Received Date: March. 2026 Revised: April. 2026 Accepted: May. 2026

Legal Dilemmas and Problems in Settlement of Rohinga Refugees

Bijaya Khadka (LL.M)
(Ph.D. Scolar)
Pokhara University

Abstract

This paper is formulated to reflect the lives of Rohingyas in Nepal. The crisis began with the 1982 immigration law in Myanmar, which deprived the Rohingyas of their right to citizenship. According to Section 3(1) of the Immigration Act 1992, "No foreigner may enter or stay in Nepal without a valid passport and visa." However, Nepal is aligned with international obligations and customary law through treaties and conventions such as the ICCPR, CRC, and CAT. Although the UNHCR's Refugee Status Determination (RSD) process has provided temporary shelters for Rohingyas in areas like Kapan in Kathmandu. This paper addresses the question of whether the status of Rohingya refugees under Nepalese law is legal. This study critically examines the Rohingyas' life in Kapan, Kathmandu. What measures and tools can be employed to resolve this issue? The study focuses on the historical context, media discourse, inquiries, data collection, questionnaires, and the textual analysis of a Rohingya memoir. The paper concludes that negotiation, repatriation, reintegration, and third-country resettlement are the only viable long-term solutions

Key Words: Reparation; Re-integration; third-country resettlement; migration

1. Introduction

Refugees are forcibly displaced persons who have fled their countries of origin due to reasons beyond their control, such as persecution, public disorder, civil war, famine, natural disasters, or environmental degradation.[1] The legal status of refugees is rooted in modern Western history, where some people sought new worlds while others remained in their hometowns.[2] Migration brings both problems and opportunities. While factors such as social, political, economic, and environmental pressures in their homeland or even personal decisions may influence a person's choice to cross borders and settle in a new country.[3] According to Utopian Theory, migration without boarders enhances human mobility but it may also bring numerous problems.[4]

[1] B.S. CHIMNI (ED.), INTERNATIONAL REFUGEE LAW 44(1d ed., Sage Publications, New Delhi 2007).

[2] B.S. CHIMNI, INTERNATIONAL LAW AND WORLD ORDER: A CRITIQUE OF CONTEMPORARY APPROACHES (Sage Publications, New Delhi 1993).

[3] Bhola R. Das, *Refugee Status and International Protection: A comparative Analysis*, JOURNAL OF REFUGEE STUDIES, Vol 18, No.1, at 1-20(2005).

[4] CHAKRA PRASAD BASTOLA, TIBET JUSTICE CENTRE 212(Barkley, California, USA 2001).

There are challenges related to ethnic and religious conflict as well as other security issues to the Rohingyas' flight. The global economic crisis, disparities between the Global North and South, growing xenophobia, ethnic cleansing, religious conflict, the formation of new nation-states, climate change, ongoing conflicts, and the persistence of old ones all threaten to exacerbate displacement issues are the other factors to be blamed.[5] August 2017, the Myanmar military began a sweeping campaign of massacres, rape, and arson in northern Rakhine State. According to Human Rights Watch, more than 730,000 Rohingyas fled to precarious, flood-prone camps in Bangladesh, while approximately 600,000 remained in Myanmar.

Human Rights Watch reported that Myanmar soldiers systematically killed and raped villagers before burning their homes. The security forces engaged in barbaric acts of arson. "Myanmar authorities brutalized us," said Shaker Muhammad, a 26-year-old Rohingya refugee in Kathmandu, Nepal. They burned down our homes, raped our mothers, sisters, and daughters, and burned our children. Twelve of us took shelter in Bangladesh to escape the brutality. The Bangladesh police arrested us and left us at the India border. Indian police then brought us to Kakadvitta on the Nepal border, and we were able to enter Kathmandu in 2012." Rohingyas have been subjected to atrocities that Zeid Ra'ad Al Hussein, the United Nations High Commissioner for Human Rights, described as "a textbook example of ethnic cleansing".[6]

It is estimated that approximately 65.6 million people worldwide are identified as refugees due to persecution and violence, the highest number since World War II.[7] Among them, 20 million—including 7 million children—have fled their homelands. Around 86% of these refugees are from developing countries, primarily in Asia. Conflicts in Syria, Afghanistan, and Myanmar have led South Asia to host refugees from both within and outside the region.[8] Currently, about 19.9 million refugees face a bleak future worldwide, with around 8.7 million in Asia, including 1.1 million in Bangladesh.[9] Despite the close border between Bangladesh and India, over 650 Rohingyas have unofficially entered Nepal and taken shelter there. Although Nepal is not a party to international refugee conventions, half of the Rohingyas in Nepal have been certified as refugees by the UNHCR.[10]

---

[5] JAMES C. HATHAWAY, THE LAW OF REFUGEE STATUS 67-68(Butterworths, Toronto 1991).

