lentil, and breads. Vegetarian cuisine is normally popular since non-vegetarian foods like fish (some types) and beef are usually expensive in the market. The food consumption in general is not satisfactory as the people are not fulfilling nutritional standards, and according to the interviews, most Geneva Camp residents do not meet the daily average intake requirement (2000 calories for women and 2,500 calories for men).

2.2.2.6 Education

As per AFB, the Geneva Camp originally had five schools, with Urdu as the medium of instruction. Resident respondents Mr. Dil Mohammad and Ms. Parvin suggest that till the 1990s, children often could not get admitted to Bengali schools just for being ‘Bihari.’ Mr. Hasan of AFB comments that children were frequently not allowed admission into primary schools until 1995. Since 1996, primary education became free for all children, and the GOB is especially providing this under the United Nations’ Millennium Development Goals. A few respondents have stated that as the Urdu-speakers are underprivileged in terms of their economic situation, they are unable to afford their children’s education after primary school.

Hence, one of the main difficulties faced by the community is that they have a low literacy rate due to poverty and lack of opportunity, and this has been a recurrent issue since the inception of Bangladesh. According to a 2013 report, 94 percent of the Urdu-speaking Community is illiterate, compared with a Bangladesh national average of 46

¹³⁸ Sholder, *supra note* 6 at 30.

percent.¹³⁹ In October 2013, AFB conducted a sample survey among 2000 households in settlements all over Bangladesh.¹⁴⁰ The total number of respondents was 10,733.¹⁴¹ These findings show a poor status of the Urdu-speaking Community's children within different levels of the education system: Illiterate (12.9%), Basic Literacy (18.9%), Primary Education (39.6%), Education Qualification up to Lower Secondary Level (15.1%), Secondary School Course (3.1%), Higher Secondary Course (2.6%), Undergraduates (1.2%), Graduates (0.2%), Master's Degree Holders (0.2%).¹⁴² As these figures show, there is a very high dropout rate predominantly when children reach the secondary level. A probable reason behind this is because of the growing economic needs of most families, which ultimately results in children to quit school and become a source of income to the household.

Currently, there is only one school in Geneva Camp known as the Non Local Junior High School. In AFB's own school/health clinic in Geneva Camp, the medium of instruction is Bengali. All resident respondents have stated that their completed level of education is mostly until high school, except for one respondent who did not attend any institution. In one interview with resident Mr. Sazzad Ali (a new generation Urdu-speaker), I asked about how difficult it was for him to achieve higher education. Mr. Ali says:

¹³⁹ "Neglected Bihari youth battle stigma in Bangladesh" *IRIN News* (27 August 2013) online: IRIN News (Geneva, Switzerland) <<http://www.irinnews.org/report/98651/neglected-bihari-youth-battle-stigma-bangladesh>>.

¹⁴⁰ Al-Falah Bangladesh, "Al-Falah Bangladesh: Annual Report 2014" online: <[http://www.alfalah.com.bd/reports/Annual%20Report%20Al-Falah%20Bangladesh%20\(AFB\)%20-%202014.pdf](http://www.alfalah.com.bd/reports/Annual%20Report%20Al-Falah%20Bangladesh%20(AFB)%20-%202014.pdf)> at 3.

¹⁴¹ Ibid.

¹⁴² Ibid.

I am studying in my second-year at university now. I feel higher education is feasible if one has adequate financial strength, apart from those who receive scholarships on merit. For those who want to get enrolled at colleges/universities, getting coaching can be difficult when a family earns Bangladeshi Taka 8,000 - 10,000 (US \$101-127)¹⁴³ a month. Moreover, the environment to concentrate and study proves difficult within Geneva Camp due to the noise pollution (from morning till late night) with sounds of people talking, shouting, or laughing; infrastructure work, public announcements, music, ambient noise, etc. Some students are not able to enter public/private universities because of the lack of a required score as a result of this. A permanent address is also mandatory to enroll at university, which is another problem, but people sometimes use a fake address. Students likewise do not want to go for studies to other cities in Bangladesh, but want to remain in Dhaka with their families.

Access to education remains somewhat limited as Urdu is used frequently as the main language within the greater community. While most children know how to speak Urdu, they do not know how to write it. Children also face discrimination and are ridiculed at institutions for their failure to use the Bengali language properly.¹⁴⁴ Another shortcoming pertaining to education is the deficiency of proper study materials. Some resident respondents have expressed in the interviews that the teachers and general staffing in institutions is inadequate, which is resulting in a decline in the number of students enrolled in schools. Respondents Mr. Dil Mohammad and Mr. Qadri have also indicated that children occasionally fight in the local schools in Geneva Camp and a few other settlements, so an open and safe atmosphere is urgently needed for educating children, especially outside the settlement areas. Regardless of these issues, both respondent groups have stated that the number of students enrolled in public schools all across Bangladesh has increased than before, but it remains a big dilemma for students to continue studies after secondary school.

¹⁴³ As per the exchange rate of October 31, 2016.

¹⁴⁴ Md. Rizwanul Islam & Cynthia Farid, eds. *Mapping of Knowledge on Projects on Justice Sector Facility Development and Human Rights in Bangladesh since 2000*, United Nations Development Programme & School of Law, BRAC University (2015) at 161.

2.2.2.7 *Employment*

Generally, the Urdu-speakers of Bangladesh work in different vocations in the informal industry (public and private), and are typically employed as day laborers, rickshaw pullers, chauffeurs, car mechanics, butchers, employees in food and home catering services, and other petty jobs. Geneva Camp respondents have further specified that they have friends and peers who are employed as cooks, domestic helpers, hawkers, garment workers, shopkeepers, and street vendors. AFB mentions that there are also a number of workers in the male-grooming industry, which include barbers. Additionally, women are continuing their quality work for generations on crafts and handloom, including weaving ‘Benarasi’ or silk sarees that come with rich embroidery, such as the use of sequins and gold threads. These are predominantly happening in the households of Millat Camp in Mirpur District, Dhaka. Dyeing and thread making are also common in a few other settlements. Reports however denote that some people have been deprived of fair price for their products and are facing extortionist activities of local thugs and politics; as a consequence, a number of families have given up their handloom businesses.¹⁴⁵ Mr. Hasan of AFB also suggests that those who wish to conduct businesses are usually not able to receive trade licenses. In addition, the Urdu-speakers are also not normally employed in government service jobs.

As per my interviews with the respondents living in Geneva Camp, the monthly income of each resident’s family ranges from Bangladeshi Taka 3,000 (US \$45) to Bangladeshi Taka 20,000 (US \$254) as per the exchange rate of October 31, 2016. The respondents also emphasize the fact that women are earning and are a good source of

¹⁴⁵ Ibid at 160.

income for many families. Still, as per AFB, the per capita income of the community is less than US \$30 per month. In terms of employment related problems, one camp respondent, Mr. Dil Mohammad describes:

We barely get any proper jobs. I tried very hard to hunt for jobs in the 1980s and 1990s, but was never able to get an appropriate one. Today, I feel fortunate by having a license and running a shop here, but I really want to get hold of a government job, but there are too many social-political barriers.

Another respondent, Mr. Qadri states:

If we are able to develop some skills, we can do much better. I have seen that the issues in the early 1980s and now are still very similar. Even those few students with good merits are unable to acquire suitable professions just because of their 'Bihari' or 'Geneva Camp' identity. It seems like all generations of our people, old and new alike, continue to suffer the same fate.

It is apparent that the prejudice remains incessant in terms of securing appropriate work and that there is no equal access to employment for many Urdu-speakers. The camp respondents also specify that such unemployment drives people to do begging, theft and crime for subsistence. Nevertheless, two camp respondents suggest that they know a few people who are now working at well-known companies in Dhaka. But the same respondents have also shown concern about their camp identity and address, which is causing disparity of treatment in the job market. Once again, certain people are thus forced to hide their 'Bihari' or 'Geneva Camp' identity in order to get jobs. In one interview, a camp respondent in particular mentions about his friend, and the worries they face when concealing their identity:

There was this one time I realized that my friend was speaking in Bengali as opposed to Urdu. After the brief conversation had ended, he called me again a few hours later to apologize and mentioned why he did not utter any Urdu. I then found out that the actual reason was because his colleagues were present at that time during work when he had originally called.

The empowerment of women in the Urdu-speaking Community has also steadily improved since the millennium, helping girls and women to attain education that leads to

jobs. Respondents like Ms. Parvin and Ms. Naz state that they are aware of women relatives and friends who have completed higher education and are now working outside Geneva Camp. Prior to 2000, most girls were not allowed to go outside the camp areas. Even so, the respondents raise concerns that many girls are still dropping out of schools today (especially after Grade 7) since education prospects are impeded due to the aforesaid economic constraints of families. Ms. Parvin further mentions that the right to work is occasionally diminished due to the patriarchal views of society within the settlements. Key difficulties include lack of women's independence when offering their opinions, and facing pressures from male members in the family like a father, brother or husband. Ms. Parvin stresses that women are typically able to work if they have sufficient education, but she has seen cases where their opinions to pursue desired vocations are not considered because their families have "the ultimate say". As a ramification, women become homemakers in certain cases.

It is hence reasonable to say that job confinement is a burning issue for the Urdu-speaking Community. One professional respondent, Mr. Ahmed Ilias of AFB, contemplates that local training is truly essential at present and the bureaucracy must do something to offer people skills training so that individuals from the settlements are able to find their preferred jobs in the market. Due to the absence of any facilities, the majority of people continue to take ordinary low-paid jobs in the informal sector. Mr. Ilias additionally expresses that he has seen children from a very early age being involved in specific works, which are taught by their parents (for instance handloom work), and parents habitually do not want their children to attend schools, especially after completing primary school due to financial limitations. One major reason for this is

because the children's training from their parents would eventually lead them to future jobs that would bring earnings to the household. The interviews also suggest that people, especially in Geneva Camp, consequently do not want to move out of the settlement. Thus, it is evident that if there were some opportunities from the bureaucracy to train and bring people out of the settlements, they would probably have the chance to do so.

2.2.2.8 Health

According to all of the interviewees, there is little access to proper health care services in Geneva Camp, and there are several concerns relating to general health maintenance. Sanitation is poor due to the dearth of suitable toilet amenities, and waste removal and drainage/sewage systems. Some respondents have complained about the shortage of safe drinking water. This is causing residents to become susceptible to illnesses because of certain water borne diseases like cholera and diarrhea. People thus commonly face chronic hygiene problems. A few residents also express that the number of proper toilet facilities is so insufficient that it leads to long queues and quarrels on a regular basis. The average number of people using one toilet may be as close as 200.¹⁴⁶

Mr. Sazzad Ali, a camp respondent mentions:

Each sector in Geneva Camp has its own toilet facilities. Still, if you come in the morning, you have to wait till late afternoon to get in. There are a total 10 toilets within my sector and over a dozen families use each of these. Many toilets are broken and waterlogged. Nonetheless, few NGOs have developed and done repair works over the years. Right now, I think the overwhelming camp population is a great problem.

The AFB interviews further suggest that immunization programs are now free of cost for all people since the GOB is implementing the United Nations' Millennium Development Goals and currently the United Nations' Sustainable Development Goals.

¹⁴⁶ Sholder, *supra note* 6 at 28.

Respondents like Ms. Parvin and Ms. Naz indicate that family planning is also being promoted minimally. Each respondent reveals that some aspects of family planning are being well applied than before (such as proper arrangements for child birth) albeit the typical family size is still larger compared to the national average of Bangladesh with six or more children in many Geneva Camp families.

Matters regarding general health are usually taken care of by the people themselves (such as the use of herbal medicine). As per the interviews, when the need arises, clinics and pharmacies are sought after for medicine. One resident respondent, Mr. Dil Mohammad, describes that there were proper health clinics in the prior decades within Geneva Camp, but they have closed down. Residents now normally purchase medicine from nearby pharmacies and clinics in the Mohammadpur District, such as Humayun Road. Government services for the public, including the Urdu-speakers, consist of the Dhaka Shishu (Children's) Hospital, the National Institute of Traumatology and Orthopaedic Rehabilitation (*Pongu Hashpatal*), and Shaheed Suhrawardy Medical College Hospital. World Vision Bangladesh also occasionally supports Geneva Camp residents by offering health examinations free of cost. However, obtaining treatment such as surgery is quite uncommon as it is costly for most people. In addition, Mr. Hasan of AFB specifically mentions that there is a lack of communication between the Urdu-speakers and doctors in such hospitals sometimes. Since the local doctors speak in Bengali, and the Geneva Camp community mostly speaks Urdu (or a broken Bengali dialect that would make one to identify them as non-Bengalis), there is a language barrier to a definite extent. Nonetheless, Mr. Hasan points out that there are some family health workers from Geneva Camp who are serving the Urdu-speakers as interpreters of both

Bengali and Urdu at these public hospitals.

2.2.2.9 *Corruption and Violence*

One chief problem stressed by all Geneva Camp respondents is corruption and the general lack of political will in the bureaucracy to help the Urdu-speaking Community. There is a nuance of views here since some respondents have inferred that there is really no rule of law as a result of corruption. But the rule of law cannot be simply ignored with immunity, as it requires every individual or agency to act within the dictates and confines of the law itself but corruption is a universal problem, and state power and the capacity of law are usually the drivers to achieve social change, including public interest. In bolstering institutions to prevent systemic corruption, every country has to build a well-performing government, including disciplined policymaking, a professional civil service, and a balance of duties amongst local governments.¹⁴⁷ For Bangladesh, an impartial judicial system and transparency within the civil society, the media and government are arguably crucial factors. Reshaping public opinion is necessary since restrictive public attitudes last because of the behavior of irresponsible political elites.¹⁴⁸ Above everything, strengthening the right of ordinary people's involvement in reporting corruption, particularly of those bureaucrats or civil servants who are inadequately paid and have an excuse to solicit and take bribes, is urgent given that the laws seem futile.

Violence also remains a predicament for the Urdu-speaking Community. Previously, the Urdu-speakers were subjected to attacks on their own settlements and

¹⁴⁷ The World Bank Group, "Helping Countries Combat Corruption: The Role of the World Bank" online: <<http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor06.htm>>.

¹⁴⁸ Matthew J. Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees* (Cambridge, United Kingdom: Cambridge University Press, 2004) at 245.

received threats of eviction, and the general Bangladesh population had viewed them with suspicion.¹⁴⁹ In spite of the 2008 decision, my interviews highlight the fact that this scenario has not changed since for most people who continue to live in Geneva Camp. For instance, in 2014, supporters of the administration were helped by police and clashed with the Urdu-speakers in an attempt to grab land in a settlement located in Mirpur District, Dhaka.¹⁵⁰ These clashes ensued due to some Urdu-speaking youth who exploded firecrackers while celebrating an Islamic holiday. The settlement's youth had disregarded the requests of the public to not celebrate the holiday in a loud or raucous manner. In the aftermath, nine residents died due to the clashes, and victims' family members claimed that the police had helped the attackers to torch some houses in the Mirpur settlement.¹⁵¹ According to other news reports¹⁵² and AFB, gang-related violence occurs seldom in Geneva Camp.

Upon inquiring to the residents about their interaction with the police and the extent to which they receive support, one respondent, Mr. Dil Mohammad expounds that he and most others are not normally able to go to the police to report an incident. Even when some individuals are capable of doing this, they are made to wait an entire day to receive firsthand help. People can lodge a General Diary or GD, which the police use to register an incident that has occurred or is likely to happen, but some respondents have suggested that they do not usually receive updates from the police after filing an

¹⁴⁹ Sen (Part 2), *supra note* 37 at 64.

¹⁵⁰ Ashif Islam Shaon & Abid Azad "Mirpur clashes kill 10 Biharis" *Dhaka Tribune* (15 June 2014) online: *Dhaka Tribune* (Dhaka, Bangladesh) <<http://www.dhakatribune.com/crime/2014/jun/15/mirpur-clashes-kill-10-biharis>>.

¹⁵¹ *Ibid.*

¹⁵² Star Online Report "Clash at Mohammadpur Geneva camp" *The Daily Star* (17 March 2016) online: *The Daily Star* (Dhaka, Bangladesh) <<http://www.thedailystar.net/city/clash-mohammadpur-geneva-camp-792520>>.

application. Further, due to a dearth of security within Geneva Camp and other settlements, open drug dealing in some parts of the settlements is also a major new phenomena and concern now as per the respondents. In conclusion, each respondent group indicates that the bureaucracy is yet to act fully on the safety issues within Geneva Camp; so strengthening and implementing the law enforcement capacity within the settlements in general is very crucial.

*2.2.2.10 Involvement of Organizations in Geneva Camp*¹⁵³

After conducting the interviews, I have learned from both respondent groups that AFB is among the foremost NGOs campaigning for the rights of the Urdu-speaking Community in Bangladesh. Out of 3000 or more active NGOs in Bangladesh, the Geneva Camp residents state that there are possibly less than 10 NGOs currently operational for the community. These include NGOs like AFB, OBAT Helpers, Concern Worldwide Bangladesh, Muslim Welfare Development Organization, and Bangladesh Nari Mukti Kendra.

AFB has been involved with serving the community since 1980 and its vision is to ensure the active national development of the Urdu-speaking Community. There is no focused program between the GOB and AFB, as AFB operates as an NGO. The core tasks carried out by the organization encompass development work, research, education, and healthcare. AFB has previously offered low-price nutritional food to camp residents in Dhaka. At present, education and healthcare are top priorities for the organization. The respondents of AFB mention that the biggest contribution of the NGO is advocating for the Urdu-speakers. With regard to this, AFB has had a three-year program to spread

¹⁵³ AFB has mostly provided the information discussed in this part.

awareness to Geneva Camp residents and other Urdu-speakers in the country about the 2008 judgment. Current projects also include the Community Development Centre, and a skills development project on computer literacy. The organization also wants to disseminate awareness of the Urdu-speakers' constitutional rights to all settlements across Bangladesh and conduct surveys through interconnected computer networks establishments in the future. This is to make sure that other settlements outside Dhaka are also in the spotlight for research and evaluation.

For the purposes of education training, AFB functions in the whole of Bangladesh, and offers 500 scholarships a year to individuals with merit (this does not cover all Urdu-speakers living in Bangladesh). Since 2007, the organization has provided scholarships to 6,794 students from the pre-primary to Masters level.¹⁵⁴ AFB believes that in order to create better support systems for the entire community, education is conducive and should be mainstreamed. While the 500 scholarships per year are still inadequate due to budget issues, the organization plans to do an intensive investment in education, and is trying to gather funds from both local and international NGOs. At the time of this writing following my visits to Geneva Camp, there are two 'Foundation Schools' for primary level students, each running for less than a decade. These are supported by DoPeace, a US-based organization, which provides education to children in slums around the world. There are 15 shifts of teachers instructing in the schools each week. All teachers are also students themselves, and many have received scholarships from AFB. A project entitled 'Self-Help Education' is currently being implemented. Senior students with merit are provided with the incentive to secure future scholarships

¹⁵⁴ Ilias, *supra note* 108 at 64.

from AFB as they continue teaching young children in the community. The medium of instruction in the Foundation Schools is Bengali.

Furthermore, AFB runs the Al-Falah Model Clinic in Geneva Camp. This was established by the ICRC in 1972, and was supported by the UK-based Bangladesh Population And Health Consortium between 1991-2000. Today, it is a basic service clinic, and has a maternity ward with six beds, and offers antenatal and postnatal checkups, child immunization (free vaccines are provided by the Health Department of Dhaka City Corporations), family planning, referral services, and health education. The Urdu-speaking women employees at the clinic are helping other women with immunization programs, and men are primarily performing administrative duties in relation to this. However, as per my observations at the clinic, it still seems insufficiently outfitted because of the absence of modern medical equipment and facilities. AFB nonetheless suggests that the clinic is currently trying to tackle funding problems.

A few other NGOs as aforesaid are generally active and are providing strategic and technical support. With respect to this, the government maintains a bidding process for NGOs to become involved with the Urdu-speaking Community, according to the different areas of Dhaka city (there are eight zones). The NGO(s) that win the bid then work for the respective settlement. Organizations like the US-based OBAT Helpers runs various projects relating to education, health, empowerment, and community and infrastructure development throughout Bangladesh. Apart from Dhaka, OBAT operates in the cities of Chittagong, Saidpur, Khulna, Rangpur, Mymensingh, Ishwardy, Gaibandha and Narayanganj. OBAT manages a tutoring center, preschools (including an

English school), Scholarship program, computer-training center, Tube wells services, and a charity program in Dhaka.¹⁵⁵ Meanwhile, the Bangladesh Nari Mukti Kendra helps the Urdu-speaking Community with microcredit programs (Saving and Loans).

According to AFB, the United Nations Development Programme (Bangladesh) has also spent a sum of Bangladeshi Taka 10 million (approximately US \$127,475) between 2014-2015. This project focused wholly on the development of infrastructure in Geneva Camp, with the construction of new roads, toilets, and lighting in the settlement areas. As per AFB, the UNHCR is still aiding the Urdu-speaking Community with international support by recognizing it as an internally displaced population, and provides funding for creating awareness of the community's citizenship rights. For example, Mr. Hasan indicates that he has represented the Urdu-speaking Community with the assistance of the UNHCR in a number of conferences held in the Netherlands, Thailand, and Malaysia in the past few years to spread awareness about the community's citizenship status in Bangladesh. Intriguingly, a professional respondent from the judiciary has also proposed that the UNHCR has a mandate that should apply exceptionally to the "internally displaced Urdu-speakers". In the opinion of the respondent, this bodes true because the UNHCR's presence in a country is mostly dependent on the goodwill of the host nation. As a result, it may be plausible to say that the UNHCR can still make the Urdu-speaking Community an issue of concern by finding an executive order from the GOB.¹⁵⁶ In addition, the interviews denote that the office of the International Organization for

¹⁵⁵ OBAT Helpers, "OBAT's Projects City-wise" (2016) online: <<http://obathelpers.org/what-we-do/obats-projects-city-wise/>>.

¹⁵⁶ Bangladesh is also a member of the UNHCR's Executive Committee. See United Nations High Commissioner for Refugees, *Background on the Executive Committee* (1 July 2001) <<http://www.unhcr.org/excom/announce/3b4f09faa/background-executive-committee.html>>.

Migration in Dhaka is not involved with the Urdu-speaking Community. Lastly, Mr. Ahmed Ilias of AFB suggests that some Urdu-speaking residents, who are doing particularly well in Bangladesh, are now on the verge of opening their own NGOs to assist the overall community.

2.2.2.11 Integration Practices

One of the most imperative questions regarding the Urdu-speaking Community is perhaps their ability and willingness to integrate in Bangladesh in the prevailing circumstances. The analysis that follows is derived through the interview process, where each respondent has suggested to what degree local integration is truly achievable.

Firstly, the Geneva Camp respondents were asked whether they ever thought of repatriating to Pakistan. Out of six Urdu-speaking respondents, only one person has specified that they would opt for repatriation due to the “abhorrent discrimination” the Urdu-speaking Community faces in Bangladesh. The remaining five Urdu-speaking respondents have indicated that they do not choose repatriation or settling elsewhere because Bangladesh has been their homeland for too long and they are reasonably satisfied with maintaining relationships with people, albeit all Bangladeshis may not equally reciprocate with their community. The respondents are also aware of the history of the Urdu-speaking Community with Pakistan, particularly the political and social tensions related to the Sindhs, and thus expressed their reluctance to repatriate. One respondent, Mr. Qadri, who is a senior generation Urdu-speaker, states why he has chosen not to repatriate:

I am living in Bangladesh before it became independent. My father used to work for the Air Force, but during the 1971 war, I lost both my parents. Later, we lost

all our possessions because of the persecution carried out by the locals. I did not want to live in Bangladesh then and thought of repatriating to Pakistan. However, I was unable to do this and the repatriation process seemed to stall, and I ended up staying in Geneva Camp. After a couple of years, I got married and thought again that I would leave the country, but asked myself – why? It was then that I realized I was better off in Bangladesh. I believed this because I had grown up on this soil (from a child into an adult). Even now, I remember walking from Gulistan to Geneva Camp in the 1970s, and people used to look at my friends and me and call us ‘Bihari’. Few people occasionally continue to do this now. It has been more than 40 years and few of us still dream to return to Pakistan, but I feel this is a false dream. The politics of Pakistan, like our history with the Sindhs, is also not good. So repatriation is just not possible today. Even with our circumstances, we understand now that we have growing families who are all born here in Bangladesh. I think grooming my children and grandchildren for a better future in this country is necessary. After all, Bangladesh remains my home, in good or bad times.

