

REFUGEE WATCH

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Marginalization and Exclusion: Politics of Non-Citizen Rights in Postcolonial South Asia

By

Nasreen Chowdhory *

The state-building processes in postcolonial societies were responsible for developing a particular trajectory of accommodation for minority rights. *State-building* is defined as “a process of centralization”¹ initiated by a bureaucracy through coercion over a particular territory. The state represents a set of institutions with an extreme coercive power of domination and an autonomous structure of power with a monopolization of the means of force,² and it professes to protect territorial integrity, which follows the Weberian idea of state “as an organisation that claims a monopoly within a fixed territory over a legitimate use of violence,”³ but Schmitter asserts that the “state is also a modern amorphous complex agency with ill-defined boundaries, performing a great variety of not very distinctive function.”⁴ The typical nature of state-formation in South Asia was beset with the arduous task of accommodating the diverse needs of an ethnically divided society.

Some states followed the policies of “homogenization” wherein the majority community tends to be the dominant group (where subordinate groups may not be forced to assimilate), whilst other countries (states) adopt a relatively pluralist policy of accommodation with a strong state to counter divisive tendencies emanating from societal needs. ⁵Essentially, in these societies, this kind of state-formation had an impact on state-building and the policies of accommodation. Tilly identifies this homogenization as the “process of internal consolidation and concomitant differentiation of the internal and external aspects of the state”⁶ in which a state assumed absolute control of the internal structure. While explaining the typical processes of state-building that subscribed to the notion of the modern nation-state as a “conceptual community,” Giddens asserts that “the unity of the national state has a cultural dimension” but ignores the constitutive role of culture and its

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heterogeneity.⁷ The construction of the modern nation-state created a moral community, yet it demarcated belonging (for example, inclusion and exclusion) and, predictably, it pushed a certain number of people outside its territory. Both Tilly and Giddens discuss an idea of a homogenized state that adopts different strategies of homogenization by means of forced assimilation, expulsion, or extermination of its members.

Migdal argues that social forces in a society can be distinguished easily from the state forces, as state and societal forces exist in a continuum. The distinctiveness of the state as an institutional structure may vary based on region and patterns of domination can be traced back to the distinctive kind of, and nature of, the history of state-formation, which in turn shapes state capabilities,⁸ and its functioning capacity as state has the power to penetrate society, regulate social relations, and extract and appropriate resources. The image of a strong state has remained a fundamental phenomenon in most developing countries. In South Asia, state-formation⁹ and the subsequent nation-building project aimed at including people of multi-ethnic origins went forward, but it succeeded only in a few instances. Thus, state exists within two kinds of boundaries: the first is based on territoriality and the other is the state-society divide that tends to co-opt the state structure within the societal framework. The structural features in state-formation should be an on-going process rather than a one-time phenomenon. The structural features of states involve the entire set of rules and institutions involved in making the state function as a unit, in regards to managing day-to-day affairs and policymaking. Despite misgivings regarding the functioning of state power, the state as an institutional structure remains in a position of authority to determine the membership of those living within the territorial domains of its state structure.

Despite the shared colonial history in the South Asia region, the experiences of Sri Lanka, East Pakistan, and later Bangladesh vary remarkably from that of India, which has a clearly stipulated need to be multicultural to accommodate pluralist tendencies. Countries like Sri Lanka and Bangladesh failed to accommodate completely certain minority groups. Whereas the states of Sri Lanka and Bangladesh adopted a unitary model as opposed to a federal system with a bifurcation of power distribution, India adopted a federal system. In India, the strong party system and the accommodation of linguistic demands rather than religion (with the exception of religious laws) facilitated the process of nation-building where degrees of state autonomy were different. Rudolph and Rudolph characterize the Indian state as semi-autonomous or “constrained.”¹⁰ But Kohli denies that the Indian state had complete autonomy and asserts that it is “weak.”¹¹ However, Pranab Bardhan disagrees with Kohli’s assertion and points out that the Indian state was able to develop policies independently of “goals and aspirations of propertied class.”¹²