[6] https://news.un.org/en/story/2018/08/1017802 (retrieved: 15 September 2024)

[7] https://www.unhcr.org/news/stories/forced-displacement-worldwide-its-highest-decades (retrieved: 15 September 2024)

[8] Mahendra P. Lama: "Refugee Situation in South Asia: Critical issues in perspective", Bulletin on IHL and Refugee Law, vol. 3, no.1, at 87 (2000).

[9] https://www.migrationpolicy.org/article/bangladesh-india-climate-migration(retrieved: 15 September 2024).

[10] Yadav Kumar K.C., International *connections concerning refugees: their rights with special reference to Nepal, Vishleshan,* NUTA PG CAMPUS UNIT, BIRATNAGAR, VOL.3, at 26 (1998).

Furthermore, the most serious and adverse impact of the open and uncontrolled Nepal-India border has been the rise in anti-social and lawless activities.[11] The open border system between Nepal and India has had negative consequences, such as the illegal smuggling of goods, trafficking of girls to brothels in Indian cities, trafficking of narcotic drugs, arms, and ammunition, and the movement of criminals and terrorists. Both Nepal and India have agreed, in principle, to control such illegal activities, but there is a lack of an effective and practical approach between the two countries.[12] The Indo-Nepal border has posed a security challenge for Nepal, and the open border with India significantly contributes to insecurity.[13] The open border is the primary cause of cross-border crime between Nepal and India.[14] The significance of borderlands also contributes to a thread of mutual relationships between the two nations, which is accepted by both the Nepali and Indian governments.[15] Geographical location, open borders, and religious, geographical, and ethnic issues are mentioned as elements influencing national security.[16]

2. Legal Lenses Toward the Rohingya Refugee

What rights do foreigners or aliens possess in the territory of Nepal? The Supreme Court of Nepal has not yet provided a concrete view on this matter. In July 2008, Nepal reportedly handed over a Tibetan to Chinese officials after finding and jailing him on suspicion of theft. The government attributed the deportation to policy confusion and internal miscommunication. Nepal has also deported four asylum seekers to their most recent countries of transit after arresting them for illegal entry or lack of documentation.[17] Although UNHCR-recognized refugees and asylum seekers are technically in violation of immigration laws, the GoN generally does not prosecute them. According to the Home Ministry, around 2,000 nationals from more than 12 countries—including Nigeria, Ethiopia, Somalia, Liberia, Zimbabwe, Pakistan, Myanmar, Afghanistan, Iraq, Iran, and Bangladesh—have sought asylum and refugee status through UNHCR in Kathmandu. Relevant to the context of Nepal are the prevailing Foreigners Act 1958, The Citizenship Act, and the Immigration Rules 1994. [18]

---

[11] Kenny David, *International refugee protection,* HUMAN RIGHTS QUARTERLY VOL.8, NO 1, at 287 (1986).

[12] Kalyan Shrestha, *International convention concerning refugees and their rights (*working paper), UNHCR, BIRATNAGAR, (2049).

[13] P. B. Bogati, *Security Management of Nepal-India Open Border*, PHD THESIS, TRIBHUVAN UNIVERSITY at 22 (2023).

[14] Yadav Kumar K.C., *Politico-legal aspects concerning Bhutanese refugees and their repatriation,* ANUBHAV SMARIKA, JHAPA, at 9 (2060).

[15] B. R. Upreti, Proliferation *of Small Arms and Challenges to Post-Conflict State Building; The Remake of a State: Post-Conflict Challenges and State Building in Nepal*, KATHMANDU UNIVERSITY, at 30 (2010).

[16] YADAV K.C., KUMAR REFUGEE LAW, 101 (Pairavi Prakasha, Kathmandu 2016).

