RECOGNITION OF RIGHT TO DEVELOPMENT IN PROTRACTED SITUATIONS: CONCEPTUALIZING WITH SUSTAINABLE DEVELOPMENT GOALS AND RIGHT TO WORK OF ROHINGYAS IN BANGLADESH

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ABSTRACT

With the introduction of Sustainable Development Goals (SDGs) in 2015, the vulnerabilities of disadvantaged people were recognized by international actors. Across the globe, people continue to endure intersecting forms of hardship linked to their gender and ethnic identity, displacement, age, and poverty. The Rohingyas living in Bangladesh are considered one of the most vulnerable groups whose circumstances keeps deteriorating amid a protracted refugee situation. As the protracted situation continues, regional political indicators suggest that the prospect of securing a durable solution in the near future seems quite impossible. This paper examines a nexus between the aims of SDGs and the necessity for the realization of right to development of vulnerable populations, focusing on the Rohingyas in Bangladesh and discover their potential for societal and economic contribution in a protracted situation. The paper explores the right to work as a fundamental aspect of the right to development and analyzes judicial interpretations recognizing the right to work in protracted displacement. The final section of the paper assesses the extent to which the Leaving No One Behind (LNOB) principle has been implemented in recognizing the right to work of Rohingya populations in Bangladesh, evaluates the legal obligations of Bangladesh being a host state, and advances timely recommendations.

***Keywords*:** *Rohingyas, Protracted Refugee Situation, Right to Work, Sustainable Development Goals, Development.*

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I. INTRODUCTION

The 17-point plan for Sustainable Development (2030 Agenda) was introduced by the United Nations in 2015 with 169 targets in order to construct a thorough plan for people, planet, and prosperity.[1] The SDGs were intended to adopt a universalism approach in its implementation, and were considered to be 'bold' and 'transformative', leading to a path of resilience and sustainability.[2] The principles emanating from SDGs are considered to be the outcome of wide negotiating phases led by the United Nations, comprising new aspirations, emerging demands, and timely perspectives.[3] Since SDGs promote the 'Leaving No One Behind' (LNOB) principle, it is expected that vulnerable populations, specifically refugees in protracted situations, will receive the benefit of LNOB implementation. SDGs were developed, consisting of three components: social, economic, and environmental; this paper will try to assess whether SDGs have any meaningful impact on Rohingyas residing in Bangladesh from the viewpoint of these three dimensions. Bangladesh is recognized by UNHCR to host more than one million Rohingyas in Cox's Bazar, who primarily rely on humanitarian assistance for fulfillment of basic necessities.[4] Rohingyas enjoy limited livelihood opportunities owing to the domestic legal prohibition in Bangladesh, and consequently, community resilience failed to develop in a protracted situation.[5] LNOB was promised as a tool for poverty elimination, reduction of inequalities and vulnerabilities, combating discrimination and exclusion through the reinforcement of human dignity.[6] The promise made with LNOB is one of self-reliance and development driven. Therefore, it is essential to evaluate the

[1] The primary idea behind the plan was to eliminate poverty in all forms, which is considered to be the greatest obstacle in achieving sustainable development for people and planet. The Preamble of the Agenda recognizes the elimination of poverty as a precondition to accomplish the SDGs by 2030. *See*, UN Department of Economics and Social Affairs, 'Transforming our world: the 2030 Agenda for Sustainable Development' <https://sdgs.un.org/2030agenda>.

[2] The collective journey of SDGs was proposed to be built on collaboration among diverse stakeholders, and inclusive, leaving no one behind. The Preamble acknowledges the non-realization of Millennium Development Goals and demonstrates how to achieve them by 2030 through the realization of human rights and gender equality for all. *See*, Ibid.

[3] Javier Surasky, 'The 2030 Agenda for Sustainable Development: Beyond goals and targets' *Cepei*, 7 May 2021 <https://cepei.org/en/documents/2030-agenda-sustainable-development/>.

[4] UNHCR, 'Bangladesh' 6 October 2025 <https://www.unhcr.org/where-we-work/countries/bangladesh> accessed 8 November 2025.

[5] World Bank, 'Two Settlements, Two Diverging Paths: Jobs and Labor Market Outcomes for the Displaced Rohingya Population - Analysis Based on The Cox's Bazar and Bhasan Char Panel Surveys', August 2025 <https://documents1.worldbank.org/curated/en/099071225032011906/pdf/P501651-f76fc248-8c33-4770-8603-50c952250068.pdf> accessed 8 November 2025.

[6] UN Sustainable Development Group, 'Principle Two: Leave No One Behind' <https://unsdg.un.org/2030-agenda/universal-values/leave-no-one-behind>.

promise made under LNOB with reference to the experience of Rohingya refugees found in a protracted situation. Moreover, it is crucial to investigate gaps in recognizing the right to work of Rohingyas, weakening the LNOB principle, and building a nexus with the expected social, economic, and environmental development of refugees under a protracted situation.

II. PROTRACTED REFUGEE SITUATIONS: A PRESSING CONCERN FOR THE INTERNATIONAL COMMUNITY

In recent times, UNHCR frequently relies on the notion 'Protracted Refugee Situations' or (PRS) to evaluate this grave humanitarian issue, however, this term has never received any formal definition from this organization.[7] For the purpose of this paper, refugees under protracted situations are to be understood as those who have lived in displacement for more than five years. Their existing circumstances fail to demonstrate an imminent possibility for a durable solution through voluntary repatriation, local integration, or settlement.[8] The precise data and numerical standards from UNHCR turn PRS into a more transparent and evident idea. According to the data from UNHCR, two conditions must be fulfilled to satisfy the criterion of PRS. Firstly, a minimum of 25000 refugees must evidently be in exile, being displaced from the same country. Secondly, they should be in exile for a timeframe longer than five consecutive years.[9] The duration implies there must not be a temporal gap or interval within this timespan. UNHCR collected data on PRS in 2018 and identified 10 major protracted refugee situations.[10] As per the operational data portal of UNHCR, the protracted situations commenced and gradually escalated, resulting in no durable solution.[11]

[7] Jeff Crisp, 'NO SOLUTIONS IN SIGHT: THE PROBLEM OF PROTRACTED REFUGEE SITUATIONS IN AFRICA', (2003) 22(4) *Refugee Survey Quarterly* 114–50 <http://www.jstor.org/stable/45054745> accessed 28 October 2025.
[8] Ibid.
[9] UNHCR, 'Protracted Refugee Situation Explained', 28 January 2020 <https://www.unrefugees.org/news/protracted-refugee-situations-explained/> accessed 28 October 2025.
[10] Afghan, Syrians, South Sudanese, Rohingyas, Somalis, Sudanese, Congolese (DRC), Central Africans (CAR), Eritreans, and Burundis were labeled as the largest protracted refugee populations. In 2019, 16 million people were found to be in protracted refugee situations. This number revealed an increase of 12% from the number in 2018. The pattern, as identified by UNHCR, depicts the gradual intensification of the situation, leading to the inherited hardships of refugees among generations. The plight of Afghan refugees bears strong evidence of such transgenerational trauma being hosted by Pakistan and Iran for the last 40 years. *See*, Ibid.
[11] *UNHCR, Situations* <https://data.unhcr.org/en/situations>.

Prolonged stay in host states with no pathway to durable solutions inevitably leads to pressing challenges obstructing refugees' assimilation into the host population.[12] The study conducted in Uganda substantiates this assertion by illustrating refugees' struggles to navigate the local labor market, access higher and technical education surrounding the unpredictable relationship they share with the host communities.[13] Prolonged stay in host states could generate security concerns for refugees, which may be perceived as implicit.[14] Conflicts could surface among local populations and refugees as the latter group is often viewed as recipients of preferential treatment through international aid. To be particular, health and education benefits are made available to them through international aid, while access to such necessities becomes increasingly difficult for local populations owing to the resource constraints of the government.[15] The continuation of the refugee crisis has turned into a domestic and regional issue, casting grave political implications.[16] Refugees' prolonged stay and mass concentration in the host community eventually give rise to transnational security concerns such as drug trafficking, human trafficking, smuggling of arms, and mobilization of soldiers, weakening state structures over which the host nation cannot exercise any visible control.[17]

Refugees in protracted situations are often forced to live in isolation and are restricted from residing in encampment settings, which eventually leads to the denial of basic human rights and

[12] Paul Ogwang Tulibaleka, Tumwesigye Keneth and Nakalema Kuluthum, 'Protracted Refugee: Understanding the Challenges of Refugee in Protracted Refugee Situation in Uganda' (2022) 14 *Journal of African Studies and Development* 1.

