



A Newsletter on Refugee and Migratory Movements

UDBASTU

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THE SOUTH ASIA DECLARATION ON REFUGEES

Adopted by the Eminent Persons Group (EPG) on
Refugee and Migratory Movements in South Asia in January 2004

The Regional Consultation on Refugee and Migratory Movements in South Asia was initiated by the former United Nations High Commissioner for Refugees Mrs. Sadako Ogata in 1994. The purpose was to provide a forum for discussing refugee issues at the South Asia regional level so as to come up with strategies and common approaches for strengthening refugee protection and intensifying the search for durable solutions. Eminent persons were approached in Bangladesh, India, Nepal, Pakistan and Sri Lanka – who became members of a group (the Eminent Persons Group or EPG) tasked with leading the forum forward in the debate on refugees.

At the Seventh Informal Regional Consultation of the EPG in New Delhi 15 – 16 December 2002, the EPG concluded that it was necessary to have a Declaration that would serve as a platform for reinforcing refugee protection principles and reiterating the need for states to enact national refugee legislation. The Declaration will provide a harmonised approach to refugee protection for the region.

DECLARATION

Preamble

Recognising that

Countries in the South Asia region, with their porous borders, experience mixed flows of populations across borders including refugees in need of protection.

States in South Asia have been hospitable towards refugees and continue to offer protection and assistance to large numbers of refugees.

Countries in South Asia are also faced with internally displaced persons due to internal conflict, human rights violations and other forms of violence.

Despite the magnitude of refugee movements, none of the South Asian countries are signatories to the 1951 Convention Relating to the Status of Refugees or the 1967 Protocol, nor do they have any national refugee legislation or any regional instrument specific to refugees.

The absence of comprehensive regional strategies for resolving issues of forced displacement has resulted in the lack of a harmonised regional approach to these issues.

Issues of illegal migration continue to be a cause of serious concern for receiving states and require to be addressed differently than refugee situations.

The absence of a national legal framework for dealing with refugees in countries in the region gives rise to disparities in the treatment of refugees as well as to uncertainties in approaches to refugee problems, and risks arbitrariness in dealing with refugees.

In this issue:

The South Asia Declaration on Refugees	1
Seminar on <i>Riverbank Erosion and Displacement in North West Bangladesh</i>	5
2 nd Workshop on <i>Social Science Research and Migration</i>	7
Publication	7
Activities	8

The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol remains central to international protection of refugees and may be supplemented by regional instruments that address specificities of refugee situations in the regions concerned.

The granting of asylum by a state to refugees is a non-political act and should not be considered an unfriendly act. It is humanitarian in nature, with a foundation in international law, and should be respected by all states. International refugee law provides tools to exclude persons who do not deserve international protection due to serious non-political criminal acts, or acts against humanity or peace.

The EPG has formulated a model national refugee law that is meant to provide guidance to states in dealing with asylum seekers and refugees and their treatment, and in enacting national refugee laws.

RECOMMENDS TO STATES IN SOUTH ASIA:

To continue to respect the principles and procedures contained in the model national law on refugees adopted by the South Asian EPG in Dhaka in November 1997, which are as follows:

1. Purpose of the Act

The purpose of this Act is to establish a procedure for granting of refugee status to asylum seekers, to guarantee to them fair treatment, and to establish the requisite machinery therefore. For the purposes of this Act the grant of refugee status shall be considered a peaceful and humanitarian act, shall not be regarded as an unfriendly act and does not imply any judgement on the country of origin of the refugee.

2. Terminology

In this Act, unless the context otherwise requires:

- I 'Asylum seeker' means a foreigner who seeks recognition and protection as a refugee.
- II 'Refugee' means a 'refugee' defined in Section 4 and includes dependants of persons determined to be refugees.
- III 'Country of origin' means the refugee's country of nationality, or if he or she has no nationality, his or her country of former habitual residence.
- IV 'Commissioner' means the 'Commissioner for Refugees', an executive officer, referred to in Section 8 of this Act.
- V 'Refugee Committee' means the 'Committee' established as an appellate authority by the Government under Section 8 of this Act.