[17] United States Committee for Refugee and Immigrants, World Refugee Survey Report, at 1 (2008).

[18] Bhola R. Das, *Refugee Status and International Protection: A comparative Analysis*, JOURNAL OF REFUGEE STUDIES, Vol 18, No.1, at 1-20(2005).

On January 27, 2005, the Ministry of Foreign Affairs sent a letter to UNHCR stating that any foreign national seeking refuge and resettlement should be held accountable under the Immigration Act, rules, and regulations, and would be punishable for settling without the permission of the Government of Nepal. The Ministry reiterated this request on March 11, 2007, asking for a suspension of refugee certificates issued by UNHCR. According to the National Immigration Act of 1992, foreign nationals are not allowed to enter Nepal without a visa and passport. The Immigration Act requires the Department of Immigration to keep a record of any foreign national living in Nepal. Director-General Ishwar Raj Poudel stated that he had no information about the Rohingyas living in Nepal, noting, "Did the Rohingyas come by plane to be monitored by the immigration department?" He added, "Since they entered the country, the jurisdiction falls under the Ministry of Home Affairs." Article 7 of the Immigration Act assigns the responsibility for regulating, managing, and controlling the entry, presence, and departure of foreigners to the director-general. Article 2 allows the GoN to prohibit the entry, presence, or departure of any foreigner if deemed detrimental to the national interest. As per the International Criminal Court (ICC) Statute recognizes the need to establish principles related to reparations for victims, including restitution, compensation, and rehabilitation.[19]

Nepal has not acceded to the 1951 Refugee Convention or its 1967 Protocol. However, Nepal has ratified other human rights treaties such as the Universal Declaration of Human Rights (UDHR), which is subject to international customary laws. Article 14(1) of the UDHR states that everyone has the right to seek and enjoy asylum from persecution in other countries. This implies that Rohingyas have the right to seek asylum in Nepal, although they are not guaranteed refugee status. Forcefully deporting all Rohingya refugees would violate this article of the UDHR. Customary international law also plays a significant role. The Principle of Non-Refoulement, a principle of customary international law, prohibits the rejection of a refugee at the frontier and the expulsion of refugees who have entered the country. This principle, enshrined in Article 33(1) of the Refugee Convention, states, "No Contracting State shall expel or return (refouled) 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."

Nepal's Constitution, Immigration Act, Passport Act, Extradition Act, Marriage Registration Act, Children Act, and Compensation for Torture Act touch upon the rights of refugees to a limited extent. The Supreme Court had ordered the government to formulate a national refugee law, but no such law has been enacted yet. Nepal's 2015 Constitution forbids human trafficking and provides for the protection of the fundamental rights of women, labor, and children by criminalizing exploitation and torture. [20]

[19] Article 75, ICC Statues.

[20] Sambhu Prasad Khanal, *An insight over refugee problem in Nepal and legal regime on refugee protection*, NEPAL LAW REVIEW, YEAR 36, VOL. 23 (2001).

Emigration is regulated by the Memorandum of Understanding between the GoN and the governments of the receiving countries.[21]

3. Dilemmas in the Application of Laws

The law relating to the right of refugees to seek asylum involves a complex balance between providing protection from persecution and respecting the sovereign rights of the asylum state. An asylum state must consider its internal policies, as political refugees can pose a threat to the peace and order of the host country.[22] Similarly, while the asylum seekers' claims may be genuine, the state might be unable to accommodate them due to economic constraints or the influence of more powerful states demanding their return. Therefore, despite the principle of sovereign equality in international law, a weaker nation must weigh factors such as humanitarianism, foreign policy, and domestic considerations before granting asylum to refugees.[23]

In this context, there is confusion about why Nepal has granted asylum to such a large number of refugees despite not being a party to the 1951 Refugee Convention and its 1967 Protocol, and lacking specific legislation on refugees. It is indeed paradoxical that Nepal has accepted thousands of refugees without enacting comprehensive laws regarding their status.[24] Justice Kalyan Shrestha of the Supreme Court of Nepal noted, "To give refugees the right to travel, to engage in professions and business, and the right to study, while not making comprehensive laws regarding refugees and not acceding to international conventions, is logically inconsistent".[25]

Despite the absence of specific legislation on refugees, some researchers suggest that Nepal's existing laws, such as the Treaty Act and the Immigration Act, might indirectly address refugee issues. [26] For example, the Immigration Act of 1992 does not explicitly provide access to territory for asylum seekers and imposes penalties for visa overstays and unauthorized entry. However, Articles 11 and 14 include provisions for "waivers" for certain groups, communities, or races, though these provisions have not been actively applied. As a result, refugees in Nepal might be viewed merely as aliens who entered the country illegally and reside in violation of Nepalese law and regulations.