When I inquired to the residents as to why they have chosen to live in the settlement, and what options are available to reside elsewhere, the general response pertained to one issue only, namely economic restrictions. Mr. Dil Mohammad says:

We do not have the right atmosphere, but we have lived in Geneva Camp for years. There are severe financial constraints to get out of the camps and pay rent outside. Though I have seen that if one’s situation gets better, they tend to move out of the settlement.

Few respondents have also explicitly mentioned that because of the strong stance of the General Repatriation Committee of the Urdu-speakers (who want to return to Pakistan), it can seldom play into the hands of the bureaucracy, which results in further denial of rights for the Urdu-speakers. The General Repatriation Committee members are mainly senior-generation Urdu-speakers. It is probable that because of its existence for decades, the associated individuals still have a clout in Geneva Camp even now. Respondents (both professionals and residents) who know of the Committee’s functions suggest that it is an “emotional” issue for the Committee members because of the Urdu-speakers’ history and connection to Pakistan. However, the General Repatriation Committee members have also decreased significantly and they are now among the

minority who voice their support to repatriate. One professional respondent has also indicated a paradox through an interview that many of the Committee's members' own children are currently established in Bangladesh. As per the respondent, they have achieved higher education from respectable institutions and have acquired good jobs in the country.

Furthermore, after talking to the research participants, it is evident that many Urdu-speakers have integrated in the Bangladesh community and are doing reasonably well. AFB especially mentions that there are Urdu-speakers in the country who are voluntarily merging with the mainstream society by marrying Bangladeshis. Geneva Camp respondents similarly state that they are aware of a few people who have attempted to move out of the limits of the settlement. A few interviews also reveal an interesting phenomenon of some Urdu-speaking people employed in Bangladesh's railway industry in Saidpur. The Urdu-speakers who live there are occupied in maintenance and production works. According to the interviewees, generations of Urdu-speakers have been working in Saidpur and have become self-sufficient in their livelihoods outside the settlements and are now even engaged in local politics.

Meanwhile, in Geneva Camp, all respondents have said that the biggest barriers they face in terms of their inability to assimilate is the social stigma of being 'Bihari', poverty, and the lack of a formal education. Being a 'Bihari' is a substantial concern as some respondents state that they, as the descendants of their forefathers, did not support Pakistan during the 1971 war, but the people of Bangladesh continue to make them feel accountable. Many respondents state that the Urdu language is also very much

responsible for the cultural exclusion of the community living in Geneva Camp. Conversely, for the purposes of integration, a large segment of the Urdu-speaking population has consciously attempted to assimilate in terms of the Bengali language, which they speak. It is notable to mention that during the interviews, most respondents of the camp spoke good Bengali, albeit with a specific accent or dialect.

AFB identifies another key difficulty that prohibits integration of the Urdu-speakers, which is the community's dependency on donations and support from organizations. In order to address this, vocational training may be useful and educational training centers with a quota-based system should suffice. With opportunities for education and development of skills, the Urdu-speaking Community may be able to sustain itself. For instance, the acquisition of passports¹⁵⁷ could even allow people to work abroad and send remittances to their families in Bangladesh (remittance is a major contributor to the Bangladeshi economy and the country's foreign exchange reserve continues to swell as it has crossed the US \$30 billion mark in recent years).¹⁵⁸

The question however remains: how can the Urdu-speakers integrate without obstacles? One respondent from the judiciary reveals that if one were to openly speak about the accommodation of the Urdu-speaking Community in mainstream society, there may not be a strident opposition of their views, but they would be thought of as a "revisionist" in terms of how Bangladeshis are taught to look at the 1971 war. In terms of the present, this and another respondent congruently deem that the Urdu-speakers can

¹⁵⁷ Approximately 7% of the residents in Geneva Camp have passports. See Sholder, *supra note 6* at 33.

¹⁵⁸ Abdur Rahim Harmachi "Bangladesh's foreign currency reserves near \$30-billion mark" *bdnews24.com* (26 June 2016) online: Bangladesh News 24 Hours Ltd. (Dhaka, Bangladesh) <<http://bdnews24.com/economy/2016/06/26/bangladeshs-foreign-currency-reserves-near-30-billion-mark>>.

come to court again after the 2008 judgment for any perceived threat or infraction of their legal rights (especially when the community remains unsatisfied with the lack of integration prospects and unequal treatment as citizens) that is recognized by the 2008 ruling.¹⁵⁹ It may also be from any order emanating from any ministry when a problem may seem to be in violation of the community's rights and their constitutional status. The predicament though is that the Urdu-speaking Community has not approached the Supreme Court in years. As per one respondent, it is possible that the court will intervene favorably since the Supreme Court of Bangladesh has usually stood by minority groups in the country. Another respondent similarly thinks that in order to ensure the Urdu-speaking Community's welfare in the future, these judgment(s) should continue coming at regular intervals so that they act as a reminder to the establishment on what needs to be done to integrate the people. In retrospect, the community members should not feel discouraged to go to the court, as it seems to be the only avenue for them now. But all of this begs another question: would going to the Supreme Court be a feasible long-term strategy to adopt for every single infraction of the community's legal rights? After all, the 2003 and 2008 decisions are intended to be tools to overhaul the system as it were and to make the system more accommodating towards this community, but the judgments are not an end to themselves. It can be argued that the judiciary may continue to do its bit, but the system still needs to be overhauled with the aid of the judgments (especially with the two existing rulings now). It may therefore be said that the Supreme Court has asked to change the society's view on the Urdu-speaking Community on two occasions.

¹⁵⁹ Both respondents believe that the contempt jurisdiction of the Supreme Court of Bangladesh would suffice. The Appellate Division of the Supreme Court of Bangladesh could acknowledge the situation of the Urdu-speakers and meet people's demands by granting leave of the court. However, the court can also summarily dismiss such a contention.

Nonetheless, it is critical to recall that the judgments of the Supreme Court of Bangladesh do not necessarily engender political will or have any enforcement ability. According to one respondent, it is rather the ideology of the party in power that would likely matter the most.

As per Dr. Borhan Uddin Khan, there is an agreement in part of both the bureaucracy and general political opinion, but the bureaucracy has failed in achieving the implementation of the goals set by the 2008 decision. Much like the aforesaid respondents mentioned in the paragraph above, Dr. Khan stipulates that the bureaucracy is failing to achieve the desired objective because there is no driving force from the Urdu-speaking Community itself. These opinions seem rational since my interviews with AFB respondents also indicate that this is true. The fact remains that the Urdu-speakers themselves are not being able to bring the required momentum to force the bureaucracy or local government to understand the gravity of their situation, and since 2008, there has been no spokesperson or group to act on their behalf. Dr. Khan like some other professional interviewees proposes that local integration of the Urdu-speakers would perhaps be attainable if an aggrieved group of people from the community comes forward to the court (in contempt of the court's 2008 verdict), as opposed to a *suo moto* by the Supreme Court of Bangladesh.

In most cases, achieving full integration on a mass-scale can take several years or even decades. The respondents of Geneva Camp anticipate that future generations may be able to accomplish it at some point. While the new generation continues to integrate with

Bangladeshis,¹⁶⁰ the same cannot be said of all the senior generation Urdu-speakers. Thus, mainstreaming them will persist as a challenging issue. Going to the court may also continue to be difficult because of the reluctance of individuals within the larger community. This may be as a result of people being naturally involved with their lives, and resorting to the courts could perhaps be both costly and time-consuming for them. The low literacy rate in the community and the scarcity of NGOs' interests, and other financial, social, or political support groups are also additional factors for lack of assimilation. Further, the Urdu-speakers who could possibly take the initiative to do this may be afraid to change their status quo because of issues like eviction from the settlements. Regardless of such concerns, there are still possibilities for integration. One of the greatest ways to address this is to guarantee the mobilization of the Urdu-speaking Community's current legal rights. The state mechanism must similarly safeguard the Urdu-speakers' rights, and the 2008 decision ought to be taken into cognizance by the bureaucracy and local government.

¹⁶⁰ Prior surveys at the settlements highlight the fact that members of the new generation are typically adamant about their nationality, and state that Bangladesh is their home since birth and that they are citizens. See Sholder, *supra note 6* at 33.

CHAPTER 3: THE CURRENT STATUS AND EXISTING LEGAL RIGHTS OF THE URDU-SPEAKING COMMUNITY IN BANGLADESH

3.1 Identifying the Present Legal Status of ‘Biharis’: Refugee, Stateless, or Citizen?

Given the situation of the Urdu-speakers, it is important to address their actual association with Bangladesh, and distinguish their definite status at present. The persisting debate concerning the people’s status (sometimes deemed non-citizens), who mostly live in the settlements throughout Bangladesh raises this imperative issue. This section will therefore explore and argue from different perspectives on who a refugee, a stateless person and a citizen is, and then prescribe where the community really fits in the social and legal context.

3.1.1 The Refugee Analysis

I begin this discussion with the first relevant question: are the Urdu-speaking Community members really refugees? In order to construe this, it is necessary to understand what constitutes refugee status. The classification of a refugee actually carries several meanings. Generally in common parlance a refugee indicates persons who are forced to leave their own homes (outside their own country’s territory) because of threats to their personal well being or freedom.¹⁶¹ From a legal standpoint, and most narrowly, it signifies persons who are outside their actual state of origin and are unwilling or unable to return to their home due to a well-founded fear of persecution. Threats of persecution can include serious harm to race, religion, nationality, participation or membership in a social group, or political opinion. To a significant degree, this person faces the absence of state protection, and is outside the domestic political community in an indeterminate

¹⁶¹ Matthew E. Price, *Rethinking Asylum: History, Purpose, and Limits* (Cambridge, United Kingdom: Cambridge University Press, 2009) at 17.

manner,¹⁶² owing to harm perpetrated and/or tolerated by officials within the domestic territory. This kind of a refugee is commonly called a ‘Convention refugee’ under the *Convention relating to the Status of Refugees*, 1951. This definition cannot apply to everyone fleeing from oppressive regimes, unless it is determined that they are being persecuted individually or as a member of a vulnerable social group.¹⁶³ The persecution must be linked to the specific grounds listed in the definition. There are ‘mandate refugees’ as well (albeit they are a dwindling number today). These are people who have lived outside Europe, and are termed as such because of the events following 1951.¹⁶⁴ On the other hand, a person may be identified as a refugee if they flee for a number of reasons. These can include: unlawful prosecution in the country of origin, denial to exercise fundamental rights, civil strife or conflict, poverty, food shortage or natural disasters.¹⁶⁵ This second category has been termed as *de facto* or humanitarian refugees of temporary status or *non-convention* refugees because they do not fit within the legal refugee definition.

Of further note, refugees can be political dissidents, ethnic minorities or a range of other things, but until a disagreement or divergence occurs, a minority group will continue to be firmly attached to a state.¹⁶⁶ Today, the UNHCR mandate is extended beyond refugees, and most notably includes stateless people, returnees, asylum-seekers

¹⁶² Emma Haddad, *The Refugee in International Society: Between Sovereigns* (Cambridge, United Kingdom: Cambridge University Press, 2008) at 42.

¹⁶³ Myron Weiner, “Ethics, National Sovereignty and the Control of Immigration” (1996) 30:1 Int’l Migr Rev 171 at 185.

¹⁶⁴ Sara E. Davies, “The Asian Rejection?: International Refugee Law in Asia” (2006) 52:4 Austl J Pol & Hist 562 at 567.

¹⁶⁵ Guy S. Goodwin-Gill & Jane McAdam, *The Refugee in International Law*, 3d ed (Oxford: United Kingdom, Oxford University Press, 2007) chapters 1 and 2.

¹⁶⁶ Haddad, *supra note* 162 at 28.

and internally displaced persons.¹⁶⁷ Moreover, the current trend among Commonwealth courts is to draw the meaning of “persecution” to international human rights law. As a result, the denial of any human rights – whether caused by state officials, private actors, or merely by circumstances of economic and political structures may constitute persecution.¹⁶⁸

Let me now succinctly explain the context in which the Urdu-speaking Community has been deemed refugees in the past. Initially, the persecution that was carried out in East Pakistan (subsequently Bangladesh) during the independence period between 1970 and 1971 created the foundation for applying international refugee law for establishing their refugee status. The Urdu-speakers, who were a minority, had faced fear from both a subjective and objective point of view. This underscores the apparent and real persecution that they had to endure. In December 1970, the parliamentary elections roused a strong sense of Bengali nationalism, which transformed throughout East Pakistan. This led to ‘Bihari’ establishments to be frequently attacked, because it was believed by the Bengalis that they had sided (even though most people did not openly express any political will) with the pro-Pakistan Muslim League.¹⁶⁹ The carnage against the people continued unabatedly in early 1971 and very much until the end of that year, with fear and systematic persecution and even ethnic cleansing. The regime seemed incapable and even reluctant to prevent what had transpired.¹⁷⁰ The key matter was therefore a protection issue for the Urdu-speakers. Eventually, the provincial government

¹⁶⁷ T. Alexander Aleinikoff, “The mandate of the Office of the United Nations High Commissioner for Refugees” in *Research Handbook on International Law and Migration*, Vincent Chetail & Céline Bauloz, eds. (Cheltenham and Northampton: Edward Elgar, 2014) at 394.

¹⁶⁸ Price, *supra note* 161 at 17.

¹⁶⁹ Sen (Part 1), *supra note* 19 at 630.

¹⁷⁰ Lawrence Ziring, *Bangladesh: From Mujib to Ershad: An Interpretive Study*, 1st ed (Dhaka, Bangladesh: Dhaka University Press, 1992) at 64-5.

was implicated and made accountable for arranging this oppression and persecution, which ultimately led to the community's flight, and to claim refugee status by identifying with Pakistan (where they had originally migrated from).¹⁷¹ The constant denial of *de jure* nationality by the Government of Pakistan was also a major reason of their persecution between 1970 and 1971. In this sense, the people had a well-founded fear of persecution, which is one of the general requirements of being refugees under the Convention definition. The Urdu-speaking Community met this condition, although because one must usually cross an international border to be a refugee, this did not occur in their case and needs to be addressed directly in the purview of refugee law.

However, the community's legal status as refugees has seldom been recognized. In the aftermath of the partition of the Indian subcontinent in 1947, the new Dominion of Pakistan was formed. During that time, the Government of Pakistan had offered the 'Bihari' people equal opportunity to exercise their rights and duties, much like normal citizens of Pakistan. Afterwards, Pakistan had in fact considered them as citizens under the formal law of *The Pakistan Citizenship Act, 1951*.¹⁷² As a result, the 'Biharis of Pakistan' did not naturally qualify for the definition of a Convention refugee, because they were recognized by the local governments and offered rehabilitation and integration. This was all an outcome of the partition itself. The war for the sovereignty of Bangladesh by 1971 became a different story altogether, since the Urdu-speakers' fears of persecution became well-founded. The case for allowing asylum on grounds of past persecution is greatest when severe persecution is carried out by the overall society in an uncontrolled manner rather than by the government alone or by a certain section of

¹⁷¹ Sen (Part 1), *supra note* 19 at 633.

¹⁷² Farzana, *supra note* 8 at 229.

society.¹⁷³ Arguably, this is what most of the Urdu-speaking Community had to endure, but it is important to bear in mind that establishing past persecution is always tricky because the test is usually future looking. But their situation in subsequent years has changed. It is quite evident that they do not qualify for any form of refugee status under the Convention definition, since almost a half (600,000) of the entire population decided to become citizens of Bangladesh, after the Supreme Court of Bangladesh ruled for their citizenship in 1972. After this initial decision, the Supreme Court again confirmed and granted full citizenship rights to the community in the landmark judgment of 2008.

Generally, a refugee fleeing from persecution arrives with the simplest of necessities and often without personal effects or travel documents. While the Urdu-speakers had to face this scenario on their initial arrival after the post-1947 period, subsequent to the war of independence in Bangladesh, the majority of the population received proper identification cards through the UNHCR, and today they hold valid national identity cards issued by the GOB. Thus, there is no burden of proof on the community to establish their current status. Additionally, the Urdu-speakers had in fact re-availed themselves of the protection of the country of origin [accordingly fulfilling the conditions stipulated in Articles 1C(1) and (4) of the Refugee Convention] since many people officially repatriated to Pakistan during the repatriation programs between 1972-1993. Meanwhile, the remainder of the community also obtained a new nationality in another state, that is within Bangladesh, and enjoys the protection rights set out in Article 1C(3) of the Refugee Convention.

Furthermore, there are reasons for which the UNHCR does not recognize the

¹⁷³ Price, *supra note* 161 at 17.

Urdu-speaking Community of Bangladesh as refugees, according to its definition. Firstly, some Urdu-speakers in Bangladesh had voluntarily refused to benefit themselves from Pakistan, while a substantial number of them re-availed citizenship in Pakistan by the end of the repatriation years. Therefore, the criteria of the “competence of the High Commissioner” ceases to apply in the case of the Urdu-speaking Community under Article 6A(ii)(a) of the *Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR Statute)*. The majority of the Urdu-speakers outside their state of origin, who were not able to gain normal protection, have also obtained nationality rights in Bangladesh since 2008. This fulfills the requirement set under Article 6A(ii)(c). Hence, the circumstances in relation to their entitlement and recognition as refugees under the application of the UNHCR definition(s) have fundamentally ceased to exist.

We can appreciate that the situation of the community is really different when identifying their analogies with the refugee. The uniqueness of a refugee is forged precisely by her or his lack of belonging, of being an “outsider” and in a position “between”, rather than “within”, sovereign states.¹⁷⁴ There is an extra moral obligation imposed on states, which is the humanitarian demand to permit outsiders into a country’s territory and agree to allow the refugee to belong in the political community.¹⁷⁵ The situation with the Urdu-speaking Community is that they *do* fit into the state–citizen–territory hierarchy. This is unlike the refugee who is forced instead, into the gaps between states.¹⁷⁶ Refugees are usually ineligible for permanent membership in the asylum state

¹⁷⁴ Haddad, *supra note* 162 at 7.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

and find it difficult to integrate.¹⁷⁷ It is worthwhile to clarify that the popular public discourse in Bangladesh sees the ‘Biharis’ as refugees since many segments of the community have remained isolated from the general Bangladeshi populace, and this is a reason that disadvantages the Urdu-speakers. But the Urdu-speakers are not outside their state of nationality because the GOB has clearly established their present citizenship status in law. It is therefore interesting to see the starting point of how the community has been identified as non-citizens and continue to be prejudicially viewed as such given their history in Bangladesh. Still, while the prior situation of the people living in Bangladesh reflected a “warehousing” condition due to their protracted circumstances, the community is presently not denied the right to integrate in Bangladesh. It is true that they are going through predicaments in order to restore a meaningful membership in the host (more akin to home) community, but from a broad perspective, they cannot be deemed refugees since they are not deprived of the freedom to pursue ordinary lives under the laws of Bangladesh albeit some people have also opted out of the assistance and support systems of the government and rights organizations, and self-settled amongst the mainstream Bangladesh society. The existing rights granted to the Urdu-speaking Community under Bangladesh and Pakistan’s distinctive nationalism and sovereignty are critical elements for them to be non-refugees. Only a breakdown of these people’s sovereign rights, and the duties that are owed by these states can create the mere possibility for them to become refugees again. The lack of state protection can also transform private violence into persecution,¹⁷⁸ and such victims of persecution can be qualified to gain refugee status only. To reiterate, even though the Urdu-speakers face

¹⁷⁷ James C. Hathaway & R. Alexander Neve, “Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection” (1997) 10 Harv Hum Rts J 115 at 132.

¹⁷⁸ Price, *supra note* 161 at 147.

and suffer some discrimination in Bangladeshi society today, it cannot be said that they face “persecution”.

3.1.2 Degree of Statelessness: A Scrutiny

It is evident with the prior part’s discussion that the Urdu-speakers are not refugees, but we should still ask to what degree (if any) do the people share attributes to being stateless, even with their existing rights. In brief terms, international law describes a stateless person as someone who is not considered a national by any particular state under the operation of its law. This makes such individuals exceptionally vulnerable and in need of immediate protection. This definition is specified in Article 1 of the *Convention relating to the Status of Stateless Persons*, 1954. Thus statelessness is normally regarded as an issue to be resolved under nationality law. Other aspects of statelessness typically include the lack of actual and reliable documentation of such persons, or the failure of an emerging state to include all residents in the body of citizens when that particular state itself becomes sovereign. The major effect felt by stateless individuals is therefore the lack of a critical link to nationality. Such persons are unable to claim the benefits of any particular country, and receive basic protection from international law partially owing to the dearth of diplomatic protection. In order to ascertain whether an individual is stateless, it is generally enough to look at whether they have the nationality of any place with which they have certain links, such as the country of birth or habitual residence, or the country of nationality of one’s parents. It is also possible to be stateless without being a refugee (if the person has not crossed an international border) but it is not possible to be a refugee if one enjoys state protection (the point of refugee status is substitute protection).

In the context of the community, it is true that they were *de facto* stateless as a consequence of denationalization by Pakistan. When the GOB had decided to offer them citizenship in 1972, many Urdu-speakers still opted for Pakistani citizenship. This is because there was a legal bond and a social element of attachment between the community and Pakistan. In other words, there was a real association of interests and sentiments, composed with mutual rights and duties; this underscored the significance of equality of the Urdu-speaking people with Pakistan in fact and in law.¹⁷⁹ As aforesaid, their persecution continued relentlessly in spite of the change of state after the events of 1971, but the people did not altogether *change* their nationality when East Pakistan became Bangladesh. Since the other half (539,669) of the people mostly retained their original Pakistan nationality, they did not qualify for Bangladeshi citizenship.¹⁸⁰ In a way, they had tacitly rejected the nationality of the new state of Bangladesh. Moreover, the provisions in the *New Delhi Agreement* (the trilateral agreement signed between India, Pakistan, and Bangladesh on August 28, 1973), stipulated the choice for ‘non-Bengalis’ to return, and hence it can be contended that in the light of this treaty provision, the Urdu-speakers could not automatically obtain Bangladeshi citizenship.¹⁸¹ All this, however transformed when Pakistan promulgated the *Pakistan Citizenship (Amendment) Ordinance, 1978* to refuse nationality and the right of self-determination of those Pakistani ‘Biharis’ living in the settlements of Bangladesh.¹⁸² Essentially, the people had become stateless by this very action, and the application of the Refugee Convention’s

¹⁷⁹ Sen (Part 2), *supra note* 37 at 44.

¹⁸⁰ *Ibid* at 46.

¹⁸¹ *Ibid*.

¹⁸² *Ibid* at 49.

Article 1A(2) pertinently applied, as there was no protection from the administration at the time.