[13] Uganda has been practicing 'encampment' and 'self -reliance strategy' in collaboration with UNHCR to ease the plight of refugees displaced from African countries. Uganda allowed refugees' freedom of movement and recognized their right to work for which the country earned international acclaim. However, Uganda failed to continue such support due to the large-scale entry of refugees from South Sudan, who represent the majority of the refugee population. With limited resources, Uganda failed to ensure basic necessities for all refugees displaced from South Sudan who are now found to be in protracted situations. The refugees encounter fewer employment opportunities, lower pay at workplaces, discriminatory treatment and segregation from employers. Refugees who aspire to launch self-entrepreneurial initiatives fail to execute for lack of sizable capital and support from the government. Additionally, their access to education is undermined by instability and uncertainty. The majority of them are unsure of a strategic roadmap following the completion of primary and secondary education. While some non-governmental organizations provide aid for vocational education, the transition to university-level education remains uncertain and challenging. Ibid.

[14] Gil Loescher and James Milner, 'The Significance of Protracted Refugee Situations' (2005) 45 *The Adelphi Paper* 7.

[15] Ibid.

[16] Gil Loescher and James Milner, 'Security Implications of Protracted Refugee Situations' (2005) 45 *The Adelphi Paper* 23.

[17] Ibid.

heightens security risks.[18] Such restrictive policies often compel the refugees to resort to illicit methods to secure a livelihood, such as prostitution, robbery, or smuggling.[19] Their involvement in unlawful practices increases the vulnerability of host states, leading to their adoption of more restrictive measures against refugees.[20] It is pertinent to mention here that the refugee crisis does not develop into a protracted situation instantly, rather the challenge unfolds progressively. The passive and non-participatory role played by 'peace and security actors', coupled with the lack of political action between the host state and country of origin, transforms into a protracted emergency.[21] As pointed out by UNHCR, such unresolved protracted situations emerge primarily from political causes.[22] The combined effect of political non-intervention and minimal donor involvement has intensified the crisis.[23]

III. RIGHT TO DEVELOPMENT IN PROTRACTED EXILE: ACCESS TO WORK OR BARRIERS IN DISGUISE?

The right to development is an all-encompassing process marking the continuous sequence of economic, social, cultural, and political actions.[24] Development implies effective and voluntary participation from all leading to their sustainable welfare.[25] Article 1 of the *Declaration on the Right to Development* considers the right to development as a basic fundamental right 'by virtue of which every human person, individually and collectively, is entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized'.[26] The right also implies one's capacity to exercise self-determination, having full control over natural resources and wealth. The combined reading

[18] Refugees who are in protracted situations in Kenya and Tanzania are allowed to move within a 4KM radius of the camp. Such a restriction prevents them from earning wages through lawful means and makes them extensively dependent on international aid. Gil Loescher and James Milner, 'Long Road Home: The Significance of Protracted Refugee Situations' (2005) 47 *The Adelphi Paper* 153.
[19] Ibid.
[20] Ibid.
[21] Robyn N Lui, 'Such a Long Journey: Protracted Refugee Situations in Asia', (2007) 19 *Global Change, Peace & Security* 185.
[22] UNHCR, 'The State of the World's Refugees 2006 - Human Displacement in the New Millennium - Chapter 5: Protracted Refugee Situations: The Search for Practical Solutions' <https://www.unhcr.org/media/state-worlds-refugees-2006-human-displacement-new-millennium-chapter-5-protracted-refugee> accessed 29 October 2025.
[23] Ibid.
[24] Declaration on the Right to Development, GA Resolution 41/128 (4 December 1986).
[25] Ibid.
[26] Ibid.

of Article 1 and 2 suggests that humans, being the central focus of development, are expected to participate meaningfully in the process of realization for this 'human right'.[27] It is the human being who acts as the active participant and the beneficiary of the implementation process.[28]

The texts of the *Declaration* point to the fact that refugees in protracted situations are also entitled to employ their full potential to claim their right to development. This paper has particularly concentrated on the right to development, as this intrinsic human right shares a substantial nexus with principles emanating from SDGs.[29] Additionally, the texts of the *Declaration* reveal that the right to development encompasses a full spectrum of human rights, whether civil, political, or economic. Right to development does not foster superficial categorization among human rights and applies to all human beings, including refugees, irrespective of their mandated status or designated as stateless by the host state. Therefore, the practical outcomes of the Leaving No One Behind (LNOB) commitment in the context of refugees in protracted exile could be assessed through the evidence of the realization of the right to development.

When refugees are found in protracted exile, it is reasonable to assume that lasting solutions cannot be realized immediately, and thus the role of international human rights law comes into play.[30] UNHCR holds a legal personality and an effective mandate to oversee that camp populations are being developed in an appropriate manner.[31] UNHCR's alignment with international human rights law is evident through its involvement in 'Humanitarian-Development

[27] Arjun Sengupta, 'Right to Development as a Human Right', (2001) 36 *Economic and Political Weekly* 2527.
[28] Ibid.
[29] Human Rights are interdependent and mutually reinforcing. Sustainable development cannot be fulfilled while neglecting the right to peace and security, and vice versa. Human rights cannot be mechanically compartmentalized from other pressing rights such as the right to peace, development, and environmental protection. Iryna Ivankiv, 'Right to Sustainable Development as One of the Rights of Humanity' (2020) 82 *Studia Iuridica* 115 <https://doi.org/10.5604/01.3001.0013.9614>.
[30] Ralph Wilde, 'Quis Custodiet Ipsos Custodes: Why and How UNHCR Governance of 'Development' Refugee Camps Should Be Subject to International Human Rights Law' (1998) 1 *Yale Human Rights & Development Law Journal* 107.
[31] The engagement of UNHCR with international human rights law is necessary to ensure the 'development' of refugee populations within the camps, which will eventually create a path for durable solutions. The promise for durable solutions implies that UNHCR and the host states must provide basic support within the camps for those who are currently enduring the crisis. The support for the ongoing emergency does not essentially mean that refugees' exile is being formalized weakening their ties with country of origin. Rather, it demonstrates that principles of human rights law, which promote the provision for aid to those currently experiencing the crisis, are being acknowledged by UNHCR and the host state. Such acknowledgement reinforces the idea that international actors should ensure refugees' right to development when permanent solutions cannot be foreseen in near future. Ibid.

Cooperation. Four types of development practices are found from case study countries.[32] UNHCR collaborates with development actors to improve refugees' situation by providing data and sharing protection advice. UNHCR initiates policy advocacy and bargaining with governments to ensure uninterrupted access to basic necessities such as health care and education. UNHCR is launching a self-reliance program focusing on refugees' employment opportunities and mobilization in the financial sectors.[33]

Despite the development-oriented interventions introduced by UNHCR, in reality, it is tremendously difficult for refugees in protracted exile to find suitable employment or develop new skills as the country of asylum neglects to recognize their potential contribution towards the economy. Additionally, the international community is reluctant to advance financial resources for their meaningful engagement.[34] The international community fails to see the demonstrable nexus between 'forced migration' and 'development,' and thus refugees' capacity to contribute to the society, economy, and the political spheres remains unrecognized.[35] Poverty works as a catalyst in this scenario, where the refugees are caught in the vicious cycle of destitution.[36] Refugees in protracted situations experience minimal opportunities for seeking employment. Additionally, practicalities and legal restrictions obstruct their access to higher education and compel them to be overly dependent on humanitarian assistance. This complex situation generates discriminatory treatment towards refugees, restricts their enjoyment of human rights, triggers social exclusion in the host community, and obstructs their agency in the societal involvement process.[37]

International actors have acknowledged refugees' right to development through their focus on the inherent nexus between three instances relevant under humanitarian situations- humanitarian, development, and peace (HDP). The World Humanitarian Summit held in 2016 helped establish this HDP nexus. The nexus affirmed the necessity for initiatives of broader development and peace

[32] Julia Streets, Julian Lehmann, and Urban Reichhold, 'UNHCR's Engagement in Humanitarian Development Cooperation' *GPPI*, October 2019, <https://gppi.net/assets/5dd3b7bd4.pdf> accessed 29 October 2025.
[33] Ibid.
[34] Walter Irvine, 'Refugees and Sustainable Development: a rights-based approach', *September 2007* <https://www.caritas.pt/wp-content/uploads/2007/09/ficheiros_nacional_file_Irvine.pdf > accessed 29 October 2025.
[35] Ibid.
[36] Anna Lise Purkey, 'Legal Empowerment for a Dignified Life: Fiduciary Duty and Human Rights-Based Capabilities in Protracted Refugee Situations', (2014) Unpublished Doctoral Thesis, University of McGill <https://adsp.ngo/wp-content/uploads/2018/12/G-8_A-Dignified-Approach_-Legal-Empowerment-and-Justice-for-Human-Rights-Violations-in-Protracted-Refugee-Situations.pdf> accessed 29 October 2025.
[37] Ibid.

alongside humanitarian assistance intended for refugees and other displacement situations.[38] However, the HDP nexus approach will not lead to a development driven or sustainable outcome for displaced persons if public services (such as health care and education) are not made inclusive and barriers to the formal labor market remain unaddressed.[39] Progressive measures reinforcing refugees' right to development were formalized in Uganda, specifically tailored for refugees from South Sudan.[40] Refugees were given a small share of land to grow their own food and capital to initiate small enterprises. However, accessibility to the formal and informal labor market remained challenging for linguistic differences and educational barriers.[41]

The right to development in PRS seems challenging to realize when host communities attempt to escape the economic strain of incorporating refugees within their society. Refugees are perceived as a liability posing a serious threat to the economy, security, and environment.[42] It is important to note that refugees are often used as convenient excuses to rationalize the existing socioeconomic crisis in the host state.[43] Additionally, recognition of the right to development and implementation of SDGs largely remain unfulfilled as the *Declaration* and SDGs promote soft law obligations without requiring mandatory enforcement of aspirational goals.