4. Role of UNHCR

As there is no refugee law in Nepal and Nepal has not even ratified the International Refugee Convention, the UNHCR has stated that it only keeps records of Rohingyas living here. It is the job of the state to issue or manage refugee certificates. We can only

[21] https://mofa.gov.np/wp-content/uploads/2024/08/Protocol-and-Consular-Handbook-2024.pdf (retrieved: 28 September 2024)
[22] *Ibid*
[23] *Ibid*
[24] Laxman Kumar Upadhyaya, *A glance at Refugee law, policy and Practice in Nepal,* NEPAL LAW REVIEW, VOL.19 (2008)
[25] *Ibid*
[26] *Ibid*

work in coordination with the government of Nepal.[27] Although refugees from Bhutan before 1993 were prima facie recognized by the GoN; the subsequent arrivals were processed using individual refugee status determination. For Tibetans arriving before the 1990s, the modus operandi of prima facie recognition was used, and for the subsequent arrivals, only a transit facility through Nepal was provided as per the so-called Gentleman's agreement between UNHCR and the Nepal government in 1989 under the auspices of the US embassy.

On 13 April 2023, Md Shaker, 26, left Myanmar. Myanmar military burned their houses when they returned from the farm. They saw the entire incident and fled from their homes with five friends in 2012. Shaker and his friends had little money; they crossed the sea by swimming and reached Bangladesh. Another refugee, Rolma, and her family are among about 140 Rohingya refugees in Nepal. There, members of the Muslim minority group are denied citizenship, despite having ancient roots in the majority-Buddhist country.[28] The Rohingya who remain in Myanmar face extreme violence from armed forces and local people, according to a February U.N. report. Sadistic killings of people of all ages, including babies, and sexual violence are occurring at high rates. Starvation is common.[29] Mumtaz Begum, 45, stands with two of her four children in Kapan, a community near Kathmandu, Nepal's capital city. Begum is a Rohingya refugee from Myanmar, but she doesn't receive support from the Nepalese government and UN agencies. Her children often go hungry,' she added. 'We have not chased the Rohingya away from Nepal because of our Hindu tradition that guests should be provided hospitality.' [30]

At first, UNHCR, the U.N.'s refugee division, gave 5,000 rupees per month to the head of each refugee family, and a lesser amount to the other members, Shrestha says. Those payments ended in 2015 due to budget constraints. That money was desperately needed, says Rolma. 'Many Rohingya have been cheated in their workplaces, but they do not go to the police office to complain due to the fear of getting arrested,' she says. Rolma's children attend the nearby Nepal Charter School, where UNHCR covers their school fees. But the family needs food just as badly as the children need education, Rolma says.

A Rohingya person, MD Saker, fled in 2012. He says he won't return unless he receives an invitation from Myanmar's government confirming that the Rohingya would be welcome there. Even though there is a huge problem of residence recently, the contract period for their land in Kapan is ending. They tried many places like Banepa, Godawari, Sundarijal, Panauti, Kushadevi, Tokha, and many other places, but locals denied them resettlement. They paid the expensive rent to the landowner, but local villagers and the community objected. However, NCELL Telecom provided the mobile SIM card concerning the UN identity or refugee documents. Shaker added that UNHCR is providing

[27] www.unhcr.org/3b73b0d63.html (retrieved: 12 September 2024).
[28] UNGA, UDHR. United Nations, 127(III) A, Paris, art. 17 (1948).
[29] *Ibid*
[30] Usman Jabed v. Government of Nepal, Writ no. 0038 (2007)

yearly NRs 6,000.00 per student for those studying in community schools. As for Abdul Malik and others, during the field survey, we found that they have no option of further staying in the Kathmandu Valley. Native people didn't permit the staying of refugees in their local places.