The state structure in Sri Lanka and Bangladesh was more complex than the structure in India: the unitary states in these two countries failed to accept pluralism as a cardinal rule of accommodation. Moreover, the duality of the weak state and strong societal tendencies resulted in strong separatist movements first in East Pakistan and later in Bangladesh. Both Sri Lanka and

Bangladesh had originally adopted the middle path and opted to uphold the dominant cultural politics by way of dominance of a unitary state and majority culture. Edrisinha asserts that Sri Lanka's first Constitution had some basic provisions to protect minorities in Section 29(2) to ensure the equality of all religions and create a political barrier against the imposition of majority rights.¹³ However, post-independent Ceylon/Sri Lanka failed to abide by this Section of the Constitution aimed at countering the "bulwark of majoritarianism" in the Sri Lankan polity. The two Republican constitutions of 1972 and 1978 weighed heavily in the favour of the majority—the Sinhalese community. The 1972 Constitution elevated the position of Buddhism as a state religion to a new height that was a turning point in the ethnic relations in Sri Lanka. The 1978 Constitution caused the entrenchment of the feelings of alienation further among the minority Tamil community, as Buddhism acquired the foremost position in the Constitution and as questions of Tamil language failed to be addressed. Moreover, the constitutional reforms of 1995 retained the provisions of "Buddhist primacy."¹⁴ Uyangoda and Bastian argue that the nature of the state during colonial and post-independent Ceylon did not have adequate means to accommodate Tamil sentiments and aspirations based on differences of language, historical past, religion, and "territory of traditional habitation."¹⁵ The nature of the political development in Sri Lanka seemed to favour a centralized strong state, which also became the master form of "the political/constitutional order."¹⁶

Similarly, the state of Bangladesh pursued policies of majoritarianism, which alienated minorities. The state professed to be secular but failed to define the terms and conditions of secularism. The dominant Bengali-speaking Sunni Muslims threatened to impose their brand of secularism and failed to accommodate the ethnic minorities in the Chittagong Hill Tracts (CHT). The majoritarian policies were perceived by the ethnic minorities—especially the Chakma community—as a threat to their exclusive status and as a denial of their distinctive cultural heritage. The Constitution of 1972 failed to provide a special status to the *paharis* (indigenous people) of the Chittagong Hill Tracts—a status they had previously enjoyed during the colonial rule. Specifically, this Constitution imposed a particular kind of nationalism that prescribed the complete submission of the *paharis*: they were to become Bengali, and thus their sensibility as a distinct ethnic minority was marginalized. This brand of Sunni-Bengali identity became synonymous with Bangladeshi nationality.¹⁷ Moreover, the idea of Bangladeshi nationality became intertwined with religion rather than with language only. The earlier kind of nationalism was based on Bengali as a special language encompassing every sphere of society with an overtone of a distinctive multi-religious perspective. Ironically, the creation of the state of Bangladesh was the end result of a very successful ethno-religious movement waged by the Bengali-speaking Muslims against the Urdu-speaking Muslims of West Pakistan. Since 1972, Bangladesh has had to face issues of low legitimacy, a lack of social cohesion, and a low state capacity to deal with the multitude of problems of state-building. Due to the problems of the majority of policies of the predominant Bengali-speaking Sunni Muslims, the state of Bangladesh

persecuted the paharis, which resulted in the Chakma/ Jumma seeking refuge in India. In Bangladesh, state-building entailed aggressive policies of dominance by ethnic majorities over minorities that finally resulted in armed conflict and the flight of Chakma and Tamil refugees to India. In the case of Sri Lanka, a strong and intrusive state apparatus with little inclusion of minorities and state-led violence created the Tamil refugees. The state failed to accommodate minority sentiments at one level, and on the other, failed to accept Tamil refugees after repatriation. The Bangladesh state had problems of low legitimacy as a result of state-led policies of majoritarianism, and the suppression of ethnic minorities in the Chittagong Hill Tracts led to state-sponsored violence and massacres leading to the flight of Chakma refugees to India.

