"Caught between Scylla and Charybdis"

A study of Rohingya repatriation in Myanmar in light of theory and practice from Bangladesh`s perspective

Abdul Kadir Khan

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(Department of Political Science)

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Muraddkhan@gmail.com

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Abstract

In short, my research interest aims to identify, describe and analyze Bangladesh’s policy approaches as well actual politics towards the Rohingyas after the massive exodus in Bangladesh on 25 August 2017. The central finding of the study revolves around three interconnected outcomes. First, Bangladesh has not given refugee status to the Rohingyas after the 2017 exodus. Although Bangladesh is a non-signatory of the 1951 refugee convention, the complementary protection law can overweigh the convention refugee status and protect the Rohingyas through the principle of non-refoulement. Bangladesh on the other hand, can claim the 2017 repatriation agreement as a legal document for the repatriation of Rohingyas in Myanmar. The second finding is that the local integration of Rohingyas in Bangladesh is not a viable option considering the challenges and the weak state capacity of Bangladesh. Considering the local integration of Rohingyas, state and society will fail together with the extra burden of the huge Rohingya population. Therefore, the solution of the crisis is more repatriation oriented. The third findings suggest that, protection through the principle of non-refoulement or the premature repatriation of Rohingyas will leave the Rohingyas in a protracted displacement either in Bangladesh or in Myanmar. Therefore, the study suggests the importance of citizenship of the Rohingyas in Myanmar. The descriptive study analyzed the stratification of the citizenship and describes how the inclusion of the Rohingyas can be achieved by preventing different forms of injustice: maldistribution, misrecognition and misrepresentation within the idea of the politics of citizenship.
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Love to my friends and family in Bangladesh!
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Acronyms

AL – Awami-League
ARIF- Arakan Rohingya Islamic Front
ARSA – Arakan Rohingya salvation Army
BBS – Bangladesh Bureau of Statistics
BDT – Bangladeshi Taka
BNP – Bangladesh Nationalist Party
BRAC – Bangladesh Rural Advancement Committee
CAT – Convention against torture
CPD – Center for policy dialogue
CSC – Color-coded scrutiny card
CSC- Citizenship scrutiny card
DRC – Danish Refugee Council
e.g. – exempli gratia (for example)
ExCom- Executive committee
FDP- Forcibly displaced person
FY – Fiscal Year
GDP -Gross domestic product
HUJI – Harkat-ul Jihad
i.e. – id est (that is)
ICCPR – International covenant on Civil and Political Rights
ICNV- Identity cards and national verifications
IDP – Internally displace person
IOM – International organization for migration
JMB – Jama`atul Mujahideen Bangladesh
MoU – Memorandum of Understanding
NFI – Non-food Items
NSD -Norwegian center for research data
NVC- National verification card
OAU – Organization for African unity
OHCHR – Office of the United Nations High Commissioner for Refugees
OIC – Organization of Islamic Cooperation
RRRC – Refugee relief and repatriation commission
RSO – Rohingya solidarity organization
SLORC – State law and order restoration council
SPDC – State peace and development council
TRC- Temporary resident card
UDHR -Universal declaration for Human rights
UN- United Nations
UNGA – United Nations General Assembly
UNHCR – United Nations High Commissioner for Refugees
UNO – Upazilla Nirbahi office
USDP – Union solidarity and development party
WB – World Bank
Chapter 1
1.0 Introduction
The Rohingyas are an ethnic, linguistic, and Muslim minority group of the northern Rakhine state (Azad & Jasmin 2013) who are not recognized as "citizens" of Myanmar (Ullah 2011). The status of the "Rohingya" have been politically determined by two strong blocs: pro and anti-Rohingya (Ullah 2017). The pro bloc determined that Rohingyas settled in Burma (Now Myanmar) in the ninth century through the historically pluralistic population of Bengalis, Persians, Moghuls, Turks, and Pathans in the Arakan state. The anti-Rohingya bloc, on the other hand, claims that Rohingyas are a modern construct, illegal Bengalis from Chittagong (a territory of Bangladesh) that arrived as a by-product of British colonial rule (Zarni & Cowley 2014). On 25 August 2017, thousands of Rohingyas fled to Bangladesh for safe shelter due to the persecution and life threats occurred by the Myanmar military. This mass displacement occurred on the same day the ARSA (Arakan Rohingya Salvation Army) militants attacked government forces. In response, the government forces supported by Buddhist militia launched a "clearance operation" that involved persecution, rapes, and killings (Ratcliffe 2017). The OHCHR (The United Nations high commissioner for human rights) called the clearance operation "a textbook example of ethnic cleansing" (Beyrer & Kamarulzaman 2017).

Hitherto, in the recent influx of 2017, more than 670,000 (as of 25th February 2018) Rohingya migrants crossed the border and took shelter in Bangladesh (IOM 2018). The total number of Rohingya population in Bangladesh is now more than 800,000 (UNHCR 2017). Following the influx, there was a bilateral agreement signed by Bangladesh and Myanmar for voluntary repatriation. In a bone of contention of Rohingya identity, however, there emerge some follow-up questions; why are Rohingyas not accepted in Myanmar? Are they stateless? If so, why did Myanmar sign the bilateral repatriation agreement with Bangladesh? Furthermore, why has Bangladesh not given refugee status to the displaced Rohingyas, nor accepted them for local integration? If Rohingyas belong to Myanmar, then why are they not given citizenship rights? These are the problems that should be justified with further research in light of theory and practice from the Bangladesh perspective.

The United Nations considers the Rohingya in Myanmar to be “one of the most persecuted groups in the world" (Zarni & Cowley 2014:709). To explain the ethnic cleansing of the Rohingya, Maung Zarni and Cowley (2014) claimed that the Rohingya population in Rakhine state experiences "slow burning genocide" (Zarni & Cowley 2014). Due to the contested
identity of Rohingya refugees, it is one of the most complex, protracted and a chronic crises (Brooten et al. 2015) for more than three decades (Azad & Jasmin 2013:25). The status of the Rohingyas, however, is disputed in Bangladesh. A particular conceptual debate arises when Bangladesh did not give refugee\(^1\) (UNHCR 2005c: 13) status to the Rohingyas after the 2017 exodus to Bangladesh, when the same group was granted refugee status on a *prima facie*\(^2\) (ibid: 112) basis after the second influx of Rohingyas in 1992. So, what is the position of Bangladesh regarding the legal protection of Rohingyas as well as the normative means of non-refoulement?

There is less knowledge of the position of Bangladesh than that of Myanmar regarding the Rohingyas. In this thesis, I shall primarily focus, therefore, on Bangladesh’s position regarding the Rohingyas treatment beyond their refugee status. Since Bangladesh is not a signatory state of the 1951 convention of refugees, it is contradictory, from the Bangladeshi point of view, to apply the definition of the Rohingyas and their rights by this convention, as well as with the 1967 protocol relating to the status of the refugees. Bangladesh characterized the displaced Rohingyas as the forcefully displaced people from Myanmar, as per the request of the Myanmar government not to refer to them as Rohingyas. Since Rohingyas were not given refugee status as determined by international refugee law; the paper will disentangle the legal protection of Rohingyas beyond the 1951 refugee convention, defined by the *complementary protection law*. More generally there are certainly some normative positions that have acquired the status of *customary international law* or *egra omnes*\(^3\). Apart from that, the paper will assess the state capacity of Bangladesh, to check the credibility of Bangladesh considering the local integration of Rohingyas.

The crucial disputes on the status of the Rohingyas also come with analytical problems. How shall one approach the issue of repatriation (in the context of bilateral repatriation agreement 2017) when there is not even a basic agreement on the concepts? My point of departure when

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\(^1\) Under UNHCR’s mandate, a refugee is any person who is outside his or her country of origin or habitual residence and is unable or unwilling to return there owing to:
- A well-founded fear of persecution for one of the reasons set out in the 1951 Convention;
- Serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order.

\(^2\) When large numbers of asylum-seekers arrive at once, it is often not possible to conduct individual status determinations. In these situations, the cause of the mass influx should recognize those arriving *en masse* as refugees. Each member of the group is then regarded as prima facie.

\(^3\) *egra omnes* is a Latin phrase that means "towards all" or "towards everyone"; considering the rights and obligations are owed toward all.
analyzing the term *repatriation* will be both normative and descriptive. For example, the term *non-refoulement* in international legal protection of refugees can be defined as: *refugees should not be returned to countries where lives and freedoms may be threatened because of their race, religion, nationality, membership of the particular social group or political opinion.* (UNHCR 2005b:26). There is always a discussion over the issue of non-refoulement along with the issue of repatriation. However, there is a bilateral repatriation agreement signed by both Bangladesh and Myanmar on 23 November 2017, which is problematic in the first place due to the premature repatriation. The premature repatriation comes when both the country of origin and the refugees are not ready for voluntary return. Hence, they are pushed out by threats, attack, and expulsion rather than pulled by peace and safety within their country of origin. Moreover, the premature repatriation often leads to militarized repatriation where refugees return to an unsettled and conflicted homeland (Stein 1997:4). Literally, the post-repatriation process will make the Rohingyas physically at home, but they are not participating in the economic and political life of Myanmar, and therefore, the potential threat is relocated and thus may convert refugees into internally displaced persons (IDP). Therefore, it emerges the importance of citizenship rights for Rohingyas, within the process of voluntary repatriation in Myanmar.

In sum, my research interest is to identify, describe, and analyze the Bangladeshi governmental approach regarding policy as well as actual politics (theory and practice) on the ground regarding voluntary repatriation, local integration and treatment of Rohingyas beyond the conventional refugee recognition. As long as the bilateral agreements were violated, including by way of forceful repatriation to Myanmar in 1992, my analysis will also consider that the repatriation agreement of 2017 will not be a viable solution without considering the politics of identity and the granting of citizenship to Rohingyas in Myanmar.

1.1 Previous studies and arguments
The Rohingya is a conundrum, a controversial terminology (Kipgen 2014) in Myanmar and a dilemma for Bangladesh. There are many pieces of literature and a lot of discussions have already taken place based on different incidence and mostly on democratic opening and the dominant discourse. It is evident that the democratic opening in Myanmar opens new dimensions of research. For my purposes, some of these studies are used to understand the issue of Rohingya repatriation, its credibility, the state capacity and the identity or citizenship of the Rohingyas. Since I am studying the crisis from the Bangladeshi perspective, I will also review the Bangladeshi position for Rohingyas treatment beyond 1951 refugee convention.
Therefore, I have collected data based on my objectives from the Cox’s Bazar, Bangladesh. Since the crisis rests predominantly upon the Myanmar side, apart from the primary data the use of secondary sources is inevitable. Thus, my particular focus is mainly on scholarly articles for the theory, and I also survey online articles and newspapers to remain up to date on the latest news in both countries.

1.2.1 The Roots of Refugee crisis in Myanmar

Tran (2015) in his writing described the history of Rohingya crisis. Moreover, there are many pieces of literature that emphasize the historical exclusion of Rohingyas. One thesis in the shared history of the Rohingya crisis reveals that the crisis emerged before 1962 when the civilian government of the social democratic party was headed by prime minister U Nu. U nu’s regime excluded the Rohingya as an ethnic group from the official list of 135 ethnic groups, and they were not given any rights or status as citizens of Myanmar. It was considered that the citizenship law of 1948 recognizes Burmese citizens as being only those whose families had settled in the country before the independence in 1948 (Tran 2015). The "nagamin operations" a clearance operation in 1978 was to identify, prosecute and expel illegal migrants and non-citizens (Cheesman 2017a:472). The operation rendered the Rohingyas’ de-facto stateless and the official documents of many Rohingyas were taken away by the military government during this period. Due to the clearance operation of illegal immigrants from the government side, the Rohingya population fled to Bangladesh for the first time in 1978 (Azad & Jasmin 2013). Subsequently, the military regime promulgated the 1982 citizenship law. Under section 6 of the law, persons who were already citizens at that time would continue to be so. The 1982 law provided "associate" and "naturalized" citizenship for those whose citizenship application was being processed and/or who were not citizens but could establish that their predecessors lived in the country before independence. In order to become a naturalized citizen, one has to have evidence that they entered and resided in Burma prior to independence in 1948. There were some related laws such as the foreigner Act 1846 (Indian act III), the registrations of foreigners act 1940 (Burma act VII), the registration of foreigners rules 1948- related to the foreigners before or after Burma’s independence, but Rohingyas were not subjected to any laws (Ullah 2017:3). Even though General Aung San was an indigenous person and he assured Muslim Rohingyas in 1946 by saying that native people should not be divided (Ahsan Ullah 2016; Ullah 2017). However, the aftermath of “nagamin operation” those who were qualified for citizenship under 1948 law, would no longer be qualified under 1982 citizenship law.
Kipgen (2014) studied the historical context and the nature of the conflict in different periods. Yasmin (2017) also analyzes the Rohingya crisis and the various influxes of Rohingya refugees in Bangladesh. She explained during the second influx of refugees in 1992; a new military regime came to power in a coup against the socialist government in 1988. The new military regime or state law and order restoration council (SLORC) promised a speedy democratic transition. Under the oppression of SLORC, almost 250,000 Muslim Rohingyas fled to Bangladesh. However, the forceful repatriation from Bangladesh that followed, different humanitarian organizations denounced the poor conditions of Rohingyas (Kipgen 2014).

"The Journal of contemporary Asia" has published a series of articles covering the 2012 religious violence. Many other analyses have also aimed at explaining the 2012 sacred violence. Some of the literature address the issue as a Buddhist and Muslim conundrum (Kipgen 2014), communal violence (Cheesman 2017b) and the role of social media and Facebook in communal violence (Brooten et al. 2015). Some other articles also analyze the violence based on contemporary world politics and Islamophobia. In many conversations, it is also argued that innocent Buddhists are defending themselves from ISIS (van Klinken & Aung 2017). In a TV interview to the BBC in October 2013, Nobel peace prize recipient Daw Aung San Suu Kyi denied that her country was engaged in ethnic cleansing and further proclaimed that the violence against Muslims was logical and that it emerged from the fear of a global Muslim power (Azad & Jasmin 2013). The claim is that the ethnic oppression of the Rohingyas in Myanmar is similar to that of the Kurds in Iraq. In both cases, a semi-stateless group has the historic connection to the region that engaged in a conflict between the government and local minority groups (Garrie 2017).

1.2.2 The refugee crisis in Bangladesh
Other literature that covers the protracted refugee crisis in Bangladesh and the role of UNHCR in legal protection; and how Rohingyas are increasing the threat to the national security of Bangladesh (Yasmin 2017). Some other reports from humanitarian organizations argue that the 1978 and 1992 repatriation agreements were nothing but a commitment to return Rohingya refugees to Myanmar. Furthermore, some literature clarifies the Myanmar militants’ position. Armed militants often claim that the Rohingya are illegal Bengali migrants who came to Myanmar before the Myanmar’s independence (prior 1948). In 1998, the first secretary of SPDC (state peace and development council), General Khin Nyunt wrote to UNHCR that,

"these people (Rohingya) are not originally from Myanmar but illegally migrated to Myanmar seeking for greener pastures. They may have children who were born here, but the previous
generations had crossed over to Myanmar during past decades. They are racially, ethnically, culturally different from other national races” (FIDH 2000:19).

Bangladesh for their part do not want to accept Rohingyas (Azad & Jasmin 2013). The Bangladesh government claims that the Rohingya are from Myanmar. In this bone of contention, the Rohingya are the most neglected and persecuted group in the world. Among the ASEAN (Association of Southeast Asian nations) nations only two nations (Philippines and Cambodia) are signatories of the 1951 refugee convention and 1967 protocol for the status of refugees. Some of the literature emphasizes the issue of third parties and their role in terms of Rohingya crisis. With regard to the Rohingya issue, Myanmar’s diplomacy often relates to the position of its ASEAN co-members. ASEAN has stated that the Rohingya crisis is a full-blown humanitarian crisis that has regional consequences and that there is a lack of a political and legal framework to deal with the refugees (Shivakoti 2017). Therefore, there might be some discussion of external enforcement for identity construction in Myanmar and how constructive engagement can be defined by urging the idea of citizenship? In this context many articles and resources have been discussed on the issue of the 1951 convention and beyond that how the customary international laws are applicable for refugee protection. Moreover, the paper will also provide space for further research regarding the role of third-country resettlement relating to the concept of “burden-sharing”. The concept of “burden sharing” refers to the need for sharing the responsibility for the protection of refugees, especially in the aftermath of a mass influx. The preamble of the United nation’s 1951 convention or 1967 protocol relating to the status of refugees mentions the need for “international cooperation” for the heavy burdens of asylum seekers or refugees in the hosting countries. This has been interpreted as two main sorts of action. The first one relates to providing financial assistance for the hosting countries; and second type of action refers to a “physical” arrangement of resettlement in third countries (Boswell 2003)

The UNHCR (2005) report, an introduction to international protection proposed three solutions to end the refugee crisis; voluntary repatriation, local integration and resettlement (UNHCR 2005c). However, the framework is also widely used to explain the protracted refugee crisis. Azad and Jasmin (2013), analyze a much-related work regarding my objectives. They used the UNHCR framework to explain a durable solution including local integration and settlement apart from repatriation. However, in the paper they did not introduce the importance of citizenship and the credibility of the agreement between two parties.
The recent joint initiative from Myanmar state councilor office and the Kofi Anan Foundation on the establishment of the “Advisory Commission on Rakhine state” has placed a predominant focus on sustainable democratic peace in the future of Rakhine state. The final report includes guidelines and proposes 88 recommendations for the economic and social development in Rakhine state following a human rights-based approach. In writing the report, the commission consulted many actors, institutions and stakeholders, including Bangladesh, Thailand, India, and Malaysia in order to understand the nature of the problems and put forward recommendations. The proposed recommendations have emphasized the importance of the inclusion of the Rohingyas, but the proposals draw on the citizenship verification and 1982 citizenship law of Myanmar. However, as referred to in the earlier literature, the citizenship verification process and the 1982 citizenship law are very complicated. Many analysts even argue that the military governments have taken away the valid documents of many Rohingyas and it is therefore difficult for them to provide residency documentation (Ullah 2017). Nonetheless, the final report did not propose any plan for Myanmar by offering incentives and concessions for the Rohingyas, rather the proposal was derailed by the ARSA attack on 25 August.

1.2.3 The importance of Citizenship
The recent major influx in Bangladesh on 25 August 2017 places further attention on the issue of Rohingya repatriation and settlement. Cheesmen (2017) discussed the exclusion of citizenship of Rohingyas, but focused predominantly on the complex issue of the Myanmar citizenship law 1982 based on taingyintha or national races (Cheesman 2017a). According to his research, he mentioned that the idea of “taingyintha” or national races is so complicated and Rohingya minority group was not being included among 135 ethnic groups. Cheesman (2017) claimed that Myanmar’s problem is not a Rohingya problem but a national race problem where the surpassing status of taingyintha is itself the issue (Cheesman 2017a:476).

The advisory commission’s final report in 2017 claims that the challenges associated with rights and citizenship in Myanmar was one of the most challenging issues and it needs to be controlled by the citizenship verification process under 1982 citizenship law (The Advisory Commission on Rakhine State 2017). However, Ian Holiday (2014) emphasizes the importance of the citizenship verification and status of Rohingyas. A citizenship verification process has been introduced by both the former and current governments, based on 1982 citizenship law. The citizenship law of Myanmar (1982) categorized citizenship by three categories: citizen, associate citizen and naturalized citizen (Cheesman 2017a; Holliday 2014;
Citizenship was granted to those who lived in Myanmar before 1823 or to the children of parents if both parents were citizens. Associate citizenship is reserved for those who retained citizenship through the 1948 citizenship act as well as the 1948 union citizenship act (Act No.LXVI of1948); and naturalized citizens are people who were born before 4 January 1948 and applied for citizenship after 1982 (Azad & Jasmin 2013; Kipgen 2013:300). Despite living for generations within the territory of Myanmar which has 135 ethnic groups legally recognized by the 1982 citizenship law, the Rohingya were not listed as a group. The Rohingya remained stateless with a total population of approximately 800,000; which is 4% of the country’s total population (Green 2013).

Some other studies have been done based on different regimes and their ways of verifying the genuine citizens. After the 1982 citizenship law, the so-called NVC card (national verification card) was changed to a temporary resident card (TRC), where only TRC cardholders were allowed to apply for the citizenship, but within the condition of listing their identity as “Bengali. In 1983 the government also introduced a citizenship scrutiny card (CSC) or pink card. Afterwards, in 1988, the military junta took power and replaced green card instead of a pink card; and later they were issued white cards (Cheesman 2017a:472). However, in 2015, the government canceled the TRC and replaced the process to identity cards of national verification (ICNV) (The Advisory Commission on Rakhine State 2017:27). The verification process was confined by changing the method of identifying and distributing the identification card. In the process of valid identification, it is inevitable to consider through recognition of residents with the components of citizenship.

Holiday (2014) emphasizes the importance of citizenship and the challenge relating to citizenship. The Rohingya crisis, predominantly, can be understood as a conflict over citizenship either judicial status or in a broader sense as a matter of cultural inclusion, social rights and political participation (Holliday 2014). There must inaugurate some challenges in both repatriation and national protection in Myanmar, unless a valid citizenship status. The conventional understanding of citizenship is a legal status granted by nation-state. However, modern citizenship can be understood as four interconnected dimensions such as membership, legal status, rights and participation (Stokke 2017). Membership and legal status refer to the cultural and juridical inclusion in the communities of citizens, while rights and participation concern the entitlements and responsibilities following such integration. In the view of inclusion and exclusion, Heater (2013) claims that international law recognizes the right of
sovereign states that who may be permitted to become citizens. He also categorized different way of recognition as citizenship. He stated that, citizenship is acquired on the basis of the citizenship of parents (*jus sanguinis*), or being born in the territory of the state (*jus soli*) or even acquired by marrying a citizen (*jus matrimoni*) or through residence for a given period (*jus domicii*) (Heater 2013; Stokke 2017). However, Stokke (2017) in linking with Fraser’s (1995) argument of the three forms of injustice; maldistribution, misrecognition, and misrepresentation proposed the affirmative and transformative remedies in light of politics of justice. While Olle Tornquist (2009) has contributed to the study of the politics of representation, there remains a need for a study of Myanmar within the context of politics of justice for Rohingyas.

1.3 Objectives of the study and research questions
In short, my research interest is to identify, describe, and analyze the Bangladesh policy approaches as well as actual politics on the ground regarding refugee protection or non-refoulement, local integration and voluntary repatriation. Since there is a theoretical debate of premature repatriation, my research will address the underlying problem by focusing on repatriation as a viable solution, and discussing concept of local integration in Bangladesh. If Bangladesh cannot accept the Rohingyas for local integration or any other means of burden sharing; a possible solution in the future may have to be less repatriation oriented, an approach that considers to a much larger extent the politics of identity and citizenship in Myanmar.

