

Provision of Legal Aid for Asylum-Seekers,
Refugees, and Others Forcibly Displaced in Asia

Country-Level Memorandum: Bangladesh



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STATE FUNDED LEGAL AID

Eligibility, Nature and Scope

Eligibility of Asylum-Seekers, Refugees and Stateless Persons

The Legal Aid Services Act, 2000 (the “LASA”) defines “legal aid” as assistance in the form of legal advice, lawyers’ fees, litigation costs and other incidental expenses, provided to economically disadvantaged populations, including those who, for various socio-economic considerations, are unable to access justice.¹ The LASA thereby serves to enable economically challenged litigants access to the justice system in circumstances where their basic rights have been infringed.²

The LASA itself does not specifically identify eligibility criteria for those seeking to access legal aid. However, under section 24 of the LASA, guidelines and rules may be formulated to carry out the purposes of the LASA. For instance, rule 2 of the Legal Aid Services Rules 2015 (the “LASR”) provides a list of groups of people who are eligible to apply for legal aid, including:

1. Any child;
2. Any person or victim of human trafficking;
3. Any child or woman victim of physical, mental and sexual torture;
4. Homeless or rootless persons;
5. The handicapped; and
6. Any other person who is determined as economically insolvent, rootless to implement the aim of the LASA and any person who, due to various socio-economic constraints and any person affected by natural calamities who are unable to defend their rights or file a suit.

The following categories of persons would also be eligible for legal aid under the LASA:³

1. A freedom fighter who is incapable of earning or partially incapable of earning or who is without any employment or whose annual income is below 6,000 BDT (approximately 70 USD);
2. The person who is receiving old age honorarium;
3. Poor women who are holders of VGF Cards;
4. Women and children who are victims of human trafficking activities;
5. Women and children who are acid-burnt by miscreants;
6. Any person who has been allocated land or housing in a village;
7. Poor widow, women deserted by her husband;

¹ “A Critical Analysis of Legal Aid in Bangladesh” by Nannu Mian and Md Mamunur Rashid (2014)

² “Refugee Protection Under the Constitution of Bangladesh: A Brief Overview” by Nour Mohammad (2012)

³ “Refugee Protection Under the Constitution of Bangladesh: A Brief Overview” by Nour Mohammad (2012)

8. Physically or mentally handicapped person who is incapable of earning and without means of subsistence;
9. Person who is unable to establish his/her right to defend him/herself in a Court of law due to financial crisis; and
10. Any other person who is considered eligible by the Legal Aid Board from time to time due to the financial crisis or any other socio-economic reasons or disaster.

Although the guidelines/rules do not explicitly mention asylum-seekers, refugees or stateless persons, a number of the categories included in the LASR may be applicable to members of the Target Group.⁴

In addition to legal aid provided in the LASA and the LASR, members of the Target Group may be able to avail themselves of the fundamental rights granted under the Constitution of Bangladesh (the “Constitution”), which provides citizens and non-citizens alike with a number of rights, including:

1. The right to protection of law (pursuant to Article 31 of the Constitution);
2. The right to protection of life and personal liberty (pursuant to Article 32 of the Constitution);
3. Safeguards as to arrest and detention (pursuant to Article 33 of the Constitution); and
4. Protection from forced labour (pursuant to Article 34 of the Constitution).

In accordance with the Constitution, any individual looking to enforce the fundamental rights outlined above can rely on Article 102 of the Constitution to seek protection of these rights in the Honourable High Court Division of Bangladesh.⁵

It should be noted that members of the Rohingya community form the vast majority of the Target Group in Bangladesh (with over 400,000 Rohingyas estimated to have sought refuge in Bangladesh). Yet Rohingyas are no longer classified as “refugees” in Bangladesh, and are instead categorised as “forcibly displaced Myanmar nationals” and are registered as such upon arrival in the country.

The eligibility requirements for legal aid (as defined by the Legal Aid Provision Policy 2014) stipulate a number of circumstances that are explicitly applicable to Rohingya, including “(e) any person belonging to a small ethnic group or community,” and “(m) a person unable to establish rights or defend himself in court due to financial difficulties.” Therefore, Rohingya in Bangladesh ought to be covered by the LASA and the LASR. Neither the LASA nor the LASR explicitly limit the applicability of legal aid services towards Rohingya applicants. The LASR state that legal aid service providers should, when appropriate, recommend alternative dispute resolution over litigation, to which the applicant must agree. The Rohingya community should have access to protection under

⁴ The Target Group consists of asylum-seekers, refugees and stateless persons.