[38] The approaches adopted under the HDP nexus lack a nuanced understanding of sustainability. While the initiatives primarily concentrate on improving communal unity among refugees and the hosting society, the root causes of displacement and conflict remain inadequately addressed. As discussed in this paper, one of the root causes of PRS is the lack of political dialogue between the country of origin and the host state. The initiatives undertaken under the HDP nexus, much like earlier approaches, concentrate on providing humanitarian help in the host state rather than tackling the challenges in the country of origin. Such a development-based model, despite being integrated, will fail to guarantee a sustainable outcome. OECD and United Nations High Commissioner for Refugees, 'The Humanitarian-Development-Peace Nexus and Forced Displacement: Progress, Insights and Recommendations for Operational Practice' (57th edn, 2024) *OECD Development Policy Papers* <https://doi.org/10.1787/3e493170-en> accessed 31 October 2025.

[39] Ibid.

[40] above note 13.

[41] The focus group study on urban refugees revealed that social exclusion had remained the primary factor restricting their participation in the formal labor market. One of the participants in the study expressed that he had completed primary and university level education in Uganda. However, he failed to be a part of the informal labor forces despite having the right educational credentials. The participant believed his South Sudanese identity had restricted his access to the Ugandan formal labor market. The study confirms that refugees in PRS cannot exercise their right to development as they remain trapped in the cycle of persistent poverty, which was triggered by the exclusionary practices experienced in the host community. above note 13.

[42] Samuel Opono and Frank Ahimbisibwe, 'Protracted Refugee Situations and the Shrinking Durable Solutions: Could There Be a Ray of Hope in Local Solutions?' (2024) 10(1) *Cogent Social Sciences*.

[43] Many in Guinea perceive Liberian and Sierra Leonean refugees as contributing to the rise of unlawful activities, petty offenses, street prostitution, and the escalation of narcotics circulation. However, the cycle of poverty had been in existence at the onset of the refugee influx, but there is no specific evidence proving conclusively that the erosion of public security in Guinea is connected with measures undertaken for refugee integration. Ibid.

IV. Recognition of Dual Significance of Work in Protracted Exile: Judicial Engagement in Reinforcing Refugees' Right to Development

Asylum seekers' and refugees' right to development in protracted situations has gained judicial recognition in several decisions. The decisions interpreted refugees and asylum seekers' accessibility to employment through 'dual value of work' where a nexus had been constructed between 'personal economic development' and 'preservation of human dignity'.[44] The 'dual value of work' was specifically reflected in the opinion of the Attorney General in *KS and MHK v International Protection Appeals Tribunal, the Minister for Justice and Equality and the Advocate General and RAT and DS v Minister for Justice and Equality.* In this case, three applicants from Bangladesh, Pakistan, and Iraq applied for international protection in Ireland between 2015 and 2018. The applicants were not allowed to access the labor market of Ireland as they were not considered eligible applicants under the Dublin proceedings. The applicants challenged refusals for their work permit, and the Court of Justice of the European Union (CJEU) addressed the issue of their eligibility based on the preliminary references submitted by the High Court and the International Protection Appeals Tribunal.[45] CJEU interpreted the point of exclusion by stating-

There is no doubt that, in the context of the forced nature of migration and the often traumatic experiences associated with it, the refusal of an applicant to engage in any professional activity may increase his or her vulnerability, the precariousness of his or her situation and, sometimes, the isolation and social exclusion to which he or she is already subject, especially as the waiting period may be several months. In that context, where a procedure for taking charge of an applicant or for taking him or her back or, where appropriate, for transferring him or her has been initiated, that applicant is ultimately in a more precarious situation than an individual who is not subject to such procedures.[46]

[44] Cathryn Costello and Colm O'Cinneide, 'The Right to Work of Refugees and Asylum-Seekers', in Cathryn Costello, Michelle Foster, Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (Oxford University Press, 2021).
[45] *KS and MHK v International Protection Appeals Tribunal, the Minister for Justice and Equality and the Advocate General and RAT and DS v Minister for Justice and Equality*, Joined Cases C-322/19 and C-385/19 (2021) Court of Justice of the European Union, ECLI:EU:C:2021:11.
[46] Ibid, para 85.

The plight associated with prolonged stay in the host country eroding one's self-worth was addressed by the Irish Supreme Court in *N.H.V. v. Minister for Justice & Equality and ors.* In this case, the applicant was a Burmese citizen who applied for refugee status in 2008. However, his application was rejected, and the decision remained the same in judicial review. In 2013, he received an offer of employment. However, the Minister of Justice and Equality did not allow him to work, stating that Section 9(4) of the *Refugee Act, 1996*, restricts him from pursuing employment in Ireland. The interpretation of section 9(4) was challenged by N.H.V. in the High Court and sought a declaration regarding the incompatibility of the section with the *Irish Constitution* and *European Convention on Human Rights*.[47] The Supreme Court found the complete bar on asylum seekers access to employment to be contradictory with the Irish Constitution and observed:

> …right to work at least in the sense of a freedom to work or seek employment is a part of the human personality and ……individuals as human persons are required be held equal before the law, means that those aspects of the right which are part of human personality cannot be withheld absolutely from non-citizens.'[48]
>
> In this case, the applicant was in the system for more than eight years, and during that time was prohibited from seeking employment. In my view, the point has been reached when it cannot be said that the legitimate differences between an asylum seeker and a citizen can continue to justify the exclusion of an asylum seeker from the possibility of employment. The damage to the individual's self-worth, and sense of themselves, is exactly the damage which the constitutional right seeks to guard against. The affidavit evidence of depression, frustration and lack of self-belief bears that out.[49]

The States are obliged to pronounce development oriented and well-being focused national policies for the entire population, including each and every individual.[50] Their free, active, and meaningful participation serves as a precondition for the formulation of such policies.[51] It is important to note that the Declaration does not differentiate between nationals and non-nationals in their entitlement to development initiatives, aligning with the above-mentioned judicial observations. The Declaration emphasizes on the equality of opportunity 'for all' in their 'access to employment' and considers such inclusivity as an important factor in the fulfillment of 'all

[47] Marie O'Reilly, 'Direct Provision: The Implications of N.H.V. v Minister for Justice and Equality' (2018) *Trinity College Law Review Online* <https://trinitycollegelawreview.org/direct-provision-the-implications-of-n-h-v-v-minister-for-justice-and-equality/> accessed 18 January 2026.

[48] Mr N.H.V. had been in the process of asylum for a considerable amount of time. He sought temporary permission to work during the asylum procedure, considering the length of the process. The case revealed his distressful and demoralized state as he failed to engage in meaningful employment despite being in the direct provision system for more than five years. *N.H.V v. Minister for Justice & Equality and Ors* (2017) IESC 35 (Ireland).

[49] Ibid, para 20.

[50] above note 24, Article 2.

