



Internal Relocation Alternative: An Aid to Principle of Non-Refoulement and Local Settlement.

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Abstract

Internal relocation alternative (IRA) is a significant element of refugee status determination. The UN Refugee Convention 1951 has not defined IRA in its text. Theoretical inference of Article 1(C)(1,2,4,6) of the convention provides validity of the principle's existence in the UN Refugee Protection mechanism. At the same time, the incorporation of the UNHCR handbook regarding IRA has made it an indispensable element of refugee status determination. It examines the alternatives of relocation for an asylum seeker in the refugee origin country before providing refugee status in a host country. During the examinations, it seeks the presence or absence of serious harm in the relocation area. An area becomes suitable for relocation only if it passes the reasonableness and relevance test under the UNHCR handbook. Generally internal relocation alternative is a practice prevalent in origin countries. Focusing on the situation in Bangladesh and the Rohingya community, this paper proposes to assimilate IRA in the host countries besides local settlement (LS) as an aid. LS is also a protection mechanism used in the host countries as an ad-interim solution for refugees. Effective assimilation of IRA with LS will benefit the principle of non-refoulement and revolutionize the refugee protection regime.

Keywords

Internal Relocation Alternative, Rights-based approach, Surrogate Protection, Self-Settlement, Human Rights Standards, Bangladesh.

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I. INTRODUCTION

Bangladesh has started relocating the Rohingyas to Bhasan Char (“the Char”) since 2020.¹ It has planned to relocate 100,000 Rohingyas to the Char.² As Cox’s bazar camps have become overcrowded and environment has degraded, the government of Bangladesh (“GoB”) has developed the Char. GoB has built the Char with the help of the Bangladesh Navy and equipped it with better facilities compared to the facilities in the refugee camps.³ Most importantly, GoB has fewer restrictions in the relocation area of Bhasan Char than Cox’s Bazar camps. Many human right groups and international agencies have opposed this idea of relocation on three grounds:⁴ a) forcible relocation, b) environmental risk in the Char, with its newly built infrastructure, and c) human rights standards disregarded. But Bangladesh has denounced these allegations and prophesied the strategic motives behind such relocation. Considering the situation in Cox’s Bazar camps, this relocation of refugees was inevitable to provide better life and living standards to these refugees and save the environment of Cox’s Bazar. Bangladesh did not have any other solutions available to protect the Rohingyas being an overpopulated and underdeveloped country.

Generally, in comparable situations, the solutions available in a host country are local integration, encampment, self-settlement, and local settlement. Except for self-settlement, all the other solutions need help from a third party. Rohingyas in Bangladesh are already encamped since they arrived in Bangladesh. As Government has initiated relocation, it needs to take affirmative actions to protect the refugees in the place of relocation. Bangladesh took a basic human rights-based approach regarding protection. Bangladesh is not bound to follow the 1951 Refugee Convention-based approach regarding the protection of refugees during relocation. The basic human rights-based approach will ask for the projection of Internal Relocation Alternative into the practice of local settlement to complement or replace it in the refugee host country. Now the question is how International Refugee Law defines such a move in Bangladesh, and how Bangladesh is defining this whole process. International refugee law tries to define it as local settlement because Bangladesh is not a signatory to the Refugee Convention and has done the settlement in a different place other than camps for a temporary period. Local settlement is a refugee protection mechanism to handle mass refugee influx by relocating refugees in other parts of the country other than camps.

The term local settlement under the International Refugee Law regime is not defined as such. The International Convention as well as the regional conventions does not define the matter directly. Rather an indirect disposition of what this term means is provided in these instruments and there are very few instruments such as working papers that provide the notation of the term ‘Local Settlement.’ At the outset, the process of local settlement was first adopted by the African countries in handling large-scale exodus between the 1960 and 1980s

¹ The Dhaka Tribune, ‘Don’t Worry about Rohingya Relocation to Bhasan Char: Dhaka to UNHCR’ (The Dhaka Tribune, 10 December 2020). Available: <https://www.dhakatribune.com/bangladesh/rohingya-crisis/232955/dhaka-to-unhcr-don%E2%80%99t-worry-about-rohingya>. All links in this article have been verified on 4 January 2024.

² Al Jazeera, ‘Un, Bangladesh Sign Deal to Aid Rohingya Relocated to Island’ (Rohingya News | Al Jazeera, 11 October 2021). Available: <https://www.aljazeera.com/news/2021/10/11/un-bangladesh-deal-rohingya-refugees-bhasan-char-island-aid>.

³ Asif Showkat Kallol, ‘Navy to Develop Thengar Char to Shelter the Rohingya’ (Dhaka Tribune, 27 September 2017). Available: <https://archive.dhakatribune.com/bangladesh/2017/09/25/navy-develop-thengar-char-shelter-rohingya>.

⁴ Md Didarul Islam and Ayesha Siddika, ‘Implications of the Rohingya Relocation from Cox’s Bazar to Bhasan Char, Bangladesh’ (2021) 56 International Migration Review 1195.

refugee crisis arising at the end of the colonial era and the post-cold War, which happened in Algeria, Congo, Angola, and Nigeria.⁵ Adopting local integration as a durable solution to the crisis would ideally result in offering citizenship of the host country to the refugees. Owing to the poor economy and the concern for security they did not opt for local integration as a durable solution to the crisis, rather, they went on to have the refugees locally settled in a place with some of their rights being restricted except the right to engage in farming and other economic activities. This adoption of local settlement as a solution to the refugee crisis was recognized in the OAU Refugee Convention 1967.⁶

The two UNHCR working papers, *i.e.*, working paper number 45,⁷ and number 102,⁸ delineated the term local settlement to include the following matters:

- a. It can be a durable solution to the mass refugee crisis.
- b. The government *prima-facie* recognises new arrivals from the country of origin.
- c. In most instances, local settlement is a temporary phase where the refugees live their life with security dignity, and prosperity.
- d. The host state ensures that the refugees are self-sufficient pending repatriation.
- e. The goal of local settlement is voluntary repatriation to the country of origin.
- f. The facilities of the local settlement are determinant upon the goal of the host country and the donor countries.