The previous studies and literature review on the issue of Rohingya have addressed many dimensions including both history and political context. Additionally, the final report *towards a peaceful, fair and prosperous future for the people of Rakhine* of the "Advisory Commission on Rakhine State" introduced the idea of citizenship by considering the citizenship verification and 1982 citizenship law. Furthermore, the report covers the broader issues and the bilateral relationship with Bangladesh by emphasizing the issue of joint verification in the process of voluntary repatriation. In its recommendation number 80 (page 60) in particular, the commission recommended to the Myanmar government to secure the territory and assisting Rohingyas with shelter construction when the Rohingyas will return back to Myanmar. However, the report neither describes the issue of citizenship beyond the complex citizenship Act of 1982; that is inevitable for the democratic peace in Myanmar, nor the issue of credibility of repatriation agreement 2017 between Bangladesh and Myanmar, and the state capacity of Bangladesh in the process of voluntary repatriation.
The relative weakness in previous research and discussion of the role and state capacity of Bangladesh with regard to the plight of the Rohingya refugee protection regarding non-refoulement, local integration and to repatriation (in the context of the bilateral agreements in 2017 with Myanmar), as well as the possibly crucial importance of their citizenship rights, are thus basic points of departure for the formulation of my research questions.

Moreover, my analysis of the previous studies and discussions in the next chapter will reveal that there are few data archives (confidential documents, and online newspaper articles) available regarding bilateral agreements and the challenges of repatriation in Myanmar. In particular, there are only a few scholarly articles which have addressed the credibility of the repatriation agreement in the condition of assuring all types of safety (physical, mental and legal) by the Myanmar side. There are some articles on the 1992 Rohingya exodus in Bangladesh and the refugee recognition on *prima facie* basis as well as challenges of repatriation of the Rohingyas afterward, but there is no literature within the area of discussing the legal protection or non-refoulement of Rohingyas in the circumstances of not giving the refugee recognition of the Rohingyas. Apart from that, Bangladesh does not accept Rohingyas for the local integration. In this regard, it is necessary to analyze the state capacity of Bangladesh in light of challenges after the 2017 exodus of Rohingyas in Bangladesh. Hence there is a fundamental need to try to collect more information in the field by way of data collection and interviews with reflective informants on the ground.

In short, the research questions, given the state of the existing literature are as follows:

- What are the approaches of the Bangladesh government in theory and practice towards the exodus of displaced Rohingyas from Myanmar in 2017?
  1. How does the Bangladesh government address the legal protection of refugees or non-refoulement regarding repatriation in Myanmar?
  2. What are the key challenges of Bangladesh towards local integration of Rohingyas in Bangladesh, especially concerning state capacity and credibility?
  3. What is the special importance of recognition of citizenship rights of Rohingyas in Myanmar, in the context of credible voluntary repatriation?
1.4 Thesis structure

Chapter 1 is the introduction of the general problems regarding the Rohingya crisis from the Bangladesh perspective. The section emphasizes the background and the literature gap that need to be addressed in order to obtain a better understanding and to discuss the viable solution. The chapter also consists of the objectives and the research questions of the paper.

Chapter 2 consists of key concepts and a theory section. The chapter discusses the refugee crisis in light of different theories and concepts. This chapter can be considered as the rules of the game by which the game should be played. The sections cover refugee protection beyond the 1951 convention of refugees, state-society approach by Joel S Migdal (1994); and the theory related to Stokke’s (2017) stratification of citizenship in addition to Fraser’s (1995) politics of justice with the dimension of redistribution, recognition, and representation.

Chapter 3 provides the methodological approach, in the context of case study research, interviews, data collection, research ethics and the limitations of the study. The sections are mainly describing the way in which the data has been collected before an analysis of the data.

Chapter 4 discusses the policy approaches of Bangladesh regarding the refugee protection or non-refoulement. The chapter analyzes the approach of Bangladesh towards Rohingyas where Rohingyas have not given refugee status. In this context, chapter 5 analyzes the core human rights law beyond the international refugee law and establishes that, although the Rohingyas are not given refugee status in Bangladesh, they are entitled to get international protection considering the term non-refoulement and right to seek asylum offered by complimentary protection law.

Chapter 5 discusses the state capacity of Bangladesh considering the local integration of Rohingyas in Bangladesh. A discussion on the credibility of the local integration of the Rohingyas in Bangladesh, the chapter claims that economic growth is not the only element to consider the strength and weakness of states. With this context, the theory-based discussion of Joel S Migdal’s (1994) state society approach classifies Bangladesh as a weak state in a strong society. As a result, both the state and society will fail together in its penetration if the extra burden of Rohingyas has been considered for the local integration.

Chapter 6 establishes the importance of citizenship rights of Rohingyas in Myanmar. The key argument of the section is relevant to Anan commission’s final report (2017) that recommended to review or amend the 1982 citizenship Act. In this regard, citizenship has been characterized through Stokke’s (2017) four elements of citizenship; such as legal status, membership,
participation, and Rights. Moreover, the interlinkages of the citizenship elements establish the recognition of full citizenship. Lastly, the discussion includes the dimensions of citizenship in the context of politics of justice: redistribution, recognition, and representation in Myanmar.

Chapter 7 is the conclusion that contains the summary in light of the critical objectives of the study and research findings after analysis. The chapter also include the possible directions of further research.
Chapter 2

2.0 Approach concepts and Theory

The concepts of my studies are related to theories of international agreements on refugees, citizenship and state capacity. In the following, I will discuss the relevant aspect to each of them.

2.1 Theoretical debate of non-signatory states beyond the 1951 Convention of Refugees

In general, the 1951 convention of refugees contradicts with the bilateral repatriation agreement 2017 between Bangladesh and Myanmar. Theoretically, there are some human rights law (complementary protection law or customary international law), and humanitarian law beyond the international refugee law that emphasizes the protection of refugees or non-refoulement beyond the 1951 refugee convention. According to the 1951 Convention relating to the Status of Refugees, “a refugee is someone whose membership in a particular social group, or political opinion; is outside his/her country of origin; and is unable or unwilling to avail him/herself of the protection of that country, or to return there, for fear of persecution” (UNHCR 2005) (Chimni 2000).

The 1951 refugee convention is the fundamental legal document in defining who should be deemed refugees, their rights and legal obligations in the first asylum country, but it was more or less restrained protecting only the European refugees in the aftermath of World War II. However, the 1967 protocol expanded its scope as the problem of population displacement around the world (Al Imran & Mian 2014). According to the definition of Article 1A (2) of the 1951 refugee convention, Rohingyas can be entitled to refugee status, but in reality, the Bangladesh government has not given the refugee status to the Rohingyas. Bangladesh is not a signatory of 1951 refugee convention, nor the 1967 protocol relating to the status of the refugees. In 1992, however, the same Rohingyas were given refugee status on prima facie basis. Within the altercation of the refugee recognition, the complementary protection law emerged from the human rights law for the protection of refugees beyond 1951 convention of refugees or non-refoulement can be explained by the theoretical ground.

The international refugee law is a part of human rights law. For example, according to the universal declaration of human rights (UDHR), 1948 of Article 14(1), "everyone has the right to seek and to enjoy in other countries asylum for persecution." States, from now on, instead
of being a non-signatory of 1951 convention, still provide shelter to refugees whenever it is in necessary on humanitarian grounds. Bangladesh has quite often accepted these refugees only on humanitarian grounds. There are some other customary laws which are also relevant for the refugee protection. For example, Article 3 of the 1984 convention against torture claimed that "no state parties expel, repel, return (refouler), or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture." Moreover, Article 26 of the international convention on the civil and political right, 1966 mentioned that, "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law". It guarantees all persons equal and effective protection. Moreover, the UN refugee agency UNHCR (2005) offered three durable solutions to the refugee problem such as voluntary repatriation, local integration and resettlement (Azad & Jasmin 2013; UNHCR 2005a :137). The core concept of voluntary repatriation is return in safety and dignity (Azad & Jasmin 2013). Voluntary repatriation refers to the conditions of physical, legal and material safety with full restoration of natural protection (UNHCR 2005c:140). Local integration is a solution whereby the country of asylum provides legal residency, and resettlement involves the permanent movement of refugees to a third country (Azad & Jasmin 2013). Rohingya crisis is a protracted crisis. Repatriation is a proposed solution of a protracted crisis by UNHCR, but it is not acceptable while abusing the principle of non-refoulement. The Principle of non-refoulement is obliged to provide shelter to a refugee determining the ground of customary international law (Al Imran & Mian 2014). Non-refoulement is the normative ground that influence on the voluntary repatriation. The 1951 convention of refugees; article 33(1) considers the refoulement relating to the status of refugees that

"No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."(UNHCR 2005b)

Nonetheless, the principle of non-refoulement requires the safety and security in the place of their return, the provision of freedom might be threatened because they will be no more refugees after return from the asylum-seeking countries. On the other hand, according to article 33(2) of 1951 convention, the exception on refugee return can be possible on two grounds; refugees become a threat for the national security or public order of the host country, and if the refugees have been found to have committed a crime, thus posing a danger for the host community (Goodwin-Gill & McAdam 2007:139).
2.2 State-society approach by Joel S. Migdal

A crucial aspect of Bangladesh’s ability to handle the refugee crisis by accepting the Rohingyas for local integration and the relations with Myanmar is its ability to implement policies and decisions. One classical and useful approach to the challenges of the state-society linkages in the Global South is Joel Migdal’s State-society approach. Joel S Migdal (1994) in the book "state power and social forces: domination and transformation in the third world" brings forth the determinants in the definition of the state. The description, on the one side, emphasizes the bureaucratic (rule enforcing) character of the state in formulating and transformation of its goals. It highlights the capabilities and proficiencies in achieving a fixed set of goals in implementing or formulating policies by the top state leaders and legislative process. In this process, a state is doing nothing less than reinvent the society but transforming its engagement with other social forces (Migdal et al. 1994:12). For instance, Mao’s China formed the state policies in the language of class struggles which defended the socialism and raised revolutionary consciousness. Nonetheless, the state’s goals and actions were colored by the social networks that can be characterized by economic, social and political relations at both national and local levels.

The state is a powerful organization that engages in centralized, institutionalized, territorialized regulation of many aspects of social relations. Hence the state is not a fixed ideological entity; instead, it embodies an ongoing dynamic and a changing set of goals, as it engages in the social group (Migdal et al. 1994:13). When the state organization interacts with different social groups, it clashes with the social bases and the aims of the state. Therefore, the interaction with the social groups influences to change the set of goals. Such engagement can involve direct contact with formal representatives, legislators and commonly through political parties closely allied with the state. In this regard, the state may be “a crippled giant” in the quest for domination in society, but more meaningful initiatives and more consistent actions from the other social forces (Migdal et al. 1994:18). When strong pressures are applied by domestic and foreign social forces, various components of the state interact on their different levels. Here social forces in society represent powerful mechanisms for associative behavior. These actions can also be social movements, including those held together by common, strongly motivating sets of ideas.

State capacities are defined to include the capacities to penetrate society, extract resources, regulate social relationship and appropriate or use resources in determined ways. Among the four capacities, penetration in the society and the extraction of resources from the societies are
easy to achieve for many third world states; but for the vast majority of them efforts to develop the appropriate use of resources with a regulated social relationships is difficult to achieve, and these two are the key indicator of state social control (Migdal 2001:22). Political leader cannot impose their domination because of the state capabilities which are mostly depend on the very top leadership of state bureaus and state branches.

In the modern world, it is impossible to understand society without the state. Society is the outermost social structure for a certain group of individuals as well as a product of state formation (Migdal et al. 1994:18). The formulation of the society created and activated the society. If society is outer most limits with which people identify, then it is the state that initially determines those limits. Indeed, the interaction between the state and society are mutually transforming. The interaction between states and other social components, some social forces tied their fortunes to that of the state or accepted it as the appropriate organization to establish the proper practices for all the society.

State and social forces have produced a range of outcomes based on the struggles and accommodation, which can be captured by four results. First, total transformation. In this form, state penetration leads to the destruction, co-optation or subjugation of local social forces and the state domination. In such cases, the compound of the state successfully transforms the people arena identify themselves within. Forced migration, replacement of the locals by a settler population, widespread use of violence may destroy local dominating social forces and transform personal identity (Migdal et al. 1994:24). Second, state incorporation of existing social forces. In this type, the state’s injection of the new social organization forced into an arena enables it to apply the appropriate existing social forces and symbols to establish a new pattern of domination. These changes in local components of the state may then affect the states’ overall coherence and its ability to reallocate resources, establish legitimacy and achieve integrated domination. Third, existing social forces’ incorporation of the state. In this type, the presence of the state components by dominating social forces do not produce radical changes in the pattern of domination. Or in some cases, the presence of the new states does generate a new pattern of domination, but ones in which new non-state social forces rise to the top. The organization and the symbolism of the state’s components are appropriated by the local dominating social forces. In this case, the transformation of the local components of the state is so extensive as to harm the state’s overall chances of achieving integrated domination in society significantly. Finally, the state may fail together in its attempt at penetration. This refers to the disengagement or lack of engagement of the state in the local arena will result in
a small transformative effect on the society, and limited impact of the society on the state. Failure to engage in arena struggle in even the most remote parts of the country can affect the state in the capital city by denying state components, their resources, and support from the larger society (Migdal et al. 1994:25).

2.3 Citizenship
One of the recommendations regarding the advisory commission on Rakhine state is quite relevant even if there is no context of repatriation but promotes to establish the elements of full restoration of natural protection in Myanmar. In the recommendation (12) of the final report of the commission, it was stated that the government should establish a straightforward pattern and a timeline for the citizenship verification process. The process enables individuals to apply for citizenship at the same time as they apply for NVC (national verification card). Additionally, in recommendation 14, Myanmar will need to establish a status for those who reside in Myanmar without being citizens. Moreover, the report also covers the complicated 1982 citizenship law of Myanmar, where recommendation 17(5) stated the need for finding a provision for individuals who reside permanently in Myanmar and the possibility of acquiring citizenship by naturalization; and 17(6) the government should present a plan for the start of the process to review the citizenship law. Those recommendations suggest that even in the general agreement the issue of citizenship must be added, but the process of recognition remains disputed.

The construction of citizenship is not only based upon residency but can be understood as four interconnected dimensions which are membership, legal status, rights and participation (Stokke 2017:194). Among the core components, membership and legal status refer to cultural and juridical inclusion in communities of citizens; rights and participation concern the entitlements and responsibilities that follow from such compositions. The membership dimension highlights that citizenship is based on a distinction between insiders and outsiders in a community, but the community and criteria of inclusion vary over time and space. Based on membership in a national community, states ascribe citizenship as a legal status inclusive of both rights and responsibilities between individual and state. The third components of citizenship are the set of rights associated with the membership and formal citizenship status. Moreover, there are three folded typologies of civil, political and social rights. Finally, the process of becoming a citizen is conceived not merely as a question of legal status but also a matter of active participation within communities of citizens (Stokke 2017).
The stratification of full citizenship has a mutuality of all the components. The population of a state or territory is *politically excluded* if there is no participation in the decision making or election. Citizens without membership are also *culturally excluded citizens*. The *membership* dimension highlights that citizenship is based on a distinction between insiders and outsiders in a community, but the meaning of community and the criteria for inclusion vary over time and territory. The *juridical excluded residents* are considered to deprivation of citizenship by legal status. Thus, *legal status has a contractual relationship between an individual and the state that carries with it both rights and responsibilities*. Persons excluded from such rights are *socially excluded citizens* (Stokke 2013:03). Finally, when all the components of citizenship function as a whole the result is full citizenship.

Liberal theories claim that citizenship is a status, which entitles individuals to set a specific set of universal rights accepted by states, and the state is to protect citizens in the exercise of their rights (Oldfield 1990). So, concerning protection, the state is not obliged to protect the Rohingyas unless the Rohingya is given the valid identity, where identity refers to the legitimate status of any individual claiming a part of a nation. The politics of citizenship is very complicated considering the issues of exclusion or negligence. It is a prism to address politics. Thus it is both a product of and basis for politics of recognition, redistribution, and representation (Fraser 2009; Nyers 2007; Stokke 2013:1).

2.4 Specified Research questions

In view of the analytical tools presented and discussed in the above section, how would it now be possible to specify the general research questions? With regard to each of the three general research questions on the issue of the approach of the Bangladesh government, we may now formulate specific sub-questions based on the analytical frameworks for the study of international agreements on refugees, citizenship and state capacity. The general research questions and the specific research questions are as follows:

1. **How does the government of Bangladesh address the legal protection of refugees or non-refoulement regarding repatriation in Myanmar?**

   1.1 In what way, if at all, does Bangladesh consider the relevant customary international law to protect Rohingyas considering non-refoulement?

   1.2 Does Bangladesh have any influence or try to take any responsibility to assure non-refoulement for the refugees regarding voluntary repatriation?

   1.3 What issues are at the stake for Bangladesh’s position regarding the Rohingya treatment in Bangladesh?
2. What are the key challenges of Bangladesh towards local integration of Rohingyas in Bangladesh, especially with regard to the state capacity and credibility?

2.1 What are the specific challenges of sheltering the Rohingyas in the camps (apart from local integration) regarding the political economy and socio-economic capacity of Bangladesh?

2.2 How can state capacity determine the local integration of Rohingyas considering the credibility of strong and weak state?

2.3 How viable is the proposal of the local integration of Rohingyas when determining the state capacity of Bangladesh?

3. What is the special importance of recognition of citizenship rights of Rohingyas in Myanmar, in the context of a meaningful voluntary repatriation?

3.1 How does the lack of recognition of citizenship rights of Rohingyas undermine the protracted displacement in Myanmar?

3.2 What would be the arguments for the inclusion of the issue of citizenship by reviewing the 1982 citizenship Act?

3.3 In what way is the citizenship of Rohingyas in Myanmar interconnected with the politics of redistribution, recognition and representation?
Chapter 3

3.0 Methodology
The chapter discusses the research methods that are used for data collection and addresses the objectives of the study regarding the research process. Gerring (2006) claims that in practical sense researchers invariably face a choice between knowing more about less, or less about more (Gerring 2007:49). This section will now proceed to state how I intend to answer the proposed specified research questions. In short, the research strategy chosen for answering my specified research question mentioned in the previous chapter is the theory based, descriptive case study, which is conducted through the qualitative research with a semi-structured interview in the field work as well as relying on secondary data sources such as scholarly articles, available journal, newspaper, treaties and agreement documents etc.

3.1 Research design
3.1.1 Research Style: Qualitative Research
“Good research” or “scientific research” can be qualitative or quantitative in style (King et al. 1994). Disentangling the difference between qualitative and quantitative research; (KKV) King, Keohane and Verba (1994) claimed that, neither quantitative nor the qualitative is superior to the other, regardless of the research problem being addressed. Theoretically, qualitative research covers a wide range of approaches but tends to focus on one or a small number of the case and to employ intensive interviews or in-depth analysis of historical materials. Considering the style, Bryman (1999) also claims that, "qualitative research" has been sometimes taken to imply and appears to social research, where quantitative data has not been collected or generated (Bryman & Burgess 1999). Arend Lijphart (1971) claimed that all empirical research is performed on a shared logic of inference, where inference is the process of using the facts we know to learn about the facts we do not know (Lijphart 1971). So, we can find the facts by focusing on the verification of a causal relationship between single variables while isolating the others. (King et al. 1994).

As already indicated in the above sections, information about the role of Bangladesh in the Rohingya crisis is scarce. The first conclusion is therefore that qualitative research design is the only feasible option. A qualitative study would be useful to allow for assembling different relevant information and provide an in-depth knowledge of the study area. Qualitative research emphasizes words rather than quantification in the collection and analysis of data; the strategies are broadly inductive, constructionist and, interpretive (Bryman 2012).
3.1.2 Research strategy: Case study research

A case represents something that pertains to a broader population (Gerring 2004:342-344). It is a delimited phenomenon (a unit) observed at a single point in time or over some period that an inference attempts to explain (Gerring 2007: 19). Moreover, A case study as a research design draws upon a shared logic of inference (Verba et al. 1994). Lijphart (1971) contends that all empirical research focuses on the verification of a causal relationship between single variables while isolating the effect of others (Lijphart 1971:683). Since I must mostly limit myself to focus on description and understanding of complicated and rarely researched processes before considering possible casual relationships, I feel more at home with the argument by George and Bennett (2004) that "[A] case study is more about finding the condition under which specified outcomes occur, through the mechanisms they occur rather disentangling the frequency of the terms and consequences (George & Bennett 2005:31).

According to Yin (1984), explanatory case studies can be complemented by two other types “exploratory” or “descriptive” case studies. Thus, among the three types of research strategies which are exploratory, descriptive and explanatory (Yin 1984:1), I would like to focus on descriptive analyses since it is a significant task to search and make sense of relevant data in the first place. Descriptions can be used for conceptual tools and theoretically based approaches. And in some cases, my descriptions may facilitate the concept of developing theory-guided analysis or testing the hypotheses about possible causal factors.

Even though my study has a descriptive focus – given the prime need to identify and handle scarce information – I think that it may be characterized by an interpretive, idiographic and theory-guided approach (Levy 2008). In the previous section, I have discussed approaches, concept, and theory that could best help me to identify and analyze the relevant data. With regard to data and other information, I will undoubtedly search for various documents related to the negotiation between Bangladesh and Myanmar, state capacity assessment of Bangladesh reports on public policies and possible reviews by fact-finding teams on the refugees and the importance of citizenship rights in different context. In this process I rely on the bilateral agreement of repatriation (1978, 1992 and 2017), international treaties upon refugee law, theories related to citizenship as for right, scholarly articles, books, available online journal, newspaper, etc.

3.1.3 Justification of methodological choice

Regarding the primary goal of inference, Gerring (2007) explained the method of studying the case can be compared to the two ways to learn how to build a house. First, by analyzing the
construction of many houses; or else by studying a particular house. The first approach is a cross-case method and the second approach is the case study method. Although there are different paths to this goal; both are concerned with the same general subject (Gerring 2007:1). Considering the affinity of case study and cross-case study, Gerring (2007) differentiated the research goals respectively as, hypothesis generating and hypothesis testing, internal validity and external validity, causal mechanisms and causal effect; and the scope of the proposition by depth and breadth. (Gerring 2007:38).

Although based on selecting the case study, the Rohingya case should be a hypothesis generating case considering the affinity of research goals, but it the Rohingya issue is a hypothesis testing case. Flyvbjerg (2006), in contrast, argued that the theory testing is also possible in the case study analysis. Lijphart (1971), likewise proclaimed that, a single case can constitute neither the basis for a valid generalization nor the ground for disproving an established generalization (Lijphart 1971:691) Following the argument of Flyvbjerg (2006), in contrast, it can be reiterated that the generalizability of a case study depends on the strategic selection of a case, especially in the critical case (Flyvbjerg 2006:221).