The differing argument as one can imagine is quite simple. As international law echoes a rising intolerance for statelessness, it can be said that the Urdu-speaking Community are meeting the principles of not being stateless. After the decision of the Supreme Court of Bangladesh that granted them citizenship in 2008, the people cannot be deemed stateless. The Refugee Convention's definition in Article 1A(2) specifies stateless people as those "not having a nationality and being outside [their] country of former habitual residence", and such persons are unable or, due to their fear of persecution, reluctant to return to their place of former residence. This is not the case with the Urdu-speaking Community. They are presently avoiding statelessness at birth in Bangladesh, with the issuance of every child's birth certificate according to law. So, every individual, Urdu-speaking or not, can obtain Bangladesh nationality at birth, and this nationality right cannot be lost unless if another nationality is acquired. In reality, there are however key challenges as people continue to face obstacles in obtaining documents,¹⁸³ which is contradictory to the rule of law. Statelessness includes the failure of vulnerable populations to register births due to nationality laws,¹⁸⁴ generally when members of the family are displaced from their respective homes. In the case of the Urdu-speaking people who live in Bangladesh, parents are permitted to register for their children's birth certificates according to local legislation. Further, statelessness also

¹⁸³ The Guardian, *supra note* 125.

¹⁸⁴ United Nations High Commissioner for Refugees, *Stateless People* <<http://www.unhcr.org/pages/49c3646c155.html>>; Maryellen Fullerton, "The Intersection of Statelessness and Refugee Protection in US Asylum Policy" (2014) 2:3 Journal on Migration and Human Security 144 at 148.

results when there is discrimination against minority groups in national legislation. There is no law enacted in Bangladesh prohibiting the community to exercise their fundamental rights (which will be further expounded below), but they seem to face these issues regardless. It is therefore critical for the bureaucracy to prevent such bias, just as statelessness can be avoided by guaranteeing recognition of an individual's genuine link with a state, based on factors including a person's place of birth, descent, and residency.¹⁸⁵ The framing of civil registries for the old and the new generation of Urdu-speakers, who are in fact Bangladeshis now, is similarly required.

Lastly, one conclusion that statelessness was a more useful and productive status for the community than citizenship has proven to be in practice and that the community members are sometimes still deemed as the 'refugee' is quite fascinating, which has a number of implications. This is particularly interesting as it is a provocative observation, but which was not made by any of the younger generation Urdu-speakers whom I had interviewed, but rather a few senior generation community members only. It is quite possible that those members suggested this because they were thinking about the domestic legal framework, and how it has not allowed full and real citizenship in the overall community. Statelessness had indeed attached the international community in a direct sense that does not exist anymore, as the international community no longer has an obligation to support them or exercise a right to reach in and help them with their livelihoods, food, healthcare, etc. The 'refugee' label is obviously inaccurate, but sometimes used and colloquially more of a social fact rather than a legal fact. A return to statelessness is highly unlikely to help the community right now, especially with the

¹⁸⁵ Carol A. Batchelor, "Statelessness and the Problem of Resolving Nationality Status" (1998) 10:1/2 Int'l J Refugee L 156 at 168.

younger generation who are more prone to living and enjoying citizenship rights in Bangladesh. Nevertheless, given these opinions, the obligation to enjoy citizenship rights tells us that citizenship in a genuine sense is yet to be fully realized in the community setting, which is further examined in the next sections.

3.1.3 The Urdu-speaking Community: Citizens of Bangladesh

The final question pertaining to the status of the Urdu-speaking Community in Bangladesh is to understand why and how they really are citizens of the country. The Urdu-speakers were *de facto* unprotected as refugees, and *de jure* unprotected as stateless persons. Naturally, the Urdu-speaking population cannot be described as stateless or refugees anymore – and the primary reason for that rest on the two decisions of the Bangladesh Supreme Court. To underline the meaning of who a citizen is and what rights avail from citizenship is therefore essential. Normally, questions about citizenship can be broken into three overlapping categories: those that concern the substance of citizenship (what citizenship is), the domain of its action and territory (where citizenship takes place), and that, which concerns the class of the subject of citizenship (who is a citizen).¹⁸⁶ Citizenship constitutes a permanent relationship with a state, and encompasses a friction between who may be included or excluded, according to law or custom. This means those persons who are recognized and entitled to citizenship, and those who are denied to become members of a polity. As aforesaid, Immanuel Wallerstein describes that all inhabitants of a country should enjoy in it the rights of passive citizens, including protection of their person, property, freedom, etc.; but everyone does not have a right to

¹⁸⁶ Linda Bosniak, *The Citizen and the Alien: Dilemmas of Contemporary Membership*, 1st ed (New Jersey, United States of America: Princeton University Press, 2006) at 17.

play an active role in the creation of public authorities.¹⁸⁷ Hence, all citizens are not active citizens, but some people are passive citizens. Only those who contribute to the public establishment are deemed to be the “true stockholders of the great social enterprise”.¹⁸⁸ The modern idea of citizenship still respects the concept of political participation and contribution, and typically embodies an elaborate system of political representation. All members have legal rights to political, economic, and social benefits, and owe legal duties and responsibilities to the particular state. Additionally, citizenship can be regulated by elements including *jus soli*, *jus sanguinis*, *jure matrimonii*, and naturalization.

It is actually quite significant to understand what citizenship really means and should mean, and therefore I will discuss this here a little more. Naturally, there is more than one set definition and several academic scholars have defined what citizenship entails. Audrey Macklin defines legal citizenship as something that refers to the formal status of citizenship in a state, or membership in a nationality as it is understood in international law.¹⁸⁹ The rights common to this in nearly all countries involve the unconditional right to enter and remain in the territory, access to consular assistance and diplomatic protection, and the franchise.¹⁹⁰ Social citizenship includes the more voluminous package of rights, responsibilities, entitlements, duties, practices and attachments that define membership in a polity, and situate individuals within that

¹⁸⁷ Wallerstein, *supra note* 113 at 651-2.

¹⁸⁸ *Ibid.*

¹⁸⁹ Audrey Macklin, “Who Is the Citizen’s Other - Considering the Heft of Citizenship” (2007) 8:2 *Theor Inq L* 333 at 334.

¹⁹⁰ *Ibid.*

community.¹⁹¹ Meanwhile, Christian Joppke suggests that there are at least three aspects of citizenship. These encompass citizenship as status, which means formal state membership and the rules of access to it; citizenship as rights, which concerns the formal capacities and immunities connected with such status; and, citizenship as identity, which denotes to the behavioral aspects of persons acting and conceiving of themselves as members of a collectivity, classically the nation, or the normative conceptions of such behavior imputed by the state.¹⁹² In terms of the latter, citizenship addresses the harmony and integration of society, and it is firmly linked with the definitions of nation and nationalism.

Linda Bosniak sets the meaning of citizenship in her famous typology where she suggests that as a normative matter, citizenship in an internal sense stands for a universalistic ethic – for the inclusion and incorporation of “everyone”.¹⁹³ Citizenship has now even been transposed from the domains of state and politics to spheres that have conventionally been insulated from direct public concern.¹⁹⁴ In normative terms, boundary-focused citizenship is understood to denote not only community belonging but also community exclusivity and closure.¹⁹⁵ In a nutshell, citizenship is “hard on the outside and soft on the inside”, with hard edges and soft interior constituting a complete citizenship package.¹⁹⁶ Because citizenship is regarded as representing political or social membership in the nation-state, the question of citizenship’s subjects is accordingly the

¹⁹¹ Ibid.

¹⁹² Christian Joppke, “Transformation of Citizenship: Status, Rights, Identity” (2007) 11:1 *Citizenship Stud* 37 at 38.

¹⁹³ Bosniak, *supra note* 186 at 2.

¹⁹⁴ Ibid at 23.

¹⁹⁵ Ibid at 2.

¹⁹⁶ Ibid at 4.

question of who will be counted as political or social members.¹⁹⁷ Moreover, citizenship indicates formal legal standing: to be a citizen is to possess the legal status of citizenship, one that brings with it certain privileges and obligations.¹⁹⁸ It comprises formal, juridical membership in an organized political community, and the enjoyment of rights under law is the central feature of social membership.¹⁹⁹ Citizenship can also evoke the affective elements of identification and solidarity that people maintain with others in the world as it conveys the experience of belonging, and there is a stake of the felt aspects of social membership.²⁰⁰ This includes national identity and patriotism. There is likewise the idea of ‘economic citizenship’, which might include a right to decent work and a right to a financial stake in society.²⁰¹ Attention must also be paid to ‘cultural citizenship’; this is the assurance of community recognition or as recognition of “the right to be different”, without marginalization or subordination in the membership community at large.²⁰² In addition, there is a disparity in the enjoyment of citizenship rights among formally equal citizens (which we can relate to the Urdu-speakers). There is a rhetorically powerful critique of ‘second-class citizenship’, where certain marginalized social groups enjoy nominal citizenship status, but their members are in reality afforded less in the way of substantive citizenship than others in society since they suffer directly unequal treatment.²⁰³ This means that the possession of formal citizenship status fails to protect

¹⁹⁷ Ibid at 13.

¹⁹⁸ Ibid at 19.

¹⁹⁹ Ibid.

²⁰⁰ Ibid at 20.

²⁰¹ Ibid at 22.

²⁰² Ibid at 22-3.

²⁰³ Ibid at 30.

people from exclusion directed at those who are perceived to be ‘foreign’ in character, habit, or appearance.²⁰⁴

I will now once again discuss the historical context here in order to appreciate the development and the situation of the Urdu-speakers’ current status. As a provisional measure before, Bangladesh implemented the *Presidential Order 149* in 1972, which permitted temporary citizenship to the prior generation of Urdu-speakers. Sheikh Mujibur Rahman had given the Urdu-speakers Bangladeshi citizenship under the “zero-option” (meaning that Bangladesh has its own ethno-national group with the Bengali people, but nationality rights is afforded to all at the time of independence, or during the time when new nationality legislation is being passed).²⁰⁵ But as aforementioned, many of the people had rejected the new sovereignty of Bangladesh, and declined to accept a new nationality. Despite their resemblances to the majority Bengali population with a common religion in Islam, and a common language as well, the current community living in the country is still treated differently in terms of citizenship and its entailed rights of identity, including, social, economic and political status.²⁰⁶ Some older generation community leaders as a result continue to press for repatriation to Pakistan. A new addition to the ‘cessation’ clause of the *Bangladesh Citizenship (Temporary Provisions) Amendment Ordinance* (Ordinance No. VII of 1978) can be a problem for such individuals, as they may not qualify for citizenship if they are found to “owe, affirm or acknowledge, expressly or by conduct, allegiance to a foreign State” (Article 2B). Basically, some Urdu-speakers, much like the refugee, have fewer desires to reinvent or reimagine a fresh identity or to

²⁰⁴ Ibid.

²⁰⁵ Jean-Marie Henckaerts, *Mass Expulsion in Modern International Law and Practice*, 1st ed (The Hague/Boston/London: Martinus Nijhoff Publishers, 1995) at 92.

²⁰⁶ Das & Hasan, *supra note* 122.

adopt with the “host state”; rather, they reminisce their previous home with nostalgia and may attempt or act to ensure that their ties with the Pakistani identity and culture endure.

As a consequence, it may be argued that some Urdu-speakers are not being able to really exercise their actual Bangladeshi citizenship effectively due to the lack of function of rights. Their actual rights are not pragmatic and do not work according to the way the Supreme Court of Bangladesh has decided. Nevertheless, many of these people are gradually passing as mainstream Bangladeshis (by abandoning their Pakistani heritage), which has provided them to acquire basic resources like education. But the chances of the people’s acquisition of citizenship documents, including passports and even birth certificates, continues to be difficult as they are often faced with serious obstacles.²⁰⁷ For instance, it has been reported that in some city corporation offices, uncooperative officials refuse the majority of their requests to gain documents.²⁰⁸ Ministers and officials frequently classify the people as “Standard Pakistanis” disregarding the decision of the Supreme Court.²⁰⁹

To highlight the position of the Urdu-speaking Community as citizens, I shall now review the related actions of the past and present Pakistan and Bangladesh governments. Firstly, it is important to note that the present Urdu-speaking Community of Bangladesh are not Pakistani citizens anymore. The interior ministry of Pakistan explicitly states in Section 16-A of the *Pakistan Citizenship Act*, 1951 that all persons residing in the territories, which before December 16, 1971, constituted the province of East Pakistan, and those residing there since that day voluntarily or otherwise would

²⁰⁷ The Guardian, *supra note* 125.

²⁰⁸ Ibid.

²⁰⁹ IRIN News, *supra note* 139.

cease to be citizens of Pakistan. So Pakistan does not account for those people who had intentionally decided to integrate within Bangladesh. It is further stated that those who were not repatriated prior to March 18, 1978 (when the provision was originally introduced) but whose return had later been settled by the Government of Pakistan would continue to be Pakistani citizens only (Clause iv of subsection 1).

Self-determination is concerned with the accountability of governments and active participation of people to control their own lives. Skeptics of the recent developments in human rights law insist that rights arranged by membership in a certain state continue to be “the only ones of any worth”.²¹⁰ In this regard, the Supreme Court of Bangladesh’s ruling in 2008 brings the biggest changes for the existing community as it establishes and confers *jus soli* citizenship to them. Consequently, all children who are now born in Bangladesh can be understood to be born as nationals and receive citizenship upon birth in the country. The decision of the court retroactively enables citizenship to the Urdu-speaking Community before and after the independence of Bangladesh. Therefore, they cannot be treated or viewed as being refugees or stateless, or singled out as a different class of citizens. Under Article 6 of the Constitution of Bangladesh, they are “Bangalees” or “Bangladeshies”, and not *de facto* stateless or ‘Stranded Pakistanis’. The majority of the people living in the settlements are also registered with national identity cards,²¹¹ which is strongly tied to their right to social, economic and political life benefits. In fact, virtually all the people have rights under Bangladesh’s domestic laws, as they extend citizenship rights to all who are born in Bangladesh, as well as to all the prior generations of fathers or grandfathers who were permanent residents in the country since

²¹⁰ Haddad, *supra* note 162 at 75.

²¹¹ Khalid Hussain, *supra* note 12 at 30.

1971.²¹² To establish that an individual is not considered a national of a state does not require demonstrating the lack of recognition as a national by states. Citizenship is usually decided on the basis of genuine links between a person and a state, including the legality of an individual's status in the territory, as well as where an individual and their families have resided, and these are precisely what has been determined by the 2008 decision.

Broadly speaking, the community is in need of an effective citizenship. There are a few number of refugee concepts that have shaped the citizenship status for the Urdu-speaking Community. These include in particular, the infrastructure of the settlements (especially Geneva Camp and the use of rations/relief cards and prior repatriation forms for tenancy purposes), as they are a linking thread to their former status, as well as the early UNHCR involvement in the people's repatriation to Pakistan in 1973. Many of the Bangladeshi people, including the bureaucracy, therefore continue to see this community differently for their former refugee status and their ongoing practices of speaking a distinctive language in the settlements. Consequently, the Urdu-speakers remain marginalized from the overall population.

With the setting out of these various understandings of citizenship and the current status of the people that has been explained above, it is possible to parse what the Supreme Court decisions have indeed provided. The court essentially offered the legal and formal status of citizenship in the state and political participation as voting rights for the Urdu-speaking Community, but it failed to reach other goals. These include matters such as the lack of the community's belonging as they should have a stake within social

²¹² Paulsen, *supra note* 13 at 58.

membership that relate to national identity. Evidently this has impacted the community's 'economic citizenship' as many are unable to exercise a right to decent work. Moreover, the court has not addressed the aspect of the people's 'cultural citizenship' and there has been no clear guarantee of enabling community integration and recognition, which has consequently resulted for them to be treated differently and being trapped within the concepts of marginalization and subordination in society. The Urdu-speakers, especially with the aforesaid passport dilemma, additionally do not have an unconditional right to exit or enter the territory of Bangladesh. Thus, as a group they presently enjoy a nominal citizenship status, but are being afforded much less in terms of substantive citizenship. This further implies the behavioural aspects of the people trying to conceive themselves as members of the collective population of Bangladesh, but the real notion of citizenship and their identity as 'Biharis' constitute a serious problem. With such observations, it facilitates the criticisms this thesis makes regarding the bureaucracy and how the legal concept of citizenship is still being inadequate for the Urdu-speaking Community.

Regardless of these facts, it is without doubt discernible that these people are linguistically (since most now speak Bengali along with Urdu), religiously, and even culturally similar to the Bengali people. The key challenge now is that their rights have to be interpreted in a sincere and forthright manner. After all, they are legally entitled to apply for governmental and judicial remedies in harmony with all laws of Bangladesh, just like any other citizen. In order to do this, what the bureaucracy needs to do is to show actual concern, and stop the social stigma and the struggles of all these people to rehabilitate and assimilate them into normal society. Refugees are frequently the most committed of immigrants to the political, social, and associated practices of their new

country of residence, because they understand that there is no particular option for them to return to their original homeland.²¹³ Though the Urdu-speakers cannot be considered refugees, the majority has certainly embraced this position to be like other Bangladeshis.

3.2 Employing the Bangladesh Constitution and Domestic Laws for the Urdu-speaking Community

What I intend to do in this section is to launch a discussion and scrutinize what a normatively satisfactory state policy for the Urdu-speaking Community should look like. Such a policy should offer primacy for improving the conditions of their sufferings. It is hence in the view to vindicate their human rights under the GOB's national (and international) obligations. As I shall focus on the current situation within the institutional level, it is important to note that these standards should reflect the values of the rule of law. The domestic laws should therefore communicate and apply intelligibly that would enforce the people's much-needed rights. Thus, I will begin by assessing the domestic legislation comprising legal tools and remedies that is and ought to support the Urdu-speakers. Examining the legal possibilities and proposing necessary changes to current policies may help to realize whether Bangladeshi laws can feasibly solve the problems faced by the community. I shall also identify the rights that intrinsically have a connection to their situation, particularly where the national law has gaps or does not work, which can support the arguments and act as a guide to these local laws. This is fundamentally important for the Urdu-speaking Community on an individual level, in order to be treated in accordance with internationally recognized minimum legal standards since they are currently not being able to exercise rights even as citizens.

²¹³ Gibney, *supra note* 148 at 45.

3.2.1 The Constitution

Even though the bureaucracy is currently unable to fully offer protection rights, the Constitution of the country is something that clearly applies for the entire Urdu-speaking Community. So the laws of the land are applicable for all Urdu-speakers because the Constitution of Bangladesh effectively preserves rights for all persons irrespective of whether they are citizens or not.

The important elements of the Constitution that apply for the Urdu-speaking Community are quite a few. Firstly, the preamble carries particular weight. It states “...that it shall be a fundamental aim of the State to realise through the democratic process a socialist society, free from exploitation a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens.” The Urdu-speakers, as citizens of Bangladesh, are and should be undoubtedly recognized under this crucial entitlement. A modest look at the Constitution tells us that the essential human rights norms are combined under two distinct heads. These are encapsulated under Part II’s “Fundamental Principles of State Policy” (Articles 8-25), and Part III’s “Fundamental Rights” (Articles 26-47A). The Constitution adopted and heavily drew many concepts from the international human rights discourse under such “Fundamental Rights”. It is imperative to note that while the provisions covered in Part II of the Constitution constitute its basic structure, they are not enforceable in a court of law. This is because Part II talks about the principles of nationalism, socialism, democracy and secularism, and covers the economic, social and cultural aspects, which are fundamental to the governance of Bangladesh. The

Constitution relies on the non-enforceability criteria according to Article 8(2), and holds that a law cannot be repealed only on the ground of inconsistency with fundamental principles. Thus a law cannot be deemed void for inconsistency with any fundamental right, as the Parliament in such law expressly can declare that a provision is made to give effect to Part II of the Constitution. Hence, these are signified as “principles” rather than “rights”. In a way, this results to the state’s reluctance to realize certain rights and a weak protection scheme for the people. On the other hand, Part III broadly reflects the principles of international law, and a number of its provisions maintain the rights and responsibilities of the *United Nations Charter*. For instance, the provision that includes the right to protection of law is established in Article 31, which reads:

To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.

The Urdu-speaking Community is entitled to this, as it is an inalienable right that applies to all citizens, and even every other person, including non-nationals, within Bangladesh. Another chief fundamental right that provides an effective remedy is Article 32, that prescribes the protection of the right to life and personal liberty. Specifically, this guarantees a right for every person, irrespective of country of nationality, ethnic groups or lack thereof. The use of the word “person” indicates that the provision is applicable for virtually anyone once they are admitted into the territory of Bangladesh. In essence, this underlines a foundation of international human rights law that calls for prohibiting discrimination against all persons (including refugees or stateless people) based on their status.

There are other provisions in the Constitution that hold value. Given the prevalence of discrimination the Urdu-speakers have faced for generations in aspects of life like education and employment, Article 11 should apply, as it is the duty of Bangladesh as a democracy, to provide fundamental human rights and freedoms and respect for the dignity and worth of the human person. Article 15 of the Constitution is equally critical because quite a significant number of the Urdu-speaking population are still not able to receive the very basic economic necessities of life. Article 15 reads:

It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens –

- (a) the provision of the basic necessities of life, including food, clothing, shelter, education and medical care;
- (b) the right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work;
- (c) the right to reasonable rest, recreation and leisure; and
- (d) the right to social security, that is to say, to public assistance in cases of undeserved want arising from unemployment, illness or disablement, or suffered by widows or orphans or in old age, or in other such cases.

Much of what is mentioned here is vital for the Urdu-speaking Community, especially those living in the settlements. A number of people are still unable to obtain adequate access to food, proper housing, education, health care, and social security due to lack of state accountability. For their right to social security, the administration should offer the same treatment with respect to public relief and assistance, as is accorded to the rest of the Bengali nationals. Free and compulsory education with equality of opportunity is also necessary for children as a societal right, as enumerated in Article 17 of the Constitution. In light of this, Bangladesh must accord the community the same treatment as is rendered to other nationals with regard to public education. Article 28 of the Constitution, which is

a fundamental right, stipulates that the state shall not discriminate against any citizen, and the provision's clause 3 encapsulates:

No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution.

Article 28(4) designates that the state may take special measures for the advancement of any “backward sections of the citizens”, but this is something that is not mandatory for the state to follow. Incorporating a nondiscriminatory clause, particularly in respect of the language provision in Article 28 may additionally help the Urdu-speakers to be recognized as a linguistic minority since it is currently limited to discrimination on the grounds of religion, race, caste, sex, or place of birth.

The right to work and guaranteed employment needs to be addressed as well. This has been one of the bigger problems for a long time, and it is something the people continue to face today. Despite graduating with a high school or a university degree, many people fail to get a proper job due to their “Bihari identity”.²¹⁴ I have also previously stated in the second chapter that certain people are unable to acquire trade licenses to conduct businesses in Dhaka. With regard to these, the Constitution articulates the fundamental right of freedom of profession or occupation under Article 40, whereby “every citizen possessing such qualifications, if any, as may be prescribed by law in relation to his profession, occupation, trade or business shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business”. The administration must recognize and guarantee this. It is urgent for the bureaucracy to

²¹⁴ IRIN News, *supra note* 139.

accord to the people the right to engage in wage-earning employment. In addition, restrictive measures against the Urdu-speakers' employment for the "protection" of the national labor market cannot be applied. They must further have the right to engage in self-employment in a liberal manner in different works, including agriculture, commercial and industrial companies, etc. The state therefore needs to implement effective measures to remove social and economic inequality among them and other citizens.

Work is acknowledged as a right, a duty and a matter of honor for every citizen who is capable of working under Article 20(1) of the Constitution, but it is not guaranteed. It is a fundamental right and has equality under the law according to Article 29 though, which reads:

(1) There shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic.

(2) No citizen shall, on grounds only of religion, race, caste, sex or place of birth, be ineligible for, or discriminated against in respect of, any employment or office in the service of the Republic.

(3) Nothing in this article shall prevent the State from – (a) making special provision in favour of any backward section of citizens for the purpose of securing their adequate representation in the service of the Republic.