A perusal of the abovementioned working papers may give us a presumption that local settlement may fall within the ambit of the local integration concept provided under Article 31 of the refugee convention of 1951.⁹ But local settlement and local integration have certain differentiating characteristics of their own. Local integration denotes that the refugee may stay for an indefinite period in the country of asylum, enjoy a wide range of rights including the right to freedom of movement, and consequently attain the citizenship of the host country. However, local settlement is a bit different in the sense that it provides the refugee's security, dignity, as well as inclusion in terms of social economic, and legal matters within a territory set out by the host country. But unlike local integration, the goal of the host country here is the repatriation of the refugees to their country of origin. Moreover, the local settlement gives protection for a temporary period, where refugees' right to life with security, dignity, and prosperity is emphasized. The fact of serious harm to the refugees is also kept in mind while protecting the refugees. Here lies a nexus between internal relocation alternative and local settlement.

Unaware of the nexus, Bangladesh has defined the settlement of Rohingyas as 'relocation' in its official documents and communication. International Refugee Law understands relocation as an internal relocation alternative (IRA) enshrined in the UNHCR

⁵ Lydia DePillis, Kulwant Saluja and Denise Lu, 'A Visual Guide To 75 Years of Major Refugee Crises Around The World' (Washington Post, 2022). Available: <https://www.washingtonpost.com/graphics/world/historical-migrant-crisis/>.

⁶ Organization of African Unity (OAU), Convention Governing the Specific Aspects of Refugee Problems in Africa (entered into force 10 September 1969) 1001 UNTS 45. ("OAU Convention"). Available: <https://www.refworld.org/docid/3ae6b36018.html>.

⁷ Karen Jacobsen, 'The forgotten solution: local integration for refugees in developing countries' UNHCR New Issues in Refugee Research Working Paper No. 45. Available: <https://www.refworld.org/docid/4ff569552.html>.

⁸ Jeff Crisp, 'The Local Integration and Local Settlement of Refugees: A conceptual and Historical analysis' (UNHCR The UN Refugee Agency). Available: <https://www.unhcr.org/research/working/407d3b762/local-integration-local-settlement-refugees-conceptual-historical-analysis.html>.

⁹ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) 137.

Handbook of 1991,¹⁰ which is mostly used in the refugee-origin country, as a prerequisite of refugee status determination in the refugee host country. That means, before applying for refugee status in a host country, a refugee must exhaust all their alternatives of flight, relocation, or protection in the origin country. Is it possible to use the IRA principle in the host country? To know about the possibilities, we must examine in the doctrine in the prospects of refugee host country. Simultaneously, as local settlement had been there as a temporary protection mechanism, is there a chance of using IRA in the host country with new dimensions? This paper examines these possibilities and tries to utilize IRA besides local settlement practices in the refugee host country for a comprehensive refugee protection regime.

Part I of the paper will give a brief overview of IRA as understood in the International Refugee Law regime. This part will consult with different kinds of literature and views of scholars regarding IRA. This eventually pleads for rights-based practice of IRA, which will not limit its application to the origin country only. **Part II** of the paper discusses the nexus among internal relocation alternative, the principle of non-refoulement, and local settlement practice. It investigates how the international relocation alternative is helping the local settlement to serve the purpose of the principle of non-refoulement. **Part III** of the paper discusses Bangladesh's case of Rohingya relocation. It aims to argue that Bangladesh is protecting the Rohingyas through internal relocation in the host country, which is basic human rights-based and a new practice of International Refugee Law. **Part IV** concludes the argument by emphasizing IRA's contribution to expanding the horizons of international refugee law. This part sees IRA along LS practice as a blessing, encouraging the voluntary repatriation of refugees, because the refugees with social and economic security in the host are more prone to repatriation.¹¹ This intensifies the necessity of exploring IRA as a practice under International Refugee Law.

II. INTERNAL RELOCATION ALTERNATIVE GENERALLY UNDERSTOOD

The Internal Relocation Alternative emerged as a practice of UNHCR in the 1980s. A Dutch court rejected the plea of refugee status to six Turkish individuals citing the reason of not exhausting other relocation alternatives within the refugee origin country.¹² The court emphasized that refugees had other places of relocation in Turkey before taking asylum in the Netherlands. It further added that if persecution does not extend to the whole territory of a country, asylum seekers shall move to persecution free parts of the country. It portrays the vacuum and arbitrary discretion of countries denying asylum to persecuted people. UNHCR came up with a handbook regarding IRA to remove arbitrariness from this practice.¹³ Paragraph 91 of that handbook emphasizes persecution need not extend to the whole territory of a country.¹⁴ The existence of

¹⁰ United Nations High Commissioner for Refugees, 'Para 91 of the Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees' (UNHCR 1991): Available: <https://www.unhcr.org/publications/legal/5ddfcdc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html>.

¹¹ Karen Jacobsen, 'The forgotten solution: local integration for refugees in developing countries' UNHCR New Issues in Refugee Research Working Paper No. 45. Available: <https://www.refworld.org/docid/4ff569552.html>.

¹² *Szatv V Minister For Immigration And Citizenship* (2007) 233 Clr 18, 18 (High Court of Australia).

¹³ United Nations High Commissioner for Refugees, 'Para 91 of the Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees' (UNHCR 1991). Available: <https://www.unhcr.org/publications/legal/5ddfcdc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html>.