3.1.4 Techniques for case selection
Case studies are useful for explaining the causal mechanisms, whereas cross-case method is useful for elucidating causal effects. The causal mechanism effects the plausibility of an X/Y relationship. That is, X must plausibly be connected with Y. George and Bennett (2005) defined mechanisms as stable independent factors that are under certain conditions link causes and effect (George & Bennett 2005:8). On the other hand, causal effect refers to two things; the magnitude of a causal relationship (the expected impact on Y of a given change in X across a population of cases), and the relative precision or uncertainty of the point estimate. To account for broader phenomenon, a focused case study must be representative of a broader set of cases. Hence a critical case is essential in defining the strategic importance about the general problem. The logic behind the critical case study rests upon the Sinatra inference: “if I can make it here, I will make it anywhere” (Levy 2008), vise-versa “if I can’t make it here, I can’t make it anywhere” (Gerring 2007:49). So, in the context of different case selection techniques (typical, diverse, deviant, crucial, pathway, etc.) by Gerring (2007), the study is justified through typical-case selection technique because the typical case is representative. The author chooses the case based upon a set of descriptive characteristics and then probes for causal relationships. The typical case model involves a causal model of some phenomenon of theoretical interest. Here, the researcher may identify a particular outcome (y), and perhaps a specific X1/Y
hypothesis that is planned to investigate. Choosing the typical case may be helpful in exploring the causal mechanism and in solving the identification problem. Thus, the researcher may confirm or disconfirm the existing hypothesis or reframe it in a way that it is consistent with the findings of the case study (Gerring 2007:89-93).

3.1.5 Rohingya crisis: A typical case selection
In light of selecting the case study as a research design, the typical selection of the case of Rohingya crisis can be understand through the causes and preconditions (the causal process and mechanisms) behind a given outcome or a process from case to consequences (i.e., Bangladesh has not given refugee status to the Rohingyas can lead to abuse the principle of non-refoulement). Further, the selection of Rohingya as the “case study” research design will discuss the causal mechanisms of Rohingya displacement, and the importance of citizenship for a meaningful repatriation in Myanmar for a viable solution of a protracted crisis. by granting the citizenship rights to the Rohingyas in Myanmar. The protracted refugee crisis is a worldwide phenomenon. The strict immigration policies of the developed countries and the issue of international protection of refugees beyond the 1951 convention of refugee, selecting the Rohingya crisis is a representative case that has a broader definition by the international humanitarian law or human rights law (customary international law). Apart from that, the complementary protection of refugees, as well as the term non-refoulement beyond the 1951 convention of refugees or the 1967 protocol relating to the status of refugees, can be characterized by a descriptive means. Bangladesh’s position of not giving the refugee status of Rohingyas are somewhat leading the solution towards a repatriation oriented which is based on the theory-based hypotheses. Typical-case selection helps to explore the causal mechanism. Consequently, there are more choices to confirm the theory-guided hypothesis or reframe it in a way that it is consistent with the findings of the case study. Therefore, the study reframes the causal mechanisms with a dimension of exploring the importance of citizenship rights in Myanmar as an acceptable outcome of repatriation of Rohingyas in Myanmar.

3.2 Site selection and Data collection
The case site is Cox’s Bazar in Bangladesh which is the border district sheltering the Rohingyas in the camps.
Map 1: Rohingyas are sheltering in the border district Cox’s Bazar, Bangladesh.

Since the data from the Rohingya population or the local people may be not relevant enough for studying Bangladesh’s approach. The study, therefore, does not have the direct interaction with the Rohingya population. The sample of interviewees were predominantly the actors of the government leadership, UNHCR representatives, humanitarian workers and the officials who are actively involved after the exodus of Rohingyas in 2017.

With this context, a set of my backup questionnaires relate to the official actors working in Cox’s Bazar. Due to the intense workload for the UNHCR representatives, I had to collect the interview data from both Cox’s Bazar and Dhaka in Bangladesh. Afterwards, I interviewed the personnel in the government’s regional departments in Cox’s Bazar from the top to bottom hierarchy which corresponds to Migdal’s (1994) four different levels of non-state actors. In ascending rank, they are: the trenches, the dispersed field offices, the agency’s central offices and the commanding heights. The similar set of questions were asked with an open-ended flow to the local government, stakeholders, state organizations, humanitarian organizations, Police and voluntary workers in the Rohingya camps areas who are working actively, and who observe the common practice on the actual ground. This category can be classified by the three sets of pressure within the state organization such as supervisors, underlining and peers (Migdal, 1994).

3.2.1 Interviews
Due to a limited time frame, I interviewed 18 informants in the fieldwork, with a semi-structured interview questionnaire. With this regard, Mosely (2013) proclaimed that a semi-structured interview questionnaire format is appropriate to the goal of coding the data and using
the data. Especially, for evaluating the causal arguments and to establish the characteristics of a population (Mosley 2013:117). Regarding the sampling technique, I preferred *non-probability* sampling, which is the sampling technique where the samples are gathered representatively to the population and not giving equal chance of being selected. Among the four types of non-probability sampling (convenience sampling, consecutive sampling, quota sampling, judgmental sampling), I preferred *judgmental sampling*, which is more commonly known as *purposive sampling*. In such sampling technique, the sample is based on considerations of case and convenience. Since the respondents regarding my data are representatives from state and non-state actors with more face values, the judgmental sampling has been chosen as the technique (Yin 2013). To collect primary data based on my thesis objectives, there was an intensive fieldwork conducted from January 2018 until mid-February 2018. The medium of interview language was both Bengali and English (UNHCR representatives). The interviews were conducted mainly through semi-structured interviews. Semi-structured refers to a context where the researcher has a set of questionnaires for the informants, but the questions during the interview session were generalized if additional information was required.

### 3.2.2 Design planning tool

The following design planning tool will have helped me to ensure that my design is coherent and has a logical flow regarding my aim of the study and research questions.

Table 3: The design planning tool for data collection

<table>
<thead>
<tr>
<th>Key Research Question</th>
<th>General research Questions</th>
<th>Data needed to cover</th>
<th>Methods/tools for collecting data</th>
</tr>
</thead>
<tbody>
<tr>
<td>What are the approaches of Bangladesh government in theory and practice towards the exodus of displaced Rohingyas</td>
<td>1.1Does Bangladesh government address the legal protection of refugees or non-refoulement regarding repatriation in Myanmar?</td>
<td><em>First of all, need to assess the international refugee law, human rights law, and humanitarian law in the context of refugee protection or non-refoulement. Then must explain the complementary</em></td>
<td>Interview with the semi-structured interview questionnaires for the primary data with the officials, stakeholders, and actors. Secondary data (the repatriation agreements, international customary law for refugee</td>
</tr>
</tbody>
</table>
1.2 What are the key challenges of local integration of Rohingyas in Bangladesh, especially concerning state capacity and credibility?

| from Myanmar in 2017? | protection law beyond 1951 signatory states. Next, need that data relating to the practice and adherence of Bangladesh government with different customary laws. Finally, discuss the approach of Bangladesh not giving the refugee status to those who fled after 25th August 2017 in Bangladesh. | Protection, scholarly articles, newspaper, journals, online archives, etc.). Interview with the semi-structured interview questionnaires with the officials, stakeholders, and actors. Secondary data (i.e., scholarly articles, books and online archives, etc.) |
1.3 What is the special importance of citizenship rights in the context of a credible voluntary repatriation?

First of all, need to define the understanding of citizenship and its importance for Rohingyas in Myanmar. Then, need to distinguish the recognition of citizenship and the challenges regarding 1982 citizenship Act 1982. Next, have to describe the forms of injustice and the politics of justice regarding citizenship rights. Finally, politics of justice from Myanmar’s perspective of citizenship.

Secondary data (scholarly articles, books, journals, online archives, etc.). That is because the fieldwork is conducted in Bangladesh and have not accessed Myanmar for data collection.

Source: Author (2018)

### 3.2.3 Data analysis for the result

The approach of Bangladesh regarding the non-refoulement as protection of refugees is so complicated that there is not a distinct idea or framework to explain the crisis. The refugee treatment is, nevertheless, the key concern regarding the protection of the Rohingya. Hence, the study is susceptible while adjusting the research questions with the questionnaires. Bryman (2012) also admitted the difficulties of qualitative research that rest upon the fieldwork notes, interview transcription or documents (Bryman 2012). The interviews were conducted mostly in “Bengali” in the field, except in “English” with the UNHCR representatives working in regional and head office in Bangladesh. The questionnaire was being translated to Bengali, and
the notes were also documented in Bengali for the purpose of making a simplified data collection process.

However, the data was transcribed in English, and for categorizing the sequence, a table was adjusted with specified research questions and the interview questionnaire and the key findings from the fieldwork. Furthermore, “narrative analysis” has been chosen for data analysis, since the narrative analysis is the approach that maintains the temporal sequence of the people by which the interviewers and informants narrate the events (Bryman 2012).

3.3 Limitation of the data collection

Good research tries to incorporate both cause and effect, which reflect on the characteristics of broader populations, even after struggling to ensure the relationship between independent and dependent variables from the findings. The interview method for collecting data is a very effective method that can be used to evaluate hypotheses about the general effect of the independent variables. The data can be used to make the causal inference that comes from other empirical sources.

Gerring (2007) argued that causal mechanism is the core research goal with case study analysis. With this context, interviews can be used for process tracing, to check the intermediate steps between the independent cause and dependent effect (Mahoney 2010; Mosley 2013). Process tracing is a procedure used to identify the steps in a causal process leading to the outcome of a given dependent variable of a particular case in a specific historical context (i.e., X leads to more or less Y through the mechanism of A, B or C) (George & Bennett 2005:176). It is a style of analysis used to reconstruct a causal process that occurs within a single case (Gerring 2007:216). However, there can be some noticeable challenges in figuring out the essential intermediate steps. This is where a historical sequential process may help to overcome such problems (this is why the repatriation history of 1992 comes in the analysis in section 4.5.4 in the next chapter).

Another problem arises in choosing this research style. Quantitative data supports suggested causal relationships, whereas the interviews increase the validity. In this context, there is an assumption that process tracing within a case study cannot provide a causal relationship in a broader set of cases. The absence of a causal factor in a positive or a negative case would raise the question about the validity of the case findings. On the other hand, the causal process with the data set observations can be a valuable tool for theory testing, since the researchers can estimate the likelihood of finding such causal processes. Furthermore, the selection bias
remains a significant concern when the interview subjects are randomly chosen, and the subject’s decision whether or not to participate in the study are influenced by the unknown factors that complicate the causal relations (Martin 2013; Mosley 2013).

Apart from the methodological challenges, there were some practical challenges relating to the data collection in the fieldwork during the data collection period. The initial plan of conducting the study was two-folded; the first one with the non-state actors with the commanding heights, and the agency’s central offices. Second phase was determined to interview the trenches, the dispersed field offices as well as other state pressures like supervisors, underlings and peers. In phase one I planned to interview the decision-making body of the Bangladesh government. However, due to the limited access and the sensitive issue of the 2017 bilateral repatriation agreement, few subjects were willing/able to be interviewed. However, there were still materials and resources in the field, and therefore, a new plan was executed. This plan included interviewing subjects from the RRRC (refugee, relief, and repatriation commission office) in Cox’s Bazar with other state and non-state actors. The interviews were also conducted with the UNHCR representatives for a better understanding of the legal aspects of Bangladesh’s position regarding the concept of non-refoulement. Moreover, there arose another potential challenge since my topic interest demanded advanced knowledge over the international refugee protection or the concept of non-refoulement; the situation required to explain the ideas and concepts before proceeding to the interview questionnaires to extract the local knowledge of the informants. Although the judgmental sampling technique allowed me to select the informants, the limited time in the field and the lack of financial support remained a challenge during the interim period of the data collection.

3.4 Triangulation
Since my objective is based on both primary and secondary data regarding the approach of Bangladesh considering the treatment of the Rohingyas, assessing the state capacity for local integration of Rohingyas and discussing the importance of the citizenship in Myanmar. In this view, especially the third objective on the issue of citizenship is relied on the secondary data source, because the fieldwork was conducted in Myanmar. Therefore, I must be aware of triangulation of my data. Triangulation is a method to affirm the validity and assure the objectivity of the research process. It is important to check the validity of sources by entailing more than one method of sources. It is an approach of using multiple observers, theoretical perspectives, and sources of data and methodologies. However, the emphasis has predominantly focussed on methods of investigations and sources of acceptable and genuine
data (Bryman & Burgess 1999). The secondary sources which have been used are mainly from the acceptable data sources like scholarly articles, books, international treaties, bilateral agreements and recognized newspapers.

3.5 Trustworthiness and ethical considerations
When collecting data through interviews, I was aware of not violating relevant ethical principles. Bryman (2012) said that in the research process ethics must be acknowledged in the way that no one should be harmed in the research process (Bryman 2012). My research also considers three principles throughout the research process by acknowledging honesty, trustworthiness, and openness. As the Rohingya issue is highly sensitive and a protracted crisis, I assured the informants that both they themselves and their acquaintances would remain anonymous. Before leaving to the fieldwork in Bangladesh, I obtained research approval from the NSD (Personvernombudet for forskning) for the ethical clearance (attached in the appendix) and notified them about my research plan. In response they also suggested for me to maintain an anonymous research process. Considering research ethics, Bruce L. Berg (1995) claimed that anonymity and confidentiality have quite distinct meanings. Most of the qualitative research subjects are known to the investigators, so anonymity is virtually nonexistent. Thus, it is essential to provide the subjects with a high degree of confidentiality (Berg 1995).
Chapter 4

4.0 Findings and Discussions of Bangladesh’s Approach towards Rohingyas after 2017 influx.

This chapter discusses the key research question regarding the Bangladesh’s approach towards Rohingyas after 2017 influx. Thereafter the discussion moves towards the specific research questions regarding the refugee law perspectives. The general research questions and the specific research questions are as follows:

1. **How does the government of Bangladesh address the legal protection of refugees or non-refoulement regarding repatriation in Myanmar?**

   1.1 In what way, if at all, does Bangladesh consider the relevant customary international law to protect Rohingyas considering non-refoulement?
   
   1.2 Does Bangladesh have any influence or try to take any responsibility to assure non-refoulement for the refugees regarding voluntary repatriation?
   
   1.3 What issues are at the stake for Bangladesh’s position regarding the Rohingya treatment in Bangladesh?

4.1 Introduction

The Rohingya exodus from Myanmar in Bangladesh is not a new phenomenon. After the exodus in 2017, the Rohingya crisis brought a new interest on international refugee treatment when Bangladesh did not give the Rohingyas refugee status. However, the same groups of Rohingyas were given refugee status in 1992. So, how does Bangladesh government address the legal protection of Rohingyas in terms of non-refoulement after the 2017 exodus?

Traditionally, the policy and strategy of Bangladesh to handle the Rohingya crisis has always been to adhere to “repatriation” in Myanmar, after signing a bilateral repatriation agreement. Likewise, in the recent 72nd UNGA (General assembly for United nations) session on 21 September 2017, the prime minister of Bangladesh (sheikh Hasina) mentioned the five points proposals of the Rohingya crisis where one point is to ensure sustainable return of all forcibly displaced Rohingyas from Bangladesh to their homes in Myanmar. This chapter aims to discuss different aspects of legal protection in theory and practice and why the refugees are entitled to conventional refugee recognition or not. The first part will discuss the theoretical propositions of the international protection law, humanitarian law and human rights law for the refugees. The next part will discuss the theoretical debate of refugee recognition and the Bangladesh
position beyond 1951 convention of refugees regarding non refoulement. Finally, the chapter will discuss what is at stake for the Bangladesh government in the orientation of their position towards the Rohingya.

4.2 Politics of Nomenclature regarding Rohingya treatment in Bangladesh

Rohingyas have not been given convention refugee status who fled away to Bangladesh after the 25 August incident by the Bangladesh authority. In the recent influx of 2017, more than 670,000 (as of 25 February, 2018) of Rohingya migrants crossed the border and are sheltering in Bangladesh (IOM 2018). There is a conceptual debate on nomenclature of Rohingyas in Bangladesh. However, such nomenclature is important for Rohingya migrants regarding their recognition and entitlement of International legal protection. A huge numbers of more than 800,000 Rohingya displaced persons are sheltering in twenty camps in Cox’s Bazar (IOM 2018); who are been called FDP (forcibly displaced person) or displaced Myanmar nationals; and there were still 34000 registered Rohingya refugees (1991-1992) living in the two registered camps, who were given refugee status on a prima facie basis in 1992. The country can give the status individually which is termed as “refugee.” If the number of displaced persons from another country arrive at once, in that circumstances the cause of the mass influx should recognize those arriving en masse as refugees and each member of the group is then regarded as prima facie where such criteria were given to Rohingyas in 1992 from Bangladesh government. According to the UN refugee agency, UNHCR (Bangladesh), The Rohingyas who sheltered in Bangladesh following the border attacks on 9 October 2016 are called UMN (undocumented Myanmar national) when more than 87000 entered Bangladesh. Also, more than 300,000 undocumented Rohingyas entered in Bangladesh between the years of 2005 and 2015. Apart from that there are almost 120,000 IDP (Internally displaced person) Rohingyas living in camps in Myanmar (watch 2017). Forcibly displaced persons (FDP) are those Rohingyas who fled away and are sheltering in Bangladesh; and Internally displaced persons (IDP) are those Rohingyas living in the camps in Myanmar. The following interview data illustrates the politics behind refugee status,

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5 When large numbers of asylum-seekers arrive at once, it is often not possible to conduct individual status determinations. So, the cause of the mass influx should recognize those arriving en masse as refugees. Each member of the group is then regarded as a prima facie. (http://www.unhcr.org/3ae6bd5a0.pdf ), p 112 (Accessed date: 25.11.2017)


7 Ibid (i), https://www.ipinst.org/2018/02/foreign-secretary-bangladesh-rohingya-crisis#9
Refugee is a declaratory status. Rohingyas are being called by different names. But by calling them Refugees are not the conventional refugees. Although they are here because of persecution and fear of life threat, but Bangladesh government calls them displaced, foreigners of migrants. They are not given refugee status on prima facie basis as in 1992. Prima facie is a legal term to call group-based refugees; for example, all the Somalian group-based refugees in Kenya can be recognized refugee status by prima facie based. Or, the refugees from Ethiopia, the government can say all the group-based refugees will be assessed individually to give status of refugees” (Interview 9)

Rohingyas are being called by displaced persons, migrants, foreigners, Undocumented Myanmar nationals, forcibly displaced persons from Bangladesh side, whereas the Rohingyas have been much maligned by calling them “ugly as ogres”, dirty, terrorists and “kalar” a racial slur by the xenophobic belligerent Buddhists in Myanmar. Myanmar’s government, in addition, refers to the Rohingyas as “Bengalis” or “illegal Bengalis” rooted from Bangladesh during the British occupation (Brooten et al. 2015:718-719). One of the possible reasons for this could be the categorization by Myanmar 1982 citizenship Act, while there was no recognition of such groups in Myanmar. Therefore, the Myanmar authorities do not want to call them Rohingya and not permit the Rohingya to be recognized as an ethnic group in Myanmar. The Myanmar state councilor Daw Aung Saan Suu Kyi also reiterates her stance not to use the term “Rohingya”(Slodkowski 20.06.2016). By referring to them as “Bengalis”, the government of Myanmar actually designated the Rohingyas as outsiders or illegal immigrants from Bangladesh (Mohdin 2017). In contrast, Bangladesh always disputes the claim that Rohingyas belong to Bangladesh. So, words matter in the refugee politics of the global south. Nevertheless, refugee, IDP, UMN and FDP are all Rohingya minorities, categorized by their contemporary nomenclatures based on different status of recognition. Hence, this is not only a theoretical debate of refugee status but a hard reality of Rohingya misery. So, why has Bangladesh not given the conventional refugee status to Rohingyas after the 2017 exodus? In another sense, what is at stake in the refugee debate regarding not giving the Rohingya refugee. The following sections will discuss the contemporary debate surrounding the refugee recognition of Rohingyas.

4.3 Theoretical propositions of international legal protection of conventional refugees
The definition in the 1951 convention does not apply for the persons fleeing from generalized violence of internal turmoil and persecution in their home countries. In this case such persons are generally considered to be “humanitarian refugees” rather than political or social refugees. Therefore, states are not bound to provide assistance or protection of humanitarian refugees (Martin 1982). Since both Bangladesh and Myanmar are not the parties to the convention, if any country imposes statelessness on the population, they are not actually violating the
international law (Ebbighausen 02.11.2017). Predominantly, the exclusion of Rohingyas under the 1982 citizenship act from the Myanmar government makes the Rohingyas de facto Stateless\(^8\) (Ahsan Ullah 2016:291). The Myanmar government did not give them any legal status of citizenship in Myanmar (Azad & Jasmin 2013:30). Being a stateless group could be another reason, to negotiate with international protection law. However, the repatriation agreement between Myanmar and Bangladesh clearly stated the return of Rohingyas was to their home country. Since Myanmar signed to accept Rohingyas, it means that the Rohingyas are not stateless.

It has been argued that stateless persons are not conventional refugees and they should not rely on the protection afforded to them by the complementary protection mechanisms. According to the 1954 refugee convention on the legal status of stateless persons specified that stateless individuals could not be treated worse than a foreigner with nationality. The 1961 convention\(^9\) intended to prevent statelessness by giving the effect of article 15 of the UDHR which states \textit{“everyone has the right to a nationality”}. The 1954 convention relating to the status of stateless persons contains the similar rights to refugees under the 1951 refugee convention. However, article 33 of the 1951 refugee convention accorded also the same in the explicit \textit{non-refoulement} provision. Even if, Rohingyas are stateless and they have no citizenship rights in Myanmar, the international responsibilities for stateless persons also determined the principle of non-refoulement in Bangladesh.

\textbf{4.3.1 International refugee law (Signatory states of the treaties)}

The 1951 convention of refugees consolidates previous international instruments and rights of refugees on an international level. Among the South-East Asian countries, Cambodia and Philippines are countries that are the signatory states of 1951 refugee convention (Ahsan Ullah 2016:285). Both Bangladesh and Myanmar are non-signatories of the 1951 refugee convention. This means that both countries are not legally obliged to accept refugees. Persons those who satisfy the 1951 convention of refugee definition, can be referred to \textit{“convention refugees”} or \textit{“statutory refugees”} (Grahl-Madsen 1966:108; Hailbronner 1988). Since Bangladesh is not a signatory state of 1951 refugee convention or 1967 protocol for the status of refugees, accepting

\footnotesize{\(^8\) A stateless person is someone who is not considered to be a national or citizen of any state. A person without nationality may be denied rights and protection even though s/he was born and raised in a country in question. (http://www.unhcr.org/publications/legal/3ae6bd5a0/self-study-module-1-introduction-international-protection-protecting-persons.html), P84.}

Rohingya refugee is not an obligation for Bangladesh but *what if they are obliged by international refugee law?* The following section will discuss different aspects of protection regarding non-refoulement of Rohingya refugees within international refugee law.