3. Non-Obstante Clause

The provisions of this Act shall have effect notwithstanding the provisions of any other law including *The Foreigners Act*.

4. Definition of Refugee

A refugee is:

- a. any person who is outside his or her country of origin, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of a well-founded fear of persecution on account of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion,¹ or,
- b. any person who owing to external aggression, occupation, foreign domination, serious violation of human rights or other events seriously disrupting public order in either part or whole of his or her country of origin, is compelled to leave his or her place of habitual residence in order to seek refuge in another place outside his or her country of origin.²

5. Persons who shall be excluded from refugee status

A person shall be excluded from refugee status for the purpose of this Act if:

- a. he or she has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- b. he or she has committed a serious non-political crime outside the country of asylum prior to his or her admission into this country as a refugee.³

6. Principle of Non-Refoulement

- a. No refugee or asylum seeker shall be expelled or returned in any manner whatsoever to a place where there are reasons to believe his or her life or freedom would be threatened on account of any of the reasons set out in subsections (a) or (b) of Section 4.
- b. The benefit of the present provision may not, however, be claimed by a refugee or asylum seeker where there are reasonable grounds for regarding him or her as a danger to the security Of the country or who has been convicted by a final judgement of a serious crime and constitutes a danger to the community.

7. Application

- a. Where an asylum seeker requests to be recognised as a refugee either at the point of entry or subsequently, the country concerned shall act in accordance with the principle laid down in Section 6 and refer the case to the Commissioner of Refugees for disposal.
- b. Where an application is made by an asylum seeker for determination of his or her status as a refugee, pending determination of such status, no restrictions shall be imposed on the asylum seeker save and except those that are necessary in the interests of sovereignty and integrity of the State or public order.

8. Constitution of the Authorities

In order to implement the provisions of this Act the Government shall appoint:

- i. Commissioners for Refugees; and
- ii. A Refugee Committee as the Appellate authority.

9.

- a. A Commissioner for Refugees shall receive and consider applications for refugee status and make decisions.
- b. The Commissioners for Refugees shall be of a rank not less than that of an Administrative Head of a District.

10.

- a. The Refugee Committee shall be the appellate authority and receive and consider applications for refugee status *suo moto*, or those made by the asylum seekers in appeal against the decision of the Commissioner.
- b. The Refugee Committee shall consist of the following three members:
 - i. a sitting or retired High Court Judge designated by the Government in consultation with the Chief Justice of the Supreme Court as Chairperson,
 - ii. two independent members conversant with refugee matters.

11. Finality of Order

Every order of the Refugee Committee shall be final.

12. Determination of Refugee Status⁴

- a. An asylum seeker who wishes to claim refugee status under the terms of this Act shall be heard by a Commissioner for Refugees before the determination of his or her status.
- b. During the Refugee determination interview, the asylum seeker shall be given necessary facilities including the services of a competent

interpreter where required, and a reasonable opportunity to present evidence in support of his or her case.

- c. The asylum seeker, if he or she wishes, shall be given an opportunity, of which he or she should be duly informed, to contact a representative of UNHCR.
- d. The asylum seeker, if he or she wishes, shall be entitled to be assisted in the determination of the status by a person of his or her choice including a legal practitioner.
- e. Where an application by the asylum seeker is rejected, the Commissioner for Refugees shall give reasons for the order in writing and furnish a copy of it to the asylum seeker.
- f. If the asylum seeker is not recognised as a refugee, he or she could be given a reasonable time to appeal to the Refugee Committee as the appellate authority for reconsideration of decision.
- g. If the asylum seeker is recognised as a refugee, he or she shall be informed accordingly and issued with documentation certifying his or her refugee status.

13. Persons who shall Cease to be Refugees

A person shall cease to be a refugee for the purpose of this Act if:

- a. he or she voluntarily re-avails himself or herself of the protection of the country of his or her origin; or
- b. he or she has become a citizen of the country of asylum; or
- c. he or she has acquired the nationality of some other country and enjoys the protection of that country, or
- d. he or she has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution; or
- e. he or she can no longer, because the circumstances in connection with which he or she was recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of his or her nationality.