[51] Ibid.

human rights'.[52] A similar inclusive perspective was endorsed *in Minister of Home Affairs and Others v Watchenuka and Others.* In this case*,* the first respondent was a widow from Zimbabwe who entered South Africa with her son, asserting that they fled due to political persecution. Eventually, they were denied the permit to work and study in Cape Town. The respondent applied to the Cape High Court for a declaration directing the appellants to allow her and her son to work and study while their asylum application was being processed.[53] Scrutinizing the absolute prohibition on asylum seekers' right to work, the Supreme Court of Appeal of South Africa observed:

> But where employment is the only reasonable means for the person's support, other considerations arise. What is then in issue is not merely a restriction upon the person's capacity for self-fulfillment, but a restriction upon his or her ability to live without positive humiliation and degradation. For it is not disputed that this country, unlike some other countries that receive refugees, offers no State support to applicants for asylum. …… Thus, a person who exercises his or her right to apply to apply for asylum, but who is destitute, will have no alternative but to turn to crime, or to begging, or to foraging….but only that the deprivation of the freedom to work assumes a different dimension when it threatens positively to degrade rather than merely to inhibit the realization of the potential for self-fulfillment.[54]

In the case of *GA. v. Director of Immigration*, the Court of Final Appeal of the Hong Kong Special Administrative Region addressed the protracted situations of applicants who had remained in Hong Kong for a 'prolonged period of time'.[55] In this case, the court sought to determine if the Director of Immigration (DOI) could prevent applicants from exercising their constitutional right to work on the ground of public policy who had remained in Hong Kong for more than four years.[56] The court observed that a minimum threshold of severity must be established to prove a case of 'Inhuman or Degrading Treatment' (IDT), and such could only be reached following the study of individual facts, figures, and circumstances.[57] The burden of proving IDT will always lie on the

[52] above note 24, Article 8(1) and 8(2).
[53] *Minister of Home Affairs and Others v. Watchenuka and Another* (2003) ZASCA 142 (South Africa).
[54] Ibid, para 32.
[55] *GA. v. Director of Immigration* (2014) 17 HKCFAR 60 [6] (Hong Kong).
[56] Ga, FI, and JA were mandated refugees. The fourth applicant, PA, was recognized as a 'screened-in torture claimant'. GA had been in Hong Kong for 10 years, FI had been staying there for 9 years, JA had been living in Hong Kong for nearly 12 years, and PA had been staying there for over 13 years. GA, FI, and PA had received permission to work by the DOI in 2013. However, the permission, not being an open ended one, would expire in 2014. The permission to grant work permits was within the discretion of the DOI. While the DOI expressed the view that employment permission could be granted when exceptional circumstances such as genuine risks of inhuman or degrading treatment exist, however, the Director's office was of the view that none of the applicants could demonstrate that they had been exposed to such risks. Ibid, para 7.
[57] Ibid, para 49.

party who has claimed to have experienced it and must show a minimum scale of severity.[58] Not allowing someone (being in a protracted situation) to work could lead to IDT when evidence adduced by them sufficiently shows deterioration of mental health owing to unemployment, desperation, destitution, and loss of human integrity.[59] Through this observation, the Court of Final Appeal successfully constructs a nexus between persons' right to work in protracted exile and preservation of their human dignity, both of which represent integral components of right to development.

The threshold of severity was also discussed *in Regina v Secretary of State for the Home Department*[60], the test which the asylum seekers in protracted circumstances must satisfy. If the applicant experiences an immediate possibility to encounter grave suffering caused by the denial of food, shelter, and other essential tools for survival, the applicant could have a legitimate claim for IDT.[61] However, the test is not a conclusive one as some pivotal factors, such as the applicant's age, sex, mental and physical state, facilities made accessible to the applicant, must be evaluated to determine the legitimacy of the threshold.[62] The court acknowledged that a simple test had not been in existence to prove IDT, however, it required strong and persuasive evidence from asylum seekers depicting a serious predicament to life, such as experiencing serious hunger, homelessness, no accessibility to hygienic living conditions, and a lack of state assistance. In view of the court, these illustrations satisfy the 'requisite level of severity'.[63]

The judicial observations offer two compelling dimensions regarding the plight experienced in PRS. Firstly, a reasonable nexus has been constructed between refugees' right to work and right to development. The observations acknowledge the justifiable relation between the right to work and recognition of self-worth in protracted situations. While affirming such development-oriented notion, the evidentiary threshold of establishing gross violation of human dignity has been set so high which appears to be tremendously difficult for affected individuals to corroborate such harm, particularly in protracted situations. If refugees and asylum seekers are viewed as right-holders in

[58] Ibid, para 50.
[59] Ibid, para 54.
[60] *Regina v. Secretary of State for the Home Department (Appellant), Ex Parte Adam (FC) (Respondent); Regina v. Secretary of State for the Home Department (Appellant), Ex Parte Limbuela (FC) (Respondent); Regina v. Secretary of State for the Home Department (Appellant), Ex Parte Tesema (FC) (Respondent) (Conjoined Appeals)*, [2005] UKHL 66.
[61] Ibid, para 8.
[62] Ibid.
[63] Ibid, para 9.

the context of development, they are bound to experience certain capacity gaps.[64] The gaps might include a lack of education, skill, resources, security, constraints on free expression, and participation in the host society.[65] It is also pertinent to note that, although the abovementioned judicial observations established a nexus between individual asylum seekers' right to work and right to development in PRS, the same nexus may also be employed as recognizing right to development in group-based contexts, especially considering that refugees' right to work carries importance for three fundamental reasons. Firstly, the right to work is a crucial right under international human rights law and refugee law. Secondly, recognizing the right to work leads to better socio-economic and psychological implication for refugees. Thirdly, right to work is connected with the national development of host states and greater benefit for the international community coupled with the possibility of reduced refugee movement.[66] Recognizing the *de jure* and *de facto* right to work and development of refugees in group-based contexts during PRS is neither unique in practical application nor in theoretical discourse. Right to work was recognized as a *de jure* right of refugees in Uganda, demonstrating the nation's well-established commitment to refugees' right to development. Ethiopia has moved towards recognizing the right to work of refugees in group-based contexts by amending its legislation in 2019. Kenya does not recognize *de jure* right to work, but recognition of refugees' *de facto* right to work is prevalent in its Turkana County.[67] Therefore, the nexus established by national and regional courts between asylum seekers' right to work and development during PRS is likely to assume broader implications in group based contexts in the years to come, as multiple host states are demonstrating a growing trend in recognizing refugees' right to work, in law as well as in practice. However, it is important to highlight that soft law obligations set out in the *Declaration on the Right to Development* and embodied within SDGs gradually turn into binding obligations through states' practices and amended legislations, as identified in Ethiopia. Nevertheless, the non-binding force of SDGs and the Declaration continues to shape policy measures in different states and possesses the strong potential to grow into mandatory commitments in the future.

[64] UNSDG, 'Operationalizing Leaving no One Behind' March 2022 <https://unsdg.un.org/resources/leaving-no-one-behind-unsdg-operational-guide-un-country-teams> accessed 2 November 2025.
[65] Ibid.
[66] Alexander Betts and Olivier Sterck, 'Why do states give refugees the right to work?' (2022) 38(3) *Oxford Review of Economic Policy* 514.
[67] Ibid.

V. THE ROLE OF LNOB PRINCIPLE AND SDGS IN RECOGNIZING THE RIGHT TO WORK OF ROHINGYAS IN BANGLADESH: TO INCLUDE OR LEAVE BEHIND IN PRS?

Leaving no one behind (LNOB) is a progressive commitment under the 2030 Agenda for Sustainable Development and a visionary pledge associated with Sustainable Development Goals (SDGs).[68] The United Nations has adopted the 'reaching the poorest of the poor' approach to interpret LNOB.[69] LNOB strives to implement ideas similar to those enshrined within the Declaration on the Right to Development, such as the progress of all individuals and the population, ensuring equality, equity, and non-discrimination.[70] Persons are labeled as 'left behind' if their choices and opportunities, being limited, prevent them from meaningful participation in society and thus continue to endure deprivation and disadvantages.[71]

The LNOB principle is often interpreted through its three primary aims-to eliminate poverty in all its forms, to put an end to marginalization and deprivation resulting in unequal distribution in society, and to prioritize those who are the 'furthest left behind'.[72] With the adoption of UN SDGs, international actors are expected to implement the LNOB principle to eliminate vulnerability and to ensure fair distribution of wealth across various strata of the society.[73]

SDGs promote the right to development of refugees, in principle, through acknowledgement of different goals and targets. SDG 1 aims at eliminating poverty in all forms by 2030 and emphasizes on the access to basic services and natural resources by poor and vulnerable people.[74]

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[68] above note 64.

[69] UNICEF, 'Water, Sanitation and Hygiene: A Guidance Note for Leaving No One behind' <https://www.unicef.org/documents/water-sanitation-and-hygiene-guidance-note-leaving-no-one-behind> accessed 2 November 2025.

[70] The LNOB takes into account the unequal distribution of wealth, income, resources, social benefits, and opportunities affecting one's living conditions. LNOB aims at combatting inequality of opportunity, which focuses on personal and social circumstances of individuals that obstruct them from developing their full potential in disadvantageous situation. Ibid.

[71] Women and girls, migrants, refugees, and internally displaced people, indigenous peoples, ethnic minorities, persons with disabilities, older people, youth, people living in poverty, religious minorities, LGBTQI+ individuals, linguistic minorities, persons who are homeless, people who are incarcerated are considered to be in disadvantageous situation by UN Women and at risk to be left behind. Ibid.