As expressed, clause (3)(a) even suggests that the state can create special provision "in favour of any backward section of citizens". This has been typically applied for women's rights in Bangladesh, but may work and be adopted for the Urdu-speaking Community too. This may be equally taken into consideration as part of the fundamental principles of state policy, especially under Article 14 of the Constitution, which attests that it is the state's responsibility to emancipate backward sections of the people from all forms of

exploitation. It is clear that the scope of the Constitution covers equality of opportunity for citizens, particularly under Article 19. Article 19(2) expressly mentions that the state shall adopt measures to remove social and economic inequality between people and guarantee opportunities in order to accomplish a uniform level of economic development throughout Bangladesh. The bureaucracy must take into account that the Urdu-speaking Community's present dearth of vocational skills and denial of receiving proper employment impedes such development.

The Constitution's Article 25 (of Part II) is also of importance, which needs to be identified with. It suggests that "[t]he State shall base its international relations on the principles of respect for national sovereignty and equality, non interference in the internal affairs of other countries, peaceful settlement of international disputes, and respect for international law and the principles enunciated in the United Nations Charter." This provision therefore incorporates, *inter alia*, that the country shall base its international relations on the principles of respect for international law, and the *United Nations Charter*. The substance of this holds a key value since Bangladesh needs to be more mindful on the breaches of international law. For example, the Urdu-speaking people, especially who live in the settlements, such as the Geneva Camp, cannot even open bank accounts nor receive loans from banks, even though they are citizens.²¹⁵ The bureaucracy's lack of awareness and action cannot be condoned since the people have undergone these obstacles in the past and continue to face them, that breaches the basic rules of both domestic and international law.

Another crucial right of the community is their essential right to property that they

²¹⁵ Ibid.

have mostly been unsuccessful to acquire even until now. Article 42 of the Constitution mentions that:

Subject to any restrictions imposed by law, every citizen shall have the right to acquire, hold, transfer or otherwise dispose of property, and no property shall be compulsorily acquired, nationalised or requisitioned save by authority of law.

Most of the Urdu-speakers' properties during the war were declared as enemy property, and subsequently acquired under the *Bangladesh Abandoned Property Order (Control, Management and Disposal)*, 1972. In particular, the administration took over all of their commercial and industrial concerns through the *Acting President's Order I* of 1972 and *President's Order 16*.²¹⁶ As an unfortunate consequence, the people had willingly surrendered and could not pursue any form of legal recourse for many years. The result of the disposal of their properties has not yet been addressed after over four decades. The Urdu-speakers are long due and should be accorded proper and favorable treatment with regard to the (re)-acquisition of movable and immovable property. With respect to their housing, the bureaucracy should thus provide favorable treatment to all persons, who are staying lawfully in the territory of Bangladesh. I will further analyze this prospect in part 3.2.3 of this chapter.

Besides, as some Urdu-speaking respondents have pointed out that they are being unable to celebrate their community's festivals, the administration must remember that the Constitution warrants the state to take steps to protect and develop the unique local culture and tradition of ethnic sects and communities under Article 23A. Article 39 further guarantees the fundamental right of freedom of thought and conscience, and of speech.

²¹⁶ Sen (Part 1), *supra note* 19 at 637.

Lastly, the category of substantive rights under the Constitution's Part III, which has been scrutinized above, is extremely relevant. As is evident, these are the "Fundamental Rights" that embody all the popular rights relating to civil and political entitlements. These rights are judicially enforceable and can be challenged in court by any aggrieved citizen. Article 44 guarantees the enforcement of all fundamental rights enshrined in Part III. This is ensured with the "right to move the High Court Division in accordance with clause (1) of article 102", whereby the Parliament empowers the court to exercise such power under Article 102(2). However, all provisions under these fundamental rights are subject to reasonable restrictions of the state. Still, these rights are critical to the community because as citizens, they are entitled to equal protection of the law of the land, and are equal citizens before the law (Article 27), and this stands as an absolute right that allows access to justice, and any reasonable classification or restriction would be inconsistent with the spirit of the Constitution. Hence, what is discussed here needs inclusive legal interpretation and actual pro-active action and initiatives by the GOB. The rights of so many people can only in this manner be upheld and respected.

3.2.2 Citizenship and Law

Without much of a doubt, the Urdu-speakers' citizenship rights and current national identity are attached with many values, even though they are being discriminated against. Theoretically, the question of citizenship generally involves various ideas in contemporary society; so in the case of the Urdu-speaking Community, a broader notion of citizenship is firstly required to be understood than the strictly legal framing of citizenship in the law. Issues concerning the boundaries of Bangladeshi society, the belonging of ethnic groups, and the bond between the real distribution of the Urdu-

speakers' rights and their ideal distribution come to mind. But what is the criterion for invoking full citizenship in Bangladesh? It may be said that besides the law, the concept of citizenship has grown with democratization to embrace a broader definition of the citizen irrespective of matters like ethnicity. The status of the citizen signifies a sense of inclusion into the wider community.²¹⁷ This means that citizenship identifies the contribution a specific individual makes to the community, and that it is an active rather than a passive status.²¹⁸ T. H. Marshall in his notable lecture back in 1949 suggests that citizenship may be divided into three parts that include civil, political and social elements.²¹⁹ Although this definition is quite English-centric, the theory comprises three key features. The civil element encompasses fundamental rights essential for one's personal freedom such as the freedom of expression or the right to own property. Marshall classifies the political element as the right to partake in the exercise of political power. By the social element, Marshall denotes an extensive range that includes the right to a modicum of economic welfare and security to the right to share to the fullest in the standards prevalent in the society, which involves institutions like the educational system and social services.²²⁰ Modern definitions connote citizenship as a membership status, which comprises a package of rights, duties and obligations, and which involves equality, justice and autonomy.²²¹ One of the advantages citizenship has over other social identities

²¹⁷ Keith Faulks, *Citizenship* (London, United Kingdom, New York, USA: Routledge, 2000) at 4.

²¹⁸ Ibid.

²¹⁹ T. H. Marshall, "Citizenship and Social Class and Other Essays" in *The Welfare State Reader*, Christopher Pierson, Francis G. Castles, eds. (Cambridge, United Kingdom and Malden, MA, USA: Polity Press, 2006) at 30.

²²⁰ Ibid.

²²¹ Faulks, *supra note* 217 at 13.

is that it has an inclusive and wide-ranging quality, which other identities such as class, religion or ethnicity lack.²²²

The rights of citizenship, apart from the Supreme Court's ruling, may be exemplified by looking at the domestic laws that are in place for the Urdu-speaking Community. With respect to their present status, the *Citizenship Act* (Act No. II of 1951) plays a pivotal role that provides for Bangladesh citizenship. Citizenship is acquired at birth (*jus soli* as defined in section 4 which applies for all Urdu-speakers), as well as by descent (*jus sanguinis* per section 5). Section 3 stipulates citizenship at the date of commencement of the Act. It reads:

At the commencement of this Act every person shall be deemed to be a citizen of Bangladesh –

(a) who or any of whose parents or grandparents was born in the territory now included in Bangladesh and who after the fourteenth day of August, 1947, has not been permanently resident in any country outside Bangladesh; or

(b) who or any of whose parents or grandparents was born in the territories included in India on the thirty-first day of March, 1937, and who, except in the case of a person who was in the service of Bangladesh or of any Government or Administration in Bangladesh at the commencement of this Act, has or had his domicile within the meaning of Part II of the Succession Act, 1925, as in force at the commencement of this Act, in Bangladesh or in the territories now included in Bangladesh; or...

(d) who before the commencement of this Act migrated to the territories now included in Bangladesh from any territory in the Indo-Pakistan sub-continent outside those territories with the intension of residing permanently in those territories.

Simply put, the law grants the right of nationality to those persons whose fathers or grandfathers were born in the territories that now comprise Bangladesh. Other members who are included are the permanent residents. This obviously places the Urdu-

²²² Ibid at 107.

speakers as current citizens of the state, since the prior generations of people had migrated to East Pakistan (now Bangladesh) during the partition of India in 1947.

Another piece of legislation that governs nationality and citizenship status is the *Bangladesh Citizenship (Temporary Provisions) Order* (President's Order No. 149 of 1972). Section 2, much like Section 3 of the Citizenship Act, is of particular relevance as it expresses the same rules of the date of commencement of the Act:

Notwithstanding anything contained in any other law, on the commencement of this Order, every person shall be deemed to be a citizen of Bangladesh –

- (i) who or whose father or grandfather was born in the territories now comprised in Bangladesh and who was a permanent resident of such territories on the 25th day of March, 1971, and continues to be so resident; or
- (ii) who was a permanent resident of the territories now comprised in Bangladesh on the 25th day of March, 1971, and continues to be so resident and is not otherwise disqualified for being a citizen by or under any law for the time being in force:

Provided that if any person is a permanent resident of the territories now comprised in Bangladesh or his dependent is, in the course of his employment or for the pursuit of his studies, residing in a country which was at war with, or engaged in military operations against Bangladesh and is being prevented from returning to Bangladesh, such person or his dependents, shall be deemed to continue to be resident in Bangladesh.

This is basically defining a Bangladesh citizen as someone who was in West Pakistan temporarily during the Liberation War period in 1971, and who was facing obstacles to return as a permanent resident. Such persons are thus qualified for Bangladeshi citizenship. It likewise applies for those Urdu-speakers who, even in the face of obstacles, migrated to Bangladesh during this time.

Furthermore, a provision of this legislation worked against the community previously. Section 2B reads:

(1) Notwithstanding anything contained in Article 2 or in any other law for the time being in force, a person shall not, except as provided in clause (2), qualify himself to be a citizen of Bangladesh if he (i) owes, affirms or acknowledges, expressly or by conduct, allegiance to a foreign state.

Although some traditional leaders and members of the Urdu-speaking Community yearn for repatriation to Pakistan, there is a question if this can be applied against them now. From the point of view of the 2008 decision of the Supreme Court of Bangladesh, the Urdu-speaking population is protected. In that sense, this provision cannot be applied en masse to ban their Bangladeshi citizenship. Moreover, in a Supreme Court ruling of 1994 (*Bangladesh v Professor Golam Azam* (1994) 46 DLR (AD) 192), Justice Latifur Rahman specifies what Bangladeshi citizenship entails. It is explained that citizens of a country are members of a political community to which people belong and they compose the state and establish the government for the promotion of the people's general welfare, and for the protection of their individual and collective rights within the state.²²³ There is also a statement that the court makes which is of certain relevance. The ruling states that for the purposes of being a deemed citizen, no person is required to express any allegiance to Bangladesh by law since that person is a "deemed citizen" by the operation of law itself.²²⁴ Hence, even if any Urdu-speaker is reluctant to integrate or become a citizen (which means they would be ignoring the traditional allegiance to the concept of citizenship) they could still be deemed Bangladeshi citizens as per the court.

It is thus discernible that both the Citizenship Act and Citizenship (Temporary Provisions) Order provide the requisite conditions whereby an individual is deemed a citizen by operation of law. In addition, Article 6 of the Constitution of Bangladesh says

²²³ *Bangladesh v Professor Golam Azam* (1994) 46 DLR (AD) 192 at 235.

²²⁴ *Ibid* at 227-8.

that citizenship is to be determined and regulated by law. Article 6(2) specifically recognizes all citizens as “the people of Bangladesh”. It is to be noted though that nowhere in these laws is citizenship defined in terms of ethnicity (for instance, see sections 4 and 5 of the Citizenship Act).

Other related legislation that entitles the community for Bangladesh nationality is *The Births and Deaths Registration Act* (Act No. 29 of 2004). This offers for registration of births under section 5. The Act also specifies that birth certificates will be used as proof of age for different administrative procedures, including, but not limited to: issuance of identity cards, enrollment in educational institutions, etc. These along with like provisions are therefore applicable for all Urdu-speakers residing in Bangladesh. Besides, *The Naturalization Act* (Act No. VII of 1926) in its preamble, expresses the naturalization of aliens who are residents in Bangladesh. From a legal perspective, its provisions had to apply for the community prior to the 2008 ruling (although it is unclear to what extent this was offered by the government), since non-citizens have the right to receive a certificate of naturalization if they have remained in Bangladesh for a substantial number of years [section 3(1)(c)].

Thus far, I have clarified the concepts of citizenship and how it exists in the legal framework. But I would like to discuss a little more about the challenges of the community’s right to exercise citizenship by saying that the objective of full citizenship represents more than basic political rights, but social rights as well. Given the Urdu-speakers’ circumstances, we must question whether social rights can be considered actual rights of citizenship and work for the community. Social rights are “rights of

participation” in the polity and they are a means to facilitate such participation.²²⁵ Citizenship rights are irrefutably universal, but social rights, on the other hand, are only meaningful when they are substantive, and substantive rights can never be universal.²²⁶ This is because social rights are largely contingent upon a bureaucratic basis. Because of the current lack of political will, this is one of the reasons why the Urdu-speakers are being deprived.

The state must grasp the fact that if the institutions in which obligations of citizenship are exercised and are designed to favor one group over another, that is, all Bangladeshi citizens except the Urdu-speaking Community, the very concept of citizenship is diminished.²²⁷ “[To] be effective, others must recognize and respect our rights and we have a responsibility to do the same.”²²⁸ This should strictly apply for the Urdu-speakers, as political reform at the national level in Bangladesh must look to recuperate the opportunities of these people to exercise their rights by encouraging a strong ethic of participation, both socially and economically. Such participation should not only be limited to the community’s voting rights since formal citizenship does not necessarily guarantee substantive and effective rights. The identity of citizenship is critical to avoid the discrimination of ethnic labeling, and can be a reason for people (in this case most Urdu-speakers) to be in an ultimate “quest for invisibility”.²²⁹ A strong sense of citizenship can only be attained when the contextual barriers to its performance

²²⁵ Faulks, *supra note* 217 at 116.

²²⁶ *Ibid.*

²²⁷ *Ibid* at 6.

²²⁸ *Ibid* at 108.

²²⁹ Redclift, *supra note* 5 at 40.

are recognized and removed,²³⁰ and so it is incumbent upon the state that those who rule guarantee that the means to exercise citizenship belong to all recognized people. In essence, this becomes part of the covenant between the state, the individual and the collective called society; each of these exist because the other does and accordingly each works for the others so that all will benefit.²³¹ It is thus submitted that the Urdu-speakers are absolute citizens by the general operation of law and they have complete and identical rights as other citizens of Bangladesh, and all the fundamental rights of the Bangladesh Constitution apply for them.

3.2.3 The Right to Recover Property

The right to property is perhaps one of the biggest concerns of the Urdu-speaking Community at present. Even though the settlements have helped sustain the people for decades, there are questions about the rights of ownership and possession. The threats of eviction and long-standing tensions also linger and add to the dilemma. There are many possible difficulties for the Urdu-speakers to actually recover their former properties that were taken away by the administration in the prior years, which needs to be carefully looked at.

The aforesaid *Bangladesh Abandoned Property (Control, Management and Disposal) Order, 1972* actually affects the entire community's current chances to recover their properties. Section 2(1) defines 'abandoned property' as those properties that a person has ceased to occupy or manage, and section 2(1)(i) establishes that such property is considered abandoned when it was "any property owned by any person who is a citizen

²³⁰ Faulks, *supra note* 217 at 6.

²³¹ Lena Dominelli, "Critical Theories: Reflecting on Citizenship Status and Practices" in *Reconfiguring Citizenship: Social Exclusion and Diversity within Inclusive Citizenship Practices*, Lena Dominelli & Mehmoona Moosa-Mitha, eds. (Routledge: New York, 2016) at 264.

of a State which at any time after the 25th day of March, 1971, was at war with or engaged in military operations against the People's Republic of Bangladesh." As the Urdu-speakers were acknowledged as citizens in 2008, and the fact that the Supreme Court ruling does not mention anything about recovering properties, the community is in a dire state. There are several provisions of the Abandoned Property Order that specify why the Urdu-speakers are restricted to reacquire their former property entitlements. These are stated under sections 14(1) and 24, which are as follows:

14. (1) Any property vested in the Government under this Order shall be exempt from all legal process, including seizure, distress, ejectment, attachment or sale by any officer of a Court or any other authority, and no injunction or other order of whatever kind in respect of such property shall be granted or made by any Court or any other authority, and the Government shall not be divested or dispossessed of such property by operation of any law for the time being in force.

24. Anything done, any action taken or any order passed under this Order shall not be called in question in any court.

Other statutes additionally express the same ramification. The *Specific Relief Act*, 1877 (Act No. I of 1877) states that if a person is dispossessed of immovable property, they can make a suit to recover their title and possession (section 9). However, the law further instructs that "[if] any person is dispossessed without his consent of immovable property otherwise than in due course of law" then no suit (or appeal or review from any order or decree passed in any suit) can be brought against the government. Even the Constitution of Bangladesh restricts the community's fundamental right to reacquire property or receive any compensation as both Articles 42(1) and 47(1)(a) denote that property can be compulsorily acquired, nationalized or requisitioned by authority of law.

In view of this problem, there is another reason why the Urdu-speakers cannot recover their prior assets because they are also considered 'enemy property'. Besides the

Abandoned Property Act, the GOB had also passed the *Vesting of Property and Assets Order*, 1972 (President's Order No. 29 of 1972) which allowed the administration to vest former 'enemy properties' that were seized after the 1965 Indo-Pakistani War. This affected both Urdu-speakers who had resided in Bangladesh prior to 1971 and the ethnic East Bengali Hindus who had left for India during the time. Even though a parliamentary standing committee in 1999 had set a draft law in order to return possession of these enemy turned vested properties to their original owners, a cabinet committee planned a new draft in 2001, which was eventually passed by the Bangladesh Parliament as the *Vested Property Return Act*, 2001 that continued to ensure the confiscation of properties belonging to 'enemies of the state'.²³² The 1999 draft had particularly excluded any property taken over after the cancellation of emergency from falling within the purview of the Act.²³³ Had the current 2001 Act incorporated the previous draft, the properties that were taken illegally after the independence of Bangladesh could have been automatically released in favor of the lawful owners.²³⁴ This indicates the doubts that the present law has tricked the apparently bona fide intention of the government and ensured that those beneficiaries continue to have their 'rights' since their interests may be affected if there is any actual restoration of enemy turned vested properties to their real owners.²³⁵ Consequently, the Act makes it impossible to claim any compensation for enemy vested properties. No one has the right to apply for any entitlement to a court when the government or any individual has received such properties that have been enlisted, settled, or leased as per the legislation (section 28). The Act cannot also be subjected to

²³² Taslima Yasmin, "The enemy property laws in Bangladesh: grabbing lands under the guise of legislation" (2015) 15:1 OUCJLJ 121 at 146.

²³³ Ibid.

²³⁴ Ibid.

²³⁵ Ibid.

any judicial review. This acts as a disadvantage to the community to challenge the legality of the legislation in a court of law. Hence, this law has unfortunately become a tool that has led to the appropriation of the properties of the Urdu-speaking Community and other religious and ethnic minorities in Bangladesh. There is a high probability that this issue will continue to persist for many more years within the legal and bureaucratic process. A resolution is therefore immediately needed so as to make sure that the law is firstly amended. Stronger pressure groups combined with the representation from civil society and rights movements may help to see that such practice is stopped by the GOB.²³⁶ This may ultimately lead to the restoration of the properties to the genuine title, interest and possession of the original owners. Although the chances of this are quite slim right now, the administration is still obliged to restore the rights and rehabilitate the community in some other way.

3.2.4 The Passport Dilemma

The collection of a passport is a prominent hurdle for most Urdu-speakers. In this regard, there are two pieces of legislation that they should be guaranteed. *The Passport Act* (Act No. XXXIV of 1920) requires passports of persons entering Bangladesh. But the more important law in terms of the acquisition of passport is *The Bangladesh Passport Order* (President's Order No. 9 of 1973). The predicament that lies here is that many Urdu-speakers fail to meet the legal requirements of acquiring a passport, which as a consequence, does not allow them to leave Bangladesh. There are two reasons for their inability to meet the conditions. Firstly, a valid address is compulsory in order to obtain a passport, but many people especially those living in the settlements, lack this. Secondly,

²³⁶ Ibid at 147.

institutional discrimination (in the regional Passport Offices) persists as another problem. However, it is reported that some fortunate residents of certain settlements have been able to acquire their passports where such discrimination did not occur.²³⁷ Article 36 of the Constitution permits the fundamental right of freedom of movement and the right to leave and re-enter Bangladesh. The liberty to leave one's country is also an internationally guaranteed right, and enshrined in Article 13 of the *Universal Declaration of Human Rights*, 1948 and Article 12 of the *International Covenant on Civil and Political Rights*, 1966.

On another note, although the Urdu-speakers are citizens according to the Supreme Court's ruling, section 15 of the Order lays emphasis to issue passports to people, even if they are not citizens of Bangladesh. This is believed to be essential only if there is sufficient public interest, and regrettably, its application in practice is ambiguous and wholly dependent on the subjective satisfaction of the public officials. Taking into account of these palpable difficulties, identity papers for the purpose of international travel is crucial for the Urdu-speaking Community at this time, and the administration needs to act on this as soon as possible.

3.2.5 Other Relevant Laws

Some other important statutes used in dealing with the Urdu-speaking Community, include *The Code of Civil Procedure* (Act No. V of 1908), the *Women and Children Repression Prevention Act* (Act No. VIII of 2000), and *The Children Act*, 2013, officially known as "*Shishu Ain*, 2013". In particular, the purpose of *The Children Act*

²³⁷ Ahmed Ilias "Biharis: Citizens without benefits" *bdnews24.com* (13 June 2012) online: Bangladesh News 24 Hours Ltd. (Dhaka, Bangladesh) <<http://opinion.bdnews24.com/2012/06/13/biharis-citizens-without-benefits/>>.

helps to protect and treat children in accordance with the law, and was enacted for implementing the *Convention on the Rights of the Child*. Specifically, the Children's Court determines the circumstances of living conditions (section 16). Where Urdu-speaking children are in situations of being destitute, their maintenance is critical and the bureaucracy is bound to help and protect them (section 70).

With regard to education, the University Grants Commission of Bangladesh, the regulatory body of public and private universities of Bangladesh, deems that higher education is of utmost importance for all people in the country. The related legislation for public universities such as *The Dhaka University Order, 1973* (President's Order No. 11 of 1973), and *The Jahangirnagar University Act, 1973* (Act No. XXXIV of 1973) clearly say that public universities are open to all persons of whatever religion, race, creed, or class (sections 6).²³⁸ The key operating statute for private universities in Bangladesh, that is, *The Private University Act, 1992* (Act No. 34 of 1992) similarly states that all institutions are open to anyone irrespective of any forms of caste, religion, race and class (section 5). As the use of false addresses by the Urdu-speakers is still happening, it may be possible that institutions are using an ad hoc method for the 'lack of address' as a basis of discrimination against community members. Institutions must create specific rules to admit people regardless of their address or lack thereof. Education after all falls under the purview of human rights law, in both domestic and international law, and institutional regulations must acknowledge that individuals receive equal treatment for their enrollment by changing existing policies. The question still remains whether this can

²³⁸ The University of Dhaka, which is the foremost and largest university in Bangladesh, has a Department of Urdu.

solely change the behavior of educational institutions, but it is at least a starting point for the proper treatment of the Urdu-speakers.

Furthermore, it is obvious that the majority of the community (predominantly the people living in the settlements) is poverty-stricken. Normally, they are unable to institute legal suits and it is very difficult for them to involve lawyers and paying their fees. The GOB has passed two laws in order to assist the underprivileged and deprived litigants to allow them access to justice. Thus, legal aid plays a basic role in assisting the Urdu-speakers under the *Legal Aid Act, 2000*. The *Legal Aid Services Act, 2000* also provides necessary services by giving aid to those who are deprived. In some cases, people are able to institute and/or defend their particular cases in court.²³⁹ The underlying idea here is every member of the Urdu-speaking Community should have free and easy access to the courts of law. Since Bangladesh is their habitual residence, they should receive equal treatment like other nationals where access to justice is concerned, including legal assistance.