### 4.3.1.1 Universal treaties

The principal of international refugee law is based on two refugee instruments; the 1951 convention and its 1967 protocol for the status of refugees. These are the only universal treaties that define the international legal protection of refugees. The 1951 convention of refugees provides the general definition of refugees and it is the key treaty of international refugee law. The 1967 protocol is an independent instrument that acknowledges the applicability of the 1951 convention of contemporary refugee movements. By this instrument of the 1967 protocol, state parties in the protocol agree to apply the provisions of the conventions to refugees who meet the convention’s definition but without the convention’s time and space limitations (UNHCR 2005b).

The principle definition of the 1951 refugee convention in the inclusion clauses of the Article 1A(2) of the 1951 Convention states (Al Imran & Mian 2014:228) that a refugee is any person who:

“… owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” (UNHCR 2005:55).

Predominantly, the 1951 convention of refugees is both a status and right-based instrument and is underpinned by many fundamental principles, most notably non-discrimination, non-penalization (refugees should not be penalized for their illegal entry or stay) and non-refoulement. Nonetheless, the principle of non-refoulement requires the safety and security in the place of their return, the life of freedom might be threatened, because they will no longer be refugees after return from the asylum-seeking countries. The principle of non-refoulement is so unique that it provides that no one shall expel or return (*refouler*) a refugee against his or her will (no-return), in any condition whatsoever, to a territory where he or she fears threats to life or freedom. The 1951 convention of refugees; article 33(1) considers the *refoulement* relating to the status of refugees that

"No contracting State shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion".
Moreover, the obligation for the principle of non-refoulement determines that, asylum applicants should be protected against any return to a place where their life of freedom could be threatened until it is completely ascertained that they have protection and there would not exist such threats. This is important as they will not be refugees anymore after returning from the asylum-seeking country. The non-refoulement obligation under Article 33 (1) of the 1951 convention is obligatory on all the organs of the state party or signatory of the 1951 convention and/or the 1967 protocol as well as any person or entity on its behalf. The central importance of the obligation not to return a refugee to a risk of persecution, is reflected in Article 42(1) of the 1951 convention and Article VII (1) of the 1967 protocol, and is applicable to those who are a refugee under the terms of 1951 convention, which is, any person who meets the requirements of the refugee definition contained in Article 1A(2) of the 1951 convention (the “inclusion” criteria); and if the exclusion provisions are not activated within the scope of the article 1A(2) of the 1952 convention (Al Imran & Mian 2014:231; UNHCR 2005b).

4.3.2 Regional treaties

4.3.2.1 The 1969 OAU (organization of African Unity/ Union) convention governing the specific aspects of refugee problems in Africa

The 1969 OAU convention was adopted by the organization of African unity (now union). The treaty complements the 1951 convention by a refugee definition in a broader sense, a positive obligation to make the best efforts to grant asylum, provisions on durable solutions and provision on prohibiting rebellious activities. It governs the Specific Aspects of Refugee Problems in Africa, which provides in the article 2(3) that “no person shall be subjected by a Member State to measure such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened.” 10

4.3.2.2 European Union instruments

The member states of the European Union have been struggling to harmonize their asylum policies and practices since the 1980s. With this regard, since 1999, European states worked to establish a common European Asylum system considering the application of the 1951 convention and finally it established in 2004 (UNHCR 2005b).

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4.3.2.3 Customary international law

The “customary international law” is based on customs along with general principles of law and treaties. It is the primary sources of international law applied by the international court of justice, jurists, United Nations and its member states. These laws are also applicable to the states that are not party to the 1951 convention or its 1967 protocol for the status of refugees. The principle of non-refoulement is a part of the customary international law. The normative means of customary law is that all the countries are legally bound by the prohibition on returning refugees in any manner considering the principle of non-refoulement.

4.3.2.4 “Soft law” instruments

“Soft law” instruments reflect the political rather the legal commitments of the state. However, these laws are determined very important in the protection of refugees. The most notable declaration by the international levels are as follows,

- **The declaration of states parties to the 1951 convention and/or its 1967 protocol**, reaffirms the relevance of the 1951 convention to international protection and it acknowledges that the principle of non-refoulement is surrounded by the customary international law.

- **Executive committee (ExCom) conclusions on the international protection**, adopted annually by the consensus elaborating the standards and principles of international protection. The conclusions deal with an extended range of protection issues including the external issues of the international law; such as voluntary repatriation, the response to huge refugee crises and maintaining the civilian and humanitarian charter.

Apart from the universal soft law instruments, there are two particularly significant regional instruments for refugee protection, which are as follows:

- **Cartagena Declaration on refugees (1984)** that emerged because of the civil-war related refugee crisis that affected Central America in the 1980s. Similar to the 1969 OAU (African Union) convention, the Cartagena declaration sets out recommendations for providing humane treatment and durable solutions for refugees. Despite binding rules, it has repeatedly been endorsed by the central, Caribbean region and Latin American countries.

- **Bangkok Principles on the status and treatment of refugees (1966)** has been updated in 2001 and adopted by individual Asian, Middle Eastern and African states. The principle is based on the reflective views; despite being a non-signatory state of the 1951 convention of refugees or 1967 protocol, many countries have extensive experience
providing asylum. The Bangkok principles incorporate a broader refugee definition than that of the 1951 convention of refugees.

4.4 Theoretical propositions of complementary protection law beyond the 1951 convention of refugees

“Complementary protection” refers to the protection granted by states based on an international protection need outside of the 1951 convention framework. It is based on humanitarian law\(^\text{11}\) and human rights law\(^\text{12}\), such as providing supports to the persons fleeing from generalized violence. The obligation of non-refoulement does not rest upon exclusion clauses of international refugee law, but it can be operated as a form of human rights or humanitarian protection triggered by states’ obligation (McAdam 2005:1). In relation to this, the upcoming section will discuss the human rights treaties and humanitarian treaties relating to contemporary protection.

4.4.1 International Human rights law

International refugee law is closely related to international human rights law. The two bodies of law are complementary and focus on preserving the dignity and well-being of every individual. The international protection framework is based on human rights concepts. It aims to help those who have been forced to flee their countries because of fear and persecution, which is the core of the 1951 refugee convention or the 1967 protocol relating to the status of refugees. An understanding of the international human rights law is essential for the asylum countries who are not the party to any of the universal treaties or declarations like Bangladesh. Those countries should accept the refugees or migrants to their countries because the human rights law applies to everyone. Similarly, prohibiting under the customary or treaty-based human rights law on returning a person to a territory where the person is at risk of torture, cruel, inhuman and degrading treatment or punishment, reinforces the principle of non-refoulement under refugee law. The different aspects of human rights law are as follows,

4.4.1.1 Universal instruments

*Universal Declaration of Human Rights*\(^\text{13}\) (1948) is the founding proclamation and the most famous international instruments of human rights. It is, nevertheless, the core expression

\(^{11}\) International human rights law is a set of international rules based on treaty and customs; directly arising from the international and non-international armed conflicts.

\(^{12}\) International human rights law (IHRL) is a set of international rules for every human being, established by treaty, customs and numerous non-treaty-based principles and guidelines (soft law) on the basis of which individuals and groups can expect certain behavior or benefits from governments.

defining rights to which every human being is entitled. Many of its principles have been treated as legally binding treaties, where some of them gained the status of customary international law. Above all, the Universal Declaration of Human rights adopted by the United Nations general assembly in Paris 10th December 1948 (General assembly resolution 217 A), article 1 and 2 address the issue of discrimination. Article 14(1) stated the specific interest in refugees claiming that “everyone has the right to seek and to enjoy in other countries asylum from persecution.”

Article 1 of UDHR is that “all human beings are born free and equal in dignity and rights”. Article 2 stated that, “Everyone is entitled to all the rights and freedoms outlined in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made based on the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty”. Article 3 provides that, “Everyone has the right to life, liberty and security of person.”

International Bill of Human Rights
In 1966, the member states of UDHR accepted a legal obligation to protect human rights and fundamental freedoms. The legal obligation was codified by two covenants that entered into the force in 1976; International covenant on civil and political rights and international covenant on Economic, social and cultural rights. Along with the human rights declaration and the two protocols to the covenants on civil and political rights, these instruments are collectively known as the Bill of human rights. There are some other relevant universal human rights instruments, they are as follows;

- International Convention on the Elimination of All Forms of Racial Discrimination (1965),
- United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984),
Such human rights regarding the right to life, right to freedom from torture or cruel, punishment, degrading treatment are listed in the covenants on civil and political rights. These obligations must always be protected even if in a public emergency which referred to as non-derogable rights.

4.4.1.2 Regional treaties

Human rights law has been developed significantly through regional treaties. The first regional treaty was the European convention for the protection of Human Rights and Fundamental Freedoms (1950). Later there were some other regional treaties that were adopted, like the American convention on Human rights (1969) and the African Charter on Human and peoples ’ rights (1981), Inter-American convention to prevent and punish torture (1985), the European convention for the prevention of torture and Inhuman or degrading treatment or punishment (1987), and the African Charter on the rights and welfare of the child (1990).

4.4.2 International Humanitarian law

The Humanitarian law aims to protect persons who do not or no longer take part in the hostilities of an armed conflict. The International humanitarian law signified the protection of refugees because refugees are being targeted in wars. The core humanitarian laws are the four Geneva Conventions 14(1949) and their two additional protocols (1977). The first Geneva convention is “for the amelioration of the wounded and sick in armed forces”; the second Geneva convention is “for the amelioration of the condition of wounded, shipwrecked members if armed forces in the sea”; the third Geneva convention is “relative to the treatment of prisoners of war”; and the fourth Geneva convention is “relative to the protection of civilian persons in time of war”. Among all the conventions, Article 3 is common that spells out the minimum protection of the persons who are not taking part in the hostilities.

4.5 What is at stake regarding Bangladesh’s position on the treatment of the Rohingya

Bangladesh has not given refugee status to the Rohingyas from Myanmar, who fled away to Bangladesh after 25 August 2017. However, in 1992, Bangladesh granted the refugee recognition on the prima facie basis to more than 200,000 (Saha 2000) of the same group of Rohingya displaced migrants. Apart from the theoretical debate of refugees in international law, how the politics of refugee nomenclature make a difference on Rohingya migrants in Bangladesh? What are at the stake of Bangladesh’s position regarding the Rohingya treatment

in Bangladesh? The following sections will analyze the causal mechanisms of Bangladesh’s Position.

4.5.1 Bangladesh is non-signatory of 1951 convention of refugees or 1967 protocol relating to the status of refugees

Bangladesh is not a signatory of 1951 convention of refugees, but they can be a signatory of the convention upon their willingness to accept refugees. Being a signatory of the 1951 convention can be a factor in giving refugee recognition. The following data retrieved from the data interview by UNHCR defines the signatory of 1951 refugee convention,

“The 1951 convention is so broad that covers the whole life of summer from life to death. We say positively that Bangladesh open the border. This is great decision for those for seeking safety. UNHCR look at it positively. It goes beyond 1951 convention because of universal declaration of human rights. This principle is clearly observed that we appreciate, but many countries followed beyond 1951 non-signatory state. Like the Syrian crisis; 5 million Syrian refugees are being hosted by Egypt. Some countries are better at treating the refugees, but some countries did not give the provision or limits of freedom of movement without being a signatory state of 1951. The 1951 convention is a benchmark but there are many examples of not being a signatory state” - (Interview 9).

The refugee definition in 1951 does not apply to the persons fleeing from the generalized violence of international turmoil, persecution or violence in their home countries (Hailbronner 1988:859). States in many cases permit persons to stay in their territory who are not the convention refugees, but for whom return to their origin is either not possible or not advisable regarding article 33 of the 1951 convention, article 3 of the CAT (convention against torture) or article 7 by ICCPR (international covenant on civil and political right). However, the state may permit the migrants to remain for a compassionate reason and that does not come along the legal conception of “complementary protection”. According to McAdam (2005), the complementary protection is granted by states based on an international protection need outside the 1951 convention framework. It may be based on a human rights treaty or on more general humanitarian principles. The main function of such complementary protection is an alternative protection beyond the 1951 refugee convention to avoid the obligation which does not mandate time or quality of the status for the migrants. Therefore, it is not derived by the exclusion clauses but simply constrained by the human rights or humanitarian protection triggered by states` expanded non-refoulement obligations (McAdam 2005:1).

The Bangladesh treatment of the Rohingyas predominantly rests upon complementary protection law. Bangladesh did follow the normative means of non-refoulement because the situation was very hostile for Rohingyas following the ARSA (Arakan Rohingya salvation Army) attack in August 2017. Bangladesh like other South Asian countries does not have any
national laws that define and regulate the status of refugees. Bangladesh does accept many international human rights treaties and even the soft law instruments such as the Bangkok principle, whose provisions directly promote the rights of refugees. However, in practice, the human rights are not enforceable in courts of law unless specific requirements are incorporated in existing municipal statutes or given effect through separate legislation (Al Imran & Mian 2014), which also reflects the Bangladesh position of Rohingya treatment.

4.5.2 Non-refoulement beyond non-signatory of 1951 convention of refugees

The principle of non-refoulement refers to “forbidding to send back” (Molnár 2016:51) unless the guarantee condition set forth with extradition were duly observed to the returnees’ country of origin. Article 45 in the fourth Geneva convention states that

“in no circumstances shall a protected person be transferred to a country where he or she may have reason to fear persecution for his or her political opinions or religious beliefs.”

Moreover, article 45 of the convention also prohibits transferring a person to a state that is unable or unwilling to uphold the Geneva conventions, including the common article 3 that protects civilians from both inter-state and intra-state conflicts. Considering the term non-refoulement, prior to the transfer of any person, the transferring authority is required to “make sure that the power which has agreed to receive them is both willing and able to apply the convention.”15 The repatriation agreement 2017 between Bangladesh and Myanmar is the license to send Rohingyas back to Myanmar and avoid the violation of article 45 of the fourth Geneva convention.

During the racial riots of June 2012, Muslims had left dozens dead and more than 30,000 displaced in western Rakhine state. As a result, many Rohingyas decided to flee and seek refuge in Bangladesh. However, the Bangladesh government quickly closed both land and sea borders. To justify the position from the Bangladeshi government, the foreign minister said that Bangladesh is not a party of the 1951 refugee convention and its 1967 protocol and as such, they are not obliged to accept Rohingyas (Parnini et al. 2013:142) as refugees. One of the respondents from my fieldwork responded that,

“Bangladesh is neither a signatory state of 1951 refugees nor the 1967 protocol relating to the status of the refugees, but this is a different case. Bangladesh government considers existing humanitarian laws for every single human being. It is not that we differ the laws for Bangladeshi citizen and others differently. Bangladesh follows the normative means of refugee

protection and non-refoulement, but we do not consider them refugees this time for some complexities regarding international obligation.” (Interview 1)

The retrieved data reiterates that, being a non-signatory of 1951 refugee convention does not have any influence over the decision of refugee recognition. The Rohingya, nevertheless, within a theoretical debate of refugee recognition can possess the article 14(1) of UDHR which is “everyone has the right to seek and to enjoy in other countries asylum from persecution.” Despite conventional refugee treatment, the right to seek asylum principle may bind the obligation for Bangladesh against the forceful repatriation of Rohingyas in Myanmar. One of the UNHCR representatives during the interview session proclaimed that,

“Non-refoulement is the principle to give them (Rohingyas) right to seek asylum so there is no way from Bangladesh. If you want to seek residency then the country will give you the right and the country will not refuse the asylum. Bangladesh gave safety to refugees to open borders. In this view, voluntary repatriation is different, separate concept it should happen when the situation is conducive. But in Myanmar the root causes are not sufficiently addressed, and the situation is not enough positive for returning the Rohingyas. If it is not enough positive, then the non-refoulement norms will be abused regarding the repatriation” (Interview 9)

Regardless the international refugee law, according to the international human rights law, the Principle of non-refoulement can be inferred from the article 7 of 1966, International Covenant on civil and political rights (ICCPR) which promotes the banning of torture, through the extraterritorial interpretation of the prohibition of torture. Apart from the legal bound the term can be determined from the regional definition. On the African continent, in the context of refugee law, article II (3) of the 1969 Addis-Ababa convention governing the specific aspects of refugee problems in Africa offers a different definition as threatening life, physical integrity or liberty is formulated as constituting the obstacle to return, to rejection at the frontier and expulsion. Moreover, the term non-refoulment is included in article 22(8) of the 1969 American convention on human rights as a purely human rights obligation (Molnár 2016:54). The above mentioned soft law instrument and regional international treaties also support the non-refoulement of Rohingyas from Myanmar regardless as to whether they are recognized as convention refugees or not in Bangladesh. However, the definition varies from a regional explanation, and there is no obligatory fixed international standard refugee law that will have an impact on Bangladesh’s decision.

4.5.3 A fear of Rohingya’s unwillingness to return to Myanmar in the long run

Literally, Bangladesh acted on the principle of non-refoulement by giving shelter to those traumatized victims fled away to Bangladesh in fear of persecution and life safety. However, the term will be in the public discourse regarding voluntary repatriation. The interview data
illustrates the necessity of repatriation. One of the respondents during the data collection emphasized that,

“Rohingyas are living here in the camps temporarily. Because of their presence our inhabitants became the minority. Our local people cannot cultivate or catch fish nor even have access to the forest. Therefore, we need to return them in Myanmar to avoid further local conflict. Hopefully, government is taking proper steps.” (Interview -12).

However, many respondents are suspicious about their voluntary repatriation. Some of my respondents in Rohingya camps area, Cox’s Bazar stated that,

“They (Rohingyas) have shelter, basic needs, freedom and most importantly they have the protection from getting persecuted by the Myanmar Army. In Myanmar, they have nothing they do not even know that there is something is called rights. So, why will they return! Although they are living in the camps, say, humanly inhuman place, but they are far better here in Bangladesh compared to Myanmar. Therefore, they will not accept the voluntary repatriation and we cannot effort sharing the burden. We are a very small country with almost 170 million people” – (Interview 4)

“They have no citizenship in Myanmar. People were killed, women were raped, and there were no facilities for them. Here in the camps they get everything. They have life, security and food. They will not return to Myanmar except some of the Rohingyas; those who had good economic condition in Myanmar”. (Interview 11)

“Voluntary repatriation is questionable unless Myanmar responds positively. Rohingyas have no rights in Myanmar since they are excluded as citizen. In Bangladeshi Camps they have basic rights, safety and protection. Most likely they will not return willingly.” – (Interview 6)

One the other hand, the UNHCR respondents proclaimed against the repatriation if not carried voluntarily,

“For us (UNHCR), Rohingyas are considered as refugees from Myanmar. We cannot allow them to return to Myanmar if they do not want to, and before assuring the safety, dignity and sustainability in Myanmar. The exceptional will undermine if they abuse regarding the exclusion clause of 1951 convention of the refugees.” – (interview 9)

The primary data retrieved from the field can be reiterated in a way that, repatriation is a complex process. Bangladesh has not granted refugee status because of the international obligation of non-refoulement where the fear factor rests upon voluntariness of the Rohingyas while urging the repatriation.

4.5.4 The repatriation complexity after 1992 exodus influences the declaration of refugees to the Rohingyas in 2017

The Rohingya population is a dilemma for Bangladesh and a paradox for Myanmar so far. The second exodus of Rohingyas after the independence of Bangladesh was in 1992. Bangladesh did give recognition of the Rohingyas as refugees by prima facie basis. However, in 1992, Bangladesh faced an enormous challenge and pressure from the international community while
repatriating them in Myanmar. The interview data from one of the government officials reflected the complexity of 1992 repatriation process,

“In 1992, the second influx brought 5 lacs illegal Myanmar immigrants. In 1997 most of them left from Bangladesh but nearly 30000 stayed here in the Kutupalong camp, because they did not want to return to Myanmar.” - (Interview 3)

Both Bangladesh and Myanmar signed the agreement of repatriation in all exoduses of Rohingyas in 1978, 1992, and in 2017. Howbeit, the repatriation of Rohingyas in 1992 was very difficult since the Rohingyas did not want to return to Myanmar. The agreement of 1992\textsuperscript{16} was titled "joint statement by the foreign ministers of Bangladesh and Myanmar issued at the conclusion of the official visit of the Myanmar foreign minister to Bangladesh 23-28 April, 1992", where the agreement in the Article 7(iii) stated that Government of the Union of Myanmar agreed to take all necessary measures that would halt the outflow of Myanmar residents to Bangladesh and encourage those who had left Myanmar to return voluntary and safety to their homes. Similarly, the recent “arrangement on the return of displaced person in Rakhine state” held on 23 November 2017; the similar statement was written on the article (2) which is repeating the article 7 (iii) and (iv) of 1992 agreement.

Hence some claimed that the repatriation was not voluntary rather forceful, and the non-refoulement term for the refugees was not respected. Azad and Jasmin (2013) claimed that virtually all the repatriation of Rohingyas in Myanmar was forceful repatriation (Azad & Jasmin 2013:30). In 1992 almost 210000 Rohingya refugees (Abrar 1995) fled to Bangladesh, because of operation Pyi Thaya\textsuperscript{17} by claiming the human rights abuses committed by the Myanmar authorities against the Rohingyas. After enormous international pressure, Myanmar authorities came to Bangladesh and signed the repatriation agreement with Bangladesh (Saha 2000). The agreement in 1992 between Myanmar and Bangladesh acknowledged the Rohingyas as lawful residents in Burma. According to the agreement of 1992, the Myanmar government agreed to repatriate all person’s inter-alia carrying the genuine Myanmar identity cards, addresses or other documents.