¹⁴ United Nations High Commissioner for Refugees, 'Para 91 of the Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees' (UNHCR 1991). Available:

persecution in any part of that country or even the fear of persecution or serious harm is enough to defy the argument of internal relocation alternatives. Fear of persecution or serious harm might rise due to race, religion, caste, sex, political or social views according to article 1(A) of the UN Refugee Convention.¹⁵ Lauterpacht and Bethlehem add exposure to torture or inhuman treatment, threat of persecution and the threat to life or liberty as benefactors of serious harm.¹⁶ This means a state might have space for IRA, but still asylum seekers might fail to take the relocation alternatives pursuant to the fear of serious harm. In fact, for serious harm state must not have to be the monolithic aggressor.¹⁷ Fear of persecution from non-state actors can also invalidate the ground of IRA.

Keeping these in mind, UNHCR introduced two tests to execute IRA:¹⁸ a) the relevance analysis; and b) the reasonableness analysis. Of these, relevance analysis examines the probability of serious harm or apprehension of serious harm in the place of relocation. It seeks practicality, legality, and safe accessibility in the place of relocation to determine the existence of serious harm. The reasonableness test contributes to relevance analysis to ensure normal life in the area of relocation. Normal life stands for safe travel, absence of fear, and subsistence of basic human rights, which would justify the grounds of IRA. Initially, human rights considerations were not added to checklist of IRA. Ghráinne emphasized IRA area with low human rights considerations shall not be considered for relocation.¹⁹

Low human rights considerations always discourage expulsion to less protective IRA area and encourage asylum-seeking in another country during any persecution. Ivo Niks takes Ghráinne's idea of human rights considerations further, where he asks for comprehensive implementation of claimant's human rights in the IRA area.²⁰ The *Januzi and AH Sudan case* also emphasized the insurance of civil, political, and socio-economic rights in the IRA area.²¹ In addition, there should not be any undue hardship for the people relocated in terms of protection. This overall indicates a rights-based approach of IRA. This approach sees the feasibility, meaningfulness, condition of the application, situation of the origin country and effectiveness of the protection for internal relocation alternative.²² In *LO v Ministry of Interior*²³ endeavoured to find four other elements to effectively test the possibilities of IRA.

<https://www.unhcr.org/publications/legal/5ddfcdc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html>.

¹⁵ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention).

¹⁶ Sir Elihu Lauterpacht and Daniel Bethlehem, 'The Scope and Content of the Principle of Non-Refoulement: Opinion' [2003] *Refugee Protection in International Law* 87, 151.

¹⁷ James C Hathaway and Michelle Foster, 'Internal Protection/Relocation/Flight Alternative as an Aspect of Refugee Status Determination' in Erika Feller, Volker Türk and Frances Nicholson (eds), *In Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge University Press, 2003).

¹⁸ United Nations High Commissioner for Refugees, 'Guidelines on International Protection No. 4: 'Internal Flight or Relocation Alternative' within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees' (HCR/GIP/03/04)" (UNHCR, July 2003). Available: <https://www.unhcr.org/publications/legal/3f28d5cd4/guidelines-international-protection-4-internal-flight-relocation-alternative.html>.

¹⁹ Bríd Ní Ghráinne, 'The Internal Protection Alternative Inquiry and Human Rights Considerations - Irrelevant or Indispensable?' (2015) 27 *International Journal of Refugee Law* 29.

²⁰ Matthijs Ivo Niks, 'The Importance of Human Rights Protection in the Internal Protection Alternative Inquiry' (Master's Thesis, The American University in Cairo 2020). Available: <https://fount.aucegypt.edu/etds/1474/>.

²¹ *Januzi v Secretary of State for the Home Department* (2006) UKHL 5, 15; *Secretary of State for the Home Department v AH (Sudan)* (2007) UKHL 49 1 (House of Lords).

²² United Nations High Commissioner for Refugees, 'The Internal Flight Alternative Practices. A UNHCR Research Study in Central European Countries' (Refworld, June 2012). Available: <https://www.refworld.org/docid/4ffaabdf2.html>.

²³ *LO v Ministry of Interior* (2009) 5 Azs 40/2009 (Czech Republic - Supreme Administrative Court).

They are as follows:²⁴

- a) the applicant's ability to travel to another region of the country,
- b) whether relocating to another section of the country is an efficient means of avoiding persecution or serious harm in one's own country,
- c) whether the applicant is not in danger of being sent back to their place of origin, and
- d) whether or not the level of protection in a different region of the country complies with the requirements for human rights protection.

Through these four standards, it becomes apparent that IRA assesses present and future risks simultaneously.²⁵ The assessment of future risks is done through claimant's proof of well-founded fear of persecution, examination of personal and particular experiences of the claimant, and protection provided by state if any *etc.*²⁶ Jessica Schultz's thick surrogacy perspective also takes present and future risks into assessment to provide protection to refugees under international refugee law.²⁷ According to Schultz, host countries can only deny protection to refugees, if the origin state is able and willing to protect the claimant from original harm by relocating them elsewhere. Alternatively, the refugees might seek for the availability of safe and healthy relocation within the origin country voluntarily. Article 1(C)'s sub-clauses 1-4 of UN Refugee Convention 1951 discusses the cessation of refugee status and sub-clauses 5-6 allow such cessation after situational changes in the refugee origin country.²⁸ Requirements of cessation of refugee status resemble with the requirements of IRA, especially the re-establishment of national protection and extinguishment of fear of persecution under clauses 1 and 4 respectively.

