



Note on the nationality status of the Urdu-speaking community in Bangladesh

This Note provides guidance regarding the nationality of members of the “Urdu-speaking” community in Bangladesh. This may be useful in assessing asylum or statelessness applications, as well as in migration contexts where the nationality of members of this community is at issue.

The Urdu-speaking community of Bangladesh, popularly known as “Biharis”,¹ does not refer to a distinct group of people easily identifiable by race, religion or physical characteristics. Rather, it loosely refers to a linguistic minority of Urdu-speaking persons and their descendants who emigrated from India during and after partition of the subcontinent in 1947 to what was then known as East Pakistan (now Bangladesh), and who are citizens of Bangladesh in accordance with the relevant national laws. This Note does not refer to persons who have moved or returned to Pakistan since 1971.²

Background

1. In 1972, following the creation of the independent People’s Republic of Bangladesh, an estimated 1,000,000 Urdu speakers were living in settlements throughout Bangladesh awaiting “repatriation” to Pakistan.³ Agreements between Pakistan, Bangladesh and India in 1973 and 1974 resulted in some 178,069 members of this community being “repatriated” from Bangladesh to Pakistan between 1973 and 1993 out of some 534,792 who had registered with the International Committee for the Red Cross

¹ The ancestors of Urdu-speakers in Bangladesh came largely, though not exclusively, from the Indian State of Bihar. Historically favoured by the West Pakistani political elite due to the shared Urdu heritage, “Biharis” remained “stranded” in Bangladesh after its separation from Pakistan and the creation of an independent State in 1971. For this reason, they have sometimes been referred to, or self-identified, as “stranded Pakistanis”. For a detailed historical overview, see Eric Paulsen, ‘The Citizenship Status of the Urdu-speakers/Biharis in Bangladesh’, (2006) 25 Refugee Survey Quarterly, 54, 54-68, available at <http://rsq.oxfordjournals.org/cgi/reprint/25/3/54.pdf>. “Urdu speakers” is preferred over “Biharis”, as the former is a more comprehensive and correct term for the entire community.

² Bangladesh, formerly East Pakistan, came into being in 1971, following the independence war (herein referred to as “Liberation War”) from Pakistan. See, for instance, BBC, *Country profile: Bangladesh*, 23 October 2009, available at http://news.bbc.co.uk/2/hi/europe/country_profiles/1160598.stm.

³ Sumit Sen, ‘Stateless Refugees and the Right to Return: The Bihari Refugees of South Asia – Part 1’, (1999) 11 International Journal of Refugee Law 625, 635, available at <http://ijrl.oxfordjournals.org/cgi/content/abstract/11/4/625>.

for repatriation.⁴ An estimated 80,000-100,000 Urdu speakers also spontaneously moved to Pakistan.⁵ Many of those who have not been “repatriated” continue to live in Government-established camps and settlements in Bangladesh, while a growing number have integrated into Bengali communities throughout the country.

2. According to recent estimates, the Urdu-speaking community in Bangladesh numbers some 250,000 persons, with over 151,000 residing in 116 open camps and settlements.⁶ Exact figures are not available given that no census of the Urdu-speaking population in the country, especially those persons living outside the camps and settlements, has been carried out.

3. From 1971 until 2008, Urdu speakers, many of whom had sided with Pakistan in the Liberation War and had registered to be “repatriated” to Pakistan after 1971, were not recognized as falling under the terms of Bangladeshi citizenship legislation and were thus stateless. In 2008, however, the Supreme Court of Bangladesh held that they had always qualified as Bangladeshi nationals under domestic legislation.