\textsuperscript{17}Pyi Thaya or operation clean and beautiful nation is the similar clearance of foreign immigrants that resulting in massive flow of 200,000 Rohingya refugees into Bangladesh, (https://www.aljazeera.com/indepth/opinion/2012/01/201212710543198527.html), accessed date: 09.04.2018
The repatriation was planned to start on May 15, 1992; and it was delayed because the majority of the refugees are against any return in Myanmar (Saha 2000). In the refugee camp at Dhuapalong, there was a bloody clash between refugees and the Bangladesh security forces where six Muslim Rohingyas were killed because of protesting over not wanting to return to Myanmar. The same protest of opposing the repatriation happened in Naikhangchhari camps by damaging the camp office, and they demonstrated protest inside the camps opposing repatriation. Moreover, the demonstrations continued to all other camps at Nayapara, Dhechuapalong, Balukhali, Dhum and Rangikhal in Cox’s Bazar (Saha 2000:41). The situation became worse when some of the refugees and their groups did not want to repatriate other Rohingyas, especially two organizations of the Rohingya Muslims – Arakan Rohingya Islamic Front (ARIF) and Rohingya solidarity organization (RSO) fought against the Bangladesh security forces. Under the violent situation, Ms. Ogata (UN high commissioner) appealed to the prime minister of Bangladesh to stop the forced return of the refugees and give UNHCR free access to the refugee camps. A new MoU, was later signed by Bangladesh and UNHCR agreeing that refugees will enlist themselves in the voluntary repatriation registration before bringing them to any of the three transit camps to handover to Myanmar authorities (Saha 2000:40). The record of the voluntary repatriation was done by the refugee headman, but the aid agencies claimed that the headmen were bribed or forced to provide names of the refugees even those who were not willing to go to Myanmar (Frontières-Holland 2002:23).

The repatriation started but it continued very steadily, and in 1994 the repatriation was closed (from 5th May 1994 to March 1995) due to the cyclone in Bangladesh. Later in February 1997, a total of 26,832 refugees were still in the Bangladesh camps who were waiting for the repatriation (Saha 2000:40-41). Those remaining refugees are still in the camps for the last 26 years as protracted refugees in a confined area. Some aid agencies suggested that Bangladesh may accept those refugees, but Bangladesh failed to allow them local integration or citizenship status. However, in the intermediate process, UNHCR claimed that many refugees were sent home against their will whereas Bangladesh accused the UNHCR of discouraging refugees from going back to their homes. So, there was a potential conflict of measuring the safety of a return to Myanmar. The data from the interview with the UNHCR officer in Bangladesh illustrates in one point that,

“when we think about repatriation, which means the situation in the country of origin becomes conducive for the refugees to return. So, the refugees have the rights of return and there are
subjective elements of when and how to return. This is maker of process in the refugees themselves. So, our responsibility as international organization is to provide sufficient information for the refugees to make decisions called informed decisions. Often, we can go and visit and before going permanently they can check if they can be there or not. However, we do not have access until now in Myanmar’s territory and we are not invited in the bilateral agreement between Bangladesh and Myanmar”. (Interview 9)

Repatriation is a complex idea. The process of repatriation is so complicated that there is no quick fix solution in theory or in practice regarding the refugees. The repatriation agreement of 2017 is also complicated that there might be a gap of intermediaries or mediators to regulate the protection of Rohingyas.

4.5.5 The contradiction between international refugee protection and complementary refugee protection

The protection of refugees is a broader concept. The UNHCR officer in the field interview stated that,

“when the refugees arrive in the country of asylum, the country of refugees are responsible for protection same as the nationals in their own. But many countries do not have the same protection framework. If the country cannot provide, then UNHCR is often invited for the protection. Protection means physical, legal protection including rights, status and protection.”. (interview 7)

The executive committee of the office of the United Nations High Commissioner for Refugees (UNHCR ExCom) conclusion adopted in 1977 reinforced that the implementation of the principle of non-refoulment did not require the formal recognition of refugee status (ibid 53). The conclusion stated that the non-refoulment principle could be applied to asylum seekers as well regardless whether the asylum seeker is staying in the territory of the host country lawfully or unlawfully or what migratory status he has (Hathaway 2005:303-304; Molnár 2016:57). This is how, refugee law contradicts by the human rights law, where the human rights driven principle of non-refoulment prevented the expulsion of the person concerned from the territory of the given country. Therefore, the outcome would be that the person would keep his or her refugee status and that would be practically impossible to send back unless the person individually fell under the scope if the excluding clause of (article 1 F) of the 1951 Geneva convention. Thus, the foreigners or asylum seekers may not be given the conventional refugee status in any case but, considering the legal standing to expulsion, he may be allowed to continue to stay in the country viewing a “tolerated status” (Molnár 2016:58).
Moreover, the ExCom conclusion urged the importance on 16 October (1980)\textsuperscript{18} resolution and passed that the prohibition of *refoulement* as a challenge to expulsion and reinforced that the requirement of non-refoulement was to be strictly observed even on the mass influx of refugees as *prima facie*. Afterward, the ExCom conclusion also approved in (1981)\textsuperscript{19} and (2004)\textsuperscript{20} made it more explicit that the principle of non-refoulement also included non-rejection at frontiers, including the access if fair and effective asylum procedures must be assured. Moreover, the 2004 conclusion (u) reiterates the voluntary repatriation where and when feasible remained the preferred solution in the majority of refugee situation and urged the UN entities to cooperate in the creation of conditions which will enable the promotion of voluntary repatriation to occur in and to conditions of safety and dignity.

One of the respondents from Bangladesh security officials during the fieldwork responded that,

> “Bangladesh does follow the normative means of refugee protection, but we do not consider them (Rohingyas) as conventional refugees. We call them displaced persons from Myanmar. We obliged the principle of non-refoulment, and that is the reason we did not send them back. However, we do not want the further international obligation posed on refugee definition” (respondent-2)

Up to now, the policy and strategy of Bangladesh are returning those Rohingyas by assuring all types of safety needs by the Myanmar government. Theoretically, Bangladesh does not want to approach with the obligation of conventional international refugee law or humanitarian law, but Bangladesh is following the international human rights law as a normative practice in the international arena.

4.5.6 Repatriation is the ultimate policy for the Bangladesh Government
The foreign secretary of Bangladesh, Shahidul Haque in a conference at international peace institute\textsuperscript{21} on 15 February 2018 mentioned that

> “almost one million Rohingya crossed over to Bangladesh within short period of two months. Since they are concentrated in two sub-districts, there are more Rohingyas than local people now that makes local people a minority. Among the Rohingyas 58% population were children,

\textsuperscript{18} Temporary refugee No.19 (XXXI)- 1980 (http://www.unhcr.org/excom/exconc/3ae68c443b/temporary-refuge.html), accessed date 09.03.2018
\textsuperscript{19} protection of asylum seekers in situation of large-scale influx No.22(XXXII)-1981(http://www.unhcr.org/excom/exconc/3ae68c6e10/protection-asylum-seekers-situations-large-scale-influx.html), accessed date 09.03.2018
\textsuperscript{20} General conclusion on international protection No. 99 (LV) – 2004 (http://www.unhcr.org/excom/exconc/41750ef74/general-conclusion-international-protection.html), accessed date 09.03.2018
\textsuperscript{21} https://www.ipinst.org/2018/02/foreign-secretary-bangladesh-rohingya-crisis#9 (Accessed date: 06.03.2018)
He also mentioned that the approach of the policy and strategy is a mixed strategy of combining bilateral and multilateral engagements for Rohingya repatriation. So, there is so far no clear strategy for Rohingyas for local integration or seeking asylum in Bangladesh. The UNHCR claimed that Rohingyas fulfill the requirements of a refugee according to the 1951 convention, but it is the state who will decide what is their position of recognition for refugees. One of the interviewers during the fieldwork stated the burden sharing in other countries by referring that,

“If international community wants to resolve the crisis, why not the developed countries and Arab countries accept them sharing the burden? For example, they are only 1 million, if most of the developed countries accept them the problem is solved. I do not know why Bangladesh should only be in the limelight, why will we suffer? Those Rohingyas had been persecuted, they were drowned in the deep sea, we just saved them from being persecuted. It does not necessarily mean that we will accept them as our citizen. International community must understand our capacity” (interview 4).

Bangladesh never accept Rohingyas for local integration. Moreover, the Rohingyas who were recognized as refugees in 1992, are still in the Kutupalong camp in Cox’s Bazar. They are in the confined area and they have not any citizenship in Bangladesh. The primary data also reiterates the importance of international resettlement in the developed countries as a way of physical burden-sharing, where Bangladesh never want the Rohingyas settlement in their territory.

4.5.7 The modern refugee definition overweighs the conventional refugee definition

James C Hathway (1997) claimed that, the 1951 refugee convention does not need that refugees be granted asylum in a new political community. Refugees are instead entitled to benefit from dignity and rights regarding protection until and unless conditions in the state of origin permit repatriation without the risk of persecution. However, the refugee status is explicitly conditioned on the continuation of a risk for refugees in the state of origin, and in need, it may be withdrawn when there has been a significant change of circumstances in the country to reduce the need for protection (Hathaway 1997:551). In this concern, giving Rohingyas refugee recognition or not, will not make any difference in treating them as migrants from another country.

Hathway (1997) also suggests that, the acceptability of repatriation follows logically from an understanding of refugee law as a mechanism of human rights protection but not an immigration process. Every state has their immigration laws to control the state, so the state can enforce its immigration laws when the human rights of former refugees are no longer at
risk in their own countries (Hathaway 1997:555). In this view, one of the local politicians and zilla Parishad (District local administration office by the political representatives) member in Cox’s Bazar responded that,

“we do not have enough land. They are here with foreign aid in the confined area; this is not life. Bangladesh will not or cannot accept the extra burden. Giving them refugee status means they can stay here by seeking asylum. The problem is Myanmar’s internal dispute, when the problem will be solved they must return. We do not want conflict with the local people here in Cox’s Bazar” (Interview 11)

Thus, all repatriation should be voluntary, if refugees are to be guaranteed access to meaningful protection until and unless it is safe to go home. It is not legitimate to live in the host country once the harm in their own country brought has been brought to an end (Hathaway 1997). So, the policy and strategy of Bangladesh are quite relevant with a definition of modern refugee recognition. Moreover, the approach of Bangladesh reiterates that the Rohingya should return to Myanmar once the situation is good enough to return.

4.6 Conclusion
The primary data reiterates that, the Bangladesh approach of Rohingya treatment is focused on repatriation and the refugee recognition of Rohingyas was restricted as to avoid the international obligation of refugee law. Bangladesh does not want any complexities or binding by the international obligation of refugee law or human rights law. The strategy of Bangladesh is to repatriate the Rohingyas to Myanmar, and they do not want to accept Rohingyas for local integration in Bangladesh. Apart from the international refugee law and humanitarian obligation, the strategy is adhering the complementary protection of refugees by following the international customary law. The repeating entry of Rohingyas make the Bangladesh government more conscious about the international obligation of refugee treatment in the host country. Nonetheless, Rohingya crisis is rested upon by the willingness to accept from Myanmar side. The 2017 bilateral agreement of Rohingya repatriation cannot be a durable solution unless Rohingyas get safety, dignity and sustainability. Apart from that, the repatriation of Rohingyas will be debatable considering the premature repatriation in Myanmar, which ended up with the protracted internally displacement in the camps.
Chapter 5
5.0 Findings and Discussions of the state capacity and the challenges of Bangladesh regarding the local integration of Rohingyas

Bangladesh never welcomed Rohingyas for the local integration after any of the three major exoduses of Rohingyas in 1978, 1992 or 2017 to Bangladesh. There 30,000 registered Rohingya refugees from 1992, before the 2017 influx in Bangladesh (ipinst.org 2018). However, the Bangladesh government showed not even little interest in giving them citizenship or any means of valid Bangladeshi residency. Although giving citizenship or identity is a state process of recognition. Why has Bangladesh never granted the Rohingyas local integration?

To disentangle the phenomenon, at first the paper will discuss the challenges (social, economic and political) after the Rohingya exodus in Bangladesh in 2017, and then will discuss the state capacity of Bangladesh as a benchmark of accepting the Rohingyas for a credible application for the local integration. With this regard, the following key research question will be discussed through a theory-based measurement of state capacity by Joel S Migdal (1994). The discussion will be followed by the specific research questions for an in-depth insight of the state capacity of Bangladesh and the credibility of local integration.

2 What are the key challenges of Bangladesh towards local integration of Rohingyas in Bangladesh, especially with regard to the state capacity and credibility?

2.1 What are the specific challenges of sheltering the Rohingyas in the camps (apart from local integration) regarding the political economy and socio-economic capacity of Bangladesh?

2.2 How can state capacity determine the local integration of Rohingyas considering the credibility of strong and weak state?

2.3 How viable is the proposal of the local integration of Rohingyas when determining the state capacity of Bangladesh?

5.1 Introduction

The Rohingya influx has had strong impacts on socio-economic and political economy in Bangladesh. The 2017 Rohingya repatriation agreement between Bangladesh and Myanmar brings the contemporary debate in the view of premature repatriation along with the meaningful solution of Rohingya crisis. Stein (1997) claimed that premature repatriation is a result of the lack of asylum. The premature repatriation comes when both the country of origin and the refugees are not ready for voluntary return. Neither the displaced migrants (Rohingya) nor their
country of origin (Myanmar) is prepared for their return. Hence, they are pushed out by threats, attack, and expulsion rather than pulled by peace and safety at their origin. Moreover, the premature repatriation often leads to militarized repatriation where refugees return to an unsettled and conflicted homeland (Stein 1997:4). The same thing is relatively posed after the Rohingya repatriation in Myanmar. In practice, the post-repatriation process will make the Rohingyas physically at home, but unable to participate in the economic and political life of Myanmar, and therefore, the potential threat is relocated, turning refugees into internally displaced persons (IDP). Hitherto, around 120,000 Internally displaced Rohingyas are living in different camps in Myanmar (Holliday 2014; watch 2017).

Bangladesh is undoubtedly an actor in this crisis. Bangladesh has never granted the local integration of the Rohingyas. The descriptive analysis emphasizes the challenges (social, economic and political) of the Rohingya exodus to Bangladesh in 2017, and the state capacity of Bangladesh to check the credibility of the local integration of Rohingyas. One classical and useful approach to the challenges of the state-society linkages in the Global South is that of Joel Migdal`s state society approach. He claimed that the state is also a certain type of political organization and an institution of the society. The state does not exist outside or above the society, but as a part of the society. Therefore, society is not a monolithic entity but as “a mélange of social organizations,” where many of them have the rulemaking ability and have witnessed shifted resistance by the leaders for a sustained political mobilization (Migdal 1988:208).

State capacities are, predominantly, defined to include the capacities to penetrate society, extract resources, regulated social relationship and appropriate or use resources in determined ways (Migdal et al. 1994:22). Migdal (1994) claims that although the interaction between state and society is transforming. The results of the engagement or disengagement of the states with the social forces are substantive, even momentous, but it does not reflect the aim and will properly. In the light of theory, the junctures of state and society relationship can result in four outcomes; total transformation, state incorporation of existing social forces, existing social forces incorporation of state, and the state may fail together in its attempt at penetration (Migdal et al. 1994:24-25). Thus, the discussion follows the arguments of the four proposed outcomes by Migdal (1994), while considering the challenges and the capacity of Bangladesh.
5.2 The local integration of Rohingyas as a durable solution of protracted refugee crisis

Despite a non-signatory state of 1951 refugee convention, Bangladesh became a member of “1966 Bangkok principles of status and treatment of refugees,” and a member state of executive committee (ExCom) of UNHCR in 1995\(^{22}\). Thus, Bangladesh is obliged to follow some normative principles of refugee law. The UN refugee agency UNHCR (2005) offered three durable solutions to the refugee problem such as voluntary repatriation, local integration, and resettlement (Azad & Jasmin 2013; UNHCR 2005a:137). A crucial aspect of Bangladesh’s ability to handle the refugee crisis and the relations with Myanmar is its ability to implement policies and decisions of repatriating the huge influx of Rohingyas. Repatriation refers to the way in which the refugees can return to their country of origin in safety and dignity. Local integration is the solution in which the country of asylum provides legal residency, and resettlement involves the permanent movement of refugees to a third country (Azad & Jasmin 2013).

Voluntary repatriation is a viable solution if the country of origin of the asylum seeker assures all types of safety with dignity for the returnees (Azad & Jasmin 2013). The voluntary repatriation involves in and to the conditions of physical, legal and material safety with full restoration of natural protection (UNHCR 2005c:140). However, during the interview session for the primary data, one of the respondents from the UNHCR emphasizes that,

"The voluntary repatriation is a proposed solution by UNHCR determined by three conditions; safety, dignity and sustainability. Although the 2017 bilateral agreement between Myanmar and Bangladesh is a very welcoming step, but we are not sure the situation in Myanmar if it is secured enough in assuring the freedom of movement and all types of safety measures for the Rohingyas" – (interview 8)

The Rohingya case is a protracted crisis and repatriation is not a viable means of a durable solution because of the immediate outcomes of premature repatriation. Consequently, the repatriation can be a by-product of protracted internally displaced of Rohingyas at the IDP camps in Myanmar. Eventually, the alternative proposed solution of UNHCR framework should be discussed in light of the local integration of the Rohingyas in Bangladesh. However, the data retrieved from the interview session strongly opposed the argument of local integration of Rohingyas in Bangladesh. Some of the responses from the interview data are as follows:

"Simply, we do not want them in our society. Bangladesh is a small country where the population density is over 1200 per square kilometers. They are more than 800,000 in a small

confined area. Their birth rate is too high that the population can be double within 10 years. So, how can we give them more place to live?” (Interview 6).

“Bangladesh is an overpopulated country. It is even difficult to control the local peace with its massive population. How can we integrate foreigners where the local people are struggling for their livelihood?” (Interview 1)

“We do not have enough land. Those Rohingyas are living in the hills, and they destroyed the huge hill lands here in our country. It is environmental degradation. Once we let them stay in the camp the influx became huge and the more Rohingyas entered in Bangladesh. We also became refugee in 1971 during the liberation war, so we understand their situation. However, we do not have enough capacity allowing them living here permanently” - (interview 4)

“we cannot accept their (Rohingyas) local integration. we do not have enough land. If they were here with foreign aid in the confined area, this should not continue for the long time. Bangladesh cannot accept extra burden. Why turkey, Saudi Arabia, Pakistan, Indonesia other Muslim states do not take steps? Why not the rich countries accept some of the Rohingyas in their country?” (interview 12)

The above-mentioned interview data reiterates the position of the society of Bangladesh. Thus, it is necessary to discuss the challenges of Rohingyas and state capacity of Bangladesh considering the credibility of accepting Rohingyas for local integration.

5.3 The key Challenges regarding the Rohingya exodus in Bangladesh

Rohingyas are often unwelcome in Bangladesh. The data from the primary and secondary source illustrates that Bangladesh is facing different types of challenges after the Refugee exodus in 2017. The following discussion emphasizes the challenges (economic, social, political and environmental) in Bangladesh while Rohingyas are living in the camps.

5.3.1 Economic challenges

Regardless of a robust economic growth in Bangladesh, the Rohingya influx in August 2017 has had an enormous effect on the economy of Bangladesh. The total number of Rohingyas sheltering in Cox’s Bazar is almost one million. If the international community stops baring the cost for Rohingyas, the cost for supporting the huge number of Rohingyas would have multiple adverse impacts on Bangladesh economy including local food price, transport price, food grain shortage, tourism, environmental degradation and various adverse social issues.

Some of the interview data illustrates the exodus of Rohingyas had an influence on the livelihood of the local people:

“They are only Muslim by name, but they are involving in unpleasant activities and crime. For instance, they got relief blanket which is 500 Taka, but they sell it for only 300 Taka. Dal which is 110 they sell it for only 40. They think that they will get more and violating the system, abusing the humanitarian aid they are creating more conflict with local small entrepreneurs” (Interview 2)
“They are living in the hills. The local people have no access in the forests for fuelwood or honey. The local people also deprived of cultivating and fishing in the nearby rivers. The primary schools are also closed in the nearby camps. The Rohingya exodus has impact on livelihood of the local people” - (interview 5)

Although Rohingyas are living in the camps while their living expenses are bared by the international community. However, there are some potential conflict that arise in the view of livelihood loss. Many local people are living on natural resources in the hills, but now the hills are destroyed because of giving shelter for the Rohingyas. Apart from that, the tourism sector of Bangladesh faces a great impact. The Cox’s Bazar has the largest sea beach in the world. The area is now crowded by the NGO workers instead of tourists. One of the informants with the NGO workers in Cox’s Bazar by stating that,

“Rohingya is a new business company. You will see that the hotel and motel are full of NGO workers, there is no available room for the tourists. The crisis must be solved otherwise we will lose our tourism sector” - (interview 4)

Besides, another respondent during the interview emphasizes the challenges of Rohingyas for further consideration of local integration. He states that

“Due to Rohingyas occupancy in Hill areas, local inhabitants cannot get access to go to the hill forests for fire wood or honey. There is no access for the local fisherman for catching fish from the nearby rivers. There must be a conflict with the local inhabitants and the Rohingyas, considering any attempt for the local integration of Rohingyas” - (interview 3).

Since Rohingyas are in the confined area and they are not allowed to move outside the camps, even after that people are claiming the challenges against Rohingyas. Consequently, the local integration will be a matter of local conflict in the further consideration of the issue.

5.3.2 Social challenges
Myanmar is a “narco-state” where the traffickers exploited the poor Rohingyas acting as carriers, “intermediaries” or traffickers in the light of illegal drug trafficking business. Since Bangladesh is very concerned about the increasing trends of using drugs, they will control the access in the society (Rahman 2010:236). Some of the examples of the interview data show the social challenges regarding Rohingya exodus, which are as follows:

“In 1997, around 30000 Rohingyas were still living in the Kutupalong refugee camps. Due to the poor governance, many Rohingyas made the illegal Bangladeshi passport afterward, and left to Saudi Arabia or other countries using Bangladeshi Passport. When they did illegal activities, Saudi government arrested them with Bangladeshi passport. That was a state concern relating to the prestige of Bangladesh” - (interview 3)

“Many of the drug dealers use them as carriers, and some of them are the supplier of Ya ba (horse drugs/methamphetamine) which is a matter of alarming social security of Bangladeshi young generation. We cannot bring more complexities in our overpopulated country” - (interview 4)
Moreover, there should be a big concern about law and order in the society of Bangladesh. Centre for policy dialogue (CPD) claimed following the newspapers that, Rohingya trafficking charges between BDT 20,000 and 50000 to smuggle the Rohingya who denied to stay in the camps, especially women trafficking to the international markets for the unethical activities like prostitution (CPD 2018).

5.3.3 Political challenges
The most influential Islamist movement, Hefazat-e- Islam in Bangladesh, runs almost 25000 madras (Islamic schools) in the country. The Islamist groups have an influential role on a massive number of Muslims, who in turn will play a big role in 2018 national election in Bangladesh. The interview data shows the radicalization of the Rohingya rebel groups tends to be a political challenge in the camps. One of the informants said that,

“Rohingyas are here in the camps because of the ARSA attack. Who knows how many of the ARSA terrorists are living in the camps? We are skeptical about the Islamist terrorist groups and their radicalization inside the camps. It is sensitive but there is some fear of Pakistani terrorist group may help the emerging rebel groups like Rohingya patriotic front. Those terrorist organizations are spreading all over the world and they can help them with donation and arms” (interview 10).