[72] Justice Mensah, Amos Mensah, and Aba Nyameyle Mensah, 'Understanding and Promoting the 'Leaving No One Behind' Ambition Regarding the Sustainable Development Agenda: A Review' (2022) 11 *Visegrad Journal on Bioeconomy and Sustainable Development* <https://doi.org/10.2478/vjbsd-2022-0002>.

[73] Ibid.

[74] Target 1.4 emphasizes the equal rights of the poor and vulnerable in exercising their right to ownership, control over, and access to natural resources. The target implies that active economic participation is needed from the vulnerable segment to eliminate all forms of poverty by 2030. The phrasing of the target underscores that the poor and

The target reiterates the principles embodied within Articles 13 and 23 of the *1951 Refugee Convention*, allowing refugees to gain movable and immovable property and be entitled to public relief and assistance.[75] Furthermore, the target embodies the principles of equal accessibility to basic resources, equitable distribution of earnings, and initiation of social reforms to eliminate social justice.[76] The targets under Goal 1 concentrate on the plight of poor and vulnerable exposed to climate disasters,[77] aim at adopting gender-sensitive strategies.[78] Despite having timely objectives, Goal 1 could not ensure refugees' right to work in multiple host states, undermining the LNOB principle.[79]

The crisis that the Rohingya community encounter is twofold- they lack status as citizen[80] in Myanmar (country of origin) and Bangladesh has yet to acknowledge their status as refugees.[81] UNHCR recognizes Rohingya as refugees and advocates for their global protection.[82] The crisis has assumed a dual form as Rohingyas are unwanted both in Bangladesh and Myanmar.[83] As a

vulnerable are more susceptible to diverse forms of poverty. Thereby, meaningful participation from their end is essential to achieve targets under Goal 1. UN Department of Economics and Social Affairs, 'Goal 1' <https://sdgs.un.org/goals/goal1#targets_and_indicators> accessed 3 November 2025.

[75] Article 13 emphasizes favorable treatment for refugees, and acquiring movable and immovable property and exercising associated rights with it. Additionally, refugees are entitled to the same treatment in relation to public relief and assistance as extended to nationals. *Convention Relating to the Status of Refugees*, signed on 28 July 1951, 189 UNTS 137 (entered into force on 22 April 1954).

[76] Ibid.

[77] above note 74, Target 1.5.

[78] Ibid, Target 1.b.

[79] Failure to achieve SDG 1 is connected with insufficient employment prospects within host states. Host states' incapacity to recognize refugees' right to work has obstructed the fulfillment of SDG 1 in protracted situations. For instance, Iraq, Lebanon, and Jordan chose not to recognize refugees' right to work in PRS. As a result, refugees in protracted situations keep searching for employment in informal sectors where they experience exploitative treatment and minimal wages. Neo-slavery and neo-feudalism are also evident in host states where the right to work is not recognized, as refugees are compelled to work within specific sectors associated with low pay and marginal labor rights. Mai Wardeh and Rui Cunha Marques, 'Measuring the SDGs in Refugee Camps: An Insight into Arab States Bordering Syria' (2023) 15 *Sustainability* 1720.

[80] The Rohingyas, living in the Northern Part of Rakhine State for centuries, are considered to be the ethnic and religious minority of Myanmar who have frequently been subjected to structural and cultural violence. Myanmar denied their citizenship and labeled the Rohingya as possessing illegal status in Rakhine. Such a stigmatizing tag has accelerated the deprivation of civil, political, and economic rights of Rohingyas in Rakhine. Saleh Ahmed et al., 'The Sustainability–Peace Nexus in Crisis Contexts: How the Rohingya Escaped the Ethnic Violence in Myanmar, but Are Trapped into Environmental Challenges in Bangladesh' (2021) 16 *Sustainability Science* 1201.

[81] The Rohingyas sought refuge in Bangladesh to escape persecution since the latter half of the 20th century. The mass violence of 2017 led to a large influx of Rohingyas in Bangladesh, and since then, the number of their arrivals has been increasing. Despite the obvious instance of persecution, Bangladesh chose to categorize Rohingyas as Forcibly Displaced Myanmar Nationals (FDMNs). Anas Ansar and Abu Faisal Md. Khaled, 'From Solidarity to Resistance: Host Communities' Evolving Response to the Rohingya Refugees in Bangladesh' (2021) 6 *Journal of International Humanitarian Action* 16.

[82] Ibid.

[83] 'Rohingya', as a word, is considered to be a taboo in the capital of Myanmar, Yangon. The social stigma has spread across Myanmar mostly because of the non-inclusive policies from the government. The government has deliberately

host state, Bangladesh has failed to provide sufficient protection to the Rohingyas who are currently living in a protracted situation. The government has enforced strict restriction on their movement and prohibits them to seek employment outside designated camp areas. Consequently, a vast number of Rohingya women are involved in the sex trade. Furthermore, as some Rohingyas attempted to seek low wage employment outside camp areas, it has escalated resentment among the host community.[84] The plight of Rohingyas reinforces that international state and non-state actors have failed them countless times, leading to protracted vulnerability.[85]

Although Bangladesh, being a host state, is expected to implement SDG 8 and secure inclusive and sustainable economic participation of Rohingyas, it appears that Rohingyas are still left behind due to inadequate support from international actors, specifically from countries within the same region.[86] Myanmar's strong diplomatic ties with Russia, China, and India for economic purposes have resulted in passive support in favor of Myanmar although compelling evidence reveals that acts of genocide have taken place in Rakhine.[87] As a result, Bangladesh ends up bearing the disproportionate burden and fails to implement SDGs 1 and 8.

The reason why Bangladesh failed to recognize the Rohingya's right to work, and consequently their right to development, may be understood through the lens of securitization. According to the findings of the Copenhagen School of Security Studies, security could be interpreted as an 'act' targeting a particular issue as an urgent threat which must be dealt with extraordinary measures.

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chosen not to recognize Rohingyas and purposefully excluded them from the process of national and ethnic recognition. For instance, the National Museum of Myanmar preserves a record of all sub-nationalities and classifies them based on their linguistic heritage. But the museum collection makes no reference to Rohingyas or to their linguistic affiliation. Akm Ahsan Ullah, 'Rohingya Refugees to Bangladesh: Historical Exclusions and Contemporary Marginalization' (2011) 9 *Journal of Immigrant & Refugee Studies* 139.

[84] Ibid.

[85] The failure can be attributed to the overly rigid interpretation of the term 'Genocide' to understand if asylum seekers had experienced it or not, and thus explain their statelessness under the guise of ethnic cleansing. The 'never again' commitment embraced after the Second World War failed in Cambodia, Rwanda, Bosnia, Burundi, the former Yugoslavia, Darfur, East Timor, Afghanistan, Iraq, Syria, and, most recently, Myanmar. Myanmar has excluded Rohingyas from the 2015 census and labeled them as 'illegal Bengalis', trying to justify the persecution. Additionally, the prohibition imposed by Myanmar restricting the entry of UN Fact-finders in Rakhine, while Russia and China use a Veto in the Security Council, preventing all sorts of humanitarian intervention in Myanmar, will compel the Rohingyas in Bangladesh to live in prolonged uncertainty. Pal Ahluwalia and Miller Toby, 'The Rohingya Crisis: Another Failure of the International System' (2018) 24 *Social Identities* 291.

[86] The participation from the international community has been selective in addressing the acts of genocide perpetrated by Myanmar's junta. Myanmar keeps a strong diplomatic tie with Russia, China, and India. Sharing the border with China and India's Act East Policy has gained Myanmar support from this region and has received no diplomatic intervention. Md Riday Howlader, Jakiatun Nesa, and Mainul Islam, 'The Rohingya Crisis in Bangladesh: Challenges and Prospects' (2025) 3 *Discover Global Society* 103.

[87] Ibid.

Such a threat could be found in economic, political, environmental, and societal sectors.[88] It involves a perception which transforms ordinary matter into grave emergency situations, restructuring global priorities in an interconnected world.[89] Denying Rohingyas of inclusive and sustainable participation under the guise of security is prevalent in Bangladesh. Rohingyas are considered as a 'challenge' to existing political-administrative institutions.[90] According to the data from the Population Council, employment opportunities are scarce for Rohingya youth in Bangladesh. Although work opportunities are higher outside the camp, they are specifically preserved for males.[91] Lack of accessibility to equal work opportunities, restricted access to information, location of camps in disaster prone areas, regular encounter with floods, landslides have made the Rohingyas environmentally vulnerable and compelled them to be involved with organized crimes.[92] These factors have prompted the government of Bangladesh to marginalize the Rohingya community, limit their participation in the domestic economy, and obstruct the timely achievements on SDG targets. The current situation raises a critical question: how can Bangladesh adopt development-based approach addressing the Rohingya people in the absence of the ratification of the *1951 Refugee Convention*, and on which grounds the country can be held accountable for not implementing the *Declaration on the Right to Development* and the SDGs when they primarily set forth soft law commitments?