State-formation in the region of South Asia does not have any distinctive common traits that can be applied universally across borders. In the Indian context, the nature of institution-building (Weiner 1989) had remnants of colonial heritage, but similar arguments do not hold true for Bangladesh and Sri Lanka. As the Sri Lankan government attempted to build a democratic polity, the Bangladesh state was undergoing various rounds of military government, which perpetuated intense policies of Islamization. The process of decolonization in Sri Lanka seemed smoother and less problematic than in East Pakistan and later Bangladesh. However, both Sri Lanka and Bangladesh attempted to restore the dominance of the majority culture by curbing the rights of minorities.

The case of India presents an interesting contrast between Sri Lanka and Bangladesh. The elites in India, unlike those in Sri Lanka and Bangladesh, had to contend with a heterogeneous population that laid the foundation of state-building. Sri Lanka and Bangladesh had a relatively homogenous population that focused on creating a unitary form of governance with centralized power, whereas India adopted the federal form of government and attempted to accommodate the varied demands of its culturally diverse population.

In India, the multicultural and pluralist tendencies were upheld and were carefully reflected in various policies. The Indian state is not monolithic; rather, "it is layered and shared."¹⁸ The Indian state defined official ideology along the lines of a pan-Indian nationalism based on territorial integrity and secularism, and it adopted federalism and accepted the formation of new states along linguistic lines but remained firm in denying rights or accepting any religion-based demands.¹⁹ This line of argument tends to accept that the Indian state was responsible for accommodating diverse demands, but it fails to explain certain kinds of conflict. The Indian state has adopted varied strategies of accommodation, but it has failed to grant rights to non-citizen categories. I would argue that the Indian state has defined the politics of belonging along lines of nationality; effectively it has chosen to de-recognize rights of other claimants such as people crossing international borders and continue to reside in India for a long period of time. Moreover, these also indicate that despite the overt policies of accommodation the Indian state, too, has run into problems of application, which is applicable more in relation

to rights of those who do not legally “belong.” Chatterjee, while discussing the “logic of governability,” asserts that a bifurcation exists between “rights and entitlement”²⁰ of citizens. The rights approach argues for the political acceptance of citizenship status, an acceptance and acknowledgment by the state, so that those lacking documents can make claims to certain kinds of entitlement but not to political status. Despite the accommodative tendencies in India, the issue of membership was defined based on nationality first, and in some rare occasions, through the process of registration.

The states in South Asia had several common trajectories of belonging. Some of their policies had explicit links with group marginalization in countries of origin. So far I have discussed some of the commonalities in relation to state-formation and its impact on the process of belonging on the basis of membership. India did not adopt policies to accommodate the non-citizens; in the next section, I will analyze the place of refugees in this framework. India too, felt threatened by the large refugee presence and failed to adopt explicit policies of refugee protection and assistance. Rather, it maintained “open-door” policies without providing refugees legal status.

Determining the Question of Belonging in South Asia

The nature of postcolonial state-formation in Sri Lanka, India, and Bangladesh has shaped the question of belonging, membership, and citizenship rights. Unlike in Western countries, the state-formation that ensued in Sri Lanka, India, and Bangladesh followed a particular historical trajectory that was shaped by colonial history. In this context, citizenship rights came to be viewed as fixed and determined primarily by state policies. Sieder asserts that citizenship as a “fixed and non-negotiable set of rights and obligations...as embodied in a written constitution” seemed to apply to most states in postcolonial societies. States in these societies determined citizenship rights as a political recognition, for example, a legal acceptance or belonging within the structure and domain of statehood. Citizenship is determined by a kind of “juridical relationship” between the state, territory, and the people residing within the geographical area. The finality of citizenship rights is based on a certain degree of membership within the territorial bounds of statehood.²¹ Though conceptually, citizenship has evolved from a conception of rights attached to an individual to include “rules of inclusion”²² and rights attached to groups it does not apply to non-citizens. A sense of belonging, identity, and nationality seems to be tied to a particular territory that legitimizes the status, rights, and entitlements of people belonging to this territory. I question the basis of identity tied to territory and analyze the position of two groups of minorities (Chakma and Sri Lankan Tamils) in their country of origin (Bangladesh and Sri Lanka) prior to seeking refuge in a country of asylum (India). As defined by states, such rights and entitlements do not include those who are “outsiders” and have chosen to flee from state atrocities. I argue that these rights should extend to non-citizen categories, too. Furthermore, I assert that state-centric views on non-citizen rights

determined the process of refugee rights and later laid the trajectory of the repatriation process in India.