There might be some influence of radicalized Islamic groups in the Camps. For instance, the Hefazat -e-Islam is the Islamic group which has radical factions has advocated the liberation of Rakhine. They stated that if the Myanmar Army did not stop torturing Rohingya Muslims, they will begin Jihad (war) in Myanmar. Bangladesh is a Muslim country where almost 85% are believers of Islamic ideologies. According to Wolf Siegfried (2014), The Rohingyas were partly responsible for the rise of the fundamentalist movement in Bangladesh, by those who were living in the camps from 1992. He also claimed that, Indirectly, the Rohingyas are recruiting the Islamic militar extremists, and several organized interest groups of the refugees have an active link with domestic and international terrorist organizations. For instance, the Rohingya solidarity organization (RSO) is accused of having strong connections with Al-Qaeda, as well as banned Islamic group in Bangladesh Jama‘atul Mujahideen (JMB) or Harkat-ul-Jihad (HUJI) and other Islamic organizations. There might be an influence of radicalization where Muslim Rohingyas will be the key focus to make the rebel groups in Myanmar by providing training on arms and explosives (Wolf 2014:4)

5.3.4 Environmental Challenges
Accommodating the huge number of Rohingya people, several hills have been cleaned up and cut rigorously because of sheltering displaced Rohingyas. Around 3000 to 4000 acres of hilly land in the Cox’s Bazar district (Teknaf, Ukhiya, Himchhari) in Bangladesh have been cleared
in order to give shelter for those migrants. The hill cutting has an enormous impact on loosening soil and soil erosion (it can cause stream congestion, habitat loss, water pollution, and water security further downstream); sedimentation and siltation (washing out of the fertility on the top of the soil that will make the hills unsuitable for further vegetation). One of the interview respondents illustrates the environmental challenges in Cox’s Bazar due to the Rohingya influx by stating that,

“soil erosion in the hills is one of the main problems because of their dwellings in the hills. The elephant and other wild animals cannot move freely. You can see the sign board besides the road written that, Caution! Elephant crossing. Now, we must think about our bio diversity loss” - (interview 10)

The environmental challenges will lead to the over use of forest land, groundwater resources, a risk of landslides and wildlife in the sanctuaries. Apart from the threatening biodiversity, the use of forest resources leads to a rise in the social conflict between host communities and the Rohingyas (Adhikary 2018).

5.4 The State and society in light of theoretical definition
Migdal (1994) stated that, the state can reinvent the society, and can transform of its engagement with other social forces (Migdal et al. 1994:20). These forces encompass informal organizations with social movements together with a common, and strongly motivating set of ideas. The classical definition of the state by Max Weber is crucial to understanding the modern state. According to Max Weber, the modern state is a compulsory association that organizes domination. It is a particular kind of political association, characterized by the legitimacy of its “monopoly of physical violence” and the resulting sovereignty within its territory (Migdal 2001:27; Weber 1978). Joel S. Migdal (1988) following Max Weber’s definition of the state, denoted an ideal type definition of the state, It is an organization, composed of numerous agencies led and coordinated by the state’s leadership (executive authority) that has the ability or powerful authority to make and implement the binding rules for all the people as well as the parameters of rulemaking for other social organization in a given territory, using force if necessary to have its way (Migdal 1988:19).

Migdal (1988) argues that state is a powerful organization that can engage in centralized, institutionalized, territorialized regulation of many aspects of social relations through social control. Social control is the certain behavior of the subordinated people that is prescribed by the state rulers (Migdal 1988:22). Michael Mann (1988) argued that social control is power or more precisely, infrastructural power (Mann 1984:189; Migdal 1988:22-23) of the capacity of the state penetrating in the civil society and implement the political decisions logistically
Furthermore, when the strong pressures are applied by domestic and foreign social forces, various components of the state encounter on their different levels. Bangladesh as a state or country was born in 1971. After the independence, as a free and sovereign state, Bangladesh has already experienced different forms of the government system. However, in different regimes of government in Bangladesh, the bureaucratic system was highly politicized by the ruling government. The administrative institutes were politicized, and influenced the system by promotion, transfer and retrenchment decisions (Alam 1993; Alam & Teicher 2012).

Also, there is another aspect of coordination problem between Bureaucrats and political leaders. Political leaders displayed little commitment to constitutionalism and could not solve political problems by the democratic way (Zafarullah & Rahman 2008). Luiz (2000), however, argued that the state needs to develop an institutional environment to maintain the good governance as a determinant of a strong state. To maintain such environment, it is necessary to gain political dominance among the groups for enhancing state capacity (Luiz 2000). If the state can regulate the good governance, it can contribute towards strong state; but if the strong state cannot penetrate in the society with social control, it cannot be a strong society. With this regard it should be discussed thoroughly in the following sections whether Bangladesh does penetrate in the society as strong or weak state.

5.5 Bangladesh`s position between strong state and weak state

According to Migdal (1994), the state capacities are defined to include the capacities to penetrate society, extract resources, regulated social relationship and appropriate or use resources in determined ways. Among the four capacities; penetration in the society and extract resources from the societies are easy to achieve for many third world states, but for the great majority of them efforts to develop the appropriate use of resources with a regulated social relationship is difficult to achieve, and these two are the key indicators of state social control (Migdal 2001:22) as well as strong state (Migdal 1988:8).

Zafarullah and Rahman (2003), likewise argued that the state capacity is the interaction of political, institutional, technical, fiscal and administrative capacity that overlap and interact with each other (Zafarullah & Rahman 2008). In this view, Godwin and Skocpol (1989) claimed that bureaucratic and administrative capacity by which a state can penetrate into all its territory, able to provide good services and resources for its citizens (Goodwin & Skocpol 1989). White (2003) stated that the institutional capacity of a government has two dimensions: if the instruments of the government are adequate to a task; and whether a specific government
has the necessary power and resources (White 2003:222). Larsson (2013) claimed that state strength and weakness are products of a complex interaction among the ruling elites, domestic social movements and geopolitical contingencies (Larsson 2013:337). Likewise, Blair (1985) argued that in Bangladesh, it is not only the weak institutionalization of the state but in the failure to establish independence between the executive and administrative arms (Blair 1985). Although the economic growth of Bangladesh is higher than the last few years, the capacity of Bangladesh remained stagnant over the past decades, and not capable enough to implement a sophisticated industrial policy reform (McCartney 2017:194). A comparative report from the world economic forum (2015) compiled an index of governance ranging from (1 to 7). The comparison was counted by 125 countries from 2006/07 report and 140 countries by 2015/16 report. The data is as follows.

Table 2: Stagnant state capacity in Bangladesh.

<table>
<thead>
<tr>
<th>Measure of Governance</th>
<th>Rank (2006-07)/ out of 125 countries</th>
<th>Rank (2015-2016)/ Out of 140 countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quality of Institutions</td>
<td>2.9 (121st)</td>
<td>2.9 (132nd)</td>
</tr>
<tr>
<td>Diversion of Public Funds</td>
<td>2.4 (113th)</td>
<td>2.8 (108th)</td>
</tr>
<tr>
<td>Judicial Independence</td>
<td>2.5 (102nd)</td>
<td>2.4 (130th)</td>
</tr>
<tr>
<td>Favoritism shown in decisions of government officials</td>
<td>2.0 (119th)</td>
<td>2.2 (128th)</td>
</tr>
<tr>
<td>Wastefulness of Government Spending</td>
<td>2.6 (99th)</td>
<td>2.6 (106th)</td>
</tr>
<tr>
<td>Reliability of Police</td>
<td>2.4 (119th)</td>
<td>2.6 (136th)</td>
</tr>
<tr>
<td>Burden of Government Compliance</td>
<td>2.4 (106th)</td>
<td>3.0 (107th)</td>
</tr>
</tbody>
</table>


The table above shows that all types of measurement of governance are poorly scored, especially the quality of institutions and favoritism shown in decision making by government. Therefore, the World Bank (2016) notes that policy-making in Bangladesh remains fragmented (McCartney 2017:195). Bangladesh as a state, nonetheless, remains weak towards citizen’s accountability and the capacity of social control, like providing social welfare or founding an independent judiciary to collect taxes and social equality of the poor (Lewis & Hossain 2008:308). Moreover, following Migdal’s state and society approach (1988), Bangladesh is a weak state in a strong society (White 1999).
5.6 State capacities of Bangladesh in view of Migdal’s (1994) state society approach

5.6.1 penetration in the society

According to Migdal (2001), the state penetrates in the society by different social organizations. If a state leader can set the rules in its societies for building a strong state, it is needed to establish within and outside the society to build a strong apparatus as possible (Migdal 2001:68). The state leaders are the representatives of the people and gain power politically. The interview data from a state security officer in Cox’s Bazar emphasizes the role of state leader of Bangladesh proclaiming that,

“Our prime minister (Sheikh Hasina) is the mother of humanity. We opened the border only because of her decision. When she will order we will execute in the local level” - (Interview 1)

The state leader of Bangladesh has enough social control in the society. Migdal (1988) denotes that, the state can mobilize their people, skimming surpluses properly in the society and producing the extreme power to tackle the opposing forces with high levels of social control. State actors can gain autonomy from other social groups in determining their preferences, and they can protect their existence by enforcing state rules (Migdal 1988:32). One of the local government representatives during the interview session with the semi structured questionnaire extended his statement that,

“local integration or repatriation of Rohingyas is completely an issue of the higher authority of the government. We just implement the order as we are being asked to do and we send them the report what they ask to get. We have a strong link for information sharing but not for decision making” (interview-7)

The local administrative units in Bangladesh are active with the social control penetrating in the society. In Bangladesh, the political penetration in society has not been applied directly through the state, rather it comes through the bureaucratic level. The government has adequate power and the resources for a task, but the problem is to implement the policy. Most of the political leaders are not highly expert on the issue of the department they handle; and therefore, they need to rely on the bureaucratic arrangement to regulate the social relation. The capacity of penetration in the society can be understood by the set of formal institutions of the government, including central and local administrative authorities, elected political bodies and law and order forces. In this ground, Kochanek (2003) claimed that Bangladesh’s informal political process has failed to secure people’s equality of access to the leading institutions (Kochanek 1993; Luiz 2000).

The governance of Bangladesh is divided into several institutions. Among the institutions; administrative, political, Judiciary institutions (Lewis & Hossain 2008) are the state actors of
the formal and informal civil society and other non-state actors also contribute to social control in the society. The administrative and bureaucratic capacity of Bangladesh, for instance, attempt to dominate the society positively by prohibiting the dowry system, empowering women, redistributing Khas/char\textsuperscript{23} land, corruption control, establishing human rights etc., but all became unsuccessful. Even after 40 years of independence, Bangladesh is still struggling to obtain a sustainable political culture (White 1999:319). Siddiqui (1996) claimed that in 2008 the entire bureaucracy in Bangladesh is inundated by deep-seated factionalism. Factionalism is the opportunity using official positions in corrupt practices, that will affect the governance capability of public bureaucracy (Alam & Teicher 2012; Siddiqui 1996; Zafarullah & Rahman 2008). It is problematic of decision implementation or penetration in the society through the process of institutional dominance in Bangladesh because of bureaucratic over-dependency for the implementation of any policy.

5.6.2 extract resources
In the early 1970s, the US Secretary of State claimed that by most standards, Bangladesh looks like a disaster, a basket case (McCartney 2017:184). At the beginning of 1970, the country was socially and economically non-viable. Forty years later, Bangladesh gained some success in the economic sector. In the 2000s, the Bangladeshi economy has been growing to more than 6\% per annum. A report from the Asian development bank (2016) revealed that, between 2011 to 2015, the sustainability of the growth has been pointed out by the other indicators, where the inflation fell 11 to 6.5 percent, investment as a share of GDP remained steady 27-28 percent, and debt services as a share of GDP declined from 17 to 12 percent (McCartney 2017). The economic development is a success of state institutions, but it is not the only determinant of state capacity. The figure below shows that Bangladesh has had a steady economic growth since 1990. Moreover, Bangladesh did not face any difficulties, or there is no fluctuation in the graph because of either the Asian crisis in 1997, nor the global financial crisis in 2008.

\textsuperscript{23} Char is a tract of land surrounded by river, which emerges due to the dynamics of erosion and accretion in the rivers. http://en.banglapedia.org/index.php?title=Char . accessed date: 01.04.2018
Bangladesh is developing rapidly. The investment in different sectors has increased immensely at a level of 27% GDP rate within 25 years since 1990. The poverty rate has dropped to 24.3% in 2016, whereas the number was 40 in 2005 and 31.5% in 2010 (World Bank, Bangladesh 2016). The growth in the economic sector is mainly export based, and especially the readymade garments sector profited $16 billion US dollar (McCartney 2017). Bangladesh, regarding the extraction of resources, has shown a progressive growth by the state-led trade policies and support. However, economic growth is not the only elements measuring the state capacity. Joel S. Migdal (1994) claimed that, among the four capacities penetration in the society and extract resources from the societies are easy to achieve for many third world states; but for the vast majority of the efforts to develop the appropriate use of resources with a regulated social relationship is difficult to achieve, and these two are the key indicator of state social control (Migdal 2001:22).

5.6.3 regulated social relationship
Society is the outermost social structure for a specific group of individuals. In the modern world, it is a product of state formation (Migdal et al. 1994:18). Regulating the social relations, it is important to regulate state domination. Migdal (1994), by breaking down the state, finds two types of domination in the juncture between state and the society; integrated domination and dispersed domination. Integrated domination, in which the state along with other social forces established broader power and in which it acts coherently. Here the state, whether as an authoritative legal system or a coercive mechanism of the ruling class, is at the center of the process of creating and maintaining social control. In other instances, the conflicts and implicities in the multiple arenas may lead to dispersed domination, in which the state cannot spread its control all over the country for the domination or in which parts of the state may be
pulled in very different directions. In this regard, components of the state have not achieved total transformation or even successful state incorporation of local powerful social forces in all or most of these settings (Migdal et al. 1994:9).

In Bangladesh, the state itself established integrated domination by maintaining an authoritative system. The state institutions of Bangladesh lack autonomy (Lewis & Hossain 2008; Lorch 2017:71), the centralization of political institutions and the administrative institutions are state-controlled, where the junctures of state and society may be regulated in a calculated way of domination. The politics of Bangladesh can be characterized by patrimonial politics in relation with a personalized political system, patron-client relationship and lack of trust among the major political parties. Consequently the nature of such political practice produced the weak institutions, ineffective policies, deviant implementation, and absence of political accountability (Kochanek 1993).

Bureaucracy is a crucial part of the public administration in Bangladesh, and it was considered to be the “steel frame” during the time of the British Empire. However, it is now in the question of political loyalty and professional neutrality. Since 1991 most of the democratic governments made the civil service politicized for serving their narrow political interests. To maintain a strong patronage relationship, the state political regime in Bangladesh was backed up directly and indirectly by the military, several times. This politicization of bureaucracy is the main hindrance to the quality of governance interacting with the citizens (Jahan 2006). Implementing the policies in the society should be executed, and the good governance needs a public administration system that functions well autonomously. Rashid (2014) claimed that sometimes bureaucrats in Bangladesh are uncooperative and create barriers for elected officials in policymaking. Those bureaucrats treat the political elements as intellectually inferior and untrustworthy and sometimes they do not want to work under the supervision of the political executive (Huque & Rahman 2003:413; Rashid 2014:153). As a prerequisite of implementing any policy, bureaucracy should be relatively autonomous and not influenced by the populist and short-term demands of the politicians. Since most of the political representatives and political leaders are not well educated and well experienced, they rely on bureaucrats to get access to state-funded development projects and functions. This is how bureaucrats exploit the situation by allying with the political leaders and ignore the traditional values of public service neutrality (Alam & Teicher 2012:870).
5.6.4 Appropriate or use resources in determined ways

The state exercises the control of its systems of meaning and boundaries for acceptable behavior centrally on the desirable implementation with the subjects (Migdal et al. 1994:14). To achieve the goal, economic solvency is very important to achieve social control. Last few years, Bangladesh has achieved few successes over economic growth and remarkable influence over millennium development goals. In 2018, as per the World Bank’s classification, Bangladesh has been upgraded from a low-income country to a lower middle-income country (Raihan 2018). However, integrating the Rohingyas will be an additional challenge for Bangladesh. According to the report of BBS (Bangladesh Bureau of statistics 2018), Bangladesh per capita income stood at $1602. The current estimate of refugee expenditure is estimated to be almost $800 million to $1.0 billion a year, which is nearly 70% of Bangladesh income per capita. However, the number increased if we use the “moderate” poverty line proposed by World Bank of $3.2 per person per day. If the total Rohingya population is one million, it will mean the cost of maintaining them of 90 billion BDT (9000 crores Taka or almost US$1.0 billion (Haque 2017). Bangladesh, however, has a promising development with its vast numbers of the population of over 160 million, yet not entirely alleviate the absolute poverty from the country.

If Bangladesh needs to bear the expenses of Rohingya populations even sheltering in the camps, it may depend on the length of stay of the Rohingyas` in Bangladesh. In this concern, the budgetary framework of 2017-18 Fiscal year has not enough space for additional spending. The estimated cost by UNHCR for six months (Sep 2017-Feb2018) is as follows,

<table>
<thead>
<tr>
<th>Initial USD (million)</th>
<th>Additional USD (million)</th>
<th>Total USD (million)</th>
</tr>
</thead>
<tbody>
<tr>
<td>434</td>
<td>83.78</td>
<td>517.78</td>
</tr>
</tbody>
</table>


Apart from that the CPD (Centre for policy dialogue) press report on “addressing Rohingya crisis: options for Bangladesh” claimed an estimation for 10 months (September 2017 to June 2018) which is almost $882 million or 7126 BDT crore. The expenditure per Rohingya for the period September 2017 to June 2018 is USD $ 735 or BDT 59,388; per day expenditure per Rohingya stands at USD$2.45 or BDT 198 Taka. The annual figure of expenditure on

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Rohingya will be equivalent to 1.8% of national budget, 0.3% of GDP, 2.5% of total revenue of Bangladesh and 13.1% of social protection empowerment for FY 2017-18 of Bangladesh.

If a state is unable to insert itself into the strategies of survival of its citizens, it is a weak state (Lambach 2004). Through assessing the state capacity of Bangladesh by different indicators, it can be said that Bangladesh is a weak state. Regarding the facts of the remaining two capacities of regulated state relationship and appropriate use of resources, Bangladesh faces challenges in accepting the Rohingyas because of a lack of capacity to regulate the relations of state and society with the appropriate use of resources.

5.7 The outcome of sheltering the Rohingyas in the juncture of state and the society of Bangladesh

Bangladesh always denied the local integration of Rohingyas in all the three remarkable influx of Rohingyas respectively 1978, 1992 and 2017. Although Bangladesh recognized the Rohingyas as refugees in 1992, the same group has not been granted refugee status in 2017. There are almost 30,000 Rohingya refugees from 1992, who are still living in the Kutupalong registered refugee camps. They are not given any means of legal identity from the Bangladesh side. Generally, the neighboring countries are mostly the host countries sheltering the refugees and responsible for refugee protection, which Betts (2015) coined the term “accident of geography” (Betts 2015). Countries hosting refugees often have less ability to take full responsibility for protection. Nevertheless, host countries typically debt, high population growth and the unemployment rate that may limit the capacity of the hosting states to deal with refugees (Merritt 2017).

Bangladesh is a progressive country and the economic growth of last few years have been very high. However, the data shows that, the estimated cost of Rohingyas in the camps is 1.8% of the total national budget of Bangladesh. Right now, the expenses are being covered by international foreign aid and donations. If Rohingyas integrate locally in Bangladesh, a new challenge will become apparent for the state. Despite getting assistance from the international community, Kelly (2007) however, claims that there are other apparent costs to the host state in dealing with polluted water, deforestation or the detrimental effect on the ecology of the surroundings (Kelley 2007). Similarly, Bangladesh as a host country of Rohingyas has the relevant cost dealing with Rohingya refugees. According to the report of Bangladesh ministry of environment, the recent influx has the value for Bangladesh more than BDT 1.5 billion worth of forest. Moreover, the Rohingya influx also has an enormous impact on deforestation. Wood collected from the forest is the main source for the Rohingyas for firewood and cooking.
Nevertheless, burning the firewood has a detrimental effect on the ecosystem. Apart from that, the Bangladesh government allotted 3000 acres of land belonging to the department of forest for accommodating refugees, that also has a great impact on the erosion of soil in the hills (Haque 2017). Migdal (1988) argued that the state is a certain type of political organization and an institution of the society. The state does not exist outside or above the society, but as a part of the society(Migdal 1988:208). Considering two factors of potential challenges in the society and the capacity of the state, both do not support the local integration of Rohingyas in Bangladesh.

In the modern world it is impossible to understand the term society without the state. The formation of the state has created an activated society. The state reshapes the existing social relationship by renewing the active struggles for domination. The leaders of the transformative state have been to create the hegemonic presence of a single authoritative rule in multiple arenas in the society. With this regard, the goal is to penetrate into the society to effect on far-reaching domination (Migdal 1988:23). Thus, the state is the reflection of society. Since Bangladesh is a weak state, the state cannot ignore the challenges of Rohingyas for the further domination by the state leaders. The outcomes of local integration of Rohingyas can be explained by Migdal’s (1994) state society approach. The state and social forces have produced a range of outcomes based on the struggles and accommodation, which can be captured by four results.

First, total transformation; In this form, state penetration leads to the destruction, co-optation or subjugation of local social forces and to the state domination. In such cases the compound of the state successfully transforms the arena in which people identify themselves. Forced migration, replacement of the locals by a settler population, widespread use of violence may destroy local dominating social forces and transform personal identity (Migdal et al. 1994:24). Bangladesh is a weak state in a strong society. The total transformation is difficult in the context of Rohingya integration. The Bangladesh approach is predetermined by an unwillingness to accept the Rohingyas. Moreover, the regulated control also restricted the natural claim of seeking asylum in Bangladesh. Apart from that, the repatriation agreement with Myanmar also legitimizes the repatriation process regardless of being premature or abusing the term non-refoulement. With this view, total transformation is apparently not possible in Bangladesh.

Second, state incorporation of existing social forces; in this formulation, the states’ injection of new social organization, resources symbols and force into an arena enables it to appropriate
existing social forces and symbols to establish a new pattern of domination. The Politics of Bangladesh is already ruled by democracy, authoritative rules, military, semi-military and caretaker government. The history says that in 1978 the first influx was under the military regime, the 1992 was in the transection of democratic government under BNP (Bangladesh nationalist party) regimes, and the recent 2017 influx is under AL (Awami-league) government. Assessing all the other influxes, the strategy has predominantly focused on repatriation. Even if there are new changes in the pattern of domination, the strategy of Bangladesh suggests that the state may be affected by the state’s overall coherence. One of the respondent’s interviews illustrates the logic of state incorporation that,

“The Rohingya children have access to education, but they are taught English and Burmese within their study curriculum as a medium of instructions. Our government does not want them to learn Bengali as a language for regular study” (Interview 6).