Therefore, many of the rights discussed in this overall section are and should be accessible by the entire Urdu-speaking Community of Bangladesh. Since the state is not being able to uphold some of its domestic (and international) responsibilities, inappropriate (and essentially unlawful) political contemplations against the people, or the lack of awareness of the bureaucracy are no justifications. The obligations that are owed should also not be left in the judgment of field-level officials. As cited in some examples in the discussion, some actions have led to both unsympathetic and inadvertent

²³⁹ Syed Aminul Islam “Overview of government legal aid system” *The Daily Star* (29 April 2013) online: The Daily Star (Dhaka, Bangladesh) <<http://archive.thedailystar.net/beta2/news/overview-of-government-legal-aid-system/>>.

consequences, which have negatively affected the Urdu-speaking Community from exercising their fundamental legal rights. Consequently, without having an effective membership of the political community, our, and in this case the Urdu-speakers' human rights seem inadequate and end up having very limited value.²⁴⁰

²⁴⁰ Haddad, *supra note* 162 at 76.

CHAPTER 4: INTERNATIONAL HUMAN RIGHTS LAW: HOW WELL DOES IT WORK FOR THE URDU-SPEAKING COMMUNITY?

With respect to most of the discussion throughout the preceding chapters, it is palpable that the domestic laws of Bangladesh are in place today, but the Urdu-speaking Community continues to emerge from their situation, mainly in terms of poverty, according to their own societal means rather than through the clear basis and protection of the law. In this chapter of the thesis, I will first highlight how Bangladesh perceives international law, and then appraise the international human rights law paradigm for the Urdu-speakers, and provide an interpretive analysis with reference to my findings from the interview process. This may help ascertain to what degree certain principles and legal solutions are practicable for the GOB to apply, and also verify where the law may not work for the community. In light of the people's circumstances, I shall also assess their international economic, social and cultural rights. Further, because the Urdu-speaking Community is considered a minority population in Bangladesh, I will also inspect the central themes of minority rights protection in international law.

4.1 Protection Under International Law: Guarantees or Mere Pledges?

Before finding how international human rights law applies to the Urdu-speaking Community, it is substantial to ask – how does Bangladesh conform to the peremptory rules of public international law? Is the GOB following any specific structure that is both coherent and obligatory for the state? If yes, what are the guarantees that exist today? On the contrary, is Bangladesh simply making pledges (that are generally inadequate) to respect the values of international law? This section shall thus highlight a number of examples of where Bangladesh has utilized and obliged under international law. On the

other hand, it will portray instances where the state has failed to do this, and the reasons behind it.

4.1.1 Guarantees Offered by the State

Let us begin by looking at what the state practice has guaranteed for the Urdu-speakers in general, and what is lacking or absent in the current regime. Firstly, there are specific provisions in the Constitution of Bangladesh concerning international law and relations. These are enumerated in Articles 25 and 145A, which mention:

25. The State shall base its international relations on the principles of respect for national sovereignty and equality, non interference in the internal affairs of other countries, peaceful settlement of international disputes, and respect for international law and the principles enunciated in the United Nations Charter, and on the basis of those principles shall –

- (a) strive for the renunciation of the use of force in international relations and for general and complete disarmament;
- (b) uphold the right of every people freely to determine and build up its own social, economic and political system by ways and means of its own free choice; and
- (c) support oppressed peoples throughout the world waging a just struggle against imperialism, colonialism or racialism.

145A. All treaties with foreign countries shall be submitted to the President, who shall cause them to be laid before Parliament:

Provided that any such treaty connected with national security shall be laid in a secret session of Parliament.

These provide certain guidance on how the state should regard international law in a number of senses including: the social, economic, and political rights of individuals, renouncing force in international relations, and supporting oppressed peoples around the world. Yet it may be argued that the provisions (chiefly Article 25) do not fully embody the ambit and strengths of international law. It acts fundamental to the governance and law making of the state, but only with some respect to interpreting international law.

Meanwhile, Article 145A obliges the government to act only when there is a situation affecting the “national security” of the state. It seems that this provision is somewhat ambiguous and inadequate, and raises additional questions such as: why should it only apply in the case of national security? As a result, the foundation of the provision produces more problems without meaningful resolution. Besides, the Constitution also does not categorically refer to any clear or specific terms for the implementation of international treaties. In addition, notwithstanding all these indications of human rights and respect for international law, the Constitution of Bangladesh, unlike several contemporary constitutions, preserves the classic “dualist approach”,²⁴¹ and does not recognize international human rights law as a source of domestic law.

Nevertheless, on a number of occasions, both the High Court and Appellate Divisions of the Supreme Court of Bangladesh have interpreted and guaranteed on how international law and instruments should work in a domestic setting. The judiciary has taken the option towards soft law international instruments as well as binding treaties and conventions to which Bangladesh is a state party. The view of the court in *Bangladesh National Women Lawyers Association (BNWLA) v Government of Bangladesh and Others* (2001), 40 CLC (HCD) suggests that it is now a recognized rule of judicial construction to construe municipal law in conformity with international law and conventions (para 20). The court can take recourse to international law on cases where there is a vacuum of legal explanations in the domestic law, or a lack of specific laws from the national legislature. According to this decision, a discrepancy between the national laws of Bangladesh and international law should not exist either. So, this is

²⁴¹ Louis Henkin, *International Law: Politics and Values* (Dordrecht/Boston/London: Martinus Nijhoff Publishers, 1995) at 64-71.

particularly useful as it works as an aid to interpret provisions, and to govern individuals' rights that are implicit such as the right to life and liberty. Other judgments have similarly suggested this. In the case where a doubtful matter arises before the court, and suitable domestic legislation is not found, courts can take recourse to the doctrines and principles of international instruments. This is suggested in *Anika Ali v Rezwanul Ahsan* (2012), 17 MLR (AD) 49. The country's courts can therefore take into consideration the principles enshrined in the *Universal Declaration of Human Rights*, 1948 ('UDHR')²⁴² and its covenants, including the *International Covenant on Civil and Political Rights*, 1966 ('ICCPR')²⁴³ and *International Covenant on Economic, Social and Cultural Rights*, 1966 ('ICESCR').²⁴⁴ In substance, these are guaranteed to assist the legal understanding of fundamental rights, which are expounded in the Constitution of Bangladesh.

What is also interesting (and can be guaranteed to the people) is that these instruments have been used in a number of scenarios with the clear objective of protecting politico-civil rights of the marginalized sections of Bangladeshi people including women and children, prisoners and stateless persons.²⁴⁵ Occasionally, the courts have even utilized these for protecting fundamental socio-economic rights of citizens, including rights to proper nutrition and health, housing, sanitation, and land.²⁴⁶ It is imperative to note however that a number of the preceding cases like the ones delineated above, have not explained to what degree the verdicts' directions were

²⁴² Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217A(III)) (UDHR).

²⁴³ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976 and 28 March 1979) 999 UNTS 171 and 1057 UNTS 407 (ICCPR).

²⁴⁴ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

²⁴⁵ Abul Hasanat, "Using International Law in National Courts: Bangladesh Perspective" (2013) 13:1 & 2 Bangladesh Journal of Law (BILIA) at 49.

²⁴⁶ Ibid.

implemented nationally. Some courts have not clarified the persuasion of such references to international standards, because most of the decisions eventually relied on domestic laws.²⁴⁷ Nonetheless, it can be suggested that the judiciary has tried to guarantee something positive by these actions that can essentially help the Urdu-speaking Community. The acquiescence of municipal laws with international principles shows us the legitimacy and quality of the court's decision-making process since the Supreme Court has drawn international law. This can progressively lead the courts to follow the concepts of international law, and even invoke the process of international human rights law in the near future.²⁴⁸

The international instruments, to which Bangladesh is a signatory indicates that the state is there to support the community (at least in theory). The country has pledged to the principles of the aforesaid UDHR. Bangladesh has further acceded to the ICCPR on September 6, 2000,²⁴⁹ and the ICESCR on October 5, 1998.²⁵⁰ Bangladesh is also a state party to other major international human rights treaties, particularly the *International Convention on the Elimination of All Forms of Racial Discrimination*, acceded on June 11, 1979;²⁵¹ the *Convention against Torture and Other Cruel, Inhuman or Degrading*

²⁴⁷ Borhan Uddin Khan & Muhammad Mahbubur Rahman, "Human and Minority Rights in Bangladesh" in *Minority Rights in South Asia*, Rainer Hofman, Ugo Caruso, eds. (Peter Lang, Internationaler Verlag der Wissenschaften, 2010) at 95.

²⁴⁸ *Prof. Nurul Islam v Government of Bangladesh* (2000) 52 DLR (HCD) 413.

²⁴⁹ United Nations Treaty Collection, *International Covenant on Civil and Political Rights* (status as at: 23-01-2017 05:00:42 EDT) <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-4&chapter=4&clang=en>.

²⁵⁰ United Nations Treaty Collection, *International Covenant on Economic, Social and Cultural Rights* (status as at: 23-01-2017 05:00:42 EDT) <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-3&chapter=4&clang=en>.

Bangladesh has made declarations for Articles 1, 2 and 3, 7 and 8, 10 and 13.

²⁵¹ United Nations Treaty Collection, *International Convention on the Elimination of All Forms of Racial Discrimination* (status as at: 23-01-2017 05:00:42 EDT) <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-2&chapter=4&clang=en>.

Treatment or Punishment, acceded on October 5, 1998;²⁵² the *Convention on the Elimination of All Forms of Discrimination against Women*, acceded on November 6, 1984;²⁵³ and the *Convention on the Rights of the Child*, ratified on August 3, 1990.²⁵⁴

The accession and ratification of the treaties mentioned above carry some weight as long as the state applies them in practice. Let us see some examples. Firstly, Article 6 of the UDHR and Article 16 of the ICCPR are important, as they require the individual to be respected as a person before the law. In many ways, acknowledging the legal personality of the Urdu-speakers as a community is a vital prerequisite to every other right of the individual; this is because it constitutes a non-derogable right.²⁵⁵ Article 11 of the ICESCR and Article 27 of the *Convention on the Rights of the Child* are significant to assist the people with access to food and safe haven. Due to the lack of opportunity for most people to pursue work in the job market, Article 6 of the ICESCR can be implemented to grant all persons the right to find suitable employment. The right to achieve standards of health is also substantial under Article 12 of the ICESCR. These guarantees therefore have a particular meaning, as Bangladesh is obliged to comply with its obligations under them, in order to protect the rights of every person.

²⁵² United Nations Treaty Collection, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (status as at: 23-01-2017 05:00:42 EDT) <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-9&chapter=4&clang=en>.

²⁵³ United Nations Treaty Collection, *Convention on the Elimination of All Forms of Discrimination against Women* (status as at: 23-01-2017 05:00:42 EDT) <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-8&chapter=4&clang=en>.

²⁵⁴ United Nations Treaty Collection, *Convention on the Rights of the Child* (status as at: 23-01-2017 05:00:42 EDT) <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-11&chapter=4&clang=en>.

²⁵⁵ Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (Kehl/Strasbourg/Arlington: N.P. Engel, 1993) at 282.

4.1.2 Absence of Protection Rights

I shall now provide a basic picture of how the bureaucracy is not upholding the entitled rights of its citizens, including the Urdu-speaking Community. In several cases, which will be outlined in this section, the enforcement of international law (including human rights), even with the accession/ratification of international legal instruments has been futile. There is perhaps only one major reason behind why international law is not deemed obligatory by the state. This is because even a ratified treaty cannot be formally enforced in the domestic courts of Bangladesh unless they are incorporated into Bangladesh's national laws. This was first stated in the landmark decision of *Hussain Muhammad Ershad v Bangladesh and Others* (2001) 21 BLD 69 (AD).²⁵⁶ Thus, the real situation of Bangladesh, with respect to the domestic application of international law, is characterized by the vagueness of constitutional and legislative provisions. The application process of the principles of the acceded/ratified instruments would require substantial changes and/or additions to the existing laws of Bangladesh. It can cover anything between conferring new powers to the executive (thus bringing new amendments or changes in the Constitution) to improving the rights of citizens. As a consequence of the state's inaction, even the judiciary is unwilling to refer to international legal instruments in most cases.

What is more concerning is the fact that the Appellate Division of the Supreme Court of Bangladesh in 2013, has gone to state that the violation of international law does not have any coercive sanction in the domestic jurisdiction. This is stated in the judgment

²⁵⁶ Paras 2, 3, and 12.

of the War Crimes Tribunal²⁵⁷ in *The Chief Prosecutor v Abdul Quader Molla* Criminal Appeal Nos. 24-25 of 2013.²⁵⁸ The court held that the standards of customary international law would not affect the determination of the element(s) of crimes against humanity. The court justified this by describing the judicial history of Bangladesh (and before its existence) from 1612, and then rejected the requirement to look into the rules of customary international law recognized by international tribunals, by holding that “the legal system of Bangladesh is strong enough to hold trial of the perpetrators of [c]rimes against [h]umanity”.²⁵⁹ As a result, the decision of the court made Bangladesh assert its right to withdraw unilaterally from customary international law.²⁶⁰ This ruling thus applies only to customary international law and such a distinction by the court carries significant weight. Essentially, this further proves that there is no guarantee of a constitutional or statutory provision on how to implement peremptory rules of international law into the domestic legal system. This in turn also poses a serious drawback for Bangladesh’s obligations towards international law. Any further withdrawals from such fundamental rules of customary international law could present certain consequences for the rule of law in Bangladesh.

I will now cite other examples where Bangladesh has merely shown its pledge (or lack thereof) to international legal obligations, but ultimately did not guarantee any rights to individuals. For instance, as was discussed earlier, in 1971, the acquisition of the Urdu-

²⁵⁷ Since 2009, Bangladesh has been prosecuting suspects and war criminals for the genocide committed by the Pakistani Army and its collaborators during the 1971 Liberation War. The trials are taking place in a special court known as the International Crimes Tribunal (Bangladesh).

²⁵⁸ *The Chief Prosecutor v Abdul Quader Molla* Criminal Appeal Nos. 24-25 of 2013, Bangl. Sup. Ct., App. Div., (17 September 2013) at 128.

²⁵⁹ Ehsan A. Siddiq, “Bangladesh Withdraws from Customary International Law: The Practical Implications of Trifling with Custom” (2014) 7:4 J Pol and Law 163 at 163.

²⁶⁰ *Ibid.*

speakers' properties occurred through the promulgation of specific new laws. Their assets were then declared enemy or abandoned property. Even during this preliminary stage after the country's independence, such acquisition was well short of accepted international legal norms. It has been suggested by Sen that such organized persecution of the community's right to property resulted them to domicile in the various refugee camps/settlements by 1972.²⁶¹ Consequently, the acquisition of property for reasons of the Urdu-speakers' ties with Pakistan, in terms of prior nationality and for being members of a particular social group, was clearly in violation of international law.

Other examples are more recent. For instance, the government was in an intricate and difficult situation in June 2012 during the influx of Rohingya refugees from Myanmar who came into the territory of Bangladesh in overcrowded boats. During this time, the Foreign Minister of Bangladesh said:

Some are trying to say that Bangladesh should open the border in line with the international customary law. But I want to say that Bangladesh does not fall under the purview of the law.²⁶²

The bureaucracy has also failed to protect the rights of individuals who are members of human rights organizations, including human rights defenders, their families and supporters. In the last two years alone, reports suggest that the state has allegedly carried out constant practices of harassment, illegal surveillance, unlawful detention and even prosecution.²⁶³ As a consequence, the rights of individuals to express their opinions

²⁶¹ Sen (Part 1), *supra note* 19 at 635.

²⁶² Human Rights Watch, "Letter from Executive Director Kenneth Roth, Human Rights Watch to Bangladesh Prime Minister Sheikh Hasina regarding obligations not to reject refugees" (15 June 2012) online: www.hrw.org/news/2012/06/15/bangladesh-letter-prime-minister-sheikh-hasina-regarding-obligations-not-reject-refu.

²⁶³ Lawyers' Rights Watch Canada, "Letter by Siobhán Airey, Bangladesh: Threats by Bangladesh Police to Odhikar and the Bangladesh Human Rights Commission (BAMAK)" (19 August 2015) online:

in a free and democratic environment have largely suffered. These actions are obviously contrary to the country's international human rights obligations and commitments under pertinent treaties like the ICCPR. Lastly, two more examples: in 2013, the International Labour Organization had called the GOB to take specific measures that are necessary to fulfill its obligations under ratified labor conventions. The Organization advised that the revised laws of the legislature in Bangladesh still do not address several concerns, including "a 30 per cent minimum membership requirement to form trade unions and the extension of the freedom of association and collective bargaining to workers in labor-intensive export processing zones."²⁶⁴ The executive is yet to commit to bringing these new reforms. And, it has further been discovered that the perpetrators who adulterate foods seemingly live with impunity. Due to the regulatory incapacity and general lenience for a number of years, as well as fragmented pieces of legislation that exist, but do not fully reflect international standards, the enforcement scheme has mostly been unsuccessful.²⁶⁵

As this analysis suggests, Bangladesh's policy towards general and specific obligations of international law can come under criticism. But no such derogation by the state is allowed in the scope of international law, and protection rights must be ensured. It is crucial to remember that international law can become binding on a state as per the duties owed under *jus cogens*. This means that the state must guarantee measures in the

<http://www.lrwc.org/bangladesh-threats-by-bangladesh-police-to-odhikar-and-the-bangladesh-human-rights-commission-bamak-letter/>.

²⁶⁴ United Nations News Centre, "Revised Bangladesh labour law 'falls short' of international standards United Nations" United Nations (22 July 2013) online: <http://www.un.org/apps/news/story.asp?NewsID=45470#.Vp02iRFN3II>.

²⁶⁵ SM Solaiman & Abu Noman Mohammad Atahar Ali, "Extensive Food Adulteration in Bangladesh: A Violation of Fundamental Human Rights and the State's Binding Obligations" (2014) 49:5 J Asian & African Stud 617 at 618.

wake of a certain breach of rights.²⁶⁶ In this respect, the treatment of the Urdu-speaking Community is very much contingent on political will, and this would tend to be much more volatile than a well-defined system for their protection rights. The rights and norms of international law and human rights require enforcement if such rights are to be efficiently maintained, and this enforcement must take place at the national level.²⁶⁷ What is urgent for the GOB to do now is to take steps to actually implement the existing international treaties it has signed, acceded, or ratified. Further, the incorporation of international law into the domestic framework can only be done with a clear and valid interpretation process. The dilemma of the people would naturally reduce if the aforesaid provisions entrenched in the ratified and observed human rights treaties like the ICCPR are given priority by the bureaucracy.

Therefore, to sum up this section, it can be said that in several instances, the constitutional, domestic and international laws for the Urdu-speaking Community's protection have mostly been agreed and merely pledged to. But there is still a persistence to not applying the laws enshrined in the books. The obvious observation that can be made here is that there is a central problem with implementation of the laws, which results to a weakness of the rights of the Urdu-speaking people.

²⁶⁶ *Barcelona Traction, Light and Power Company, Limited* (Judgment) [1970] ICJ Rep 3, paras 33-34. The state has to determine whether it has an international obligation, and act accordingly to fulfill such obligation. In the case where the state neglects its obligation, and persons are ultimately injured, this would amount to a violation committed by the state for not carrying out its legal duty. See also *United States Diplomatic and Consular Staff in Tehran* (Judgment) [1980] ICJ Rep 3 at 30-31.

²⁶⁷ Haddad, *supra note* 162 at 75.

4.2 Applying the Scope of International Human Rights Law

The table below shows some of the key international instruments that are of general importance and apply for the Urdu-speaking Community, which I will be investigating throughout much of this section. These instruments have been signed, acceded or ratified by the GOB, and are as follows:

Table 1: List of treaties signed, acceded, or ratified by the Government of Bangladesh

International Instrument	Signed/Acceded/Ratified
<i>Universal Declaration of Human Rights, 1948</i>	Undertaken Principles
<i>International Covenant on Civil and Political Rights, 1966</i>	Acceded (September 6, 2000)
<i>International Covenant on Economic, Social and Cultural Rights, 1966</i>	Acceded (October 5, 1998)
<i>International Convention on the Elimination of All Forms of Racial Discrimination, 1966</i>	Acceded (June 11, 1979)
<i>Convention on the Rights of the Child, 1989</i>	Ratified (August 3, 1990)
<i>United Nations Convention against Corruption, 2003</i>	Acceded (February 27, 2007) ²⁶⁸
<i>Convention on the protection and promotion of the diversity of cultural expressions, 2005</i>	Ratified (August 31, 2007) ²⁶⁹

I have stated before that a ratified treaty cannot be enforced in Bangladeshi courts unless they are incorporated into domestic laws.²⁷⁰ Nevertheless, it is indisputable that a copious number of fundamental laws do exist in the domestic framework as the GOB has

²⁶⁸ United Nations Treaty Collection, *United Nations Convention against Corruption* (status as at: 23-01-2017 05:00:42 EDT) <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtsg_no=XVIII-14&chapter=18&clang=en>.

²⁶⁹ United Nations Treaty Collection, *Convention on the protection and promotion of the diversity of cultural expressions* <<https://treaties.un.org/Pages/showDetails.aspx?objid=080000028017b236>>.

²⁷⁰ See paras. 2, 3 and 12 of *Hussain Muhammad Ershad v Bangladesh and Others* (2001) 21 BLD 69 (AD). Bangladesh has typically followed the ‘transformation theory’, meaning that rules of international law only become part of national law when they have been expressly adopted by the state.

accepted instruments like the UDHR and ICCPR to be legally binding agreements as governed by international law. Each of these instruments that has been distinctly incorporated in the national legislation (for instance, the best interests of a child under the *Convention on the Rights of the Child* is incorporated into Section 86 of *The Children Act, 2013*) imposes obligations on the GOB. Moreover, certain duties have to be carried out and a failure to follow the terms of a binding treaty will incur international responsibility unless where a defense is available. The instruments cited in the table above unequivocally apply for the Urdu-speaking Community to which the GOB is bound since the accession of the stated instruments has the same legal effect as ratification. There is however one big problem, which I briefly mentioned in part 4.1.2. In spite of the stated international instruments relied upon by Bangladesh and their present status in the country, the fact is that there is no precise constitutional or statutory provision as regards the ratification of treaties in Bangladesh, and the Constitution also does not specify any clear provision for the implementation of treaties such as the ICCPR and ICESCR into domestic law. As a result, with a dualist system, almost all of the international treaties cited above that are signed and ratified by the GOB will essentially require implementing legislation or constitutional amendment to apply them within the domestic jurisdiction under specific circumstances, including but not limited to: involving alteration of the existing law, conferring new powers to the executive, and determining how the law might affect the right of citizens.²⁷¹ Hence, if these specific instruments are not fully sanctioned, the likelihood of constructive changes in the national laws of Bangladesh cannot be realized.

²⁷¹ Mazharul Islam “Absence of legal regime to apply treaties” *The Daily Star* (8 September 2015) online: The Daily Star (Dhaka, Bangladesh) <<http://www.thedailystar.net/law-our-rights/absence-legal-regime-apply-treaties-139354>>.

Be that as it may, the protection mechanism for the Urdu-speaking Community in accordance with international human rights law is curious. As the interviews patently suggest, there is no occurrence of any systemic violation of the community's human rights since certain people have been capable of claiming their rights while concurrently others have not, so their rights remain unfulfilled. The GOB must comprehend that human rights are much more ubiquitous in their influence than ever before, where abuses of peoples' basic rights by their own states are becoming increasingly difficult to defend.²⁷² Equal rights are crucial to the Urdu-speakers' recognition as true citizens, yet this is not happening as the people are continually confronted with obstacles due to a lack of political will. Despite this, there are a plethora of international legal treaty provisions that can be construed for the community's situation.