The similarities in requirements are out of the theoretical inference and analysis. Apart from that, there is no discussion regarding IRA in the UN Refugee Convention. Also, the multiplicity of the term has created further complication in its application. It is either known as Internal Flight Alternative or Internal Protection Alternative other than Internal Relocation Alternative. It is also termed as internal protection principle, safe haven principle, domestic protection principle,²⁹ and internal resettlement, *etc.*³⁰ The courts also seem to have different approaches to IRA. The Canadian court in *Thirunavukkarasu v MEI* has referred to it as a "convenient short-handed way of describing a factual situation by an asylum seeker during refugee status determination."³¹ In the same case the court held, it is neither a legal defence nor a doctrine.³²

²⁴ *LO v Ministry of Interior* (2009) 5 Azs 40/2009 (Czech Republic - Supreme Administrative Court).

²⁵ Ninette Kelley, 'Internal Flight/Relocation/Protection Alternative: Is It Reasonable?' (2002) 14 *International Journal of Refugee Law* 4.

²⁶ Ninette Kelley, 'Internal Flight/Relocation/Protection Alternative: Is It Reasonable?' (2002) 14 *International Journal of Refugee Law* 4, 4-5.

²⁷ Jessica Schultz, 'EU Immigration and Asylum Law and Policy Droit Et Politique De L'immigration Et De L'asile De L'ue' (Understanding the 'internal protection alternative' (Part II) – EU Immigration and Asylum Law and Policy, March 2019). Available: <https://eumigrationlawblog.eu/understanding-the-internal-protection-alternative-part-ii/>.

²⁸ United Nations High Commissioner for Refugees, 'Para 91 of the Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees' (UNHCR 1991). Available: <https://www.unhcr.org/publications/legal/5ddfcdc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html>.

²⁹ James C Hathaway and Michelle Foster, *The Law of Refugee Status* (Cambridge University Press, 2015) 133-134.

³⁰ Hugo Storey, 'The Internal Flight Alternative Test: The Jurisprudence Re-Examined' (1998) 10 *International Journal of Refugee Law* 499.

³¹ *Thirunavukkarasu v Mei* (1993) ACWSJ Lexis 21770 (Canadian Federal Court of Appeal).

³² *Thirunavukkarasu v Mei* (1993) ACWSJ Lexis 21770 (Canadian Federal Court of Appeal) 592.

Two questions immediately come into mind: (1) what should be the actual terminology for the practice; and (2) how should the states treat the terminology as a legal defence, a norm,³³ principle or a doctrine? Firstly, from the perspective of the author it better remains as IRA which has already transpired into state practice. Though Hathaway and Foster took a different approach by naming it as Internal Protection Alternative.³⁴ The problem with this terminology is, whenever someone resides in a territory they are under the direct control of the government. So even if they relocate, they remain under the control of the government. Fear of persecution from non-state actors might be prevented through government's protection. If government is the persecutor, who is to provide the internal protection? Relocation is still possible through self-settlements or other ways. However, it in no way ensures protection. Hence, IRA is more realistic when removing physical and legal barriers for the refugees. It is also true that, relocation without protection is meaningless. Self-settlements do not provide the protection required for the asylum seekers unless the government gives protection to them.

Secondly, this paper takes a human rights-based approach of IRA. So, we should treat IRA as a norm or principle, as it has acceptance as a regular state practice among many states. Chao also defined IRA as a strong persuasive norm.³⁵ This norm gets limited under conventional practices of international refugee law, as it only deals with surrogate protection. The practice of IRA through the domain of international human rights law will broaden and validate its customary value. If we think IRA from the perspective of International Refugee Law, IRA practice, and application will remain within the territory of the host country. This happens due to the narrow nature of IRL. But human rights jurisprudence of IRA will not limit its application within any territory. Rather it will encourage and liberalize the practice for the origin or host country. For example, the nature of IRA in the host countries resembles with local settlement, but Bangladesh has named it as 'relocation' officially when resettling the Rohingyas.³⁶

There remains no chance to define the practice as local settlement. Bangladesh does not intend to naturalize refugees being a non-signatory of the UN Refugee Convention 1951. It merely remains as relocation. But there is a chance of naming it internal relocation, as the relocation is done within the territory of Bangladesh. Here lie the arguments of this paper. It sees IRA practice from a human rights perspective and creates no boundaries for its application. Both, an origin country, and a host country can use IRA. The nature of the use will be different. For the origin country, it will remain as the prevalent practice under IRL and UNHCR guidelines. Whereas for the host country, it will serve as a mechanism to provide a better life and living standard to the refugees in a new place. Local Settlement might affiliate with IRA through the practice for better protection. Through this, IRA will benefit the principle of non-refoulement and local settlement practice simultaneously. As there are no fixed provisions

³³ Yi Chao, 'A Legitimate Norm Gets Misunderstood: Finding a Plausible Place for the Internal Relocation Principle in International Refugee and Human Rights Law' (Thesis, McGill University 2020) Available: <https://escholarship.mcgill.ca/downloads/qb98mk73k.pdf>.

³⁴ James C. Hathaway and Michelle Foster, 'Internal Protection/Relocation/Flight Alternative as an Aspect of Refugee Status Determination' (2001) 1. Available: <https://www.unhcr.org/3b83c1374.pdf>.

³⁵ Yi Chao, 'A Legitimate Norm Gets Misunderstood: Finding a Plausible Place for the Internal Relocation Principle in International Refugee and Human Rights Law' (Thesis, McGill University 2020) Available: <https://escholarship.mcgill.ca/downloads/qb98mk73k.pdf>.