⁵ “Refugee Protection Under the Constitution of Bangladesh: A Brief Overview” by Nour Mohammad (2012)

the LASA, which includes legal advice and coverage of expenses for lawyers in both civil and criminal cases. Rohingya should be classified as qualifying “litigants who are incapable of seeking justice due to financial insolvency, destitution, helplessness and for various socio-economic conditions.” As per section 16 of the LASA, Rohingya should enjoy the right to file an application for legal aid, and if rejected, have the right to appeal within 60 days. Such applications should be permitted to the relevant Committees (as defined below). A person accused of crimes who does not have access to legal assistance, nor sufficient means to pay for such assistance, should be assigned legal assistance free of charge.

In practice, however, rights to freedom of movement and the right to work have, it has been reported, been denied to Rohingya in this context.⁶

Scope of State-Funded Legal Aid

The legislation concerning legal aid does not specifically mention asylum-related matters. However, the Bangladesh National Legal Aid Services Organisation (“NLASO”), established under the LASA, is able to provide a range of services to applicants, including:

1. Legal advice;
2. Free Vakalatnama;⁷
3. An Advocate to assist in a legal proceedings;
4. Fees for lawyers;
5. Fees for the mediator or arbitrator;
6. Certified copies of orders, judgments, etc. free of cost;
7. Cost of DNA tests;
8. Cost of paper advertisements in applicable cases; and
9. Any other assistance along with expenses for a case.

Save for the above, no specific matters are covered in the description of available legal aid. However, as mentioned above, individuals can avail themselves of their rights under the LASA if their basic rights are infringed. Moreover, the Constitution also sets out a number of fundamental rights which apply equally to all citizens (including the Target Group) within Bangladesh.

⁶ “Few Rights and Little Progress: The Rohingya in Bangladesh”, by Helen Dempster and Nurul Huda Sakib

⁷ A Vakalatnama is a written document submitted before a court by legal counsel declaring that their clients have authorised them to represent them in a legal dispute.

Structure and Procedures

Process for Obtaining State Funded Legal Aid

The application process for obtaining legal aid is set out in section 16 of the LASA. Applications must first be submitted to the National Governing Board or, in appropriate cases, to the District Legal Aid Committee (the “Committee”). If an application is rejected by the Committee, the applicant may appeal to the National Governing Board within 60 days of the pronouncement of the decision of the Committee.

In addition to the foregoing, the Legal Aid Rules 2001 set out the procedure for an application for legal aid:

1. The candidate shall make an application, providing details of his/her full name, address and the underlying causes for his/her application. If the application is for any matter to be heard in the Supreme Court, it shall be submitted to the chairman of the NLASO. If the application is related to legal aid in the context of any contract, it is to be made to the chairman of the Committee.
2. If the application is accepted by the Committee, it is then put forward for consideration at its next meeting. If it is not possible for the Committee to reach a decision based on the submitted information, then the Committee may request further information. Once an application is considered to have been accepted, the applicant shall be informed in the prescribed manner.

Once they are found eligible for legal aid, the obligations of eligible individuals are limited to the application and approval process for the receipt of legal aid.

Process for Providing State Funded Legal Aid

Legal aid is provided by a panel of lawyers within Bangladesh selected by the National Governing Board who have minimum levels of experience (seven years) for assuming cases before the Supreme Court. In the case of the District Courts, the Committee shall make a list of the panel lawyers of the District Bar Association who have practised therein for a period of at least five years to try the cases which are pending or may come to the District Courts.⁸

Funding of State Funded Legal Aid

Section 13 of the LASA provides that there will be a fund of the National Board of Law and the following kinds of financing shall be deposited in that fund for the provision of legal aid:

⁸ “Legal Aid in Bangladesh, Application and Commitment”, by Esrat Jahan

1. Donations made by the Government;
2. Donations from any local authority, company or person;
3. Donations from the foreign organisation; and
4. Any other funds received by the Board for such purpose from any other sources.

In addition to the above, an allocation from this fund shall also be made to the Committee.