14. Rights and Duties of Refugees

- a. Every refugee so long as he or she remains within this country, shall have the right to:
 - i. fair and due treatment, without discrimination on grounds of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion.

- ii. receive the same treatment as is generally accorded to 'aliens under 'the Constitution or any other laws and privileges as may be granted by the Central or State Governments.
 - iii. receive sympathetic consideration by the country of asylum with a view to ensuring basic human entitlements.
 - iv. be given special consideration to their protection and material well-being In the case of refugee women and children.
 - v. choose his or her place of residence and move freely within the territory of the country of asylum, subject to any regulations applicable to aliens generally in the same circumstances.
 - vi. be issued identity documents.
 - vii. be issued travel documents for the purpose of travel outside and back to the territory of the country of asylum unless compelling reasons of national security or public order otherwise require.
- b. Every refugee shall be bound by the laws and regulations of the country of asylum.

15. Situations of Mass Influx

- a. The Government may, in appropriate cases where there is large-scale influx of asylum seekers, issue an order permitting them to reside in the country without requiring their individual status to be determined under Section 12 of this Act, until such time as the reasons for departure from the country of origin have ceased to exist, or the government decides that their status should be determined on an individual basis under this Act.
- b. In the case of asylum seekers who have been permitted to reside in the country under this provision, they may be subject to reasonable restrictions with respect to their location and movement, but will otherwise be granted normally the same rights as refugees under this Act.

16. Refugees Unlawfully in the Country of Refuge

The Government shall not impose penalties, on account of their illegal entry, or presence, on refugees who, coming directly from a place where their life or freedom was threatened in the sense of Section 4, enter or are present in the country of asylum without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

17. Voluntary Repatriation⁵

The repatriation of refugees shall take place at their free volition expressed in writing or other appropriate means which must be clearly expressed. The voluntary and individual character of repatriation of refugees and the need for it to be carried out under conditions of safety to the country of origin shall be respected.

18. Rules and regulations

The Government may frame rules and regulations, from time to time, to give effect to the provisions of this Act.

To continue to respect the principle of *non-refoulement*, which includes admission of genuine and bonafide asylum seekers and refugees at borders.

To continue to have a flexible approach in the event of a large-scale refugee influx to ensure that temporary protection be provided at the very least.

To continue their commitment to host and assist refugees who remain in their territory, including through registration and the granting of lawful status, provided they do not pose any danger to the security of the state.

To accede to the 1951 Convention Relating to the Status of Refugees and/or the 1967 Protocol.

To enact national refugee legislation based on the model law (referred to in the first recommendation), which mechanisms can be established to identify refugees from among mixed population flows and which makes provision for ensuring the basic rights of refugees.

To be liberal, as far as possible, in permitting refugees to work and to become self-reliant.

That pending the establishment of state mechanisms for refugee status determination and state structures for their protection, the role of UNHCR in this regard is respected and facilitated.

To endeavour to seek durable solutions for refugees, especially for those who remain in protracted situations.

To respect a refugee's right to repatriate to their country of origin, or to their previous place of habitual residence.

To continue to protect internally displaced persons, assisting them and seeking durable solutions to their plight in collaboration with international and national agencies.

RECOMMENDS TO UNHCR:

To continue its activities under its mandate and, in cooperation with governments, to protect refugees and find a durable solution for them.

To continue to support the requesting governments to address the needs of internally displaced persons.

To encourage states in South Asia to address and to seek solutions to refugee situations, with guidance from the Agenda for Protection adopted by the Executive Committee of UNHCR in 2002.

To monitor the implementation of this declaration.