³⁶ The Financial Express, 'UNHCR Says It Supports Bangladesh's Rohingya Relocation to Bhasan Char' (*The Financial Express* 2021). Available: <https://thefinancialexpress.com.bd/national/unhcr-says-it-supports-bangladeshs-rohingya-relocation-to-bhasan-char-1622622636>. ; UN, 'Press Statement: United Nations Statement on the Relocation of Rohingya Refugees to Bhasan Char – Bangladesh' (*Relief Web*, December 3, 2020). Available: <https://reliefweb.int/report/bangladesh/press-statement-united-nations-statement-relocation-rohingya-refugees-bhasan-char>.

regarding IRA in the Convention, the chances of using it as a temporary solution in the host country remain open. The host country must ensure that the refugees do not have to go through undue hardship.³⁷

III. THE NEXUS AMONG IRA, PRINCIPLE OF NON-REFOULEMENT AND LOCAL SETTLEMENT PRACTICE

IRA is a prerequisite to avail protection under the principle of non-refoulement in a refugee host country.³⁸ It appears to be the opposite of the principle of non-refoulement in terms of protection, because one works in the refugee origin country and the other one in the refugee host country. As this paper is treating relocation for both countries (origin and host), IRA will be considered as an aid of the principle of non-refoulement and local settlement. Opportunities for IRA or grounds of non-refoulement are decided through the existence of serious harm. The absence of serious harm in any part of the refugee origin country validates the ground for internal relocation. And the presence of serious harm validates the principle of non-refoulement in the refugee host country. Both practices have their foundation in UN Refugee Convention 1951 or IRL. Article 33(2) of the Convention strengthens the non-refoulement principle, whereas the construction of article 1(c) legitimizes IRA practice.³⁹ Article 8 of the European Qualification Directive 2011 directly mentions about internal protection.⁴⁰ This provision suggests for international protection only if there exists serious harm or apprehension of serious harm within the refugee origin territory. Safe travel, legal and reasonable settlement in the relocated place will validate the grounds of IRA. Otherwise, surrogate protection⁴¹ of international refugee law will be activated. Surrogate protection is the principal nature of international refugee law. When a citizen is unable to avail protection within their state or when the state does not give protection to its citizen, the citizen will pursue protection in other states under the surrogacy practice of international refugee law.

But it is to be kept in mind that the test or the determinants of serious harm will be different in the refugee origin and host countries. Internal relocation alternative relies on the existence or absence of serious harm. The principle of non-refoulement also prohibits expulsion apprehending the fear of irreparable harm to the refugees. If the refugees are relocated in the host country, we may call it an internal relocation alternative. In that case, the refugee in host countries must follow the relevance and reasonableness test to safeguard the refugees after relocation. It may also adopt the human rights based (HRB) approach to strengthen refugee protection after such relocation. The human rights-based approach might follow three different approaches in refugee protection:⁴² a) the comprehensive human rights approach, b) the basic human rights approach, and c) the 1951 Convention approach. Comprehensive human rights protection asks for the insurance of all the human rights (civil, political, economic, or social) of

³⁷ *Butler v Attorney-General* (1999) NZAR 205 218 (New Zealand Court of Appeal).

³⁸ James C Hathaway and Michelle Foster, *The Law of Refugee Status* (Cambridge University Press 2015) 133-134.

³⁹ James C Hathaway and Michelle Foster, *The Law of Refugee Status* (Cambridge University Press 2015) 138.

⁴⁰ European Parliament, 'Directive 2011/95/EU of The European Parliament And Of The Council of 13 December 2011', Article 8 (13 December 2011) OJ L 337/9-337/26.

⁴¹ Jessica Schultz, 'EU Immigration and Asylum Law and Policy Droit Et Politique De L'immigration Et De L'asile De L'ue' (Understanding the 'internal protection alternative' (Part II) – EU Immigration and Asylum Law and Policy, March 2019). Available: <https://eumigrationlawblog.eu/understanding-the-internal-protection-alternative-part-ii/>.

⁴² Yi Chao, 'New Zealand's Approach to The Internal Protection Alternative in Refugee Status Determinations' (2016) 14(2) New Zealand Journal of Public and International Law 262.

an individual, what he used to enjoy before persecution. The basic human rights approach focuses on the basic rights (access to essential healthcare, food, water, safety, right to movement, basic education, and shelter) of a human being in the refugee host country. Lastly, the 1951 Convention approach has a checklist of human rights required for a refugee in articles 2 to 34 of the UN Refugee Convention.

Among these three approaches, countries must choose the best human rights approach for refugee relocation according to their economy. Signatory or non-signatory of the Convention might also work as a standard. In addition, the principle of non-refoulement being a customary international law and LS being an unconventional practice may best suit the basic human rights approach. In other words, the host country will take affirmative actions to ensure basic human rights of the refugees in the relocated place. Reasonableness and relevance analysis also sought for the same after safeguarding the refugees under principle of non-refoulement. The IRA and non-refoulement principle are closely connected, because both prohibit relocation or expulsion to places containing serious harm. IRA in the host country surely serves the purpose of non-refoulement principle. When local settlement is added to the practice, IRA in the host country becomes more comprehensive. Local settlement is something near to local integration.⁴³ Through local settlement refugees avail some of the basic human rights necessary for living in the host country. There are similarities between local settlement and relocation regarding the determination criteria of refugees. Before pursuing a local settlement, the host government must examine the following:⁴⁴ a) whether the local community is ready to accept the refugees; b) whether they are protected from natural disasters; c) whether there is any threat of torture or degrading treatment by the local community. Refugees' assent to move to the new place must be considered before the relocation or local settlement. Positive answers to these credentials will permit local settlement. The only difference between the two practices is IRA searches for safer places of relocation only without the matter of cohesion with the local community. LS searches for a safer place along with cohesion with the local community. During the local settlement in the host country, there is no need to examine the risks of serious harm or fear of persecution. The events that create the risk of persecution are not in existence in the case of relocation to the host country.