The United Nations has called the Rohingya 'the most persecuted minority in the world.' Myanmar has denied citizenship to the Rohingyas since 1982.[31] At present, more than one million Rohingyas have taken refuge in different countries. The UNHCR Nepal officer Luma Singh Bisowkarma said "It is very difficult in recognition of Rohingya Refugees and give them an identity. The government didn't permit to give them identity as per the Nepalese laws but UN agencies were forced to imply.

5. A Survey of Rohingya Refugees in Kapan Kathmandu

Researcher had visited to the Rohingya refugee camp in Kapan, Kathmandu, on February 20, 2023, where researcher met several intellectuals among the Rohingyas, including Shaker, Muhammad, Abdul Malik, Muhammad Faruk, Muhammad Harras, Jaafar Miya, and others. Researcher has collected various data from them. Which is given below in table.

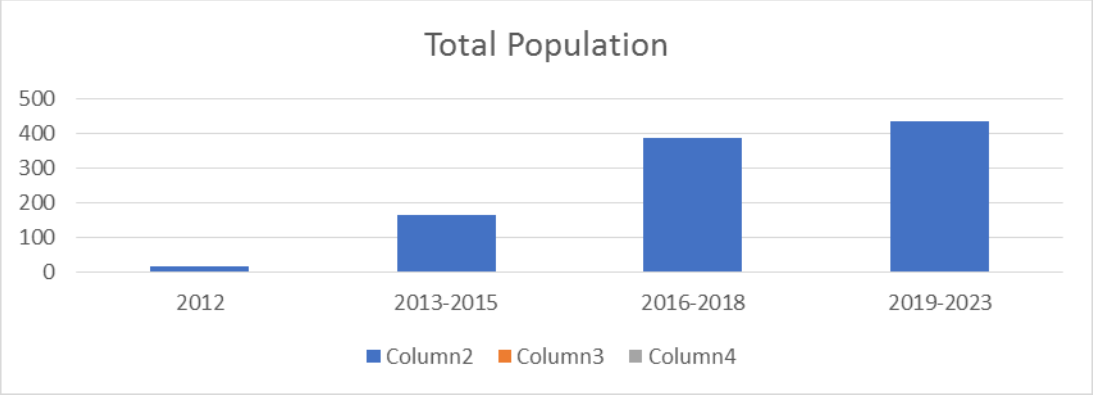


Table: 1 Source: Field Survey

Table 1: In above-mentioned figure, it is seen that the number of Rohingya 2012, only 14 Rohingya refugees were staying in Kapan, Kathmandu. The number of males was 198, females 155, and children 82.

[31] *Ibid.*

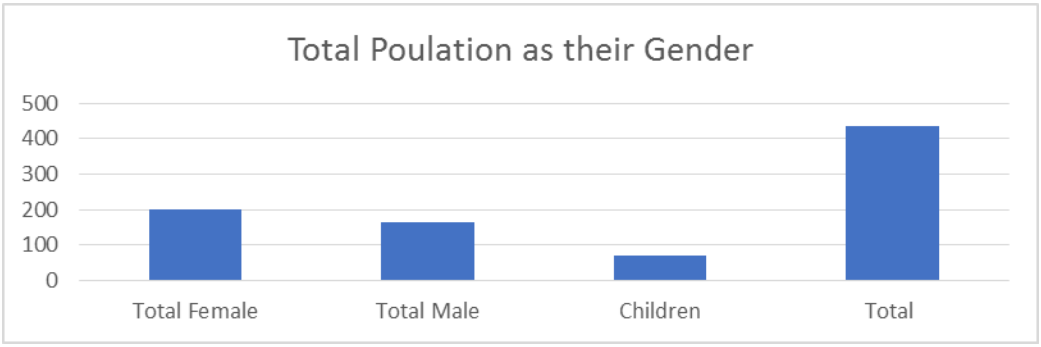


Table: 2 Source: Field Survey

It was found that there are 201 females, 165 males, and 69 children, bringing the total to 435 as of the end of 2023.