Notes

1. This part of the definition is based on Article I (A) (2) of the 1951 Convention on Refugees, which has universal approval for the refugee definition. However, taking note of the fact today's conflicts are linked to inter-ethnic violence also, ethnic identity is added in the definition as given in the 1951 Convention on Refugees. It is also understood that membership of a particular social group includes gender-based persecution.
2. This part of the definition is based on a broader definition incorporated in Article 1 (2) of the 1969 OAU Convention. Remembering that promotion of human rights throughout the world is one of the purposes of the United Nations, and realising that in practice there are massive violations of human rights in many parts of the world, and also finding that the Cartagena Declaration on Refugees in 1984 incorporates massive violation of human rights as a ground for treating asylum seekers as refugees, the same is incorporated in this part of the definition.
3. This provision does not mean that persons having committed political crimes are automatically to be considered as refugees. On the contrary, when there are serious reasons to believe that the asylum-seeker has

committed a politically motivated crime to endanger the right to life or physical integrity of another person, this asylum-seeker would normally not be recognised as a refugee, unless the punishment for such crime is expected to be discriminatory or disproportionate.

4. This Article is based on UNHCR ExCom Conclusion No. 8(XXVIII)-1977 on 'Determination of Refugee Status'.
5. This provision is derived from UNHCR ExCom Conclusion 40 (XXXVI)-1985 on 'Voluntary Repatriation', at para (b).

The following delegates adopted the Declaration. The consent of the Indian EPG was secured through electronic and telephonic means.

Bangladesh

Mr. Faruq A. Choudhury, Adviser BRAC, Former Foreign Secretary

Dr. Chowdhury Rafiqul Abrar, Coordinator, Refugee and Migratory Movements Research Unit, Dhaka University

Pakistan

Justice (Retd) Nasim Hassan Shah, Former Chief Justice

Dr. Muhammad Azam Chaudhry, Senior Partner, Azam Chaudhry Law Associates

Professor Ijaz Hussain, Department of International Relations, Quaid-e-Azam University, Islamabad

Professor Syed Sikandar Mehdi, Department of International Relations, University of Karachi

Sri Lanka

Hon. Sri Wijeratne, Member, Constitutional Council, Chairman Legal Aid Foundation

Nepal

Justice (Retd) Vishwanath Upadhyay, Former Chief Justice Supreme Court

Mr. Yadav Kant Silwal, Former Secretary General, SAARC

Mr. Daman Nath Dhungana, Former Speaker House of Representatives

Seminar Urges for DEVELOPING A COMPREHENSIVE DATABASE ON VICTIMS OF RIVERBANK EROSION

Speakers at a national seminar stated that government plan and other documents should focus on the marginalised groups such as the displaced due to riverbank erosion. They also underscored the need to develop a comprehensive data-base to understand the magnitude of riverbank erosion that create havoc to the lives of tens of thousands of people each year. Calls were also directed to NGOs to develop special credit and service programmes that would be custom-made for this hard-core poor group who does not usually qualify for NGO credit. Large NGOs were urged to design such programmes as their 'corporate responsibility'.

The day-long seminar was organised by the Refugee and Migratory Movements Research Unit (RMMRU) at the CIRDAP auditorium on 22 October 2003 to discuss the findings of a research on 'Riverbank Erosion and Displacement in North West Bangladesh'. The study was conducted by a RMMRU team under Dr. C R Abrar and S N Azad, and was commissioned by North Bengal Institute of RDRS, Bangladesh and Swiss Agency for Development and Cooperation (SDC).

Working Session I

Riverbank Erosion: Nature and Impact on the Displaced

In the first working session, Dr. C R Abrar explained the context of riverbank erosion in Bangladesh and the purpose of the research. He noted that a large number of people are affected by riverbank erosion every year, but they do not receive support from government or non-government sources. Mohammad Jalal Uddin Sikder narrated research findings with regard to impacts of riverbank erosion on social and economic lives of the affected.

Prof. Nazrul Islam of the Centre for Urban Studies pointed out that about one million people are displaced each year. He stated that this results in development of slums in urban areas. He further underscored the need for developing a national habitat policy. Dr. Zafarullah Chowdhury of *Gana Shasthya Kendra* stated that there has been general lack of interest of big NGOs to provide service to the displaced people such as those in the *char* areas. He also highlighted the plight of women in such adverse situation.

Working Session II:

Livelihood Strategies of the Displaced

In the second session Sayed Nurullah Azad elaborated research findings on the livelihood strategies adopted by the displaced people. He suggested that in preparing for such disaster, local knowledge can be harnessed.