Firstly, the principles of international human rights law and the body mandated to act on it must not be overlooked because international human rights law protects all persons, regardless of their citizenship.²⁷³ Apart from the issue of recognition as citizens, the whole Urdu-speaking Community is eligible to enjoy human rights. The notion of these rights extends to every person in every society and it exists beyond any form of discrimination. Human rights are not civil rights, and they cannot be taken away by anybody. At its core, such rights are based on the values of dignity, justice, respect and equality. So human rights exist only in the abstract for people everywhere have rights, but

²⁷² Faulks, *supra note* 217 at 168.

²⁷³ Sharryn J. Aiken, Catherine Dauvergne, Donald Galloway, Colin Grey & Audrey Macklin, *Immigration and Refugee Law: Cases, Materials, and Commentary*, 2d ed (Toronto, Canada: Emond Montgomery Publications Limited, 2015) at 255.

these rights only will have meaning within the legal system of states; this signifies that at the national level human rights and positive rights can coexist and reinforce each other.²⁷⁴

Usually, a proper way to apply international human rights law is by legislating and codifying it into domestic law, as the framework exists internationally even though there is no direct international authority administering or acting on it. Thus, it can be enforced through a ‘transnational’ legal process, where institutional interaction occurs and global norms of international human rights law are interpreted and eventually internalized by domestic legal systems.²⁷⁵ This is where the signing of treaties entails meaning for compliance and protection. Pushing the state into line to follow international agreed standards by using the local courts and human rights bodies can build pressure for governments. In addition, quasi-legal enforcement mechanisms such as the Human Rights Committee under the ICCPR, and the Human Rights Council’s Universal Periodic Review involve responsibility of states to improve and enforce the law.

The Constitution of Bangladesh recognizes the International Bill of Human Rights and major international treaties like the ICCPR and have implemented their model in the domestic law such as the ‘Fundamental Principles’ of the Constitution. It can be claimed that the UDHR does not really protect people’s human rights because governments dedicate themselves to upholding human rights, while at the same time, they may take those same rights away. Even so, the UDHR by itself is a set standard for all nations, albeit it is not a treaty or legally binding, and Bangladesh has incorporated its provisions in its Constitution, most notably the fundamental rights for citizens and even non-citizens

²⁷⁴ Haddad, *supra* note 162 at 74.

²⁷⁵ Harold Hongju Koh, “How Is International Human Rights Law Enforced?” (1999) 74:4 Article 9 Ind LJ 1397 at 1399.

as enshrined in Articles 27 to 44. For the GOB, the International Bill of Human Rights remains crucial to an understanding of the minimum obligations owed by a state to its nationals more than any other gauge possible.²⁷⁶

I shall now examine and distinguish the relevant provisions of some of the international instruments that are attributable to the Urdu-speaking Community with regard to their human rights. The UDHR is of definite significance. Equality is declared under Article 1, which expresses that all human beings born are equal, while Article 2 advises that every individual has an entitlement to rights beyond any form of discrimination or distinction. Under Article 15, no one may be arbitrarily deprived of her or his nationality. International law likewise recognizes the weight of nationality, which is illustrated by several treaties that identify and extend a degree of legal application to it. Because the Urdu-speakers in the interviews have said that their recognition is disregarded, the state must warrant their right of recognition as persons before the law (Article 6 of UDHR and Article 16 ICCPR), and that everyone is equal before the law and are entitled without any discrimination to equal protection of law (Article 7 of UDHR). Article 3 of the UDHR, which denotes the life, liberty and security of person (also a fundamental right under the Constitution's Article 32), and Article 6 of the ICCPR need to be taken into account as camp residents have previously come under harm because of violence.²⁷⁷

As analyzed in the second chapter, discrimination is rampant in most people's lives and the bureaucracy must take into consideration that it is in violation of a number

²⁷⁶ James C. Hathaway & Michelle Foster, *The Law of Refugee Status* (Cambridge, United Kingdom: Cambridge University Press, 2014) at 201.

²⁷⁷ The Financial Express, *supra note* 16.

of international legal principles that the GOB has acceded or ratified under different treaties. For instance, non-discrimination is clearly underlined in the ICCPR. Article 2(1) designates that it is the duty of the state to respect and ensure that all individuals are recognized without any distinction of any kind, particularly in terms of their language, national and social origin, or any other status. Each person has a right to an effective remedy. Article 26 of the ICCPR is vitally important and articulates:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

These provisions establish a positive state obligation to safeguard persons from discrimination and from any sort of incitement to it. In requiring a legal prohibition of discrimination, and legal guarantees of equal and effective protection against it, Article 26 can be said to create a separate ‘right not to be discriminated against’, independent of other rights and freedoms.²⁷⁸ Discrimination is additionally defined under Article 1 of the *International Convention on the Elimination of All Forms of Racial Discrimination*, 1966:

In this Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

In the prior chapters, I have assessed how the administration is currently dealing with the community’s property rights with respect to the national legislation. With regard

²⁷⁸ Paul Sieghart, *The International Law of Human Rights* (New York, United States of America: Clarendon Press, 1983) at 77.

to international human rights law, the situation is similarly concerning and needs to be addressed by the GOB as soon as possible. Given the context of ‘enemy property’ and the community’s incapacity of recovering their former lands, the *Vested Property Return Act*, 2001 is in clear violation of basic fundamental human rights norms, and the international jurisprudence that governs the behavior of states and its citizens. The law allowed control of properties on the administration’s own motion and without providing any consultation to those people’s seized properties. Since members of the community are denied to file any suit for any probable recovery of property and the fact that people have not received any form of compensation after so many decades, Bangladesh’s pledge under Article 8 of the UDHR (the right to an effective remedy for acts violating fundamental rights) and Article 17 of the UDHR (the right to own property) has largely been ignored. Further, by specifically restricting and depriving the Urdu-speakers’ from obtaining due process under the Abandoned Property Order and the Vested Property Act, the actions of the administration have breached Articles 2 and 7 of the UDHR. This is because people have not received their equal and due protection before the law. Following Bangladesh’s accession to the ICCPR, it has also been contravening Articles 2 and 26 (the right to an effective remedy and equal protection without discrimination under the law) through the continuous appropriation of the Urdu-speakers’ properties because of the existing domestic laws. The state has to be mindful of the fact that public authorities and institutions are bound to protect individuals from any acts of discrimination and to amend, rescind or nullify any policies of government that prolong discrimination against groups (Article 2 of the *International Convention on the Elimination of All Forms of Racial Discrimination*). The present circumstance thus shows that there are ongoing

infringements of protections of the right to own and inherit property, and the right to housing (Articles 5(d)(v), 5(d)(vi), 5(e)(iii) of the *International Convention on the Elimination of All Forms of Racial Discrimination*). Besides, the GOB is obliged by generally accepted norms and practices of customary international law in respect of the right to property and equal protection before the law. An example of this is the principle of *jus cogens*, which is meant for everyone because they are higher order norms binding on all States according to customary international law regardless of whether the State has expressly consented. There is an established principle of international law as well that suggests that a state is not permitted to invoke their domestic system's laws or procedures as a basis for not complying with international treaty obligations.²⁷⁹

In addition, forced eviction threats for Geneva Camp residents may occur if any future order is passed. These threats are likely to continue since before 1971, a Bengali housing association owned the land that is now Geneva Camp, and over the years attempts have been made by members of the association to get parts of the land back.²⁸⁰ There are a number of cases that have been filed, although none of them have been successful so far. Yet, enormous anxiety has been generated in the community and some say that through the acquisition of citizenship, those in the camps have lost a special status that 'statelessness' had once provided before.²⁸¹ The bureaucracy must bear in mind that any eviction could amount to an encroachment of human rights and is especially *prima facie* incompatible with the responsibilities enshrined under Article 25 of both the UDHR and ICESCR. Lastly, as the prejudicial laws are affecting the

²⁷⁹ *Polish Nationals in Danzig* (1931), PCIJ (Ser A/B) No 44 at 24.

²⁸⁰ Redclift, *supra note 3* at 121.

²⁸¹ *Ibid.*

community, it may be recommended that the state needs to rectify this by creating a procedure to return the vested properties to their rightful owners. One of the ways in which this may be addressed is if the administration amends the laws or provides compensation to the Urdu-speakers according to a fair current market value. Conversely, if the Geneva Camp residents are made to move out of the settlement in the future, their potential accommodations need to be of a sufficient standard, and not be relegated to conditions that are worse than the existing circumstances.

To sum up this part, we need to recall the problem of corruption. Because corruption is an incessant issue facing the Urdu-speakers, the bureaucratic process needs to be just and transparent when it comes to dealing with the community. After all, the GOB has acceded to the *United Nations Convention against Corruption, 2003* and is compelled to implement anti-corruption policies. The administration must ensure that the community does not participate in illegal practices, such as bribing public officials to acquire passports. As a state party to the Convention, the government must develop, implement and maintain coordinated anti-corruption strategies that promote the participation of society (Article 5). In order to fight corruption, the state has to be informed of the functions of public officials and uphold ethical codes of conduct as per the fundamental principles of the legal system, and report acts of corruption to the appropriate authorities (Article 8). Similarly, initiating legal proceedings against those responsible and compensation for damages need to be guaranteed (Article 35).

Thus, the realization of the above-mentioned instruments needs to happen, as Bangladesh is obliged to take the requisite steps by applying its legislative and

administrative measures correctly. The rule of law would then be reflected within the legal system and upheld with certain integrity.

4.3 State Responsibility: Economic, social, and cultural rights

Economic, social and cultural rights encompass substantial legal entitlements for the entire Urdu-speaking Community. This is because both international and regional human rights systems underscore that states have a responsibility to protect those living within their jurisdiction from violations, and this duty is commonly agreed to exist under customary international law.²⁸² I have explained that at the domestic level, the basic means of protecting human rights is through constitutional provisions and other laws that entrench such rights. While constitutional provisions have been broadly used to safeguard civil and political rights, there is no reason in principle why this should not be extended to economic, social and cultural rights, given that both these sets of rights are mutually reinforcing.²⁸³ However, there are some debates regarding the enforcement of economic, social and cultural rights. Civil and political rights have typically found judicial remedies for violations, but the same cannot be said about economic, social and cultural rights. In comparison to civil and political rights, some suggest that the exact legal meaning and subject of economic, social and cultural rights is less well developed and remains implicit because the human rights movement, the academic community and national governments have devoted little attention to comprehend and protecting such rights.²⁸⁴ For that reason, the implementation process is perhaps strongest for civil and political rights because they

²⁸² Manisuli Ssenyonjo, *Economic, Social and Cultural Rights in International Law* (Oxford, United Kingdom; Portland, Oregon: Hart Publishing, 2009) at 109-10. See also Article 2(1) of the ICESCR.

²⁸³ Manisuli Ssenyonjo, *Economic, Social and Cultural Rights in International Law* (Oxford, United Kingdom; Portland, Oregon: Hart Publishing, 2009) at 151.

²⁸⁴ Manoj Kumar Sinha, *Enforcement of Economic, Social, and Cultural Rights: International and National Perspectives* (New Delhi, India: Manak Publications Pvt. Ltd, 2006) at 310.

are taken more seriously by states as opposed to the violations of economic, social and cultural rights. One of the causes for this may be the fact that the primary importance has been on making basic civil and political rights meaningful for people whose human rights have less significance because of continuous deprivation and exploitation.²⁸⁵ This also means that the costs of providing civil and political rights are reasonably inexpensive, such as offering equal education, whereby a state that wants to promote it can commit to it at a lower cost as opposed to the varied economic, social and cultural rights which are predominantly 'expensive' to apply in reality. It is further necessary to keep in mind that the enforcement of economic, social and cultural rights is a general problem around the world, and not merely confined in the Global South or Bangladesh. The enforcement mechanism of these rights is mostly weak and most states are not doing much about it, and at the moment, the GOB is ensuring certain of these rights but not doing enough so progress has been both incremental and slow. Hence, international human rights in this context is sometimes not upheld properly and perfect access to all such rights can therefore be aspirational as they often come under a scale of measure. With regard to Bangladesh's domestic legal framework, the law is still there to tackle the inspected impact indicators so it is required for the GOB to understand that the international community has agreed to certain standards and the aforementioned listed international human rights treaties serve as a scale even though the highest point is rarely reached. These standards are in a way within the expectations in the jurisprudence of international human rights organizations for the realization of freedoms and recognition of rights, and countries, whether situated in the states of the Global South or Global North, need to work progressively to uphold these rights despite the existence of particular constraints.

²⁸⁵ Ibid at 313.

Thus, states are obligated to the duties arising under instruments like the ICESCR.

Article 2, which is a binding provision for states requires:

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

So the legal duty to realize the ICESCR is enumerated in this provision. Unfortunately, this may not work since Bangladesh has reserved the right to interpret Articles 2 and 3 pertaining to non-discrimination, in accordance with the provisions of its own Constitution and domestic laws. The reservation of such treaty provisions acts as a weakness due to the lack of certainty in adhering to the rules of international law. Still, with the current available resources, Bangladesh needs to genuinely and gradually implement the groundwork provisions that this treaty is meant to guarantee. For instance, Article 2(2) requires the government to ensure that everyone enjoys specific rights without any form of discrimination. It prescribes the application of special measures “for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms”. According to General Comment No. 20 (2009) of the Committee on Economic, Social and Cultural Rights, there are various distinctions in the manifestation of discrimination; they include formal and substantive discrimination, direct and indirect differential

treatment, and discrimination in the private and public spheres, which all amounts to a violation of Article 2(2) of the ICESCR.²⁸⁶ Besides following treaties, it can be argued that the prevalence of non-discrimination provisions in international law are indicative of their status as part of customary international law;²⁸⁷ therefore Bangladesh must conform to such rules.

I shall now evaluate the ICESCR's most integral provisions that the GOB can apply for the Urdu-speakers. Firstly, the right to property and proper housing has to be addressed under Article 11(1). While Bangladesh has reserved Articles 2 and 3 in respect of certain aspects of economic rights and the law of inheritance in accordance with its Constitution, the Committee on Economic, Social and Cultural Rights has explicitly observed that the right to property should not merely be interpreted in a restrictive sense but that everyone has a right to live in security, peace and dignity.²⁸⁸ The Committee further points out that every person should possess legal protection against forced eviction, harassment and/or any other kind of threat.²⁸⁹ As the Urdu-speakers continue to face threats of eviction, such acts are incompatible with the requirements of the ICESCR.²⁹⁰ If any person is relocated, it must be justified and compatible with their rights in order to preserve the community's dignity and general welfare (Article 4). Hence, the state would need to develop a coordinated program for the right of access to

²⁸⁶ United Nations High Commissioner for Refugees, *Minority Rights: International Standards and Guidance for Implementation* (Geneva: UNHCR, 2010) at 11.

²⁸⁷ *South-West Africa Cases* (Judge Tanaka's Dissenting Opinion) [1996] ICJ Rep 3 at 293.

²⁸⁸ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.4: The Right to Adequate Housing (Art. 11(1) of the Covenant)*, 6th Sess, UN Doc E/1992/23 (13 December 1991) <<http://www.refworld.org/docid/47a7079a1.html>> para. 7.

²⁸⁹ *Ibid* at para. 8(a).

²⁹⁰ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.7: The Right to Adequate Housing (Art. 11.1): Forced Evictions*, 16th Sess, UN Doc E/1998/22 (20 May 1997) <<http://www.refworld.org/docid/47a70799d.html>> para. 1.

suitable alternate accommodations with its available resources. On another note, since a few Geneva Camp respondents have indicated that safe drinking water is sometimes inaccessible, the administration must remember to provide people adequate sanitation with safe, affordable and clean water, and additionally prevent and/or treat diseases (Articles 11 and 12).

Secondly, education is a pivotal concern as many community members are being deprived of this fundamental right. Article 26 of the UDHR encapsulates about the right to education, while Article 13(1) of the ICESCR stipulates that state parties must guarantee that education allows all persons to participate equally and effectively, and promote understanding, tolerance and friendship amongst all ethnic groups.²⁹¹ Bangladesh has in addition ratified the *Convention on the Rights of the Child*, 1989, so the bureaucracy must respect and guarantee the Urdu-speakers' rights without discrimination of any kind, irrespective of a child's or their parent's language, ethnic or social origin, political or other opinion, or any other status (Article 2). The government is obliged to recognize children's right to education with a view to positively achieving it on the basis of equal opportunity, and take measures to encourage attendance at schools and reduce dropout rates (Article 28(1)(e)). These rules are enunciated in the *International Convention on the Elimination of All Forms of Racial Discrimination*, 1966 as well. Articles 2(1)(a) and 5(e)(v) instruct that appropriate measures have to be taken by the state to combat discrimination against groups, and to ensure that public authorities and institutions act in conformity with this obligation. Such measures need to be effective

²⁹¹ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 21st Sess, UN Doc E/C.12/1999/10 (8 December 1999), para. 6(b).

and immediate in nature for propagating the purposes of the *United Nations Charter* and UDHR (Article 7). I have stated earlier that community members are also suffering because of the actions of education administrators. The bureaucracy's tacit encouragement for this cannot be tolerated since the GOB clearly has the capacity to intervene. The choice to not intervene to help people with regards to their deprivation may currently be dictated by the internal policies of colleges and universities, but such activities are infringing both Bangladesh's domestic and international legal obligations.

Thirdly, the right to work and proper employment hangs in the balance too. In international human rights law, the right to work is understood to transcend mere survival, but forms an inherent part of human dignity and is critical to the development and recognition of people.²⁹² The right to work does not require the state to employ individuals; instead it protects an individual's right to choose their work by guaranteeing that they are not unfairly deprived of employment.²⁹³ States have a responsibility to safeguard the right of access to employment by preventing methods that discriminate against marginalized groups and by applying national plans of action to effectuate the right to work for those who are disadvantaged.²⁹⁴ Since many Urdu-speakers are doing jobs in the informal sector, where they have mostly trained themselves, the GOB should produce a plan to fully realize the community's capacity to work. This may be achieved by firstly addressing the bureaucratic process to prevent discrimination when members of the community are trying to find jobs. As referred before, proper residential addresses for

²⁹² Hathaway & Foster, *supra note* 276 at 256.

²⁹³ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 18: The Right to Work (Art. 6 of the Covenant)*, 35th Sess, UN Doc E/C.12/GC/18 (6 February 2006) <<http://www.refworld.org/docid/4415453b4.html>> para. 6.

²⁹⁴ *Ibid* at para. 31.

the settlements' inhabitants can pave the way for employment as well. The government can also foster technical and vocational guidance/training programs that facilitate access to employment (Article 6 of ICESCR). Allowing people to take part in government jobs (Articles 21(2) and 23 of UDHR) is similarly required since some respondents have mentioned that they are denied this right. On the other hand, Bangladesh has ratified the International Labour Organization's *C111 - Discrimination (Employment and Occupation) Convention*, 1958 (No. 111). According to Article 3, the administration is compelled to undertake methods appropriate to seek cooperation of employers and other bodies in promoting the acceptance and observance of equal access of employment.

Finally, the cultural practices of the Urdu-speakers are occasionally subject to disruption and even prohibition. It is imperative for the state to recall that as a minority population in Bangladesh, the Urdu-speaking Community has the right to take part in their cultural life. Article 5(d)(vii) of the *International Convention on the Elimination of All Forms of Racial Discrimination* supports the right to freedom of thought and conscience. Article 15(1)(a) of the ICESCR, in line with Article 27 of the UDHR, allows participation in an individual's own community. Bangladesh is further bound by its duties after ratifying the *Convention on the protection and promotion of the diversity of cultural expressions*, 2005. The treaty asks the state to recognize every community's distinctive nature of cultural activities (Article 1), and the equal dignity of and respect for all cultures, irrespective of whether the cultural practice is performed by the majority or not (Article 2(3)). The state is obliged to promote cultural expression under Article 7(1)(a):

Parties shall endeavor to create in their territory an environment which encourages individuals and social groups: to create, produce, disseminate, distribute and have access to their own cultural expressions, paying due attention

to the special circumstances and needs of women as well as various social groups, including persons belonging to minorities and indigenous peoples.

Therefore, states are prohibited from interfering with the exercise of people's cultural practices, and must allow specific preconditions for participation, facilitation and promotion of cultural life.²⁹⁵ Policies to tackle cultural inequalities are naturally beneficial to minorities but can also generate backlash among the majority,²⁹⁶ but this should not be any excuse for the administration. The GOB has to remove impediments that restrict access to culture, and take actions to protect the diversity of the Urdu-speaking Community's cultural expressions, and enable all cultures in Bangladesh to freely express themselves and make themselves known. Raising awareness and allowing mutual appreciation amongst all individuals and groups in society is essential as it can help preserve the cultural heritage of the Urdu-speakers and other ethnic groups and minorities living in Bangladesh.

As suggested, the enforcement mechanism of these economic, social, and cultural rights begs some questions. In general, these rights are merely aspirational but justiciable and can be enforced under the ICESCR when a state incorporates certain rights into its domestic laws that allow people to make claims. Yet, such rights are not achievable in a short span of time, so states are usually obliged for their 'progressive realization' and have to move expeditiously towards that goal.²⁹⁷ While the Committee on Economic,

²⁹⁵ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 21: Right of Everyone to Take Part in Cultural Life (Art. 15, para 1a of the Covenant)*, 43rd Sess, UN Doc E/C.12/GC/21 (21 December 2009) <<http://www.refworld.org/docid/4ed35bae2.html>> para. 6.

²⁹⁶ Matthew Wright & Irene Bloemraad, "Is There a Trade-off between Multiculturalism and Socio-Political Integration? Policy Regimes and Immigrant Incorporation in Comparative Perspective" (2012) 10:1 *Persp on Pol* 77 at 79.

²⁹⁷ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, para 1 of the Covenant)*, 5th Sess, UN Doc E/1991/23 (14 December 1990) <<http://www.refworld.org/docid/4538838e10.html>> para. 9.

Social and Cultural Rights oversees how countries apply the ICESCR (every five years, state parties to the Covenant submit the Committee a report expressing how they have been implementing the treaty),²⁹⁸ Bangladesh's reports to the Committee have not been encouraging, as the country has not produced reports on a regular basis.²⁹⁹

In concluding this part, it can be said that there are several domestic laws that are maintaining the Urdu-speaking Community's economic, social and cultural rights. It is obvious that some of the ICESCR's provisions are reflected in the Bangladesh Constitution, which makes a commitment to protecting the welfare and freedom of each citizen without discrimination on the grounds of membership in a community. But there are still protection gaps for violations. To apply the treaty more effectively at the domestic level, the Committee on Economic, Social and Cultural Rights has stated that the Covenant is a legally binding human rights instrument that should operate 'directly and immediately' within the legal system of each state party.³⁰⁰ The GOB can still implement the Covenant's objectives to produce suitable plans, including social and administrative measures for the Urdu-speakers. In order to prevent abuses, an efficient regulatory system must be instituted, one which includes independent monitoring, genuine public participation and the imposition of penalties for non-compliance.³⁰¹ The bureaucracy would thus be required to refrain from any prejudicial practice by following the legal policies of the government to implement the community's rights, and take definite measures so that persons do not discriminate against the community in any field

²⁹⁸ International Justice Resource Center, "Economic, Social and Cultural Rights" online: <<http://www.ijrcenter.org/thematic-research-guides/economic-social-and-cultural-rights-2/>>.

²⁹⁹ Office of the United Nations High Commissioner for Human Rights, "Treaty bodies Search" online: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en>.

³⁰⁰ Ssenyonjo, *supra note* 282 at 151.