Registration of Urdu speakers

4. In 2003, in the landmark *Abid Khan* decision,⁷ the Supreme Court of Bangladesh (High Court Division) held that the ten Urdu-speaking petitioners, born both before and after 1971, were Bangladeshi nationals pursuant to the Citizenship Act of 1951⁸ and the Bangladesh Citizenship (Temporary Provisions) Order of 1972,⁹ and thereby directed the Government to register them as voters. The Supreme Court further stated that residents of the camps and settlements had not “attained any special status so as to be excluded from the operation of the laws of the land”, and hence “mere residence” in the camps could not be deemed as allegiance to another State. In determining whether registration for “repatriation” to Pakistan would affect a petitioner’s right to Bangladeshi citizenship, the Court stated, quoting from an earlier case:

“The mere fact that he filed an application for going over to Pakistan cannot take away his citizenship. The Bangladesh Citizenship Order. P.O.”

⁴ Sumit Sen, ‘Stateless Refugees and the Right to Return: The Bihari Refugees of South Asia – Part 2’, (2000) 12 International Journal of Refugee Law 41, 41-70, available at <http://ijrl.oxfordjournals.org/cgi/content/abstract/12/1/41>. See also United States Committee for Refugees and Immigrants, *World Refugee Survey 2005 – Bangladesh*, 20 June 2005, available at <http://www.unhcr.org/refworld/docid/42c9288c16.html>.

⁵ Loraine Mirza, *Internment Camps of Bangladesh* (Crescent International, Ontario 1998) 66.

⁶ Estimates are based on a May 2006 unpublished study undertaken by Al-Falah Bangladesh, an NGO of the Urdu-speaking community. Copy available with UNHCR.

⁷ *Abid Khan and others v. Govt. of Bangladesh and others*, (2003) 55 DLR (HCD) 318, available at <http://www.unhcr.org/refworld/docid/4a54bbcf0.html>.

⁸ Pakistan Citizenship Act, Act II of 1951, 13 April 1951, available at <http://www.unhcr.org/refworld/docid/3ae6b52a8.html>. The Act is still applicable in Bangladesh by virtue of the Adaptation of Existing Bangladesh Laws Order 1972. See Paulsen, above footnote 1, 54-68.

⁹ Bangladesh Citizenship (Temporary Provisions) Order, No. 149 of 1972, 26 March 1971, available at <http://www.unhcr.org/refworld/docid/3ae6b51f10.html>.

149/72, has enumerated different situations in which a person shall be deemed to be a citizen of Bangladesh but it has not discriminated among its citizen[s] no matter in which way they have become citizens of this country. So the petitioner is on the same footing as any other citizen. His citizenship, therefore, clings to him. He could voluntarily renounce it or he could be deprived of it if he had incurred any disqualification. Though he filed the application, he did not even pursue it. He filed an affidavit affirming his allegiance to Bangladesh in 1972. The petitioner having not acquired the citizenship of any other country, his citizenship of Bangladesh which he acquired long before cannot evaporate and he continues to be a citizen of this country.”¹⁰

5. The effect of the 2003 decision was limited to the ten petitioners. Subsequently, on 18 May 2008, in *Md. Sadaqat Khan*, the Supreme Court of Bangladesh (High Court Division) reaffirmed that all members the Urdu-speaking community were nationals of Bangladesh in accordance with its laws and directed the Election Commission to “enroll the petitioners and other Urdu-speaking people who want to be enrolled in the electoral rolls and accordingly, give them National Identity Card without any further delay.”¹¹ In reflecting on the situation of the Urdu-speaking community, the Court also noted that:

“[The] [q]uestion of citizenship of Urdu-speaking has got another aspect, which is very important from the constitutional perspective. Miseries and sufferings of such people due to statelessness were time to time reported in the national media, electronic and print. Besides, the reasons mentioned in the letter of the Election Commission, they are constantly denied the constitutional rights to job, education, accommodation, health and a decent life like other citizens of the country. By keeping the question of citizenship unresolved on wrong assumption over the decades, this nation has not gained anything rather was deprived of the contribution they could have made in the nation building. The sooner the Urdu-speaking people are brought to the mainstream of the nation is the better.”¹²