The interview data suggests that the local people do not want the Rohingyas for local integration. In a response, the government is determining the effect of long term complexity of sheltering the Rohingyas. For example, if the Rohingyas are living here in the camps and learn the Bengali, in the long run the Myanmar government would claim them strongly that the Rohingyas are Bengali decedents.

Third, existing social forces’ incorporation of the state; In this type, the presence of the state components by dominating social forces does not produce radical changes in the pattern of domination which cannot be determined by the state leader. Alternatively, the new states presence does generate a new pattern of domination, but ones in which a new non-state social force rises to the top. In this case, the transformation of the local components of the state is so extensive as to significantly harm the state’s overall chances of achieving integrated domination in society. This idea of state society is inappropriate with Bangladesh, because of state domination in the society. For example, the radicalized Islamist action is visible all over the world. Bangladesh also experienced similar incidents in the recent past. However, Bangladesh is very careful regarding the radicalization of the Islamist political participation in Bangladesh (i.e., some of the religious Islamist groups like Hefazat-e- islam are forbidden).

The following interview data illustrates that the prohibition of existing social forces’ incorporation is controlled by the government, thus restricting their further influence. In this view, the government representatives in the camps ignored the claim of Islamist groups. One of the respondents stated that,

*Right now, we have enough control on their movement in the confined area inside the camps. There are some incidents that have happened here in Bangladesh relating to Islamic terrorist
Bangladesh has a strong control over the social forces that are grouped under Islamic banner. Moreover, the high court also prohibited the Islamic party jamaat-e- Islam, participating in the 2014 election. Therefore, social forces are less likely to have an influence over the incorporation of the state.

Finally, the state may fail in its attempt at penetration; it refers to the disengagement or lack of engagement of the state in the local arena that will result in little transformative effect on the society, and limited effects of the society on the state (Migdal et al. 1994:25). Although Bangladesh is achieving a strong GDP growth, even after that there are still people under the extreme poverty line. The challenges regarding the Rohingya exodus have the strong influence over the society. One of the informants emphasizes the possibility of the local conflict by stating that,

“Local people in Cox’s Bazar are in the minority now. People living around the hills are dependent on natural resource from the hills and surroundings. However, now they have no access in the hills, and that has a great impact on their livelihood. These people supported them with food and shelter when the Rohingyas arrived in August. However, the same people are appealing for a quick repatriation of Rohingyas from the camps”- (interview 4)

Thus, the government must count the local people and their livelihood loss while considering the local integration of Rohingyas. With this regard, if Bangladesh does not respond in light of the challenges and its effect relating to the society; Bangladesh as a state may fail together in its attempt at penetration. Many claims that Bangladesh has a strong society, but within a weak state capacity the extra burden of Rohingyas’ local integration may result an interruption on state dominance and social control in Bangladesh.

5.8 Conclusion
The discussions above clearly inform that, the Rohingyas are an unwelcome minority group in Bangladesh. The effects on the society because of the different aspects of challenges strongly oppose further local integration of Rohingyas in Bangladesh. The discussion also reiterates that even after the high GDP growth for last few years the distribution of the resources has not been reached in all over the society in Bangladesh. The effect of the Rohingya influx holds many potential threats that is against the further consideration of local integration of Rohingya refugees in Bangladesh. Moreover, considering the state capacity of Bangladesh, it can be said that Bangladesh is a weak state. Nevertheless, the outcomes are not promising if the implication is not coming from the society. As a result, Bangladesh will fail together with its penetration in the society if they allow the massive number of Rohingya people into their society.
Chapter 6

6.0 Discussion and analysis of the special importance of Citizenship recognition of Rohingyas in Myanmar

Bangladesh refused to accept the Rohingyas for local integration because of their heavy burden on Bangladesh’s population and the state’s weak capacity. Furthermore, Bangladesh, clarifies its position while not giving the refugee status to the Rohingyas after the 2017 influx. The approach of Bangladesh reiterates that repatriation of the Rohingyas is the goal for Bangladesh. Although the complementary protection law can assure the protection of Rohingyas beyond the 1951 refugee convention by securing the principle of non-refoulement against forceful repatriation from Bangladesh. However, this would leave the Rohingyas in the protracted displacement similar to that of the Rohingyas living in the Bangladeshi camp from 1992 for last 26 years. Also, voluntary repatriation is not a peaceful solution in the view of the premature repatriation complexities. The bilateral agreement between Myanmar and Bangladesh in 2017, however, is the legal document of Rohingya repatriation that can overweigh the arguments of legal protection or premature repatriation. Therefore, if the repatriation of Rohingyas is the ultimate arrangement that is accepted by the Myanmar government, then the recognition of citizenship rights is important for the Rohingyas for a meaningful repatriation in Myanmar. Also, the recognition of refugees can limit further consequences like abject living, bare residing in the camps or protracted internally displaced status.

The chapter is comprised of a descriptive analysis regarding the importance of citizenship for the Rohingyas in Myanmar in the light of rights and justice. Citizenship is a complex idea. During an interview session with one of the government representatives in Cox’s Bazar, it was stated that:

“Everyone knows that citizenship of Rohingyas is important. If the Rohingyas have the citizenship in Myanmar, they will definitely not be displaced to the camps in Bangladesh. It is not like that if we say that give them (Rohingyas) citizenship and they will give. If Myanmar gives recognition, then the crisis is solved. The crisis is completely Myanmar centric and the solution also rests on them—we are just sufferers.” (interview 4)

The special importance of citizenship should be discussed through Myanmar’s position because Myanmar agreed to accept the Rohingyas as well as the repatriation. Thus, the interview data from Bangladesh is not relevant for studying the problem. The paper is based on secondary data sources like scholarly articles, journals, newspapers, legal documents and reports etc. Nevertheless, the section will further illuminate the meaning of citizenship in different forms of injustice and remedies of injustice within the process of democratic opening in Myanmar. The key research questions and the specific research questions are as follows:
3. What is the special importance of recognition of citizenship rights of Rohingyas in Myanmar, in the context of a meaningful voluntary repatriation?

3.1 How does the lack of recognition of citizenship rights of Rohingyas undermine the protracted displacement in Myanmar?
3.2 What would be the arguments for the inclusion of the issue of citizenship by reviewing the 1982 citizenship Act?
3.3 In what way is the Citizenship of Rohingyas in Myanmar interconnected with the politics of redistribution, recognition and representation?

6.1 Introduction
The Rohingyas of Myanmar are among the most persecuted ethnic minorities in the world. Despite their historical presence for a long time in the Arakan state, the Myanmar government does not want to recognize them as their citizens. Due to the 1982 Citizenship Act, the Rohingyas became de facto stateless (Alam 2018); but granting them citizenship might offer a durable solution to this protracted refugee crisis. The international community and the Anan commission recommendation report (2017) also pushes for the repeal, review or amendment of the 1982 citizenship law as well as the relevant provision of 2008 constitution of Myanmar (Alam 2018:180).

Citizenship conceptualizes the inclusion and exclusion of legitimizing people in the national communities (Christensen & Siim 2010). The struggle for citizenship rights in the case of protracted displacement can result in abject living or being in the condition of being stateless. The Rohingyas lacked any membership (ensured by the 1982 citizenship law) within the political community and are excluded from acting within such a sphere because of the denial of their status. Alam (2018) claimed that Rohingyas represent an archetypical notion of Arendt’s (1951) dispossession of the “right to have rights” paradigm (Alam 2018; Arendt 1951), where the construction of racially or ethnically exclusive nationality and citizenship laws impose statelessness for the excluded Rohingyas. According to Arendt (1951), human rights ended up being rights after all their other rights had been taken away and the human rights only enjoyed by the citizens of the most civilized and prosperous countries (Arendt 1951). Within this gap, democratic peace is impossible without the inclusion of all the members of the society. In the transition of democratic opening in Myanmar, recognition of citizenship rights is very important to prevent different forms of injustice. The following
sections will discuss the components of citizenship and how the citizenship of Rohingyas can be established through the politics of justice in Myanmar.

6.2 Identity crisis of Rohingyas
Rohingyas should be integrated into Myanmar’s community, or else they will live in the form of abject living as displaced in the camps. The term “abject” lies in contrast to the “belonging” aspects of citizenship noted above and the widespread sense of having rights and privileges as a citizen. Abject, literally means the worthless, mean, despicable, low in estimation, without hope or regard (Sharkey & Shields 2008), which is determined by a form of statelessness. A “stateless person” is someone who is not recognized as a national by any state. Generally, people are de jure (legally) stateless; those who are not considered as nationals by any state under its laws. However, people who have not been formally denied or deprived of nationality, or despite documentation, are denied access to the fundamental human rights compared to the other citizens in the similar society are also de facto stateless (Goris et al. 2009). Alam (2018) ascribed that, different aspects from Psychologists or theorists on citizenship are not extended to the Rohingya minorities in Myanmar because of the discriminatory laws and policies adopted by the successive governments have shrunk the rights that eventually lead denying the citizenship rights or made them stateless. The Myanmar government, nevertheless, objects to describe Rohingyas as stateless people, but appears to have created an unique category named “Myanmar residents” which is not a legal status (Lewa 2009).

6.2.1 Myanmar citizenship law in its Constitution
Before the promulgation of the Myanmar citizenship law, 1982; there were two acts for citizenships in Myanmar, which are “the union citizenship act (election) 1948” and “the union citizenship act” (Aung 2007:271). These two Acts were constitutionally enacted on section 10,11 and 12 of the (1947 constitution) of the union of Myanmar. According to the 1947 constitution, the right of citizenship of Myanmar was defined in the article (11) as

(a) Any person whose parents belong or belonged to any of the indigenous races of Myanmar.

(b) Any person, born in any of the territories included within the Union, at least one of whose grandparents belong or belonged to any of the indigenous races of Myanmar; or

25 1947 constitution of the union of Myanmar,
(c) Any person born in any of territories included within the Union, of parents both of whom are, or if they had been alive at the commencement of this constitution would have been citizen of Myanmar; or

(d) Any person who was born in any of the territories at the time of birth was included within the British colonial dominions and who has resided any of the territories included within Myanmar for a period of not less than eight years in the preceding the date of commencement of this constitution or immediately preceding of the 1st January 1942 and who intends to reside permanently there in who signifies his election of citizenship of the Union in the Manner and within the time prescribed by the law, shall be a citizen of Myanmar.

However, the chairman of the council of state promulgated the Myanmar citizenship law in 1982, that was enacted after the approval by the third session of the third Pyithu Hluttaw (people’s parliament or house of representatives in Myanmar) (Aung 2007:272). Myanmar Citizenship Law, 1982 was fundamentally based on the sections 145 (ch-XI, Fundamental rights and duties of the citizens) of (1974 constitution)26 of Myanmar. According to the 1974 constitution of Myanmar, Citizenship has been defined as; (a) any person born of parents both of whom are nationals of the Union of Myanmar is the citizen of the Union. (b) Any person who is vested with citizenship according to existing laws on the date this constitution comes into force is also a citizen.

6.2.3 The provision of Myanmar citizenship rights
The citizenship law of 1982 recognizes eight major national ethnic groups: Bamar, Chin, Kachin, Kayah, Kayin, Mon, Rakhine, and Shan. These eight groups have been further broken down into 135 recognized ethnic groups, but not the Rohingyas (Alam 2018; Aung 2007). The following diagram shows the 135 national races which are given recognition by the 1982 Citizenship Act, where the Rohingyas do not appear in the list.

Figure 2: 8 Major National Ethnic Races and 135 Ethnic Groups

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The military regime, subsequently, promulgated the 1982 citizenship law. The timing of its promulgation, shortly after the refugee repatriation from Bangladesh in 1979, strongly suggests that it was mainly designed for excluding Rohingyas (Lewa 2009). Under section 6 of the law, persons who were already citizens at that time would continue to be the citizens. The citizenship law of Myanmar (1982) categorized citizenship by three categories: *citizen, associate citizen* and *naturalized citizen* (Aung 2007; Cheesman 2017a; Holliday 2014; Ullah 2017). Citizens were deemed to be those who lived in Myanmar before 1823 or children of parents if both parents were citizens. Associate citizenship is those who retained citizenship through 1948 citizenship act as well as union citizenship act 1948 (Act No.LXVI of1948); and naturalized citizens are people who lived before 4 January 1948 and applied for citizenship after 1982 (Azad & Jasmin 2013; Kipgen 2013:300). Associate citizenship was only granted to those whose application for citizenship under the 1948 citizenship Act was pending on the date when the Act came into force. Also, *naturalized citizenship* could only be granted to those who can provide genuine evidence of entry of residence before Burma’s independence on 4 January 1948. With this regulation, very few of the Rohingyas could fulfill the requirements. Unlike the 1948 citizenship act, the 1982 citizenship law is essentially based on the principle of *jus
sanguinis. Full citizens are those who belong to one of the 135 “national races” or "taingyintha" (Cheesman 2017b; Lewa 2009) who settled in Burma before the colonization of Arakan by the British in 1823. There were some related laws such as the Foreigner Act 1846 (Indian act III), the registrations of Foreigners Act 1940 (Burma act VII), the registration of Foreigners Rules1948- related to the foreigners before or after Burma’s independence, however, Rohingyas were not subjected to any laws (Ullah 2017:3).

In 1983, color-coded citizens scrutiny cards (CSCs) were introduced, where pink cards were given to full citizens, blue cards for associate citizens and the green cards for naturalized citizens. The new re-registration process in 1995 had to pass through numerous background checks and consequently people who submitted green cards with the new application process, did not get their green cards back, but instead, they were given temporary registration cards (TRC) or white cards (Cheesman 2017a:472). The card is a temporary registration card (TRC) listing their identity as Bengali. However, in 2015, the government canceled the TRC and replaced the process to identity cards of national verification (ICNV) (The Advisory Commission on Rakhine State 2017:27).

6.3 The special importance of Citizenship rights
6.3.1 Anan Commission’s recommendation over Myanmar Citizenship law
In the context of the 1982 Citizenship Act, one of the recommendations regarding the advisory commission on Rakhine state final report 27 is entirely relevant to establish the elements of full restoration of natural protection in Myanmar. In the recommendation (12) of the final report of the commission stated that the government should establish a clear strategy and timeline for the citizenship verification process. The process enables individuals to apply for citizenship at the same time as they apply for the NVC (national verification card). Apart from that in the recommendation 14, Myanmar will need to establish a status for those who reside in Myanmar without being citizens. Moreover, the report also covers the complicated 1982 citizenship law of Myanmar, where recommendation 17(5) stated, finding a provision for individuals who reside permanently in Myanmar for the possibility of acquiring citizenship by naturalization; and 17(6) government should present a plan for the start of the process to review the citizenship law. Those recommendations suggest that even in the general agreement the issue of citizenship must be added, but the process of recognition remains disputed.

6.3.2 Theoretical aspects of Citizenship

Most of the people in the world obtain nationality through birth. Two of the most common principles of granting citizenship operate at the moment of birth; in legal term *jus soli* (law of the soil) and *jus sanguinis* (law of the blood). *Jus soli* encompasses the legal rights for those born in the territory of a country have the right to citizenship of that country. Moreover, *jus sanguinis* represents citizenship of the children whose parents are citizens of a given country (Bosniak 2000).

The conventional definition of citizenship is holding an understanding that citizenship is a legal status granted by a nation-state (Vandenberg 2000). Jessop (2008) stated that citizenship is never a fixed model, which is always contextual and political. The form of the substance of citizenship is outcomes of competing interests, strategies, and capacities within distinct political spaces (Jessop 2007). Liberal theories claim that citizenship is a status that entitles individuals to set a specific set of universal rights accepted by the states, and the state is to protect citizens in the exercise of their rights (Oldfield 1990). Regarding the term of protection, the state is not obliged to protect the Rohingyas unless the Rohingya is given valid identity. In terms of identity, it leads the valid status of individuals claiming a part of the nation. Citizenship is always about the simultaneous processes of inclusion and exclusion (Brun 2003).

Bloemraad (2008), claimed that citizenship is a form of membership in a political and geographic community. He also characterized it into four dimensions: *legal status, rights, political and other forms of participation in society and a sense of belonging* (Bloemraad et al. 2008). Likewise, Kristian Stokke (2017) claimed that, to construct the valid status is not only given residency but some means of *membership, legal status, rights and participation* (Stokke 2017:194) which is the combination of the four elements for citizenship.
Among the core components, membership and legal status are about cultural and juridical inclusion in communities of citizens; and rights and participation are about the entitlements and responsibilities that follow from such inclusions. The membership dimension highlights that citizenship is based on a distinction between insiders and outsiders in a community. Based on membership in a national community, states ascribe citizenship as a legal status both rights and responsibilities between individual and state. The third components of citizenship are the set of rights associated with the membership and formal citizenship status. Finally, the process of becoming a citizen is conceived not merely as a question of legal status but also a matter of active participation within communities of citizens (Stokke 2017).

The stratification of full citizenship has a mutuality of all the components. With regards to mutuality, the interrelations between the four dimensions are more complex and multidirectional. According to Stokke (2017), the population of a state or territory is politically excluded citizens if there is no participation in the decision-making or elections. Citizens without membership are culturally excluded citizens. The juridical excluded resident is considered to be the deprivation of citizenship by legal status. Thus legal status has a contractual relationship between an individual and the state that carries with it both rights and responsibilities (Stokke 2017).
The rights associated to perform with the representation of the government and getting all the service and security from the state (Passport, social safety net, etc.). Persons exclude such rights are social excluded citizens (Stokke 2013:03). Finally, when all the components of citizenship function as a whole, the result is full citizenship. Regarding the elements of citizenship, Rohingyas need to be entitled with all the elements for the citizenship rights.

6.3.3 The citizenship of Rohingyas in Myanmar
The Rohingyas sheltering in Bangladesh camps after the 2017 influx are willing to return to Myanmar with full recognition of citizenship and rights. During the fieldwork in Bangladesh, there was a memorandum of Rohingya claiming 9 points of their demands before the repatriation begins in Myanmar.

Rohingyas are deprived and excluded from the politically, socially, culturally and juridically elements of citizenship rights in Myanmar. According to Holiday (2014), the Rohingya crisis is an outcome based upon the exclusion of civil rights, political rights, social rights and cultural rights (Holliday 2014:416). In practice, the legal status of Rohingyas are state-operated and there is not any legal status of Rohingyas regarding cultural and juridical inclusion. Furthermore, the political participation of Rohingyas is also excluded after the sectorial or
sacred violence after 2012. However, this is not only a state-oriented function; additionally, it stems from Burman nationalism. Thus, considering the exploitation and the gradual marginalization of Rohingyas as citizens of Myanmar need to establish firstly to their identity in the major Burman society; and then into the legal aspects (2008 constitution of Union of Myanmar and citizenship law 1982) to achieve the identification for the stateless people (Alam 2018:194). These goals can be achieved through preventing different forms of injustice like maldistribution, misrecognition and misrepresentation. With this regard, the politics of justice (redistribution, recognition and representation) should be considered in the democratic practices of Myanmar.

6.4 The importance of Citizenship in the struggle of justice
Rohingyas do not have citizenship in Myanmar. The controversial 1982 citizenship Act in Myanmar made the Rohingyas de facto stateless (Alam 2018). The total number of internally displaced persons in Myanmar is around 120,000 persons (Watch 2017). These forms of “abjection” are formed by state control and boundary-making that exclude members from which they require inclusion (Stokke & Erdal 2017). However, the permanent temporariness becomes a chronic crisis that is connected to a humanitarian category called “internally displaced persons,” “stateless person” or “refugee” (Brun & Fábos 2015; Brun et al. 2017). Moreover, these various statuses contribute to excluding people form citizenship rights, because of abjection emerging from the political use of their status as displaced.

6.4.1 The dimension of citizenship regarding the Politics of justice
According to Kristian Stokke (2017), the politics of citizenship is the struggle of institutionalized and substantive membership, legal status, rights and participation; which represents the cultural, judicial, social, and political justice respectively. Fraser (1995) characterized among economic, political and cultural forms of injustice, which are maldistribution, misrecognition and misrepresentation. Egalitarian theorists have emphasized to conceptualize the nature of these socio-economic injustices. For example, Marx`s theory of capitalist exploitation28, Amartya Sen`s view that justice requires ensuring that people have equal “capabilities to function.”29. Fraser (1995) distinguishes three comprehensive perceptions of justice; socio-economic injustice, cultural injustice; and political injustice. Socio-economic injustice emerges from the political-economic structure of the society. For example, economic marginalization (being denied access to income generating activities),

exploitation or deprivation (being ignored for more livable life standards) (Fraser 1995:71). The second kind of injustice is cultural or symbolic, that rests upon the pattern including the cultural domination; nonrecognition and disrespect (being maligned the cultural representations). The political injustice refers to the absence of a social pattern of representation, authorization, and accountability. The politics of Rohingya Citizenship can also be explained through two proposed remedies in all three forms of injustice.

Stokke (2017), within Fraser’s (1995) forms of injustice emphasized the special attention to three interrelated dimensions of citizenship regarding the struggle of justice: politics of recognition (cultural inclusion or membership dimension), politics of redistribution (social justice or social rights) and politics of representation (political justice or political participation) (Fraser 1995; Fraser 2009; Nyers 2003; Nyers 2007; Stokke 2017:194). The table below shows the different forms of injustice and the proposed remedies in the context of politics of justice.

Table 3: Different forms of injustice with their remedies

<table>
<thead>
<tr>
<th>Forms of injustice</th>
<th>Politics of justice</th>
<th>Correspond to</th>
<th>Remedies for injustice</th>
<th>Remedies for injustice</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Affirmation</td>
<td>Transformation</td>
</tr>
<tr>
<td>Maldistribution</td>
<td>Politics of redistribution</td>
<td>Rights</td>
<td>Liberal welfare state</td>
<td>Socialism and/or social Democracy</td>
</tr>
<tr>
<td>Misrecognition</td>
<td>Politics of recognition</td>
<td>Membership</td>
<td>Multiculturalism</td>
<td>Deconstruction</td>
</tr>
<tr>
<td>Misrepresentation</td>
<td>Politics of representation</td>
<td>Participation</td>
<td>Proportional representation</td>
<td>Substantive democracy</td>
</tr>
</tbody>
</table>

Source: Forms of injustice and politics of justice (Stokke & Erdal 2017), adapted from (Fraser 1995).