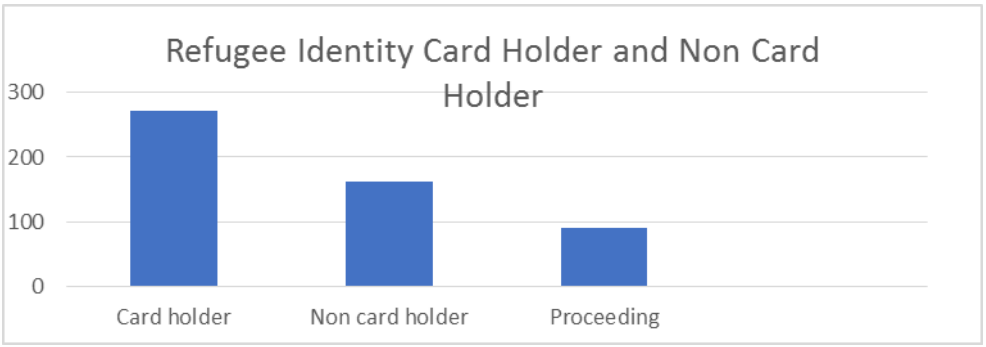


Table: 3 Source: Field Survey

As per the questionnaire there are 272 refugees were able to get refugee identity cards from the UNHCR office in Kathmandu, whereas 163 Rohingyas do not have refugee identity cards, and 91 people are in the process of obtaining refugee identity cards from the UNHCR office in Kathmandu but it is not easy to proceed to get the refugee identity.

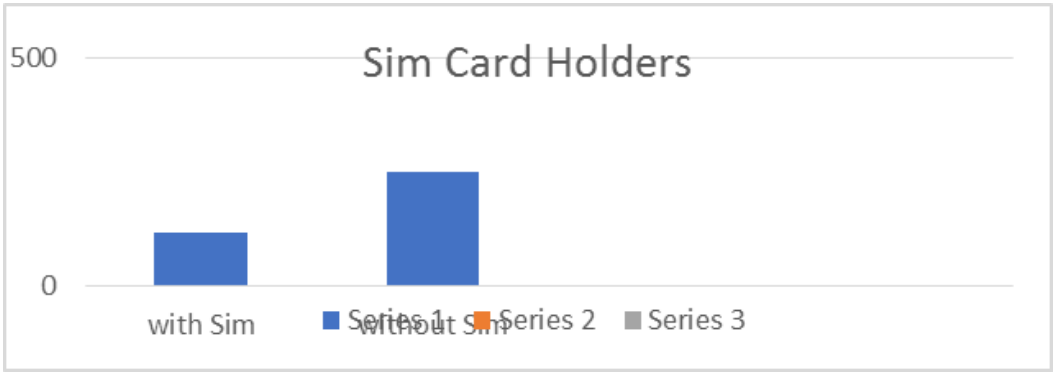


Table: 4 Source: Field Survey

A total number of 115 Rohingya refugees were able to get SIM cards. The private telecom company NCELL of Nepal provided SIM card on the basis of their refugee identity in Kathmandu.

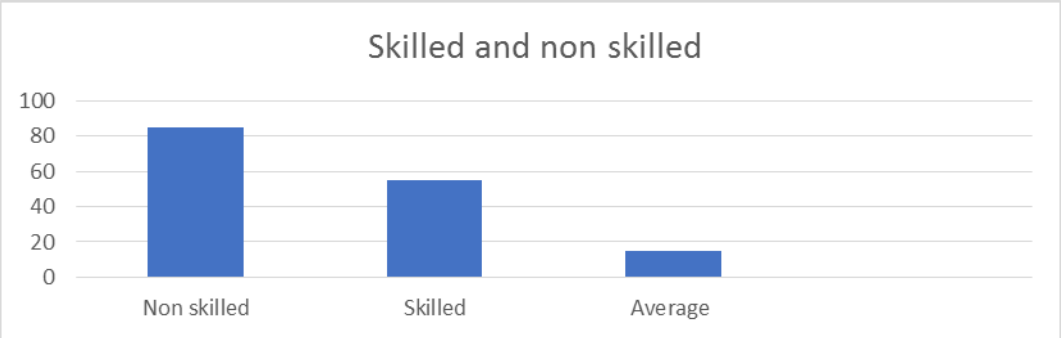


Table: 5 Source: Field Survey

All the refugees are staying at the same location because it allows them to pray at the same time in the afternoon. We collected data showing that only 55 of them are categorized as skilled manpower. These individuals are working in tile fitting, masonry, vehicle mechanics, and more. Many of them, 85 people, are not skilled and spend their time playing Ludo, chess, and cards. Only 15 people can work as skilled labor in this community.