In the open discussion Dr. Saidur Rashid of Jahangirnagar University suggested that modern technologies such as the Global Positioning System (GPS) or Remote Sensing Database through aerial photography may be used in order to develop a database. Dr. Q K Ahmad of *Bangladesh Unnoyon Parishad* felt that there is a tendency among researchers to protect data and information. He termed it as unfortunate and called for more openness and pooling of information.

Working Session III:

Experience Sharing by Stakeholders

In the third working session a lively discussion took place among the stakeholders on sharing of work experiences in the riverbank erosion-prone areas. It was pointed out that the affected groups should be involved in developing any policy with regard to riverbank erosion and displacement. It was also urged that the government should provide support to the NGO programmes in *char* areas. The participants felt adoption of an integrated approach in this regard.

Muyeed Chowdhury of BRAC was critical of ad hoc solutions to problem that involved loan money and suggested comprehensive policy framework to address

the problem. Eminent water resources expert Dr. Hamidur Rahman Khan informed that about 1,200 kilometers of riverbank is actively eroding and more than 500 kilometers face severe problems related to erosion in Bangladesh. He also stated that satellite image studies of the Granges Brahmaputra-Middle Meghna rivers between 1982 and 1992 show that 106,300 hectares was lost to erosion, while only 19,300 hectares was accreted. This amounted to a net loss of 8,700 hectares annually, most of which is agricultural land. B.M.M. Mozharaul Huq, Secretary, Ministry of Disaster Management and Relief informed the audience about government programmes initiated in the riverbank erosion-prone areas.

Working Session IV:

Mobilising Support for the Displaced

In the fourth working session Rizwana Hasan of Bangladesh Environmental Lawyers' Association (BELA) suggested that the court can give directives to the government for taking steps to mitigate the sufferings of riverbank erosion victims. She stated that the government should develop priorities before taking any initiative. She identified preparedness to be the most important in providing support to the displaced. Afsan Chowdhury of Bangladesh Rural Advancement Committee (BRAC) suggested that there should be a cell in every ministry consisting of representatives of civil society so that implementation of policies can be ensured.

Concluding Session

Chowdhury Kamal Ibne Yusuf, the Minister for Disaster Management and Relief, in his address as the chief guest called for concerted efforts of the government, academics, NGOs and development partners in mitigating the plights of the displaced people. He also deplored that despite such large-scale adverse consequences riverbank erosion is yet to be recognised as a natural disaster by the international community.

The chair of the concluding session, Prof. S M A Faiz, Vice Chancellor of Dhaka University highlighted the importance of quality research in framing appropriate policy response. Kamaluddin Akbar of RDRS, also spoke in the concluding session and explained the background of the research.

The seminar was also addressed by Prof Shafique uz Zaman of Dhaka University and Shahdeen Malik of RMMRU. A large number of academics, civil society activists and NGO representatives attended the seminar.

Reporter:

Shahzada M Akram

2nd Workshop on SOCIAL SCIENCE RESEARCH AND MIGRATION HELD

Speakers at a workshop stressed the need for collaborative and inter-disciplinary research on migration. They identified that all types of migration, internal and international, forced and voluntary, and long-term and short-term, are complex processes. They also viewed that migration has become a global phenomenon that needs to be properly managed so that individuals and states can benefit from it. Speakers also underscored that there is a strong need for effective linkage between policy formulation and empirical research. These issues were discussed at a three-day residential workshop on *Social Science Research and Migration*, organised by the Refugee and Migratory Movements Research Unit (RMMRU) from 19–21 October 2003 in Dhaka, in collaboration with the British Council. It was second such workshop organised. Participants comprised of faculty members of various universities, representatives of NGOs and research institutions.

The workshop was divided into 12 working sessions. Dr. Tasneem Siddiqui, Professor in Political Science and Chair of RMMRU explained the rationale and training method of the workshop. In the first working session, discussion took place on developments in social science research. This session covered different theories and approaches to social science research and role of theoretical framework in designing a research. Various qualitative research methods were covered in the second working session. In the third working session, various techniques of quantitative research methods were introduced to the participants.