[88] Titilayo Aishat Otukoya, 'The Securitization Theory' (2024) 11 *International Journal of Science and Research Archive* 1747.

[89] The 'securitization' mindset triggers a genuine concern for potential threats and superficially creates challenges deteriorating 'Order' in a given society. The idea of securitization persuades states to adopt exceptional measures, ignore ordinary political measures, and employ full force against elements considered to be a threat to the state's 'order' and 'survival'. Ibid.

[90] Siegfried O. Wolf, 'The Rohingyas Crisis: A Security Perspective from Bangladesh' *FID4SA Repository* (2015) https://doi.org/10.11588/xarep.00003481, accessed 8 November 2025.

[91] The young Rohingya are primarily involved in day labor, masonry, paramedical tasks, and small businesses inside the camp. Tasks of tutoring and tailoring are usually accessible to female Rohingya. Additionally, young Rohingyas are given the opportunity to work with NGOs. However, that opportunity is scarce and severely restricted to males. Md Noorunnabi Talukder et al., 'Assessment of Economic Opportunities for Young Rohingyas in Bangladesh' *Knowledge Commons* (2022) <https://doi.org/10.31899/sbsr2022.1032>.

[92] Along with these vulnerabilities, differential treatment continues to exist in the Rohingya camp as some of them received refugee status, but many are still registered as 'displaced Myanmar Nationals'. ANM Zakir Hossain, 'Sustainable Development and Livelihoods of Rohingya Refugees in Bangladesh: The Effects of COVID-19' (2021) 16(6) *International Journal of Sustainable Development and Planning* 1141.

VI. Applicability of the 1951 Refugee Convention, SDGs, and LNOB Principle in Bangladesh: Normative Uncertainty Arising from Soft Law Commitments and Absence of Ratification

Articles 15 and 17 of the *1951 Refugee Convention* recognize refugees' right to work, thereby reinforcing the principles of right to development and sustainable development.[93] Article 15 recognizes the right to form trade unions by refugees having lawful status. Article 17 manifestly addresses the protracted situation by stating that restrictions on the right to work will not be imposed on refugees who have completed three years residence in the country.[94] Bangladesh is not a signatory to the *1951 Refugee Convention* and the *1967 Refugee Protocol*. There is no specific domestic law or policy in Bangladesh that deals with refugees or displaced persons experiencing a protracted situation.[95] However, some fundamental rights embodied within the *Constitution of Bangladesh* are accessible to all citizens and non-citizens. As a result, the Rohingyas are entitled to right to life and personal liberty under Article 32, safeguards as to arrest and detention under Article 33, protection from forced labor under Article 34, due process in trial and punishment under Article 35, right to free thought and conscience under Article 39(1), freedom of religion under Article 41, and implementation of fundamental rights under Article 44 of the Constitution.[96]

It should be noted that the *Refugee Convention* lays down four criteria to determine refugee status: 1) the concerned person must be outside the territory of country of origin; 2) the person is unable or unwilling to return to the country of origin or unable to avail protection from country of origin; 3) Such inability or unwillingness is linked to well-founded fear of persecution; 4) race, religion, nationality, membership of a particular social/political group.[97] Although the Bangladesh Government has adopted a Rohingya Refugee Strategy in 2013 to meet the basic needs of

[93] Both of these articles emphasize the participation of refugees in the host community through the exercise of freedom of association and access to wage earning employment. The wording of the articles demonstrates the elements of inclusiveness and a participatory process. 'The 1951 Refugee Convention and 1967 Protocol relating to the Status of Refugees' <https://www.unhcr.org/media/1951-refugee-convention-and-1967-protocol-relating-status-refugees> accessed 19 January 2026.

[94] 'Convention Relating to the Status of Refugees' (OHCHR) <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-relating-status-refugees > accessed 8 November 2025.

[95] Manzoor Hasan and Arafat Reza, 'Evaluating Bangladesh's Legal Framework for Rohingya Refugees: Gaps and Solutions' *EJIL: Talk!*, 10 January 2025 <https://www.ejiltalk.org/evaluating-bangladeshs-legal-framework-for-rohingya-refugees-gaps-and-solutions/> accessed 8 November 2025.

[96] Ibid.

[97] above note 93.

Rohingya arrived in Bangladesh following the third wave of Rohingya influx, the government officials are reluctant to use the term 'refugee' and emphasize more on using 'undocumented Myanmar nationals'. In 2020, a compromise was reached through a Joint Response Plan (JRP) with Donor Agencies in labeling the Rohingya Asylum Seekers as refugees/forcefully displaced Myanmar Nationals.[98] The compromise reflected through JRP suggests that Bangladesh adopted the criteria of the 1951 Refugee Convention in addressing the Rohingyas fleeing from Myanmar, despite not having ratified the Convention. Bangladesh does not have a definite Refugee Status Determination (RSD) mechanism, and recognizing refugees' basic rights become increasingly challenging not having the ratified the 1951 Convention. Consequently, Bangladesh is not legally obligated to enforce Articles 15 and 17 of the *1951 Refugee Convention*. Non-enforcement of Articles 15 and 17 of the *1951 Refugee Convention* will prevent Rohingyas in Bangladesh from exercising their *de jure* right to work, resulting in increased hardship during PRS.

The existing vacuum may be filled through obligations arising from key international instruments, domestic laws and policies, and Bangladesh's approach in addressing the crisis to date. It is important to note here that obligations emerging from the *Declaration on the Right to Development*, SDGs, and LNOB agenda are soft law commitments that do not lead to enforceable obligations. The commitments under soft law and hard law can be viewed from three different perspectives-positivism, rationalism, and constructivism. While these three views identify that commitments under soft law instruments and hard law instruments complement each other; their starting points do not align.[99] In line with the positivist view, hard law and soft law obligations offer a binary interpretation. Hard law imposes formal, binding obligations while soft law provides informal, non-binding commitments. However, legal positivists do not rule out the possibility of transforming soft law commitments into mandatory obligations at some point in the future. From a rationalist perspective, hard and soft law possess varied attributes, and states choose these traits depending on specific contexts.[100] According to this view, soft law emerges when existing legal schemes fail to offer precise content while leaving the obligations to the complete discretion of parties to such legal arrangements. Rationalists also identify a vacuum in authority to which the

[98] ASM Ali Ashraf, 'Humanitarianism, National Security, and the Rohingya Refugee Policy of Bangladesh' (2021) 45 *Strategic Analysis* 184.
[99] Gregory C Shaffer and Mark A Pollack, 'Hard vs. Soft Law: Alternatives, Complements, and Antagonists in International Governance' (2009) 94 *Minnesota Law Review* 706.
[100] Ibid.

duty of monitoring could be designated, ensuring the proper implementation of existing legal frameworks.[101] Constructivist scholars question the strict categorization of 'hard law' and 'soft law' as too much distinction implies difficulty in enforcing legal frameworks. Constructivists find such a distinction unnecessary, as international law can change shared interests among states through persuasion, interaction, and deliberation.[102] From this point of view, ideas presented by constructivists and positivists coincide as both of these schools identify the possibility of soft law obligations transforming into hard law commitments even though disagreements may lie in the methods by which the transformation is achieved.

Analyzing the views of three schools on hard and soft law commitments, it is evident that Bangladesh cannot be compelled to recognize the Rohingya's right to development in line with the Declaration on the Right to Development and to implement the SDGs and the LNOB principle. The Declaration and UN Agendas/Principles do not possess any attribute of binding nature. Drawing the elements from the Rationalist school on soft law commitments, it may therefore be concluded that no designated authority exists in Bangladesh to monitor compliance with the *Declaration on the Right to Development*, the SDGs, and the LNOB principle. Lack of a competent supervisory body and well-articulated future oriented goals and aspirational benchmarks by SDGs and *Declaration on Right to Development* reaffirm the key tenets of the legal positivists school that a rigid classification does exist while labeling hard and soft law obligations. Obligations that emerge in the form of promising guidance fail to offer mandatory enforcement as required by hard law commitments under international law. The question therefore, remains if Bangladesh could be compelled to enforce right to work of Rohingya people complying with Deceleration on Right to Development, SDGs and LNOB principle. Scholars from positivist and constructivists have identified the possibility of soft law commitments transforming into hard law obligations through interaction and state practice in due time. While Bangladesh currently cannot be compelled to realize the principles of the *Declaration on the Right to Development*, the SDGs, and LNOB, growing judicial and political trends in recognizing refugees' right to work are likely to shape future developments significantly. The global endorsement of SDGs and the LNOB principle should serve as a continuous impetus for Bangladesh in revising its internal policy framework on