From the above discussion, we may say, there are different types of relocations: a) relocation within one's state; and b) relocation after becoming a refugee in the host country. Relocation within one's own state is recognized as IRA under the UNHCR Handbook of 1991.⁴⁵ It remains very much unachievable most of the time, because fear of persecution extends to the whole territory of a country. This multiplies when the perpetrator is the government itself. No relocation alternative in the country remains safe for the asylum seekers then. Secondly, relocation of refugees in the host country creates pathways for the dynamic development of International Refugee Law. It will give a systematic protection to the refugees. This remains impossible with local integration and settlement. Local integration has multiple implementation

⁴³ Jeff Crisp, 'The Local Integration and Local Settlement of Refugees: A conceptual and Historical analysis' UNHCR New Issues in Refuge Research Working Paper No. 102. Available: <https://www.unhcr.org/research/working/407d3b762/local-integration-local-settlement-refugees-conceptual-historical-analysis.html>.

⁴⁴ Jeff Crisp, 'The Local Integration and Local Settlement of Refugees: A conceptual and Historical analysis' UNHCR New Issues in Refuge Research Working Paper No. 102, 7. Available: <https://www.unhcr.org/research/working/407d3b762/local-integration-local-settlement-refugees-conceptual-historical-analysis.html>.

⁴⁵ United Nations High Commissioner for Refugees, 'Guidelines on International Protection No. 4: 'Internal Flight or Relocation Alternative' within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees (HCR/GIP/03/04)' 2 (UNHCR, 23 July 2003). Available: <https://www.unhcr.org/publications/legal/3f28d5cd4/guidelines-international-protection-4-internal-flight-relocation-alternative.html>.

problems. For example, non-signatory countries of the UN Refugee Convention will not pursue local integration of refugees.

They would rather seek temporary solutions to protect the refugees after any crisis. The local settlement remains an underdeveloped practice under IRL. It cannot ensure appropriate protection for refugees. On the other side of the spectrum, relocation remains more organized and achievable under the UNHCR Handbook. Borderless application (host and origin country) of the IRA principle would ensure better refugee protection mechanism. IRA might work as an aid to help LS for better implementation of the practice. In addition, LS aligning with relocation alternative will serve purposes for both signatory and non-signatory countries of the UN Refugee Convention. Non-signatory countries will have a scope to open new horizon of refugee protection which might become state practice in the forthcoming days. Bangladesh's case of Rohingya relocation is such an example of internal relocation in the host country.⁴⁶

IV. ROHINGYA'S RELOCATION IN BANGLADESH: LOCAL SETTLEMENT OR INTERNATIONAL RELOCATION?

Rohingyas' chances of internal relocation to their own country were impossible due to the outbreak of the crisis all over the country. Firstly, Myanmar government was the perpetrator who caused persecution of the Rohingyas.⁴⁷ The chances of safe relocation to other places in the country were unjustifiable and risky. Internal relocation always requires minimum affirmative state action to safeguard asylum seekers from threats and danger to life and liberty.⁴⁸ This was absent in the cases of Rohingyas. Secondly, aggressive non-state actors in Myanmar obstructed the process of internal relocation. Non-state actors who are the disciples of 'Theravada Buddhism (MaBaTha)' dispersed communal hatred towards Rohingyas all over the country.⁴⁹ After the participation of non-state actors in the case, the chances of internal relocation became zero. On the other side of the spectrum, more than one million Rohingya refugees are residing in Bangladesh since 2017.⁵⁰ There were several repatriation approaches after the bilateral agreements between the two countries.⁵¹ Rohingyas' unwillingness to return and Myanmar's negligent approach to take them back has caused their stay in Bangladesh to

⁴⁶ Krishna Kumar Saha, 'Rohingya Relocation and Repatriation: Bangladesh Is in the Paradox of Buridan's Donkey' (Asia Portal, 2022). Available: <https://www.asiaportal.info/rohingya-relocation-and-repatriation-bangladesh-is-in-the-paradox-of-buridans-donkey>.

⁴⁷ Human Rights Watch, 'Myanmar: Crimes against Rohingya Go Unpunished' (Human Rights Watch, 2020). Available: <https://www.hrw.org/news/2019/08/22/myanmar-crimes-against-rohingya-go-unpunished>. Hannah Beech, Saw Nang and Marlise Simons, 'Kill All You See': In a First, Myanmar Soldiers Tell of Rohingya Slaughter' (The New York Times, 2020). Available: <https://www.nytimes.com/2020/09/08/world/asia/myanmar-rohingya-genocide.html>.

⁴⁸ Yi Chao, 'New Zealand's Approach to The Internal Protection Alternative in Refugee Status Determinations' (2016) 14(2) New Zealand Journal of Public and International Law 262.

⁴⁹ Matthew J Walton and Susan Hayward, 'Contesting Buddhist Narratives: Democratization, Nationalism, and Communal Violence in Myanmar' (2014) 34-36. Available: <https://www.jstor.org/stable/resrep06518>. Also see International Crisis Group, 'Buddhism and State Power in Myanmar' (Crisis Group, 2018). Available: <https://www.crisisgroup.org/asia/south-east-asia/myanmar/290-buddhism-and-state-power-myanmar>.

⁵⁰ OCHA, 'Rohingya Refugee Crisis' (OCHA, 2022). Available: <https://www.unocha.org/rohingya-refugee-crisis>.

⁵¹ The Dhaka Tribune, 'Bangladesh-Myanmar Talks on Rohingya Repatriation Deferred' (The Dhaka Tribune, 2021). Available: <https://archive.dhakatribune.com/bangladesh/rohingya-crisis/2021/02/04/bangladesh-myanmar-talks-on-rohingya-repatriation-deferred>.

be a little longer. Considering the increasing population and environmental situation of Cox's Bazar, the Bangladesh government decided to relocate the Rohingyas to Bhashan Char.⁵²

Though the Char is low-lying land, Bangladesh has designed it with protective mechanisms for the better life of the 100,000 Rohingyas there.⁵³ In the early week of December 2020, 1600 Rohingyas were transported to Bhashan Char with their due consent for such relocation.⁵⁴ Some international agencies and NGOs have opposed the relocation citing the reasons for natural disasters and the absence of fundamental rights in the Char.⁵⁵ Bangladesh's Government reassured all the concerned agencies regarding protection. Apart from that, Bangladesh might justify its action by resorting to internal relocation alternative and whether it is a worthy candidate or not.