6. Repatriation of Rohingya: A Preferable Solution

Repatriation is the vital solution for resolving the Rohingya crisis, and if that is not possible, third-country resettlement is the next best option. The world seems to have a short memory in the aftermath of World War II, despite many countries agreeing to protect the lives of refugees through the 1951 Refugee Convention and its 1967 Protocol, along with various UN agencies. However, Nepal has not ratified these conventions and protocols, indicating a preference for sharing the burden of refugees internationally rather than taking it on alone. Nevertheless, Nepal has ratified the ICCPR of 1966, the CRC of 1989, and the CAT of 1984, which binds it to protect refugees. Nepal can and should play a significant role in resolving the crisis in the following ways:

6.1 Mediation and Negotiation

The foremost solution may involve negotiations between the affected countries under the mediation of the UN. Bangladesh and Myanmar signed agreements to repatriate the Rohingya to Myanmar within two years in 2017 and 2019, respectively. However, the Myanmar authorities did not honor these agreements and have shown reluctance to repatriate the Rohingya. Bangladesh has raised the issue in various international forums, gaining the support of many countries, but Myanmar has shown little respect for international law and norms. There may be influential powers behind the scenes. Bangladesh's Prime Minister raised the issue at the UNGA on September 25, 2021, calling for attention to the Rohingya crisis and emphasizing the engagement of ASEAN leaders.

ASEAN, in particular, can play a crucial role in solving the Rohingya refugee problem. As a South Asian country and a trusted friend of Bangladesh, Nepal can assist Bangladesh in resolving this issue by acting as a mediator. Nepal can raise these issues at various regional conferences such as BIMSTEC and SAARC platforms.[32]

6.2 Diplomatic and Bilateral Negotiations

Nepal can negotiate with Myanmar diplomatically and bilaterally, leveraging its good bilateral relations with Myanmar to find a solution to the crisis. Regional Engagement: Nepal can engage with other regional states to find a collective solution to the crisis, encouraging collaboration and joint efforts to address the issues.

6.3 Role of the Buddhist Community

The Buddhist societies of Nepal and Sri Lanka can play an effective role in resolving the crisis by following the path shown by the founder of Buddhism, Gautama Buddha. If the Buddhist community takes an active role in addressing the Rohingya crisis, Buddhists will be recognized as advocates for human rights, contributing to regional and, to some extent, global peace and communal harmony. Lumbini, Nepal, is the birthplace of Gautama Buddha, making it a holy place for Buddhists worldwide. Nepal can use this opportunity to leverage religious ties and motivate the people of Myanmar to pressure their government to repatriate the Rohingya to their homeland. All Buddhists around the world, especially Myanmar and Nepalese Buddhists, should realize the importance of addressing this issue with special attention.

7. Conclusion

According to the Immigration Act of 1992, foreigners are prohibited from entering and staying in Nepal without valid passports and visas. If they fail to comply with visa regulations, they face legal penalties, including imprisonment. Not officially recognized as refugees by the GoN, the Rohingya are considered illegal immigrants. The settlement of illegal immigrants is a difficult task. Further, UNHCR cannot unilaterally grant refugee status in Nepal. GoN instead approaches the issue under the cultural notion of "Athiti Devo Bhava" (Guest is God), which lacks a legal framework for addressing refugee issues. There is an urgent need for clear legislation that defines the rights and obligations of refugees in Nepal. Such laws would not only address the Rohingya crisis but also help manage other potential refugee situations in the future. While political efforts are essential, legal and rights-based approaches must also be implemented to manage the Rohingya refugee crisis in the short and long term. Ultimately, refugees are an international responsibility, and a cohesive approach is required to ensure their safety. However, Nepal must ensure its laws align with international obligations, particularly the ICCPR, CRC, and CAT treaties, which it has ratified.

[32] YADAV K.C., KUMAR REFUGEE LAW, 33(Pairavi Prakasha, Kathmandu 2016).