³⁰¹ *Ibid* at 111.

of public or private life. In an ideal sense, if authorities are to exercise their responsibilities in a judicious manner, administrative remedies would mostly be adequate as people have a legitimate expectation, based on the principle of good faith, that authorities will take account of the requirements of the ICESCR and other international obligations in their decision-making.³⁰² Moreover, with respect to the enforcement of the ICESCR, some say that the right to an effective remedy need not always be interpreted as requiring a judicial remedy,³⁰³ but this is not necessarily the case for the Urdu-speakers as they are confronted with obstacles frequently. It is perhaps advisable that in order to fully realize compliance with the treaty, the administration needs to offer future judicial remedies, as the present legislative, administrative and social measures are not covering all of the community's rights. The development of these economic, social and cultural rights in the human rights framework cannot be the sole responsibility of the government either because while governments have a chief duty to ensure a proper enabling environment for observing human rights, other sectors like civil society must take accountability too.³⁰⁴

4.4 Minority Rights Protection: A Brief Assessment

At this point of the thesis, it is apparent that the Urdu-speaking Community, while being citizens, is still regarded as a minority population amongst other ethnic groups living in Bangladesh. But the community cannot be strictly considered to fall under the conventional definition of a minority as they are living in over 100 settlements in different parts of the country, and share similarities with the rest of the majority

³⁰² Sinha, *supra note* 284 at 307.

³⁰³ Ibid.

³⁰⁴ Ibid at 309.

population in terms of following the same religion and even a few cultural attributes. Furthermore, many of the community members now speak in Bengali than ever before. Regardless of these facts, the Urdu-speakers do have a particular legal standing as a minority, which means that the GOB has a duty to afford more protection, as the people still remain marginalized.

In international human rights law, minority rights apply to ethnic and linguistic groups as well as religious or indigenous people. While there is no special law to protect minority rights in Bangladesh, the Constitution expresses that every citizen has equal rights, and the state shall uphold the rights of ethnic sects and communities (Article 23A). It warrants people to participate in the matters that are significant to their identity, so the Urdu-speakers are protected through rights that encompass the preservation of their cultural identity, non-discrimination, and to engage in the broad spectrum of political life. In respect of international instruments, Bangladesh has pledged towards supporting equality of individuals (Articles 2 and 7 of UDHR), and is bound to adhere to the right of everyone to express their thought and conscience (Article 18(1) of ICCPR). Article 27 of the ICCPR, which is a legally binding provision, expresses:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

This produces a *jus cogens* obligation on the GOB as it represents the standards of general international law. The same norm is also laid down in Article 30 of the *Convention on the Rights of the Child*. Article 1(1) of the *Convention on the Elimination of All Forms of Racial Discrimination* equally applies. Since Bangladesh has ratified

these treaties, the government must guarantee that people belonging to any minority are not denied this set of rights. UN Member States further recognize the *United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*. The community's entitlement to speaking Urdu is necessary too, as linguistic expression and tolerance are essential elements of minority rights, and its recognition is ordinarily achieved through public education and the mass media.

Some argue that there is no universal mechanism for implementing minority rights because they are not open to minorities as a collective but to the individual; as a result, political pressure remains the sole avenue for addressing grievances of minority groups.³⁰⁵ So states provide generous treatment to minorities through their municipal law, but are generally unwilling to increase their obligation vis-à-vis minorities into detailed rules of universal application.³⁰⁶ There is even some doubt as to whether states have any positive responsibilities beyond noninterference with the rights of minorities to enjoy their culture and use their language.³⁰⁷ The absence of effective enforcement under treaties like the ICCPR enables state parties to offer minimal constitutional protection to members of distinct groups.³⁰⁸ Nevertheless, the majority rule in Bangladesh needs to continue respecting minority rights and deter any forms of discrimination, which is fundamental to a democratic government and goodwill. The leaders from the Urdu-speaking Community and respective political representatives must come forward to allow the administration to maintain the existing enforcement mechanisms. Through good

³⁰⁵ Jelena Pejic, "Minority Rights in International Law" (1997) 19:3 Hum Rts Q 666 at 684.

³⁰⁶ Patrick Thornberry, *International Law and the Rights of Minorities* (New York, United States of America: Clarendon Press, 1991) at 388.

³⁰⁷ Pejic, *supra* note 305 at 676.

³⁰⁸ Helen O'Nions, *Minority Rights Protection in International Law: The Roma of Europe* (Hampshire, England, Burlington VT, USA: Ashgate Publishing Limited, 2007) at 96.

governance, dialogue, and participation via education and the media, the citizens of any given society can shape a better understanding of each other's concerns.³⁰⁹ In that sense, the Urdu-speakers have to believe that the majority of the Bangladeshi society will keep their wishes in mind when making decisions that affect them. After all, only through the democratic process of tolerance and willingness to cooperate together can liberate societies to reach understandings that embrace the twin pillars of majority rule and minority rights.³¹⁰

³⁰⁹ United Nations World Conference against Racism, *Multi-ethnic States and the Protection of Minority Rights* <<http://www.un.org/WCAR/e-kit/minority.htm>>.

³¹⁰ Ibid.

CHAPTER 5: REFINING EXISTING POLICIES FOR THE URDU-SPEAKING COMMUNITY'S NATIONAL INTEGRATION IN BANGLADESH

5.1 Political Will for the Urdu-speakers: A Pragmatic Reality?

Before we assess the prospects of national integration, we must first see the scope of political will. This thesis has shown much of the relationship of the GOB and the Urdu-speaking Community, which one can say has interestingly developed in the course of nearly fifty years. In contrast with the past, the community is in a much more favorable position, especially because of the 2008 judgment which has led them to break away from the cycle of *de facto* statelessness. However, they are troubled due to the bureaucracy's present lack of political will and a proper rehabilitation strategy, and this is impeding people's rights to exercise citizenship and making them feel alienated from the law. The Urdu-speakers' treatment with regard to their marginalization, political disengagement and discrimination persists to weaken the rule of law, and as a consequence, the community remains a uniquely misunderstood and ostracized minority, which in itself has led to a form of 'democratic legitimacy' in Bangladesh. One can interpret the lack of political will happens because of a continuation of negative will. This has specifically resulted to the bureaucracy to not correctly apply the laws that the people urgently need.

While the idea of political will exists in every country, the question of whether it exists to function or not is largely dependent on the type of government that is in power. As this thesis has probably revealed by now, even a government's willingness to act and create opportunities for development does not in essence belong to higher officials or ministries; rather it is the bureaucracy that is very much responsible to implement policies. For the Urdu-speakers, it can be said in general that the government has

positively accepted the Supreme Court's decision and it has policies to help the community that reflects this. Nonetheless, even when a governmental policy instructs a specific action, such as spending allocated funds for a project or providing assistance to citizens, the bureaucracy is ultimately meant to implement itself to carry out such actions.

There is no concrete evidence to suggest that the Urdu-speaking Community have been treated differently in terms of the regime-to-regime changes of government in Bangladesh over the past four decades. This is because no major political party has directly associated itself with the community, albeit they have seemingly accepted them as citizens according to the court's ruling. It is quite possible that due to the deep-rooted history of Bangladesh as a nation which struggled for its independence from Pakistan, the Urdu-speakers were treated negatively in the past. It is also quite likely that this negative attitude exists to this day because of the sentiments of political parties that recall the Liberation War of 1971. Yet a comparison can be drawn here with other ostracized communities like the Rohingya refugees from Myanmar who first started coming to Bangladesh in the late 1970s, where political parties have shown both support on humanitarian grounds as well as contentions against the growing refugee population over the last three decades.³¹¹ The opinions of most political parties concerning the Urdu-speakers are not all too clear though, but it may be said that providing absolute sympathy to the community is still 'politically risky' even at present.

Besides, the fact remains that there are no members of the Urdu-speaking Community who hold leadership positions in any major political party in Bangladesh.

³¹¹ "BNP urges govt to shelter Rohingyas" *bdnews24.com* (15 June 2012) online: Bangladesh News 24 Hours Ltd. (Dhaka, Bangladesh) <<http://bdnews24.com/politics/2012/06/15/bnp-urges-govt-to-shelter-rohingyas>>.

Currently, there are three individuals from the Hindu community who are represented politically in the National Parliament,³¹² and two members of the Buddhist minority engaged in mainstream national politics.³¹³ As the Urdu-speakers do not hold such status, this may be another reason that makes the community vulnerable. Unlike the Urdu-speakers, other religious and ethnic minorities such as the Hindu and Buddhist communities are also in a better position to deal with their rights as these groups are not treated as distinctively as the 'Bihari'. Even though there has been an erosion of Bangladesh's secular tradition due to the suppression of minority identities that have diminished the chances for their political participation,³¹⁴ these groups still have a voice and the bureaucracy does not treat them as adversely. A reason for this is perhaps because both the Hindu and Buddhist communities have an international 'stronghold' particularly within South Asia, with support from countries like India and Sri Lanka. The same cannot be said about the Urdu-speakers.

The near absence of international attention for the community is consequently a factor that hinders political will. Other minority groups or even refugees like the Rohingyas are hosted under specific programs, whereby Bangladesh continues to meet international obligations. For example, the Universal Periodic Review, which evaluates human rights records of United Nations' Member States in periodic cycles, suggests that the Rohingyas are deemed by the GOB as a socially marginalized group in need of

³¹² Members of Parliament include Mr. Suranjit Sengupta, Mr. Ramesh Chandra Sen, and Mr. Manoranjan Shill Gopal. See Bangladesh Parliament, *List of 10th Parliament Members* <<http://www.parliament.gov.bd/index.php/en/mps/members-of-parliament/current-mp-s/list-of-10th-parliament-members-english>>.

³¹³ They are Mr. Dilip Barua, Minister of Industries of Bangladesh, and Mr. Jyotirindra Bodhipriya Larma, leader of *Parbatya Chattagram Jana Samhati Samiti*, which is a regional political party representing the indigenous tribes of the Chittagong Hill Tribes of Bangladesh.

³¹⁴ Rehman Sobhan, "Building a Responsible Civil Society: Challenges and Prospects" in *Bangladesh: Promise and Performance*, Rounaq Jahan, ed. (London and New York: Zed Books Ltd, 2000) at 344.

special protection.³¹⁵ The GOB has accordingly protected such segments of society, and offered facilities including quotas in the education system.³¹⁶ The Bangladesh Public Service Commission typically provides a quota distribution of five percent for national minorities in the Bangladesh Civil Service as well. While there is this arrangement for maintaining ethnic minorities' recruitment in the public sector, it does not mention anything explicitly about the Urdu-speaking Community, according to the 38th BCS Circular, 2017. A stakeholder report of the Universal Periodic Review further indicates that there are no quotas for the Urdu-speakers, either for education or public jobs, like other minorities and indigenous people in Bangladesh.³¹⁷ Educational institutions have also become too politicized and factionalized at the level of both teachers and students, so politics has turned into an activity that is used to serve private agendas rather than to serve public purposes.³¹⁸ Additionally, Bangladesh's National Budget Speech 2016-2017 proposes that the GOB shall provide social protection for the welfare of the poor, including the destitute and backward population of the country.³¹⁹ This comprises allowance for marginalized members of society such as the newly recognized transgender identity of people.³²⁰ However, there is no precise reference for social protection towards the Urdu-speakers. Further, Bangladesh is trying to realize the goals of the Poverty Reduction Strategy Papers. These papers are prepared through stakeholders'

³¹⁵ *National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21: Bangladesh*, Human Rights Council: Working Group on the Universal Periodic Review, 16th Sess, UN Doc A/HRC/WG.6/16/BGD/1 (2013) at 23.

³¹⁶ *Ibid.*

³¹⁷ *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Bangladesh*, Human Rights Council: Working Group on the Universal Periodic Review, 16th Sess, UN Doc A/HRC/WG.6/16/BGD/3 (2013) at 10.

³¹⁸ Sobhan, *supra note* 314 at 357.

³¹⁹ Abul Maal Abdul Muhith, *Budget Speech 2016-2017 Bangladesh Parliament* (2 June 2016) <<http://www.parliament.gov.bd/index.php/en/parliamentary-business/business-of-the-house/budget/budget-speech/271-budget-speech-2016-2017/2989-budget-speech-2016-2017-bangla>> at 48.

³²⁰ *Ibid.*

consultations that include the World Bank and the International Monetary Fund, which tackle macroeconomic and social policies for enhancing growth and reducing poverty. The Urdu-speakers are once again not listed amongst the country's vulnerable groups.³²¹

Most crucially, as mentioned in Chapter 2, the administration has avoided consulting the public while drafting the new *Citizenship Bill*, which now waits in parliament. Targeted provisions exist like Section 4(1) and Section 4(2)(b) that define citizenship by birth, and states that the children of enemy aliens (as the Urdu-speakers were once deemed) would not be entitled to have citizenship of Bangladesh by birth regardless of whether they fulfill the criteria for such citizenship.³²² Section 3 additionally states that the proposed Act would have priority over any previous court decisions or decrees.³²³ This therefore shows trouble brewing for the community and the near absence of political will. However, one must remember the relationship between the legislature and judiciary, especially with respect to this proposed citizenship bill as a question arises: does this planned legislation trump the judicial decisions? The answer to this is 'yes'. But any decree or judgment of the Supreme Court pertaining to citizenship in the future could still be possible, since the operative words in the bill are "previous decisions or decrees". Because the role of the legislature is significant in the sense that it can enact law that is binding, while the judiciary can interpret the law, there is a check and balance amongst these two vital organs of the government. As the proposed bill is

³²¹ International Monetary Fund Poverty Reduction Strategy Paper, "2015 IMF Country Report No. 15/305: Bangladesh: Progress Report" (November 2015) online: <<http://www.imf.org/external/pubs/ft/scr/2015/cr15305.pdf>>.

³²² Najrul Khasru "Review proposed citizenship law" *The Daily Star* (8 January 2017) online: The Daily Star (Dhaka, Bangladesh) <<http://www.thedailystar.net/opinion/human-rights/review-proposed-citizenship-law-1341784>>.

³²³ Ibid.

evidently discriminatory and can be passed as law, it may nonetheless be deemed *ultra vires* and lead to contempt of court. The judiciary has the authority to state the nullity of the law if the proposed bill (that may become law) aggrieves anyone and a dispute were to arise over the constitutionality of the law. As a result, the law can again be amended if necessary.

Thus, these issues illustrate the lack of political will. Does this mean that it shall remain elusive in the community's future? Most of this discussion suggests that the Urdu-speakers' are isolated, and a commitment to offer help is limited since there is no strong political direction and bureaucrats have no pressure to improve the prevailing conditions. Yet in the last four years, Bangladesh has demonstrated political will. Examples include issues like the 2015 enclaves exchange between Bangladesh and India (162 enclaves were formally exchanged between both nations, ending a near century territorial anomaly and finalizing a process of land and population exchange),³²⁴ and recognizing transgender identity as a separate gender in Bangladesh in 2013.³²⁵

My findings through the interviews denote that most Urdu-speakers now have an understanding of their legal rights. As most people are on the government's voter list, it is reasonable to say that they have voted at least once in Bangladesh's general elections. Since local representatives have visited Geneva Camp before and encouraged residents to vote for their parties, the idea of casting votes should have offered some political leverage to the community. This shows that without political will, earning a formal

³²⁴ "Enclaves swapped in landmark India-Bangladesh border deal" *BBC News* (31 July 2015) online: BBC News <<http://www.bbc.com/news/world-asia-india-33733911>>.

³²⁵ Md. Fosiul Ahsan & Zahid Al Amin "Celebration of the third gender" *The Daily Star* (1 September 2015) online: The Daily Star (Dhaka, Bangladesh) <<http://www.thedailystar.net/op-ed/politics/celebration-the-third-gender-135667>>.

citizenship status does not entail effective citizenship.

Therefore, even with future policies and legislation, the law can never truly act by itself, as it requires facilitation through political will. Since most Urdu-speakers are visibly paying allegiance to Bangladesh, the will to improve current conditions is crucial to making social protection work. There is normally a connection between municipal performance and political will, so informing and motivating government actors and the bureaucracy is a way to move forward. The whole point of the Urdu-speakers becoming citizens means that they as a community should feel welcomed with respect to both social and political inclusivity. In the following part, I shall thus propose some answers in terms of how the GOB can implement political will, and talk about the practical approaches for the overall community's much-needed rehabilitation.

5.2 National Integration: A Sustainable Goal

Beyond any doubt, the Urdu-speaking Community has seen tremendous changes in their lives in the course of over forty years in Bangladesh. I have so far argued about the legal duties of the state and to what extent the law can be applied in the previous chapters, and shall now determine this final question: is it possible for the Urdu-speakers to fully integrate in Bangladesh and obtain the necessary rehabilitation from the GOB?

Before I assess this, it is critical to remember that as a former refugee and stateless community, the Urdu-speakers may not have a chance to gain durable solutions through repatriation, since Pakistan was unwilling to take people and currently it seems rather impossible to restart any repatriation program. Future repatriation programs could only occur if there is enough political will and a bilateral agreement between Pakistan

and Bangladesh, though such a prospect is highly improbable since in 2015, the Supreme Court of Pakistan has clearly stated that there are no more “Stranded Pakistanis” as they are citizens of Bangladesh and they no longer have any room in the Constitution of Pakistan.³²⁶ Further, I shall not appraise the idea of resettlement because it has not been considered by any administration, and the governments of both Bangladesh and Pakistan have not called the United Nations or any third country for the settlement of the Urdu-speakers in the past.

The scope to reintegrate and rehabilitate the community thus appears to be the only viable option. Because of the people’s present reality, this is more than a contention as it is the most practical solution that may be appropriate to consider. The initial phase of the Urdu-speakers’ legal recognition as citizens is complete, and the next and most essential phase is for the restoration of their rights as Bangladeshi citizens. It is only through national integration that they, as a community, can enjoy their fundamental human rights and participate fully in all respects of their economic, social and cultural life. In the following paragraphs, I will therefore discuss the challenges of their human rights integration, and the power and limits of the law, the rights, and most significantly the policies, and justify what can be achieved.

First of all, integration is generally understood to be a gradual process with legal, economic, social and cultural dimensions that impose significant demands on both the individual and the receiving society.³²⁷ In most cases, obtaining the nationality of a

³²⁶ This was decided after the Stranded Pakistanis General Repatriation Committee of Bangladesh filed a petition in the Supreme Court of Pakistan for their repatriation. See Hasnaat Malik, *supra note 7*.

³²⁷ United Nations High Commissioner for Refugees, *Local Integration* <<http://www.unhcr.org/local-integration-49c3646c101.html>>.

country is deemed as the culmination of this process.³²⁸ For the Urdu-speakers, both integration and rehabilitation are heavily dependent on the infrastructure of Bangladesh, with the inclusion of legislation (by adopting laws or policies to change the social situation), governmental departments, organizations and other bodies to make sure the people are able to practice their citizenship with relative ease. The complete realization of these is contingent on strong political will and the support of all citizens.

It is apparent today that there are certain elements in the settlements that have a vested interest in keeping the ‘Biharis’ as a separate and distinct community, preventing the nurturing of their dreams and hopes for constructive developments in the nation. In spite of this, many Urdu-speakers are integrating themselves into the Bangladeshi society, and it is entirely possible that after almost three generations, they have closer national and social ties with the Bangladeshi people than they do with Pakistan. Many new generation Urdu-speakers reject the ‘Bihari’ term since they have been born in Bangladesh, and have no connection with either Pakistan or the state of Bihar in India. This comprises not only the children, but possibly their parents as well. Some research even confirms that as many as 25 percent of camp residents are ethnically Bengali,³²⁹ so it must be remembered that today’s Urdu-speaking minority may not necessarily be the minority of tomorrow.

The community is still, however, paying the price for the actions of some Urdu-speakers who were against Bangladesh’s freedom when in fact most present community members, especially the new generation who want to integrate, have had nothing to do

³²⁸ Ibid.

³²⁹ Redclift, *supra note 5* at 38.

with it. Their refugee/stateless social identity also has not lessened resulting in barriers to citizenship rights. There is a great need for the GOB to engender an understanding of their rehabilitation among decision-makers and Bangladeshi society at large, who must come to accept the community as fellow citizens and end the prolonged socio-political stigma while remembering the determined struggle of those who fought for Bangladesh's independence. As the 2008 decision in page 15 suggests:

By keeping the question of citizenship unresolved on wrong assumption over the decades, this nation has not gained anything rather was deprived of the contribution they could have made in the nation building.

This rings true since the Urdu-speakers can constitute an effective human capital with their knowledge, ability and experience in Bangladesh,³³⁰ and could be considered an asset for increasing the Gross Domestic Product in the country. While the community's capability to influence the present legal conditions is narrow, their aptitude to take the helm of economic aspects should not be underestimated. Until now, there has been no collection of any comprehensive baseline data by the administration, NGOs or international agencies from which to create either short or long term programs for integrating the community. Rehabilitating each settlement dweller across the country will require a substantial amount of planning strategies and funding that the GOB may have a difficult time to provide without support from both national and international agencies.

The development of economic, social, and cultural rights for the Urdu-speakers can be catalysts for their integration. Economic integration enables an individual to

³³⁰ Zaglul Haider, "Rejected People in Bangladesh: If the Biharis Were Counted" (2016) 36:3 J of Muslim Minority Aff 427 at 427.

participate in the job market that is commensurate with their skills.³³¹ Social integration, on the other hand, is a reciprocal process wherein the state accepts people into the population without fear of discrimination, intimidation, or repression, thereby allowing individuals to create and maintain social bonds within the overall society.³³²

The implementation of economic rights can help attain a number of things for the Urdu-speakers, such as becoming financially independent and contributing to the Bangladesh economy by paying taxes to the government. For addressing the scope of education, self-rehabilitation through schooling may be the most consistent way for the Urdu-speaking Community to work its way out of poverty. Providing more scholarships could positively lead children to pursue higher learning and prompt them to complete skills training for occupations that would ultimately benefit their families. It is recommended that the government equally intervene to provide specific quotas and mobilize youths by opening the door of public and private educational institutions. It can also promote upward mobility by setting up technical schools in every sub-district where each settlement is. These would help to meet some of the stipulations of Article 28 of the Constitution.

Economic integration means that the community finds suitable employment in order to have some form of self-reliance by achieving a standard of living similar to other Bangladeshis. It is very much feasible for the GOB to offer quotas and vocational training in modern skills to ensure the Urdu-speakers' are qualified to operate in the job

³³¹ U.S. Department of State, *Evaluation of Local Integration: Final Report*, IDIQ Task Order No. SAWMMA13F2592, Office of Policy and Resource Planning, Bureau of Population, Refugees, and Migration (2014) at 12.

³³² *Ibid* at 13.

market and in public service. Since community members are sometimes using fake addresses, it is difficult to put the blame on employers who, for instance, have to make sure that employees provide an address where they can actually be found, which falls under the employers' mandate in almost any kind of job in Bangladesh. A solution to this is if the government assigns specific house numbers and postal codes to each residential unit within the zones in Geneva Camp and other settlements. Besides vocational training and capacity-building, it is recommended that the GOB carry out a survey of residents living across different settlements in the country to establish what skill sets they may be able to use to contribute to the development process of Bangladesh. Those who have particular experiences, for example, an embroidery-maker capable of working in the ready-made garments industry, could be potentially employed in the specific job sector. Additionally, the GOB could offer trade licenses or compensation for those people trying to conduct businesses to allow them to resume or start their businesses. It is suggested that the GOB also include the Urdu-speaking Community into the national development strategy. Such measures would meet many constitutional requirements, including Article 29, which pertains to backward sections of citizens.