In the fourth working session, different types of internal and international migration were discussed. Group work was conducted in the fifth session. Theories on the causes of migration were discussed in the following session. A documentary film titled

Frozen Moments: Sylheties in the UK was screened in this session. 'Theories of Consequences of Migration' was the issue of discussion in the seventh working session. Working Session VIII focused on the link between trafficking and migration.

On day three, online resources on migration was introduced. Research experiences were shared by a few eminent researchers in the subsequent session. The RMMRU produced documentary titled *Another Horizon* was screened in this session to underscore how research could inform policy making. The eleventh working session dealt with different techniques of conducting a social research. This included how to develop a research proposal, how to prepare a report, and how to cope with challenges in field research. Professor M. Asaduzzaman, Chair of the University Grants Commission, distributed certificates among the participants in the concluding session that rounded up with a dinner at a local restaurant. Representatives from the British Council were also present.

Eminent researchers, academics and NGO activists conducted the workshop. Professors Munirul Islam Khan, Salahuddin M Aminuzzaman, A K M Nurun Nabi, Gitiara Nasreen, C R Abrar and Tasneem Siddiqui of the University of Dhaka, Dr. Hossain Zillur Rahman of Power and Participation Research Centre (PPRC), Dr. Iqbal Alam Khan of *Proshika*, Mr. M Shahidul Haque, Regional Representative of International Organization for Migration (IOM), and Shahzada M. Akram and Sayed Nurullah Azad of RMMRU acted as resource persons.

Reporter:
Shahzada M Akram

PUBLICATION

Refugee Protection: A Guide to International Refugee Law, translation into Bangla by Shahzada M Akram and Syeda Rozana Rashid, RMMRU, 2003, pp. 166.

The year 2001 marked the 50th Anniversary of the United Nations Convention relating to the Status of Refugees. The Convention was a landmark in the settling of standards for the treatment of refugees. It incorporated the fundamental concepts of the refugee protection regime and has contributed to remain the cornerstone of that regime of the present day. The 1967 Protocol expanded the scope of the Convention, as the problem of displacement spread around the world. However, the changed nature of world politics and economy along with the growth of asylum seekers has made the process of refugee protection more complex, especially for the asylum countries. To this effect, the members of parliament have an important role in developing policies with regard to granting asylum in the respective country. As lawmakers,



they can encourage accession to the 1951 Refugee Convention and its 1967 Protocol, and other international and regional agreements that have not yet been ratified. They can also design and adopt national refugee legislation that conforms to international law and standards, and oversee their implementation.

The original version of this handbook in English aimed to help members of Parliament to become familiar with general principles of international refugee law and to learn how they are implemented, so they can fully discharge their responsibilities. It was jointly published by the UNHCR and International Parliamentary Union. Although Bangladesh has experiences of both refugee producing and receiving since its independence, it still lacks a definite refugee protection policy. Literature in Bangla on this issue is also inadequate. This translation is the second of such initiative by RMMRU.

ACTIVITIES OF THE UNIT

October – December 2003

Workshop: A two-day residential workshop on *Social Science Research and Migration* was organised by the Refugee and Migratory Movements Research Unit (RMMRU) from 19–21 October 2003 in Dhaka, in collaboration with the British Council. It was the second such workshop organised by the Unit. Participants comprised of faculty members of various universities, representatives of different NGOs and research organisations.

Seminar: A day long National Seminar on *Riverbank Erosion and Displacement in North-West Bangladesh* was organised at CIRDAP Auditorium in Dhaka, on 22 October 2003 to disseminate findings of a study that was commissioned by Rangpur-Dinajpur Rural Service (RDRS) Bangladesh and Swiss Agency for Development and Cooperation (SDC), Dhaka.

Publication: The translation of *Refugee Protection: A Guide to International Refugee Law* by UNHCR and Inter-Parliamentary Union was published by RMMRU in Bangla. The original version in English was translated by Shahzada M Akram and Syeda Rozana Rashid of RMMRU.

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