This article noted two fundamental tests in applying the internal protection alternative rule. One is the relevance analysis, and the other is the reasonableness analysis. Both have discussed the fact of protection during the internal relocation. Imperative answers to these tests make the 'internal relocation alternative' effective in Bangladesh following the directions and practice of UNHCR's handbook.⁵⁶ The government of Bangladesh has met the credentials of creating a safe and preserved dwelling place along with livelihood, education, medical facilities, and sufficient freedom of movement for the Rohingyas in the Bhashan Char. It somehow justifies the relocation process at any cost.⁵⁷ If we investigate the provisions of the Refugee Convention, Bangladesh is indirectly treating them with some of the rights of a refugee in a different way even if they do not have such status. These rights are not reconciled with the extensive set of rights set out in articles 3 to 34 of the Refugee Convention. Because the reconciliation with the Refugee Convention will make the situation analogous to local integration, this would have complicated the procedure for the countries that have not signed Refugee Convention. Hence, it will go for selective reconciliation of the rights under the Refugee Convention. The refugees will enjoy some non-derogable and basic rights from the Refugee Convention.

Bangladesh has endeavoured to provide the rights mentioned to the refugees in relocation area amidst growing concern of the United Nations and other international NGOs. This active movement of Bangladesh might achieve justification under the prophecy of an 'internal relocation alternative.' Generally, internal relocation alternative is the opposite of non-refoulement principle. But the same principle can be considered as an ace of the principle of non-refoulement to some extent if it happens within the host country's territory. In the case of Bangladesh, firstly, it has not pushed back Rohingyas to Myanmar. Secondly, after giving them

⁵² Shamsher M Chowdhury, 'For Rohingyas, Bhashan Char Is a Chance at a Better Life' (The Daily Star, 13 October 2021). Available: <https://www.thedailystar.net/views/opinion/news/rohingyas-bhashan-char-chance-better-life-2196846>.

⁵³ The Business Standard, 'An inside Look at Bhashan Char – the New Home for Rohingyas' (The Business Standard, 2019). Available: <https://www.tbsnews.net/rohingya-crisis/inside-look-bhashan-char-new-home-rohingyas>.

⁵⁴ The UNB, 'Don't Worry about Rohingya Relocation to Bhasan Char: Dhaka to UNHCR' (The UNB, 2020). Available: <https://unb.com.bd/category/Bangladesh/dont-worry-about-rohingya-relocation-to-bhasan-char-dhaka-to-unhcr/61779>.

⁵⁵ Mahmud Hossain Opu, 'Rohingya Refugees: From Crowded Camps to Isolated Island' (Gallery News | Al Jazeera, 31 December 2020). Available: <https://www.aljazeera.com/gallery/2020/12/31/in-pictures-rohingya-refugees-sent-to-remote-bangladeshi-island>.

⁵⁶ Jeff Crisp, 'The Local Integration and Local Settlement of Refugees: A conceptual and Historical analysis' UNHCR New Issues in Refuge Research Working Paper No. 102, 3-4. Available: <https://www.unhcr.org/research/working/407d3b762/local-integration-local-settlement-refugees-conceptual-historical-analysis.html>.

⁵⁷ Sakhawat Sajjat Sejan, 'The Dynamics of Rohingya Relocation under 'Internal Relocation Alternative' (The Daily Star, 28 December 2020). Available: <https://www.thedailystar.net/law-our-rights/news/the-dynamics-rohingya-relocation-under-internal-relocation-alternative-2018961>.

refuge, it proceeded with a planned relocation.⁵⁸ Not being a signatory to the Refugee Convention, Bangladesh is comprehensively preserving the Rohingyas on humanitarian grounds. The relocation alternative is an outcome of this humanitarian response.

The Rohingyas of Bhasan Char resides in the Char with many facilities compared to the refugees in the camps of Cox's Bazar. For example, they have housing facilities, sources of income generation, wage-earning employment, right of association, identity card, and freedom of movement within the Char and outside the Char with reasonable restrictions.⁵⁹ The right to movement is not fully consistent with Article 26 of the Convention. Article 26 of the Convention provides regulations for the refugees regarding movement, like the foreigners' movement in a country. Hence the Rohingyas face a bit more restrictions than conventional refugees in other countries and fewer restrictions from the encamped Rohingyas in Cox's Bazar. Their freedom of movement is neither fully consistent nor fully inconsistent with Article 26 of the Convention. Undoubtedly the right to movement in Bhasan Char is better than the camps of Cox's Bazar. Moreover, they receive public relief and rations from the Government. Rohingyas have access to the courts of Bangladesh, and Rohingyas in Bhasan Char can own moveable properties. Children of the Rohingyas in Bhasan Char can pursue primary education too. They can move outside the Char by taking permission from the concerned authority, which is claimed to be flexible by different NGO workers from Bhasan Char. Even they can go fishing and pursue other wage-earning tasks by submitting their ID card to the authorities.

Overall, there remain three stages of protection for the refugees in a host country after considering the case of Bangladesh. Firstly, when the Rohingyas arrive in Bangladesh, the GoB has given them protection by not pushing them back. Secondly, the protection standard was examined to weigh the necessity of relocation of Rohingyas within the country. Thirdly, there are appropriate protection measures along with minimum human rights after relocating the refugees. The first layer of protection follows the principle of non-refoulement. The second layer of protection asks for the relocation of refugees by taking aid from local settlement practice if practicable. And the last layer of protection seeks insurance for the fundamental human rights of the refugees. The reasonableness and relevance test aid the second layer. Whereas the basic human rights-based approach of refugee protection benefits the third layer after relocating the refugees. Refugee Appeal 76044 has settled these standards for better relocation prospects.⁶⁰ Bangladesh's version of relocation has followed these standards comprehensively. Ensuring three layers of protection, Bangladesh has relocated Rohingyas. It resembles the local settlement practice. Nevertheless, local settlement under international refugee law always requires assimilation with the host community. It is neither desirable nor practicable in the case of Rohingyas in Bangladesh.