¹⁰ *Mukhtar Ahmed v. Govt. of Bangladesh et al.*, (1982) 34 DLR (HCD) 29, as cited in *Abid Khan*, above footnote 7. See also *Professor Golam Azam v. Govt. of Bangladesh et al.*, (1993) 45 DLR 423, MH Rahman, J., as cited in M.M. Mohsin, *The Law of Citizenship and Passport of Bangladesh* (New Warsi Book Corp., Dhaka 2002) 24:

“Even a diehard pro-Pakistani, born in this country, is entitled to be a citizen of Bangladesh if he fulfils the requirements under Article 2 and is not disqualified under clause (i) of Article 2B.”;

id. at 25, Latifur Rahman, J.:

“[...][T]he onus of proving that the respondent has lost his citizenship from the country of his permanent residence is on the appellant who seeks to deprive the respondent of his rights as a citizen.”.

¹¹ *Md. Sadaqat Khan (Fakku) and others v. Chief Election Commissioner, Bangladesh Election Commission*, Writ Petition No. 10129 of 2007, 18 May 2008 (Bangl), available at <http://www.unhcr.org/refworld/docid/4a7c0c352.html>. See also Daily Star, *Stranded Biharis now Bangladesh citizens*, 19 May 2008, available at <http://www.thedailystar.net/newDesign/news-details.php?nid=37206>; BBC, *Citizenship for Bihari refugees*, 19 May 2008, available at http://news.bbc.co.uk/2/hi/south_asia/7407757.stm.

¹² *Sadaqat Khan*, above footnote 11, at 8.

6. Implementation of the decision was swift.¹³ The Election Commission issued National Identity Cards to any member of the Urdu-speaking community who applied for one and who met the legal and administrative requirements.¹⁴ It should be noted that this was also the first time that other non-Urdu-speaking Bangladeshi nationals were issued with National Identity Cards. Those in possession of a National Identity Card were subsequently allowed to vote during the national elections which took place in December 2008.

7. In addition to enabling voting, the National Identity Card provides citizens with rights and access to a range of services, including:

- issuance and renewal of passport, driving license, trade license, and tax and business identification number;
- opening bank accounts;
- beneficiary owner's account with stock exchanges;
- utilities (e.g. gas, water, electricity, telephone, mobile, internet, and cable television);
- registration for examinations;
- any public services;
- marriage registration;
- loans;
- Government-subsidized accommodations;
- allowance and relief;
- owning land and motor vehicles;
- admission to State schools; and
- undertaking procedures before courts.¹⁵

8. It is estimated that around 80 percent of eligible Urdu-speaking voters obtained National Identity Cards. A number of eligible Urdu-speakers have allegedly chosen not to register as voters, fearing that it would undermine their long-standing call to be “repatriated” to Pakistan and/or that they would, consequently, lose other benefits in Bangladesh.¹⁶

¹³ See Shakhawat Liton, *EC moves to make voters 1.6 lakh Urdu speakers*, Daily Star, 24 July 2008, available at <http://www.thedailystar.net/story.php?nid=47169>. According to some sources, approximately 80 percent of all adult Urdu speakers, or 184,000 persons, were subsequently registered; see United States Department of State, *2008 Country Reports on Human Rights Practices – Bangladesh*, 25 February 2009, available at <http://www.unhcr.org/refworld/docid/49a8f1a8b5.html>.

¹⁴ See, for instance, Zaheria Shirazi, *Urdu-speaking camp dwellers are moving out of the limbo*, New Age, 11 January 2009, available at <http://www.newagebd.com/2009/jan/11/edit.html>; Julfikar Ali Manik, *Biharis embark on new era*, Daily Star, 30 December 2008, available at <http://www.thedailystar.net/story.php?nid=69286>.

¹⁵ Research for Development, *Rights of the Camp-dwelling “Bihari” Community in Bangladesh*, 17 January 2008, available at <http://www.research4development.info/caseStudies.asp?ArticleID=50180>.