The legal rights to property and housing of the Urdu-speakers are similarly an integral factor for integration. A community-led and settlement-specific planning process for rehabilitation may yield structurally appropriate and financially, politically and socially viable results.³³³ As the total population count has not been conducted since 2006, it can be proposed that a widespread population count and household survey be held again. With that in mind, the courts must stop any evictions until the authorities

³³³ Sholder, *supra note 6* at x.

assess the community, so that people are able to negotiate and offer their suggestions to the municipal corporations and local government divisions. The Urdu-speakers' settlement lands across Bangladesh could formally be transferred to the community itself. This may be done in the form of a 99-year land lease according to Bangladesh law.³³⁴ In such a manner, it would potentially mean confirming the current residents' entitlements to own property as citizens in the country. Another method for the long run may be to transform the settlements from segregated slums into vibrant ethnic neighborhoods.³³⁵ The first step in this approach could be to transfer the title of the lands to the community from private owners or the government. The transfer of title would accordingly enable initiatives on an ambitious scale to improve the civic infrastructure. It is imperative to recall that the Urdu-speakers must continue to live in the settlements until their situation improves (specifically their economic stability), otherwise they would not have anywhere else to go.

With respect to social integration, the Urdu-speakers have naturally shared much in common with Bangladeshis through their historical presence. Evidently, the Bangladeshi people are not yet fully sensitized that the Urdu-speakers are actually citizens of the country. If there is a goal to go beyond the rigidity of existing laws to give human rights their due, there is a good cause to focus on the significance of public reasoning for the recognition, realization and advancement of human rights.³³⁶ Increasing targeted social awareness of the Urdu-speakers' current legal status in Bangladesh by linking their integration with the wider economic, social and cultural issues is of paramount importance in this regard, so as to remove any misconceptions about the

³³⁴ Ibid at 37.

³³⁵ Ibid at 41.

³³⁶ Amartya Sen, "Human Rights and the Limits of Law" (2006) 27:6 *Cardozo L Rev* 2913 at 2927.

community. This needs to be addressed by the executive government. Moreover, if the present-day integration continues, the Urdu-speakers will eventually feel more accepted in the coming decades. Participating in Bangladeshi traditions and developing relationships with Bengali people such as through intermarriage are positive ways to integrate. Speaking the Bengali language also acts as an advantage for societal integration.

If the bureaucratic and administrative implementation capacities for strengthening the rehabilitation process were to occur, the community's situation could be improved in several ways. Until now, development opportunities that would benefit the community have remained largely unexplored. A reciprocal and supportive interaction between civil society organizations, human rights/development organizations and the government is crucial in this sense. Such interactions through advocacy and action between these entities may help develop initiatives that can establish normal lives for community members and tackle the weak rule of law and corruption. Cooperation between these groups may also fix the derisory community infrastructure since the Urdu-speakers' integration should not be deemed complete without addressing their right to property and secure land ownership. As a consequence, the bureaucracy's approach in supporting the Urdu-speakers is urgent. Local members of parliament who represent the settlements' constituencies can also play a role here.

A few respondents during the interview process stressed that civil society groups and other rights organizations are alarmed about the lack of rights of minority groups like the Rohingyas or Chittagong Hill Tracts people in Bangladesh, but the Urdu-speaking

Community has mostly been overlooked. Thus, the GOB and organizations like AFB need to conduct research for continuing an informed and hands-on rehabilitation strategy for the Urdu-speakers. In the case of Geneva Camp, and each additional settlement, key challenges could be tackled through the building of new leadership for the whole community, increasing capacity for financial and technical resources, and creating a collective support group or body with the participation of the bureaucracy and organizations. The active involvement of local NGOs and the contribution of institutions such as the media may be beneficial. In this context, the local government and its agencies can offer some foundational support. Accountability measures through administrative bodies and impact assessments can aid the GOB and organizations to understand their responsibilities better, allowing to detect what works well so that it is continued, and what does not, so that they can be reconsidered. The National Human Rights Commission of Bangladesh, which is a government agency, can also get involved and provide more support to the community. It is further recommended that the GOB include the community in Bangladesh's Poverty Reduction Strategy Papers to alleviate existing poverty levels. Aligning these issues to Bangladesh's own national plan objectives along with the United Nations' Sustainable Development Goals need to be considered. A rehabilitation trust fund from mutual donors can similarly help mobilize funding from bilateral donors, organizations, or other national and international agencies to assist and monitor the community.

It is reasonable to say that political will may make the ultimate difference for the Urdu-speaking Community's empowerment leading to both promotion and protection of rights. In order to pursue this, the government can endorse the Supreme Court's decision

in Parliament and pass bills for the rehabilitation of the Urdu-speakers as citizens.³³⁷ Political leaders must offer sufficient support to bring about policy changes, and enough support is needed to sustain any change, especially given the chances that counter-reform efforts may be launched once vested interests see what is being done.³³⁸ If required, the government may have the option to create an independent body to review practices that impose discriminatory restrictions against the Urdu-speakers and identify and take action against offenders. Sanctioning the bureaucracy and ensuring anti-corruption efforts need to be maintained too, and the GOB has to play its part by providing satisfactory transparency. As Bangladesh is a democracy, it can still pave the way for more democratic institutions. Civil society advocacy could increase accountability by extending participation for the Urdu-speakers, and to build this in Bangladesh's democratic context would also shape pluralism.

It is likewise vital that the Urdu-speakers are able to preserve their own culture amidst the prospects of their necessary integration. Some Urdu-speakers (the senior generation) have a strong sense of collective identity and recorded history, but others (the young generation) only retain a fragmented notion of their common heritage.³³⁹ An existing challenge is how the language of Urdu and Urdu literatures would be preserved when many of the young generation have become Bengali speakers, with the possibility that future generations would not be familiar with Urdu words and letters.³⁴⁰ This begs the question that the integration of a community, which in itself is a minority into the

³³⁷ Ilias, *supra note* 108 at 69.

³³⁸ Sina Odugbemi, "Whose Will Constitutes 'Political Will'?" The World Bank Blogs (6 April 2009) online: <<http://blogs.worldbank.org/publicsphere/whose-will-constitutes-political-will>>.

³³⁹ United Nations High Commissioner for Refugees, *supra note* 286 at 2.

³⁴⁰ Ilias, *supra note* 108 at 70-71.

larger society, offers greater prospects and political influence, but often at the expense of a specific group's culture. At the same time, preserving a culture by separating a minority population diminishes its clout within the majority culture. But integration should not mean or lead to forced assimilation because minority cultures equally are a fundamental element of state identity. Since some Urdu-speakers underscore a cultural identity that separates them from the Bengali majority, while others embrace a 'Bangladeshi' identification and are seeking assimilation through which they can mask their stigmatizing Urdu ancestry, a tension between the two positions has arisen, structured in relation to the political economy of the world around them.³⁴¹ The standard universal account of international human rights law sometimes fails to address claims by minority communities that assert a firm measure of autonomy from the assimilative tendencies of the broader political community in which they find themselves.³⁴² In the Urdu-speakers' case, the proposed integration must meet the standards of participation in the institutions of the majority Bangladeshi community, together with the maintenance and reproduction of their separate identity. An example of this is bilingualism. A way to maintain the use of the Urdu language is by promoting it to community students and organizing sessions with them in their respective constituency.³⁴³ Therefore, how all of this will change in light of the Supreme Court's decision in the coming decades, and what it may mean for the future of the community and traditional Urdu culture are important questions to ask, raising debates not only in Bangladesh but among other minority communities around the world.³⁴⁴

³⁴¹ Redclift, *supra note 5* at 40.

³⁴² Patrick Macklem, "Minority rights in international law" (2008) 6:3-4 Int'l J Const L 531 at 550.

³⁴³ Ilias, *supra note 108* at 71.

³⁴⁴ Redclift, *supra note 5* at 40.

The idea of the power and the limits of what the law and rights can and cannot achieve for the Urdu-speakers is debatable. The political perception regarding the situation of the community is apparently neither encouraging nor a concern at the moment and the bureaucracy is not necessarily thinking about the community either, but the power of law nevertheless exists. The Urdu-speaking Community have come forward to the Supreme Court on two occasions by filing writ petitions to realize their rights, which resulted in binding judgments and shows that the law can indeed provide some redress. Writ petitions are typically filed against a public authority of the GOB and a specific limitation of the law is that one cannot file a writ against an institution or private person. To start a writ petition requires a certain amount of money that is feasible, but given the latest state of having no spokesperson or leadership, the chances of going to the court now are slim albeit this option remains open to community members. However, because of the constant *de facto* discrimination, one can ask that even with this authority of law, how would filing a writ petition suffice to stop the social prejudice that is carried out by the general population at large? Thus, an alternative avenue for the Urdu-speakers may be public interest litigation, whereby the community or someone on behalf of it could use litigation or legal action to advance their cause as a marginalized and disadvantaged group. In this way, it could prompt and strategically effect the much-needed social change through the law.

Conversely, there are particular limitations of both law and rights. Firstly, a culture of 'following the law' does not necessarily exist within citizens all the time that lessens the power of law and support to the Urdu-speakers. A prominent example of this is how

Bangladeshis tend to disobey road traffic rules.³⁴⁵ Further, the law usually works well for the bureaucrats, who in some ways have limited responsibility and tremendous power. This leads to various discretionary practices in the bureaucracy, and when discretion becomes virtually unlimited in certain cases, it goes against the average citizen especially with no corresponding response from the executive. Besides, even with all the domestic laws that were discussed in the third chapter and the certainty that there are useful legal solutions through national legislation (including the incorporation of international treaties within the national laws) there is no specific anti-discrimination legislation in Bangladesh. This means that it would be very difficult to directly address discriminatory practices against the Urdu-speakers such as the deprivation of education or employment. Corruption in the justice system, particularly in the lower courts, also weakens the power of law, and leaves fewer remedies for people in exercising their fundamental rights. Reports published by global watchdogs suggest that Bangladesh's justice system has had deficiencies in most aspects of implementing the law, and the system itself has been inefficient with the courts afflicted by corruption and political interference.³⁴⁶ Even determinations by quasi-judicial bodies are not always useful. Additionally, the power of law is ordinarily impacted by international pressure. An example that can be drawn here is the fact that the GOB has improved Bangladeshi labor standards through reforms recently as it concerns a direct economic impact on the country, and because the

³⁴⁵ Javeed Ahsan "What traffic rules?" *Dhaka Tribune* (14 September 2014) online: Dhaka Tribune (Dhaka, Bangladesh) <<http://archive.dhakatribune.com/op-ed/2014/sep/14/what-traffic-rules>>; Sharier Khan "Arresting for traffic rules violation is a crazy idea" *The Daily Star* (23 April 2016) online: The Daily Star (Dhaka, Bangladesh) <<http://www.thedailystar.net/op-ed/opinion-arresting-traffic-rules-violation-crazy-idea-1213432>>.

³⁴⁶ US Correspondent "Justice system infected by corruption, political interference: WJP" *bdnews24.com* (6 March 2014) online: Bangladesh News 24 Hours Ltd. (Dhaka, Bangladesh) <<http://bdnews24.com/bangladesh/2014/03/06/justice-system-infected-by-corruption-political-interference-wjp>>.

government had suffered direct international consequences due to a lack of proper labor regulations.³⁴⁷ In contrast, the Urdu-speakers issue has had no significant effect internationally. With no direct pressure or real threat of consequence, the government faces no tangible cost in terms of how the community is being treated and therefore the power of law is diminished once again.

³⁴⁷ Following two industrial disasters – Tazreen Fashions fire in 2012 and the Rana Plaza building collapse in 2013, the United States suspended its Generalized System of Preference for Bangladesh, citing shortcomings in labor rights and workplace safety. See Star Online Report “US leaves out Bangladesh from GSP” *The Daily Star* (11 August 2015) online: The Daily Star (Dhaka, Bangladesh) <<http://www.thedailystar.net/country/bangladesh-left-out-gsp-125146>>.

CHAPTER 6: CONCLUSION

6.1 Thesis Summary

This thesis has analyzed the reality of citizenship and the existing legal and human rights challenges of the Urdu-speaking Community in Bangladesh. It has questioned the scope of the applicability of domestic and international laws for the community, providing a significant gauge to comprehend where the state has failed to uphold its legal obligations. It has further suggested what is necessary for the Urdu-speakers in respect of Bangladeshi legislation and the policies that reflect international human rights law.

The introduction of this thesis raised the question concerning who the Urdu-speakers of Bangladesh are and where they come from. It identified that the division of India and the subsequent creation of the Dominion of Pakistan in 1947, as well as the regional hostility during the partition of Bengal led to mass killings and the displacement of the Urdu-speakers from different parts of India to East Pakistan. With the creation of Bangladesh in 1971, the Urdu-speakers were once again affected and had to relocate a second time to Pakistan. The chapter scrutinized the political history of three nations, namely India, Pakistan, and Bangladesh, and concluded how the Urdu-speakers have arrived to their present conditions. As nomenclature for the Urdu-speakers has continued to be an issue since 1947, the chapter isolated the terms ‘Muhajir’, ‘Bihari’ and ‘Stranded Pakistani’, and established why they no longer apply for the Urdu-speaking Community in the present-day context of Bangladesh. In Chapter 2, this thesis showed that there is sufficient reason to study the community’s current legal, political, social and economic circumstances in Bangladesh. Interviews with community members and legal experts

clarified how the Urdu-speakers are coping after being awarded citizenship in 2008, and the chapter further assessed the impact indicators through the Supreme Court's rulings to understand people's aptitude in exercising fundamental legal rights.

Chapter 3 concentrated on identifying the precise legal status of the Urdu-speakers, and gathered that the community, while facing discrimination, is not being persecuted under the Refugee Convention definition. It deduced that the community is no longer *de facto* stateless even after the Government of Pakistan denationalized them because some important legal changes have taken place in Bangladesh. This includes the Supreme Court's 2008 ruling that legally defines the Urdu-speakers as *de jure* citizens, and retroactively allows citizenship to community members present before and after the independence of Bangladesh. The chapter also demonstrated how Bangladeshi citizenship laws play a role in providing *jus soli* citizenship to the community today. In part 3.2, the thesis analyzed what a normatively satisfactory state policy for the Urdu-speakers should look like after assessing the domestic legislation comprising legal tools that support the community. In particular, it examined the Constitution of Bangladesh's civil and political rights that are judicially enforceable in court. Part 3.2.2 presented arguments relating to citizenship and the law, and underscored how a broader notion of citizenship than the more conventional legally framed definition applies for the Urdu-speakers. Furthermore, Part 3.2.3 evaluated the concern of the right to recover former properties, and found that the operation of law (Abandoned Property Act and Vested Property Act) restricts the community from filing suits and prohibits any form of compensation from the government for the loss of abandoned or enemy vested property.

Chapter 4 of this thesis examined the principles of international human rights law and various treaties to which Bangladesh is a party and elucidated how those normative standards are not being achieved but can be served to ensure protection for the Urdu-speaking minority. It established that if woven together with the domestic laws that safeguard the protection and care of citizens, the government could interpret and apply those rights for the community based on Bangladesh's respect and incorporation of international law standards in its domestic laws and administrative practices. However, the chapter indicated that advocating for international human rights law might not be entirely useful to apply since international human rights law (and economic, social, and cultural rights) can constitute a yardstick to assess the Urdu-speakers' treatment but cannot fully hold the government or bureaucracy accountable.

Lastly, Chapter 5 firstly asked regarding the facilitation of political will and provided evidence of the shortcomings in the administration to implement policies to rehabilitate the community. It then addressed the possibilities for the community to reintegrate and rehabilitate and recommended strategies to make this a feasible option for the GOB and related organizations. The chapter explored solutions on how to develop political will and suggested the direction required for improving the legal, economic, social, and cultural rights, which could prove to be the primary catalysts for national integration while explaining some of the powers and limitations of the law and the Urdu-speakers' rights.

6.2 Final Remarks: The Way Forward

This thesis is aimed to continue advocating for the Urdu-speaking Community and in the process cultivate knowledge mainly to the policymakers and public in Bangladesh, and the academic community. Pakistan will not be repatriating any more people, and that there is a definite probability of the community to integrate as citizens in Bangladesh with the correct application of the domestic laws by the government. However, after the discussion above, it is obvious that the dignity of the Urdu-speakers in Bangladesh is being effectively compromised. The apparent lack of fundamental rights, poverty, and the dearth in education and other indicators have become serious problems. The Urdu-speaking Community seemingly has a resigned acceptance of their disenfranchised status, even after 2008. They have become a politicized population throughout much of the history of Bangladesh, and currently occupy a space that makes many motivated to live in the country, while a few want to opt out of their situation by moving elsewhere. The majority population of Bangladesh is not worried about the community, and the Urdu-speakers remain branded as ‘Bihari’ due to their ethnicity and the history that stretches back to 1971 and beyond. As examined, most people have not come out of the settlements while the Bangladeshi society thrives, and a number of people are still hiding their true identity from the public sphere.

While I have tried to critically appraise the Urdu-speakers’ current legal situation, and identified a practical solution for the community, the intention of this thesis is to be a continuing point for further analysis. Additional research is necessary to evaluate the viability of conditions that are essential for the community’s national integration and for them to become visible citizens. For instance, I have mentioned in the second chapter

regarding the status of Urdu-speakers living in Saidpur, Bangladesh. Saidpur has had an Urdu-speaking population with relations with the state of Bihar in India from where many people originate. Since the independence period, the Saidpur community has mostly integrated into Bangladeshi society. Amongst the entire Urdu-speaking Community in Bangladesh, they have become self-sufficient by coming out of poverty, and now have a collective identity as a majority, and some members have even been engaged in local politics. In order to combat inequality and promote integration, it could be useful for researchers to study how these people have come to this position, and how their integration practices can be realized for the rest of the Urdu-speakers in other parts of Bangladesh. Thus, such directions in the GOB's development agenda will be a challenging political task, which merits more analysis in future research.

Moreover, at the time of writing this thesis, the new Citizenship Bill in Bangladesh is yet to be passed in Parliament and enacted as law, but in the foreseeable future, if it were indeed passed in its current draft form, it would clearly violate the principles of natural justice and the government's constitutional and international treaty obligations. The Urdu-speaking Community, especially the children and new generation could face grave problems, and the ramifications of the proposed bill would undo much of what has already been achieved since 2008.

In concluding this thesis, it may be said that Bangladesh's political disinclination and indifference towards the Urdu-speaking Community cannot be a justification for continuance of their deprivation. The international human rights law framework provides standards that give rise to duties for the GOB, but does not ensure effective monitoring

and accountability mechanisms to empower the community. In a way, the GOB has to make sure that the existing national laws enable the fundamental principle of effective participation of the Urdu-speakers in public life, irrespective of whether they are deemed a minority. Moreover, if needed, a leading spokesperson or group of individuals from the community must mobilize to pursue their needs and come forward to the government. The Urdu-speaking Community is only armed with two judgments of the Supreme Court, and with some half-baked executive orders from the concerned ministries. Consequently, their current rights are being sacrificed, and it is the perceived weakness of the community that makes them so vulnerable. The implementation of law in such a societal problem is now required because the rules are being partially or not at all enforced. As the interviews have suggested, the rule of law has a seemingly tenuous hold on most Urdu-speakers. Once the majority of Bangladeshi people come out of the fog of the ‘uncertainty’ regarding this group and genuinely is informed of their issues, constructive actions would become more possible, and political will would make the ultimate breakthrough to overcome the palpable and hidden barriers to real citizenship. Therefore, it may be said that perhaps a generational leap is required, one in which Bangladesh fully recognizes and implements the Urdu-speaking Community’s rights rather than neglecting their dilemmas. More significantly, this process must begin now as it could conceivably mainstream the people’s demand for effective citizenship.

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APPENDICES: QUESTIONNAIRES USED IN THE RESEARCH

An Appraisal of the Deplorable Conditions of the Urdu-speaking Community in Bangladesh

INTERVIEW TOPICS TO BE COVERED

Main Topics, participant's views and experience of:

- Major issues and challenges in the lives of people / institutional barriers.
- Identifying the significance of the Supreme Court of Bangladesh's 2008 decision and its relation to the development of Urdu-speakers' rights as citizens.
- Current role of the administration/organizations dealing with the people and settlements.

Geneva Camp Residents

1. What do you do?
2. What do you think/like about Bangladesh?
3. How would you describe your average day?
4. Do you know what your legal status is in Bangladesh? If yes, what is your legal status? Do you want any change in your legal status?
5. What do you know about Bangladesh law? What is its place in your life?
6. Do you feel your rights are protected here? What do you think about human rights in Bangladesh?
7. Do you interact with the police? If yes, are the police supporting you properly?
8. What is your housing situation? Are you happy with this?
9. What are the other conditions of the settlement (access to health care, etc.)?
10. Why do you live in the settlement? Do you find places to stay outside the settlement attainable?
11. What is your educational background? Do you find higher education accessible?
12. Do you find it difficult to get a job? What sort of jobs do you seek?
13. What are the challenges that you face most frequently (e.g. obtaining documents related to housing)?
14. Would you ever consider repatriation to Pakistan?

As the researcher, I am interested to ask the following questions, but I am aware that many respondents may not be able to answer them. However, these may only be enquired to a certain sub-set of the population who have had access to higher education and are considerably aware of their situation:

- i. What were your expectations after you heard about the Supreme Court's ruling in 2008? Do you feel recognized as a citizen now?

- ii. What are the current support systems provided by the government and organizations (if any)? What is your view of the approach of the administration? How is it adequate/inadequate?
- iii. To what extent are you and your family able to exercise your legal rights today? How and why is the law working/not working?
- iv. Do you think national integration is fully achievable? If no, do you think there is a lack of political will in part of the government and the people of Bangladesh?

An Appraisal of the Deplorable Conditions of the Urdu-speaking Community in Bangladesh

INTERVIEW TOPICS TO BE COVERED

Main Topics, participant's views and experience of:

- Major issues and challenges in the lives of Urdu-speakers, identifying the significance of the Supreme Court of Bangladesh's 2008 decision and its relation to the development of their rights as citizens.
- Additional support and management from local organizations and advocacy groups.
- Institutional barriers.
- Current priorities of the administration/organizations dealing with the people and settlements.

A. Members of the Judiciary (Lawyers, Judges)

1. To what extent does the community, in general, claim their rights in the court (lower courts/Supreme Court) after the Supreme Court of Bangladesh's ruling in 2008? Do courts recognize the application process? If no, why?
2. What is your view of the government's approach in dealing with them today?
3. What are the significant issues/cases of the community you have been involved with (or are aware of)?
4. Why are the Urdu-speakers unable to establish their citizenship rights, even with their recognition as citizens? Why is the law failing, and what is the driving factor behind this?
5. What policy or guidance is in place for the Urdu-speakers' protection?
6. What legal strategies can be taken to advance their rights before the judiciary?
7. Do you think there should be more specific laws to protect the Urdu-speakers? If yes, what remains to be achieved in developing further legislation for their protection rights?
8. How do you practically apply human rights law in your work for the community?
9. Do you see a role for international human rights law to help establish their rights in Bangladesh?
10. Do you utilize domestic law in conjunction with international law guidelines in assisting the community? If no, why is international law limited in function and unsuccessful to protect the people?
11. How is the government functioning with the organizations assisting the community? Is it viable?
12. Are there any steps being taken to improve the community's situation in the near future? If yes, what are the priorities and the level of implementation strategies for this?

B. Human Rights/Non-Governmental Organizations Instrumental in protecting the community's rights (Members/Activists)

1. To what degree has your organization acted to support the community in recent years? What steps have been taken?
2. What is the people's situation in terms of (please answer those which apply) – constitutional remedies and due process of law, property and ownership, food standards, health care, employment, education, cultural rights, etc.?
3. Why are the people unable to establish their citizenship rights, even with their recognition as citizens? Why is the law failing, and what is the driving factor behind this?
4. What is the current relationship of your organization and the Government of Bangladesh to assist the community?
5. Has your organization improved people's equal status as citizens and rights according to the Supreme Court's decision and domestic law? If yes, how?
6. What (if any) are new avenues for advocacy for the Urdu-speakers' rights?
7. What are the settlements' standards and what remains to be achieved? What should be prioritized first?
8. Are there any plans in your organization for developing more support systems?
9. What limitations does your organization face?
10. Do you see a role for international organizations to help establish the community's rights in Bangladesh? If yes, how can they get involved?