[101] Gregory Shaffer, Mark A. Pollack, 'Hard and Soft Law: What Have We Learned?' May 2012, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2044800 >accessed 12 March, 2025.
[102] Ibid.

the Rohingya's right to work, particularly where voluntary repatriation is not feasible in the immediate future. Therefore, what today may seem as an informal and non-binding obligation for Bangladesh may turn into a formal, binding commitment in the future as suggested by ongoing judicial developments and states being actively engaged in framing internal policy in line with UN Declarations and agendas.[103]

Not being a party to the *Refugee Convention*, Bangladesh is not bound to enforce Articles 15 and 17 of the Convention. This creates a legal uncertainty and vacuum surrounding the right to work of the Rohingyas in Bangladesh. However, an obligation for Bangladesh to uphold the rights of refugees exists independently of ratification of the *1951 Refugee Convention*. Right to work is recognized as a fundamental human right embodied within Article 23 of the *Universal Declaration of Human Rights* (UDHR). It is also known to be the most important socio-economic right, as access to work is essential to maintain the livelihoods of individuals and their families.[104] The preamble of the ILO Constitution states that social justice could bring universal and lasting peace while identifying the interdependence between labor conditions, social justice, and world peace. ILO had already completed the drafting process of 86 conventions recognizing labor rights when the UDHR was adopted by the General Assembly in 1948.[105] Bangladesh is reflecting adherence with article 14(1) of the *Universal Declaration of Human Rights* (1948), which states that 'Everyone has the right to seek and to enjoy in other countries asylum from persecution'.[106] The observance with UDHR may generate soft law obligations leading to policy guidance at best as discussed above, however; Bangladesh needs to embrace hard law obligations concerning right to work for all, being a signatory to the *International Covenant on Economic, Social and Cultural*

[103] Germany has adopted the German Sustainable Development Strategy to achieve 17 SDGs by transforming different tenets of the economy and society. The Federal Government also passed the Climate Protection Act in 2013 to fulfill the goals under SDG 13. In the same manner, Serbia has developed a Sustainable Development Cooperation Framework with the United Nations to shape the future of Serbia, achieving long-term goals with the aid of UN agencies. The Federal Government, 'Germany's National Sustainable Development Strategy' <https://www.bundesregierung.de/breg-en/federal-government/germany-s-national-sustainable-development-strategy-276504> accessed 12 March 2026; UNDP, 'Legal Framework' <https://www.undp.org/serbia/legal-framework> accessed 12 March 2026.

[104] *Petter Aasheim,* 'The Palestinian Refugees and the Right to Work in Lebanon' (2000) Graduate Thesis, University of Lund <https://scispace.com/pdf/the-palestinian-refugees-and-the-right-to-work-in-lebanon-1cqdk6tt8r.pdf> accessed 12 March 2026.

[105] Ibid.

[106] United Nations General Assembly, Universal Declaration of Human Rights, 10 December 1948 <https://www.un.org/en/about-us/universal-declaration-of-human-rights> accessed 20 January 2026.

Rights (ICESCR).[107] The right to decent work embodied within article 23(1) in UDHR embraces binding force under Articles 6 and 7 of ICESCR. Article 6 of the ICESCR recognizes the idea of gaining a livelihood through voluntary choice of work. Article 7 obliges states to ensure just and favorable working conditions for all eliminating distinction of every kind. Article 6 recognizes the sense of individual dignity, need for personal development, and social and economic inclusion through freely chosen work.[108] ICESCR also identifies 'decent work' as work mentioned in Article 6 of the convention and considers the right to a safe workplace and fair remuneration as fundamental rights upon which depend the physical and emotional integrity of all individuals.[109] Bangladesh, being a signatory to ICESCR, must make all reasonable and timely attempts to fulfill its obligation under Article 6. The right to decent work extends to all within the territory of Bangladesh. The country must take into account the interdependence of certain elements, namely *i)* availability of specialized services enabling individuals to find suitable employment; *ii)* accessibility to an open labor market free from discrimination of all kinds and on every prohibited ground; *iii)* acceptability concerning voluntary choice of work, right to a safe workplace, and to form trade unions.[110] These obligations under Article 6 of the ICESCR must not be considered as informal, non-binding obligations. Although Article 2(1) of ICESCR supports progressive realization of ESC rights in view of resource constraints and potential need for international assistance of varied dimension, it does not imply that obligations largely remain unfulfilled.[111] Certain obligations under ICESCR require immediate measures, and are subject to the principle of non-regression. Obligations requiring immediate measures concentrate on fulfilling minimum core duties. Minimum core obligations under Article 6 include ensuring access to employment for disadvantaged and marginalized population, eliminating all forms of discrimination and unfair treatment likely to be experienced by disadvantaged groups, and adopting national plans, policies, and strategies intended for the protection of all workers through a participatory process.[112] Therefore, being a signatory to ICESCR, Bangladesh must comply with minimum core

[107] United Nations Treaty Collection, <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4> accessed 15 March 2026.
[108] UN Economic and Social Council, Committee on Economic, Social and Cultural Rights, 35th Session, UN Doc E/C.12/GC/18, 24 November 2005, para 18.
[109] Ibid.
[110] Ibid.
[111] Ibid.
[112] Ibid.

entitlements intended for refugees under Article 6 of the convention as they fall within the category of disadvantaged groups experiencing barriers to employment in PRS.

Since Bangladesh has adopted a dualist approach towards international law, compliance with international law is achievable when it aligns with the municipal law.[113] Bangladesh's commitment in embracing international law within the domestic legal system can be located under Article 25 of the Constitution. Article 25 lays down the pledge to respect international law and principles within the UN Charter.[114] The Supreme Court of Bangladesh particularly dissected the dualist approach of Bangladesh towards international law and preserved the supremacy of municipal law. As observed by Bimalendu Bikash Roy Choudhury J in *Hussain Muhammad Ershad v. Bangladesh.*[115]:

> True it is that the Universal Human Rights norms, whether given in the Universal Declaration or in the Covenants, are not directly enforceable in national courts. But if their provisions are incorporated into the domestic law, they are enforceable in national courts. The local laws, both constitutional and statutory, are not always in consonance with the norms contained in the international human rights instruments…. But in the cases where the domestic laws are clear and inconsistent with the international obligations of the state concerned, the national courts will be obliged to respect the national laws, but shall draw the attention of the law-makers to such inconsistencies.

Although Bangladesh is not a party to the *1951 Refugee Convention* and the *1967 Protocol*, its obligation towards international law could stem from customary international law[116] and from the vacuum in municipal law, addressing the rights and obligations of refugees.[117] The Supreme Court of Bangladesh has recognized the government of Bangladesh's obligation to comply with customary international norms by stating-

We can take judicial notice of the fact that Rohingyas are now being persecuted in Myanmar, and by that reason, hundreds of thousands of Rohingyas have entered into Bangladesh illegally in order to save themselves from being persecuted and tortured at the hands of law-enforcing apparatus of Myanmar. At this stage, a pertinent question arises as to whether Bangladesh is a signatory to the 1951 Refugee Convention. Bangladesh, it is asserted on behalf of the petitioner,

[113] Jobair Alam, 'The Status and Rights of the Rohingya as Refugees under International Refugee Law: Challenges for a Durable Solution' (2021) 19 *Journal of Immigrant & Refugee Studies* 128.
[114] *Constitution of Bangladesh*, Article 25.
[115] *Ershad v. Bangladesh* (2001) 21 BLD (AD) 69.
[116] above note 114.
[117] Since there is no municipal law in Bangladesh contradicting existing international obligations towards refugees, it may be inferred that Bangladesh will adhere to relevant international principles given the vacuum in domestic law on this particular matter. 'Bangladesh's Judicial Encounter with the 1951 Refugee Convention' *Forced Migration Review* <https://www.fmreview.org/issue67/hossain/> accessed 8 November 2025.

is not a signatory to this Convention of 1951. If it is so, then what will be the implication of Article 33 of that Convention in relation to the detenue? Though Bangladesh has not formally ratified the Convention relating to the Status of Refugees, yet all the refugees and asylum seekers from scores of countries of the world to other countries have been regulated by and under this Convention for more than 60 (sixty) years. This Convention by now has become a part of customary international law, which is binding upon all the countries of the world, irrespective of whether a particular country has formally signed, acceded to or ratified the Convention or not.[118]

While identifying that Bangladesh has not ratified the *1951 Refugee Convention* and the *1967 Protocol*, insights have already been shared by UN agencies in developing the economic and social life of refugees, however, the government refused to implement the initiatives, considering them 'a pull factor of Rohingya into Bangladesh'.[119] In the absence of a concrete national policy governing refugees and stateless persons in conjunction with concerns that development-driven policies might serve as pull factors will perpetuate the protracted situation. Such an approach will inevitably undermine prospects of sustainable growth and development intended for the Rohingyas and contradicting the essence of the LNOB principle. Exploring the soft and hard obligations under existing international instruments, it is reasonable to conclude that Bangladesh must comply with duties embodied under Article 6 of ICESCR. While the right to development or aspirations set forth under SDGs and LNOB principle largely remain as soft law commitments, Bangladesh should focus on emerging judicial trends and state practices embracing these non-binding obligations. The soft law commitments are undergoing a gradual shift towards hard law undertakings, and Bangladesh must recognize that its future policy formulation must be guided by these present-day soft law obligations.