¹⁶ See, for instance, Mukhlesur Rahman, *More Biharis want to enrol as voters*, Daily Star, 17 January 2009, available at <http://www.thedailystar.net/story.php?nid=71702>. See also Daily Star, *Stranded Urdu-speaking people divided over accepting Bangladeshi citizenship*, 27 May 2008, as cited in

9. The Supreme Court decision of May 2008 applies to all members of the Urdu-speaking community without discrimination.¹⁷ Pursuant to existing domestic legislation, members of the Urdu-speaking community can apply for a National Identity Card at any time like any other Bangladeshi citizen. Failure to apply for a National Identity Card does not preclude the application of the Supreme Court ruling nor entail loss of citizenship and/or ensuing rights.

Current status

10. In light of the May 2008 Supreme Court decision and subsequent implementing measures taken by the Government of Bangladesh, the Urdu-speaking community can no longer be viewed as stateless, as they are considered to be nationals of Bangladesh.

11. Despite the fact that pockets of Bangladeshi society resent the role that some Urdu speakers played in the 1971 Liberation War, many members of Urdu-speaking communities, including those in the open camps, are living alongside the Bengali community and speak Bengali. Urdu speakers living in extreme poverty are sometimes unable to access basic services, either because of the unavailability of such services in their area, or because they are unable to meet the necessary legal or administrative requirements applicable to all Bangladeshi nationals (for example, they may lack a valid address, which is required to acquire a passport); this is not, however, a problem unique to Urdu speakers in Bangladesh.¹⁸ Although there may be instances where officials, particularly at the local level, would seek further guidance from their ministries on the effect and application of the 2008 *Sadaqat Khan* judgment before resolving a matter involving Urdu speakers, difficulties in accessing services do not denote a refusal to recognize Urdu speakers as nationals of Bangladesh.

United Kingdom Home Office, *Country of Origin Information Report – Bangladesh*, 25 September 2008, para. 4.72, available at <http://www.unhcr.org/refworld/docid/48ede7992.html>. The Stranded Pakistanis General Repatriation Committee (SPGRC) in Bangladesh, members of which have also registered as Bangladeshi voters, along with a few other small but vocal groups within the Urdu-speaking community, are also known to issue identity documents and certificates (for a fee) claiming that an individual is a member of their organization, is a citizen of Pakistan, or is stateless. These documents are often presented by individuals making claims for asylum in other countries. However, such documents have no legal effect and are allegedly not issued exclusively to members of the Urdu-speaking community.

¹⁷ The Bangladesh Citizenship (Temporary Provisions) Order of 1972, above footnote 9, provides that anyone resident in Bangladesh as of 25 March 1971, who continues to reside there and who was (i) born there, (ii) whose father or grandfather was born there, or (iii) who is not otherwise disqualified from citizenship, is a citizen. See also Zaheria Shirazi, *Urdu-speaking camp dwellers are moving out of the limbo*, above footnote 14:

“And it should not be assumed that only the young voters exercised their newly earned voting right. TV spots showed that elders including elderly women also voted.”);

and Julfikar Ali Manik, *Biharis embark on new era*, above footnote 14:

“Seventy-year-old Abdul Sattar, who voted twice before Bangladesh's birth in 1971, was among those lining up.”

¹⁸ Urdu speakers living in open camps continue to receive free water and electricity from the State; in addition, at the time of drafting this note, some infrastructural improvements had commenced by the government and the UNDP programme addressing urban poverty in some of the Urdu-speaking areas.

12. As stated above, members of the Urdu-speaking community are entitled to apply for administrative and judicial remedies in accordance with the laws of Bangladesh, in the same manner as any other Bangladeshi citizen. They also have the right to be issued with passports. Hence, the relevant Bangladeshi diplomatic or consular representation should be contacted in cases where members of the Urdu-speaking community outside the country require travel documents, including for the purposes of return to Bangladesh.

UNHCR
December 2009