In different forms of injustice, Fraser (1995) advocates two principal remedies for injustice—affirmation and transformation. Affirmative remedies seek to remove inequalities without changing the underlying structures of injustice, whereas transformation implies fundamental changes in the forms of injustice. For instance, affirmative redistribution is typically associated with the liberal welfare state that seeks to redress inequitable outcomes without changing political, economic structures. On the other hand, within the transformative strategies, it is typically associated with socialism or social democracy seeking to change structural power relations to address unequal distribution incomes (Stokke 2017:203). Likewise, affirmative representation involves proportional representation in the same political structures, whereas the transformative remedy advocates substantive democracy. Substantive representation refers to
the representatives who acts for the represented (i.e., a leader advancing the interests of workers) (Törnquist 2009:6)

6.4.2 The politics of citizenship regarding redistribution, recognition, and representation

*Redistribution* refers to the political-economic restructuring, redistributing income, reorganizing the division of labor and transforming the basic economic structures in the gap of economic injustice. *Recognition* refers to the cultural injustice, non-recognition, discrimination and deprivation. Considering the two forms of injustice, the affirmative remedies for *redistribution* (liberal welfare state) and *recognition* (multiculturalism) both can generate group differentiation; whereas the transformative remedies for *redistribution* (social democracy) and of *recognition* (deconstruction) both blurs the group differentiation (Fraser 1995). In this potential gap Kristian Stokke (2017), made a distinction based on Frasers’s (2009) work, a link between affirmative and transformative strategies through improved *representation*. In the level of political procedures, affirmative strategies may be exemplified by the demands for quotas or proportional representation within electoral systems of liberal democracy. However, the transformative politics of representation begins with the democratic aim of popular control over public affairs as well as creating the substantive democratic links between people and governance (Stokke 2017:203).

According to Törnquist et al. (2009), representation is a complex and contentious concept. In this regard, the political injustice can originate in two principal ways. First, the political mis-framing where the groups are excluded from participation and key issues are left out from the public affairs. Second, a political representation that fails to establish effective mechanisms for simplified control over public affairs (Törnquist et al. 2009b). The basic form of democratic representation is the authorization and accountability based on political equality, transparency and responsiveness that represent *substantive, descriptive* and *symbolic representation*. Substantive representation refers to when the representative acts for the represented (a leader advancing the workers interest). Descriptive representation refers to the representatives that present the similar objectives (a woman represents the Women groups), and Symbolic representation encompasses the wide range of sense constructing the demos, groups and interest representing the legitimate authority as a representative. It is an actor when it is perceived by the represented again in terms of shared culture and identities (Törnquist 2009:6).

Furthermore, he also claimed that, misrepresentation revolves around three principal components of representation: the constitution of public affairs; the construction of demos (people); and the links between people and governance of public affairs (Törnquist 2009:10).
In the light of political representation, the Rohingyas are the most persecuted and they have no political rights in addition to their political representation being seized in 2015, before the last national election in Myanmar. In the 2010 election, political parties from the Rohingya representation took part in the national election, but the ballot boxes were filled with advance pro-USDP (Union solidarity and development party) votes. However, there were three Rohingya MPs in the parliament as an attempt of winning the election by military represented USDP (Burmese Rohingya Organization 2015). Thus, the gap of misrepresentation of Rohingyas in Myanmar should be remedied within any means of substantive, descriptive or symbolic representation in order to prevent misrepresentation through political justice.

6.4.3 The politics of citizenship of Rohingyas in Myanmar

Myanmar’s economic growth is very low (GDP $915 per year) under the military auspices and it is listed as one of the worlds least-developed countries by the United Nations. The “Burmese way to socialism” also led to a severe economic crisis at the end of 1980s that fueled the resignation of Ne Win’s regime of Military regime in July 1988. Myanmar is especially vulnerable to the resource curse as well as maldistribution in the society. Apart from that, another form of injustice in Myanmar is the misrepresentation. The military has not been defeated in war, nor has it been departed from power. The constitution of Myanmar (2008) is the guarantee for continued military power. In chapter (1), article 40 (c), page 11 of Myanmar constitution it is written that,

“If there arises a state of emergency that could cause disintegration of the Union, is integration of national solidarity and loss of sovereign power or attempts therefore by wrongful forcible means such as insurgency or violence, the Commander-in-Chief of the Defence Services has the right to take over and exercise State sovereign power in accord with the provisions of this Constitution”. (Myanmar constitution, 2008, page 11).

Under the auspices of a Military controlled democracy opening in Myanmar, the politics of representation is still quite a challenge for Rohingyas. In 2015, president Thein Sein announced the deactivation of “white cards” and suggested the return of all Temporary Registration Certificates (TRC) to the authorities. Afterward, hundreds of thousands of ethnic Rohingyas were denied their voting rights in the 2015 election as well as being restricted from participating in any future referendum on Burma’s constitution. Rohingyas had the political rights to took part on any national election or referendum from 1947 (Burmese Rohingya Organization 2015). The state created a political form of injustice or misrepresentation denying the rights of the Rohingyas to hold public office or to be represented in the parliament. This constitutes a systematic method of deprivation.
The democratic opening in Myanmar is a success but the former military elites had been taken the lead on the state rules. Consequently, there should have a multilateral negotiation among the military, political parties and the ethnic groups (Stokke et al. 2015) to enhance the democratic peace in Myanmar. Stokke et al. (2017) argued that the substance of democratization rests upon popular representation through political parties, but most of the political parties in Myanmar are very new and could not build the organizational structures (Stokke 2017). However, the core challenges are rooted on the degree of party institutionalization. In a gap regarding the political cleavages between the authoritarian rule over the democratic control, and Burmese nationhood over the ethnic nations have produced the division between State-centered parties, that is associated with Myanmar’s authoritarian legacy and society centered pro-democracy parties. This potential gap creates the misrepresentation that tends to lead to semi-authoritarian and depoliticized governance rather than substantive democracy. Tönquist et al. (2009) mentioned that weak popular representation had been a frequent trait in many democratic transitions and results in the prevalence of minimalist rather than substantive democratic outcomes. Moreover, social movements, non-governmental organizations, trade unions and interest groups are the political intermediaries, but the political parties remain the key substance for representation (Törnquist et al. 2009a). This political form of injustice on representation of Rohingya parties led them towards the extortion, abuse and exploitation. Trevor Wilson (2017) argued that, the Rohingya as an ethnic group lack representative and their political goals have not been taken seriously. After the independence of 1948, the Rohingya failed to efficiently collectivize and represent their political aspiration or even express their aims in conjunction with other political organizations (Wilson 2017). This also results in a failure over any guarantee of fundamental rights and freedoms and severely weak administrative enforcement of regulations. Consequently, the set of discriminatory laws deny the Rohingya fundamental rights.

Zarni and Cowley (2014) claimed that, the Rohingyas were a recognized ethnic group before the military regimes in 1962. Due to the citizenship Act 1982 Rohingyas were excluded from the list of 135 state recognized ethnic groups based on the idea of tai-yin-tha or tayigyntha (original children of the soil) by accumulating the anti-colonial sentiment in post-independence. The 1982 Citizenship Act restricted systematic and legalized discrimination, that also designed to cripple the Rohingya a group by falsely deemed illegal and non-citizens. These discriminatory implemented policies impose travel restrictions (travelling without permission to neighboring village tracts), restrictions on marriages or even cohabitation, which
may restrict Rohingyas to achieve citizenship from *Jus matrimony*. The deprived ethnic groups, which are individually not the members of these groups should achieve nationality through different application procedures that can take two generations for naturalized citizenship to acquire full citizenship (Zarni & Cowley 2014:699). Bunte (2016) argues that, Myanmar is especially vulnerable to the resource curse. Besides, the core obstacle to successful democratization is the lack of a fully legitimized state with institutions accepted by all ethnic groups (Bünte 2016). So, the citizenship of Rohingyas are interconnected to the prevention of social, cultural and political injustice and that should be reframed by the politics of redistribution, recognition and representation within the political arena of Burmese nationalism. Apart from that, there is also a need of adjusting the cohabitation with the xenophobic Buddhist civilians. Therefore, the politics of recognition should be acknowledged for the remedies regarding multiculturalism or deconstruction.

6.5 Conclusion
The final report of the Anan commission (2017) emphasized the importance or citizenship rights and with this context recommended a review of the 1982 citizenship Act of Myanmar. The politics of justice in Myanmar can begin by the recommendations of the repel, review or amends the 1982 Citizenship Act. In the recommendation (12) of the final report of the commission, it was stated that the government should establish a straightforward pattern and a timeline for the citizenship verification process. The process enables individuals to apply for citizenship at the same time as they apply for NVC (national verification card). Additionally, in recommendation 14, Myanmar will need to establish a status for those who reside in Myanmar without being citizens. With this concern, the injustice of Rohingyas can be prevented by granting the recognition of Myanmar nationals within the verification of repatriation and accepting them from Bangladesh. By breaking the forms of injustice, the Myanmar authority should allow different elements of citizenship, such as legal status, membership, participation, and rights for the Rohingyas in Myanmar. The Myanmar government neither accepts the Rohingyas as their citizens nor do they want them to call stateless. However, they termed the groups as “Myanmar residents”, but excluded them from socio-economic, cultural or political rights in Myanmar. Nevertheless, preventing the injustice can be achieved through the inclusion of the elements of citizenship in Myanmar.
Chapter 7

7.0 Conclusion

To conclude, my research aims have been to identify, describe and analyze the approaches of Bangladesh in the light of theory and practice towards the treatment of the Rohingyas after the 2017 influx. The central finding of the study revolves around three interconnected outcomes. Bangladesh is a non-signatory of the 1951 convention and the 1967 protocol relating to the status of the refugees but became a member of “1966 Bangkok principles of status and treatment of refugees”. Therefore, Bangladesh cannot ignore the international obligation of the legal protection of the refugees. In this regard, Bangladesh has not given the refugee status to the Rohingyas after the 2017 influx, whereas a similar group were given the refugee status in 1992. Predominantly, in Bangladesh the politics of nomenclature with the Rohingyas plays a substantial role within international refugee protection. The first findings suggest that the complementary protection law (human rights law) can overweigh the obligation of the principle of the non-refoulement of Rohingyas beyond the 1951 convention of refugees as well as the international refugee law. Thus, the Rohingyas cannot be repatriated against their will. On the other hand, the bilateral agreement between Bangladesh and Myanmar was signed on 23 November 2017, which is the valid document of repatriation in Myanmar. However, such repatriation process can be characterized as premature repatriation. Premature repatriation often leads to militarized repatriation where refugees return to unsettled conditions. Although the repatriation process will make the Rohingyas physically at home, they will most likely be converted to internally displaced persons (IDP).

Apart from that, the study also identified the key challenges of Bangladesh towards the local integration of Rohingyas in Bangladesh regarding the state capacity and credibility of Bangladesh. The second finding is that Bangladesh is a small country with over 160 million people. Aside from the issue of overpopulation; the extra burden of around 800000 Rohingyas in the camps, the crisis places additional strain on Bangladesh’s economy, environment, society and politics. The politics of Bangladesh has been further destabilized by the added dimension of pressure from radicalized Islamic groups. The primary interview data framed within the theory of Migdal’s (1994) state-society approach suggests that Bangladesh is a weak state in a strong society. Accepting a huge number of Rohingyas for local integration in Bangladesh is not a credible solution. Consequently, the solution is more repatriation oriented.

The third findings of my study suggest that protection through the principle of non-refoulement or the premature repatriation of Rohingyas will leave the Rohingyas in a status of protracted
displacement either in Bangladesh or in Myanmar. If the Rohingyas are not sent back to Myanmar considering the principle of non-refoulement, the Rohingyas will be left in the confined camps which is the protracted displacement in Bangladeshi camps. On the contrary, if the Rohingyas are repatriated to Myanmar the consequence will result in a similar form of protracted internal displacement in Myanmar. Hitherto, there are more than 120,000 Rohingyas who are internally displaced in Myanmar, whereas before the 2017 exodus in Bangladesh there were more than 30,000 Rohingyas living in the Bangladeshi camps, some of those who were given refugee status in 1992 based on prima facie. Thus, as a point of departure for considering a viable solution, the paper argued that the repatriation will not bring a durable solution to the protracted Rohingya crisis, unless citizenship rights have been granted for the Rohingyas in Myanmar. With this concern, the paper discussed the stratification of citizenship which is the combination of legal status, membership, rights and participation. The population of a state or territory is politically excluded if there is no participation in the decision-making or elections. Citizens without membership are culturally excluded citizens. The juridical excluded resident is considered to be the deprivation of citizenship by legal status. And the rights associated to perform with the representation of the government and getting all the service and security from the state, persons excluded from such rights are socially excluded citizens. Besides, the citizenship dilemma should be prevented from the all three forms of injustices which are maldistribution, misrecognition and misrepresentation.

The process can begin by the verification process offered by the recommendations of the Anan commission’s final report of repeal, review or amendment of the 1982 citizenship law as well as the relevant provision of the 2008 constitution of Myanmar. However, the process of giving the full citizenship rests upon Myanmar’s politics of justice such as politics of redistribution, recognition and representation in the process of a functional democracy. Predominantly, the democratic opening has had a significant influence in Myanmar’s Politics. Military rule in Myanmar has not been defeated and they are still in the top down constitution of political affairs. The democratization of Myanmar is state controlled, primarily constructed by the state law and restoration council (SLORC) and later by the state peace and development council (SPDC). In the new movement with (NLD) National league for democracy, the politics of justice should be integrated for the granting of full citizenship of Rohingyas. However, the accountability should be accepted by different actors of military, xenophobic Buddhists as well as other political parties. Moreover, within the politics of recognition there should be encompassed a peaceful cohabitation with other Bamar (Burmese ethnic people who are the
majority) people. The politics of redistribution should be established through economic solvency. The financial support from the international community can prevent the maldistribution of resources in Myanmar. Apart from the concluding remarks from the research findings, there is still a possible way of further study on third country resettlement. With this regard, the burden sharing should be the best possible way if the international community agrees on a common ground of determining the protracted Rohingya refugee crisis.

However, the Rohingya crisis has no quick fix solution. The further research can be directed towards the international “burden sharing” which has been interpreted by two sorts of action. Either by providing financial assistance or a physical arrangement of resettlement in third party countries. Many of the primary interview respondents in the Cox’s Bazar encouraged the role of ASEAN (Association of southeast Asian nations), OIC (Organization of Islamic cooperation), UNGA (United nations General assembly) along with other developed countries. Generally, the Myanmar diplomacy is one directed towards south-east Asian countries. To establish a clear status of citizenship of the Rohingya population in Myanmar, it is important to get an explanation of what is the problem and how to address the dilemma. For an example, ASEAN stated that the Rohingya crisis is a full-blown humanitarian crisis that has regional consequences and highlighted the lack of a political and legal framework to deal with refugees. The ASEAN charter’s distinctive principle is that of "non-interference in the internal affairs of ASEAN member states”. However, there are some Muslim majority countries such as Malaysia and Indonesia that have begun to take a stronger stance on the protection of the Rohingya Muslims. Indonesia claimed the crisis to be a regional problem and placed emphasis on "constructive engagement" rather than placing pressure on Myanmar (Shivakoti 2017). Myanmar should accept the Rohingyas and give them citizenship rights, in this regard the international community can assist Myanmar both through ways of financial support and third country resettlement as a part of burden sharing. The protracted Rohingya crisis is a humanitarian crisis, and the international community needs to involve itself for the purpose of constructing the identity of the Rohingyas.
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Notes:

The respondents were categorized by Joel S Migdal’s (1994) concept of different types of pressures for the non-state actors, in four levels (Migdal et al. 1994:16). The trenches- who execute the state directives in the face of possibly strong societal resistance such as tax collectors, police officers, teachers and other bureaucrats with the mandate to apply state rules and regulation directly contacting with the intended clients, targets and beneficiaries of official state policies. The dispersed field offices- a notch of higher in the regional and local bodies that rework and organize state policies or even formulate and implement wholly local policies. These offices include the bureaus, legislative bodies, courts, military and police units that work exclusively in a circumscribed territory claimed state as a whole, making key decision. Thirdly, the agency’s central offices; technically responsible for the top political officials enacted and resources for implementation are marshaled at the national level. Finally, the commanding heights; the top leaderships are at the pinnacle of the state.

Apart from the issue of non-state forces, three sets of pressure within the state organization itself considers directly on each level of state which are first, from supervisors (neither elected nor very top of the hierarchy). Second, from underlings those that one directly or indirectly supervises. Third, from peers; the stuff in other agencies or politicians at roughly similar levels.
9 Appendices

9.1 Questionnaire for the interviews in the fieldwork

First of all, I will ask the following questions in general to accelerate the flow of more relevant questions. During the interview process I will cross check some answers technically. I am ethically bound to be anonymous for the respondents and I will let them know about my research and the purpose of my research.

1. What is the role of your department/organization in the Rohingya camps?
2. How your department is functioning? Who are the collaborators, stakeholders etc.?
3. What are the key issues your department focusing on?
4. What are the main obstacles during working with Rohingyas?
5. How do you maintain both first degree (civil and political rights) and second degree (economic/social and cultural rights) while working in the camps?
6. Do you get any assistance from the government? How often do you get assistance? from which level of government? How important the level of assistance may assist the groups?
7. What is the government approach of handling the refugees regarding basic needs, social security and human security?
8. Did you notice any violence or forceful attitude from any actors from Bangladesh side?
9. Tell me your experience working in the Rohingya camps. Who are actually involved in the process of humanitarian aid and intervention?
10. What is the role of UNHCR? do you think UNHCR and other international organizations get enough support from Bangladesh government?

1. How does Bangladesh government address the legal protection of refugees or non-refoulement regarding repatriation in Myanmar?

1.1 Does Bangladesh consider relevant customary international law?
(Q2) 1.1.1 What types of consideration did you notice of Bangladesh`s approach?
(Q2) 1.1.2 What do you observe on customary international law practice by Bangladesh government beyond 1952 convention of refugees, particularly in the Rohingya camps?
1.2 Does Bangladesh have any influence or try to take any responsibility to assure non-refoulment for the refugees regarding voluntary repatriation, local integration and resettlement in Myanmar?

(Q2)1.2.1 What are the actual grounds from Bangladesh sides to address the term non-refoulment?

(Q2)1.2.2 What types of instructions do you get to assure the treatment of Rohingyas?

(Q2)1.2.3 Do you have any influence over assuring the voluntary repatriation? Or, it is totally a state concern?

1.3 In what way if at all does Bangladesh consider different elements of the citizenship regarding voluntary repatriation, local integration and resettlement in Myanmar?

2. What are the key challenges of repatriation of Rohingyas in Bangladesh, especially with regard to state capacity and credibility?

(Q2)2.1.1 What do you think about the repatriation challenges for Bangladesh?

(Q2)2.1.2 How does state capacity and social forces play an important role for a credible repatriation agreement?

2.2 What are the problems relating to state capacity on different levels to offer incentives or concession towards legal protection of the refugees?

(Q2)2.2.1 What types of incentives or concessions do the Bangladesh government consider for the Rohingyas?

(Q2)2.2.2 How the interaction of local and national government decide the treatment for the legal protection of the refugees?

(Q2)2.2.3 Why state capacity can influence the legal protection of refugees?

2.3. How do the relations between state and social forces in Bangladesh influence the capacity and credibility of the state on different levels to consider the different elements of citizenship regarding legal rights of the refugees in Bangladesh, and voluntary repatriation, local integration and resettlement in Myanmar?

(Q2)2.3.1 How do the interaction of local and national government can influence the decision to consider different elements of citizenship and legal rights of the refugees?
(Q2)2.2.3 Why state capacity of Bangladesh can influence the voluntary repatriation, local integration and resettlement?

3. What is the special importance of citizenship rights in this context?

3.1 How do the problems of recognition of citizenship and the status of the Rohingyas undermine (lessen the effectiveness) the application and implementation of the UNHCR framework for the issue of refugees?

(Q2)3.1.1 Do you think that UNHCR framework will be justified if and only if the recognition of citizenship is established in Myanmar?
(Q2)3.1.2 Why should Bangladesh need to introduce the idea of citizenship in the bilateral talk about the Rohingya crisis?
(Q2)3.1.3 What is your opinion about the recognition of citizenship for Rohingyas before the bilateral agreement?

3.2 What would be the arguments for the inclusion of the issue of citizenship in bilateral agreements with Myanmar?

3.3 In what way do state capacity and credibility in Myanmar (and the factors and actors that determine this capacity) affect the development of citizenship for the Rohingyas beyond the Myanmay 1982 act on citizenship?
The purpose of the project is to analyse the Bangladesh government’s approach of repatriating the refugees in Myanmar and how the bilateral agreement can be resolved with Myanmar.

The sample will receive written and oral information about the project, and give their consent to participate. The letter of information is well formulated.

There will be registered sensitive information relating to ethnic origin or political/philosophical/religious beliefs, criminal offences, and trade-union membership.

The Data Protection Official recommends that the Department of Political Science at the University of Oslo conducts a risk assessment of the project, particular concerning student safety.

The Data Protection Official presupposes that the researcher follows internal routines of University of Oslo regarding data security. If personal data is to be stored on a private computer/portable storage devices, the information should be adequately encrypted.

It is stated in the notification form that personally identifiable information will be published, this is contradicted by the information letter provided. The Data Protection Official presupposes that the participants give their explicit consent to any publication that contains information that may directly or indirectly identify them. Further, we recommend that participants are given the opportunity to read through their own information and give their approval before publication.

Estimated end date of the project is 31.12.2018. According to the notification form all collected data will be made anonymous by this date.

Making the data anonymous entails processing it in such a way that no individuals can be recognised. This is done by:
- deleting all direct personal data (such as names/lists of reference numbers)
- deleting/rewriting indirectly identifiable data (i.e. an identifying combination of background variables, such as residence/work place, age and gender)
- deleting digital audio files
To whom it may concern

Introduction of Mr. Abdul Kadir Khan
Citizen of People’s Republic of Bangladesh;
Personal number 19835915676192600; Passport number BK0946124

Dear Madame/Sir,

This is to introduce Mr. Abdul Kadir Khan. Mr. Khan is a citizen of People’s Republic of Bangladesh but currently conducting his master-level studies at the unit for Peace and Conflict Studies at the University of Oslo, Norway. It is my privilege to serve as his supervisor.

Mr Khan is now temporarily returning to his home country to gain experiences and collect information in order to write an examination paper and thus fulfill the written requirements for his Master in Peace and Conflict Studies at the University of Oslo. Hence, I would be immensely thankful for all advice and support you could give to him and for all your valuable experience that you could share with him.

With many thanks in advance,
Yours sincerely,
January 8, 2018

Olle Tønquist
Professor of Political Science and Development Research
University of Oslo, Norway.