Barriers to State Funded Legal Aid

Availability of Interpretation Services

No specific provision for translation services is provided for under the LASA.

Geographical Limitations

The NLASO has its head office in Dhaka and is led by an officer of the rank of District Judge. The general direction and administration of the affairs and functions of the NLASO are vested in a National Board of Management. There are, however, 64 committees which operate under the NLASO to maintain the allocation of legal aid funding for poor litigants upon application. NLASO has come under criticism as applicants need to travel to one of these Committees in order to make their application, a significant potential barrier to effective legal aid.⁹

Other Barriers to Accessing Legal Aid

The primary barriers to asylum-seekers, refugees and stateless persons accessing legal aid include a lack of awareness about the rights available to this Target Group under the law, as well as structural, cultural and political barriers to accessing the formal justice system. For instance, women seeking to access the justice system risk harassment, disbelief and discrimination throughout the process, while informal justice structures are often ingrained in local communities.¹⁰

Under the Constitution, it remains incumbent on the state to protect the rights of the Target Group within Bangladesh notwithstanding the particular needs and/or circumstances of an applicant for legal aid. In practice, however, the non-refugee status of Rohingya refugees within the country increases the likelihood that their rights under the Constitution will be infringed upon.

In addition, it is worth considering the impact of the COVID-19 pandemic. On 12 May 2020, the Supreme Court issued practice directives for the Appellate Division, High Court

⁹ "Protect Rights of Justice Seekers: A Critical Analysis of Legal Aid Laws of Bangladesh", by Md. Saleh Akram

¹⁰ "Access to Justice for Rohingya and Host Community in Cox's Bazar", by International Rescue Committee

Division and its subordinate Courts for conducting judicial proceedings through video conferencing. Although this in theory alleviates the issue discussed above regarding the potential barrier of travel, these directives have reportedly been enforced inconsistently. The need for physical appearance before the relevant authorities is another barrier for persons to actually benefit from legal recourse.

NON-STATE FUNDED LEGAL AID

Eligibility, Nature and Scope

Eligibility of Asylum-Seekers, Refugees and Stateless Persons

In many instances, the Target Group is largely dependent on humanitarian organisations and NGOs to meet their basic needs. The primary determinants of refugees and others' forcibly displaced access to non-state funded legal aid are:

1. the capacity of the non-governmental organisations ("NGOs") to provide services to the Target Group; and
2. the level of awareness of the services offered by NGOs.

Scope of Non-State Funded Legal Aid

There are certain non-state funded NGOs that provide forms of legal services to different communities, including asylum seekers. Such organisations include the Bangladesh National Woman Lawyers' Association ("BNWLA") and the Bangladesh Legal Aid and Services Trust ("BLAST").

BNWLA has various cells to achieve their objectives, including the legal aid cell that provides support to abused individuals with volunteer-based legal counselling, mediation and litigation services. BNWLA has an ongoing project on the provision of legal assistance on sexual and gender-based violence prevention, including with respect to the Rohingya community. The project focuses on developing legal aid service centres, providing legal counselling, and psychological counselling, among other objectives for both male and female populations of Rohingya refugees.

BLAST provides legal advice and representation at all levels of the judicial system with an emphasis on providing services to those living in poverty or facing disadvantage or discrimination. BLAST sets out on its website that they are concerned with providing access to justice for marginalised communities, a large proportion of which are refugees. They offer advice, referral, mediation, litigation and community awareness services to disadvantaged individuals in Bangladesh, which often includes members of the Target Group. BLAST is able to conduct Salish online or on the phone, as well as through the use of a hotline number to assist individuals with advice, referral, mediation and litigation. Currently, BLAST also has an ongoing project that is promoting legal assistance

to the Rohingya community, a legal assistance and social protection programme, supported by the United Nations High Commissioner for Refugees (UNHCR), and implemented by BLAST. The programme aims to provide legal assistance services to ensure refugees have access to justice and, specifically, access to formal justice mechanisms.

Local NGOs are typically engaged in informal dispute mediation, such as the Salish system, which is the most common form of justice available in Bangladesh. While the Salish does not have formal legal authority, it is considered a legitimate actor in Bangladesh's justice system, frequently established on an ad hoc basis when the need for arbitration arises, such as in relation to civil disputes, petty criminal matters and domestic violence. This has historically been the position in respect of refugee groups within the country over the past number of years, and has continued to be the case in respect of the most recent influx of Rohingya refugees. NGOs typically partner with either UNHCR or the International Organisation for Migration (IOM).