VII. POLICY RECOMMENDATIONS

Bangladesh, being a host state, has indeed taken some significant steps, and it would be inaccurate to assert that policy measures have never addressed the plight of the Rohingyas. Bangladesh is a member state of the Executive Committee of the High Commissioner's

[118] *Refugee and Migratory Movements Research Unit (RMMRU) v. Government of Bangladesh* (Writ petition no. 10504 of 2016, High Court Division, Supreme Court of Bangladesh, 31 May 2017).
[119] UN High Commissioner for Refugees (UNHCR), 'UNHCR Submission for the Universal Periodic Review – Bangladesh – UPR 15th Session (2013).

Program.[120] Bangladesh demonstrates a sufficient interest in responding to the plight of refugees by sending representatives to the Executive Committee consistently.[121] However, the crisis has turned into a protracted humanitarian emergency, which calls for sustainable measures to be adopted by the host state and international actors.

The private sector should assume an instrumental role in ensuring SDGs for all refugees in a protracted situation. Businesses can draw talent from an expanded labor pool, create feasible opportunities of employment, and recognize potential skills and resources.[122] This inclusive approach will lead to self-sufficiency of refugees in a protracted situation[123] and facilitate to achieve 'no poverty' and 'decent work for all', consistent with SDG 1 and 8.

Involving refugees in technology-driven labor market will be beneficial for the host community and refugees in PRS. If such a digital labor industry can be created globally, refugees will not have to compete with nationals from the host community, and concerns that they could limit local economic avenues will no longer be an issue.[124] Host states and international actors should act jointly in developing skills among refugees in PRS to simply their access to the digital economy.[125] Bangladesh, as a host state, must explore opportunities globally and facilitate labor migration for the Rohingyas. For instance, the Talent Beyond Boundaries (TBB) is a labor migration program that conducts labor movement of Syrian refugees in Lebanon and Jordan on a small scale and sends them to Australia and Canada.[126] Bangladesh could take similar initiatives and consider GCC states, Japan, and South Korea as potential destinations.

Host communities should be more proactive in ensuring refugees' right to work in PRS as this prolonged crisis in an exceptional circumstance requiring the development and self-sufficiency of

[120] UNHCR, 'Background on Executive Committee' 1 July 2001 <https://www.unhcr.org/publications/background-executive-committee> accessed 10 November 2025.
[121] Naureen Rahim, 'Bangladesh and the 1951 Refugee Convention' *Refugee Law Initiative Blog*, 6 February 2023 https://rli.blogs.sas.ac.uk/2023/02/06/bangladesh-and-the-1951-refugee-convention/ accessed 10 November 2025.
[122] Allison Grossman and Lauren Post, 'Missing Persons: Refugees Left Out and Left Behind in the Sustainable Development Goals' *Joint Data Center on Forced Displacement*, September 2019 <https://www.jointdatacenter.org/literature_review/missing-persons-refugees-left-out-and-left-behind-in-the-sustainable-development-goals/> accessed 10 November 2025.
[123] Ibid.
[124] Andhira Yousif Kara et al., 'Inclusive and Dignified Digital Work: Linking Markets and Displaced People' *Forced Migration Review*, April 2024, https://www.fmreview.org/digital-disruption/kara-charles-gonzales-ucak/ accessed 10 November 2025.
[125] Ibid.
[126] Mahreen Khan and Helen Dempster, 'Sharing Responsibility for the Rohingya Crisis: What Role Can Labor Mobility Agreements Play?' *Center for Global Development*, 10 December 2019 <https://www.cgdev.org/publication/sharing-responsibility-rohingya-crisis> accessed 10 November 2025.

refugees. Refugees are capable of inventing creative ideas and acting as economic agents within the host country's economy.[127] If the value and entrepreneurial potential of refugees are recognized by host states, they will not be considered as an 'economic burden' anymore and break free from intergenerational poverty.[128] However, recognizing refugees as a potential contributor to the economy will require collaborative effort at the regional level. For instance, the 'Common Market' model adopted by the East African Community (EAC) promotes the right to free movement of workers, the right to residence, and the right of establishment. Such a regional initiative brings the LNOB principle into application and facilitates the realization of all SDGs.[129]

Being a host state, Bangladesh should promote emotional well-being combined with employment opportunities intended for the Rohingyas.[130] Adoption of such a policy is essential to realize their right to development and to empower them socially and psychologically. Besides, paid livelihood opportunities bring psychological satisfaction, which cannot be ensured through social protection programs.[131]

Finally, Bangladesh ought to reflect on acceding to the *1951 Refugee Convention* and *1967 Protocol* to ensure the right to work of refugees in PRS and facilitate durable solutions.[132] Bangladesh should also adopt a domestic refugee policy laying down asylum seeking and refugee status determination procedures. It has also been recommended by UNHCR that refugees in PRS be granted freedom of movement and the right to work to ensure access to essential services.[133] Such initiatives will help the Rohingyas to realize their right to development and gain from the outcomes of the SDG targets.

VIII. CONCLUSION

The evidence suggesting injustice experienced by refugees is compelling and has triggered a grave humanitarian concern. Being born with the wrong social identity and flight from the place

[127] Matai Muon, 'Flipping the Narrative: Let Refugees Be Economic Contributors' *The New Humanitarian*, 9 March 2023 <https://www.thenewhumanitarian.org/first-person/2023/03/09/flipping-narrative-let-refugees-be-economic-contributors> accessed 10 November 2025.
[128] Ibid.
[129] 'Common Market' <https://www.eac.int/common-market> accessed 10 November 2025.
[130] UNHCR, 'Bangladesh Policy Brief: The Impact of Livelihood Activities among Rohingya Refugees' <https://www.unhcr.org/media/bangladesh-policy-brief-impact-livelihood-activities-among-rohingya-refugees> accessed 10 November 2025.
[131] Ibid.
[132] above note 120.
[133] Ibid.

which should have been a safe haven mark the refugees as entitled to international protection.[134] The obligations to provide such protection should be distributed more extensively and reasonably among international communities.[135] Certain indicators, such as the total refugee population in the host state, refugee populations compared to host state populations, number of refugees compared to the wealth of the host state, should be taken into account while sharing the burden fairly.[136] The states should extend their help in resettling refugees in PRS in a third country from the first country of asylum, reinforcing the expression of 'international solidarity'.[137] Refugee communities living in PRS, such as the Rohingyas, cannot be safeguarded from protracted suffering if the 'unsustainable refugee system' continues to persist.[138] Placing a burden on poorer nations such as Bangladesh is an example of bearing disproportionate responsibility. To ensure the Rohingyas' development and right to work, the structure of burden sharing should be reassessed from a regional and global perspective. In parallel, a rigid perception towards the Rohingyas should be reformed. They should be perceived as assets and not a burden to the host or international community.[139] The transformed perspective, along with Bangladesh's readiness to implement obligations under soft and hard law instruments of international law, will facilitate the Rohingya community's self-progress and ensure no one is left behind, regardless of race, ethnic identity, and nationality.

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[134] Peter H Schuck, 'Refugee Burden-Sharing: A Modest Proposal' (1997) 22 *Yale Journal of International Law* 243.
[135] Ibid.
[136] James Milner, 'When Norms Are Not Enough: Understanding the Principle and Practice of Burden and Responsibility Sharing for Refugees' *Center of International Governance Innovation*, 8 December 2016 <https://www.cigionline.org/publications/when-norms-are-not-enough-understanding-principle-and-practice-burden-and/> accessed 11 November 2025.
[137] Ibid.
[138] Michael M. Doyle, Janine Prantle, and Mark Wood, 'The World's Refugee System Needs to Be Made Responsible' *Carnegie Council for Ethics in International Affairs*, 20 June 2021 <https://www.carnegiecouncil.org/media/article/the-worlds-refugee-system-needs-to-be-made-responsible> accessed 11 November 2025.
[139] World Refugee and Migration Council, 'Assessing the Impacts of Hosting Refugees - Research Paper No. 4' 28 August 2018 <https://zunokscx.elementor.cloud/publications/research-paper/assessing-the-impacts-of-hosting-refugees-research-paper-no-4/> accessed 11 November 2025.