At the same time, repatriation requires voluntary return which failed three times due to Rohingyas' unwillingness to return and Myanmar's inadvertent approach to taking them back. Bangladesh's consensual relocation of refugees opens a new horizon for international refugee law. Bangladesh has used internal relocation alternative as aid for local settlement in the refugee host country. Undoubtedly, the approach needs examination, re-examination, discussion, and criticism. Nevertheless, this stance of Bangladesh will create a nexus between

⁵⁸ Malang Faye, 'A Forced Migration from Myanmar to Bangladesh and beyond: Humanitarian Response to Rohingya Refugee Crisis' (2021) 6 *Journal of International Humanitarian Action* 13.

⁵⁹ The New Age, 'Rohingyas Visit Relatives in Bhasan Char' (The New Age, 2020). Available: <https://www.newagebd.net/article/161488/bangladesh-allows-rohingyas-to-visit-relatives-in-bhasan-char>.

⁶⁰ *Refugee Appeal No 76044* (2008) NZRSAA 80 (Refugee Status Appeals Authority).

the principle of non-refoulment and the internal relocation principle by extending the dynamics of relocation from the refugee origin country to the host country till the disposal of the *Gambia v Myanmar* case.⁶¹

V. CONCLUSION

Refugee law is growing its branches with the newer refugee crisis occurring around the world. Firstly, when the Convention was adopted in 1951, right after the Second World War, it was Eurocentric because Europe was the epicentre of the refugee crisis. After a few years, the global community started to witness refugee crises in different parts of the world. The 1967 protocol regarding refugees finally expanded the boundaries of the Refugee Convention.⁶² The Convention now befits any refugee crisis across the world. Secondly, the principle of non-refoulment, local settlement practice, or internal relocation alternative have grown with the necessity of time. A few of these words directly connect with the provisions of the Refugee Convention. They have grown through customary practices. Adopting the different handbooks at different times, UNHCR helps refugee law shape itself in a newer dimension with documentary acceptance being an ever-expanding subject.

It embraces the changes of practice to mitigate a particular situation. Generally, the durable solutions under the Refugee Convention are voluntary repatriation, resettlement, and local integration.⁶³ Nevertheless, refugee law keeps searching for comprehensive mechanisms to protect the refugees in different crises. Broadening the aspect of the internal relocation alternative might be such an exception. According to the present practice, internal relocation alternative is only available in the origin country. Local settlement (an underdeveloped practice) is used to give asylum to refugees for an ad-interim period in the host country. Local settlement resembles internal relocation alternative in terms of criteria. Unfortunately, due to a lack of proper attention, it does not provide comprehensive guidelines to relocate the refugees to a host country, whereas internal relocation alternative, as a principle, provides a comprehensive relocation plan. Refugee host countries might consider internal relocation a practice to aid or replace the local settlement.

Here, Michigan Guidelines on internal relocation alternative might be considered to understand internal relocation as aid.⁶⁴ These guidelines see internal relocation as a meaningful antidote to provide protection to the refugees in the proposed IRA site. The asylum seekers are free from the fear of persecution is an important prerequisite to relocating them. The relocation shall serve as the antidote to ensure minimum local cohesion with the local community. To sum up, according to Michigan Guidelines, an internal relocation alternative must be an antidote to the fear of persecution and the fact of serious harm. The article proposes to benefit refugee law through internal relocation in the host country, which will work as an antidote to local settlement and non-refoulment. Local settlement is not as comprehensive as local integration

⁶¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar)* ICJ GL No 178. Available: <https://www.icj-cij.org/case/178>.

⁶² United Nations High Commissioner for Refugees, 'Implementation of the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees' (UNHCR, July 1989) 14. Available: <https://www.unhcr.org/excom/scip/3ae68cbe4/implementation-1951-convention-1967-protocol-relating-status-refugees.html>.

⁶³ UNHCR, 'Solutions.' Available: <https://www.unhcr.org/solutions.html>.

⁶⁴ James C Hathaway, 'The Michigan Guidelines on the Internal Protection Alternative' (1999) 21(1) Michigan Journal of International Law 134, 137.

as a solution to a refugee crisis. That notwithstanding, the projection of the components of internal relocation alternative into local settlement practice will make LS human rights centred. The IRA area must be stable and durable under the blueprint of the approach and international refugee law as well. The protection agent must ensure physical safety and build governmental infrastructures and stability for at least twelve to eighteen months.⁶⁵

To some extent, Bangladesh accomplished all these benefactors regarding physical safety, building infrastructures, and stability. Bangladesh's contribution to refugee law's jurisprudence makes our proposition more reasonable and practicable. Moreover, the internal relocation alternative's jurisdiction shall be re-examined. It might be made open for both the countries relating to the refugee crisis, *i.e.*, the origin and host country. Though the host country has local settlement practices, it may also include internal relocation alternative as a better protection mechanism. Here, IRA will not be the opposite of local settlement but rather a benefactor to it for a better refugee protection regime. Hence, this article has advocated for the assimilation of internal relocation alternative in the refugee host countries as an interim solution to aid local settlement in the refugee host country. This will undoubtedly open a new era for International Refugee Law.

⁶⁵ Lauren Sanders, 'Finding a Reasonable Alternative: An Integrated Approach to Refugee Law, Relocation and the Internal Flight Alternative' (2009) ANU College of Law Research Paper No 09-05.