The Target Group as a whole is able to access non-state funded legal aid for non-asylum related matters, including those who entered the country during the recent influx of Rohingya refugees and are not registered as refugees.

Structures and Procedures

Process for Providing Non-State Funded Legal Aid

Dispute resolution systems on the whole require engagement with existing power structures, including the Majhi system established by the Bangladesh army. A Majhi is a Rohingya community representative, primarily responsible for information dissemination, coordination of distributions, estimating population numbers and linking the needs of Rohingya to humanitarian aid. Majhis are responsible for the representation of between 50 to 200 refugees. Majhis will also report to government representatives known as "Camps-in-Charge" ("CiCs"), who are responsible for the administration and coordination of services in refugee camps. Certain NGOs require the CiC's sign-off for any decisions made during the mediation process. NGOs are therefore reliant on effective cooperation with Mahjis and CiCs, which may not offer transparent dissemination of information.

Process for Obtaining Non-State Funded Legal Aid

For the Rohingya living in the camps, the overwhelming preference is to seek justice within the camp. If a conflict cannot be addressed within a family/community group or between multiple groups (other than non-compoundable crimes), the first step in the process is to contact the block Majhi for support, who will arrange for a gathering of community leaders to hear representations from both sides of the dispute. If the verdict

is not acceptable to any of the parties, or the gathering assembled by the Majhi fails to reach a verdict, the complaint will be escalated to the Head Majhi, who will then assemble a further gathering of leaders from the broader community to assess the dispute. Following any subsequent decision, the unsuccessful party may raise the issue with the relevant CiC, while a lawyer may support in the mediation of the case. If the mediation fails to reach an acceptable verdict, the CiC, given that he is an executive magistrate, may deliver the final verdict. Any further challenge of the CiC's decision must then be raised with the police or army in the form of a formal complaint.

For conflicts involving personal law, including intimate personal violence, Masjid committees, which represent a group of community leaders responsible for the interpretation of Islamic teachings, will be expected to be present during the dispute process. Punishments imposed through the informal justice system may include warnings, fines or imprisonment.

Access to support from NGOs and the informal justice structures are available to refugees and non-refugees without any specific restrictions. However, issues of representation in the communities are a prevalent issue, as the Majhi system can contribute to corruption and a disproportionate lack of female representation in the informal justice systems (which in turn may discourage female members of the community from seeking recourse directly).

Funding Non-State Funded Legal Aid

NGOs receive funding from various external sources, including bi-lateral, multi-lateral or individual initiatives of individual donors and international organisations such as the UN. However, the government may in turn place restrictions on such NGOs – it has also been reported that certain NGOs relevant for the Rohingya population have had their operations suspended by the government.¹¹

Barriers

Geographical Limitations

The geographies in which many members of the Target Group are located makes access to non-state funded legal aid challenging, as certain areas may not be readily accessible. A significant number of Rohingya refugees have recently been relocated from Cox's Bazar to Bhasan Char, a remote silt island approximately 40 kilometres off the coast Chittagong in the Bay of Bengal.

¹¹ "Rohingya Camps in Cox's Bazar: Activities of 41 NGOs halted for 'misdeeds'", by Daily Star (2019)

Other Barriers to Accessing Legal Aid

The primary barriers to members of the Target Group accessing legal aid include a lack of awareness about possible remedies available through the informal justice system, as well as structural, cultural and political barriers to accessing the formal justice system. For instance, issues of representation in the communities are a prevalent issue, as the Majhi system can contribute to corruption and female representation in the context of informal justice systems is low (which in turn may discourage female members of the community from seeking recourse directly).

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This document is part of a collaborative, multi-jurisdictional research project on the availability of legal aid to refugees in Asia for use by refugees, other displaced people, and the lawyers and organizations that work with them. It provides information on both state and non-state funded legal aid in Bangladesh. We are grateful to Latham & Watkins and NexaLegal for performing the legal research for this report.

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If you are an organization seeking to be matched with free legal assistance for your organization or your refugee clients, please click here to learn more about [PILnet's Refugee Legal Assistance Matching Mechanism](#).