The changing pattern of population movement and the dynamics of citizenship laws have an impact on the abilities of states in South Asia to accommodate the varied interests of its diverse peoples. These rules become important markers that determine boundaries of inclusion and exclusion of individuals and groups. The identities of people are transformed because of their legal position within the state structure. The politics of belonging in countries of origin can be determined on the basis of the nature of the state-building model adopted by countries such as Sri Lanka and Bangladesh. However, the argument is further strengthened when the same group of people, when displaced, sought refuge in India but failed to acquire political status. Thus, the nationality of the person determines the legal status of citizenship, which is well embodied within the citizenship laws of the state. The refugees do not fall within the ambit of these laws. The emphasis is more on the state-determined and state-centric views of rights of citizenship. A few cases can illustrate this point further. During the creation of new states in South Asia, especially Sri Lanka and Bangladesh, certain categories of people had great difficulties in gaining political status as citizens. Some of these groups were the Biharis in East Pakistan (Bangladesh), the Chakma in Arunachal Pradesh (India), and the Estate Tamils from southern India (groups that migrated in the colonial period). These people were disenfranchised and politically stateless.

The Biharis in Bangladesh were part of the legacy of West Pakistan and were never incorporated into the folds of the newly-created democratic state of Bangladesh. Most of these non-Bengali and predominantly Urdu-speaking people were part of the non-independence movement in East Pakistan, and after the creation of the new state of Bangladesh, they were seen as *traitors*. Since they were sympathizers of Pakistani nationalism and opposed Bengali nationalism, they were *de facto* stateless in Bangladesh. The Biharis continue to live in camps in Bangladesh. They are still “stranded” in camps at the outskirts of Dhaka, at Mirpur and Mohammadpur, and more than 20,000 refugees live at densities of ten people or more to a tent. The camps contain a large number of widows and infants. Short-term problems in the camps include not only food and health issues but also the concern over the lack of some basic amenities such as water, sanitation, and security.

The Chakma/Jumma are part of the thirteen ethnic communities displaced due to the creation of the Kaptai Dam in East Pakistan in the mid-1960s. Thousands of Chakma families fled the Chittagong Hill Tracts (CHTs) and entered Arunachal Pradesh and Tripura in 1964. Initially, these displaced people were settled in various camps in Arunachal Pradesh in 1966-68. The government provided financial and food rations to these refugees. In September 1992, the Union Minister of State for Home stated in a letter to a local member of the Parliament that “refugees who came to India between 1964-1971 were eligible for the grant of citizenship.”²³ However, the Supreme Court of India gave a ruling that the Chakmas were not entitled to citizenship under Section 6-A of the Citizenship Act of 1955, which contains certain

special provisions with regard to persons of Indian origin who came to Assam before 1966.²⁴

The Estate Tamils were brought to the central part of the island of Sri Lanka by the British starting in 1834 to work on coffee, and later tea, plantations.²⁵ As labourers on the Tea Estate, they occupied the lowest socio-economic stratum of Sri Lanka's society, earning lower wages than those in the other sectors of the economy of the island and suffering poorer literacy rates and poorer health and housing compared to the rest of the population.²⁶ They are different from the other Tamil population from India who inhabit the north and east of the island. Under the constitutional reforms of 1928, the Estate Tamils were given the right to vote,²⁷ but since independence in 1948, both the Sinhalese and the Sri Lankan Tamils view the Estate Tamils as an opportunist group of "unwanted migrants who should return home."²⁸ After independence, the Estate Tamils claimed citizenship under the new Ceylon Citizenship Act of 1948. This proved to be a difficult task as most of the Estate Tamil families, who had returned to India to marry and consequently had children, did not have the requisite documents. Furthermore, no official registration of birth existed until 1897.²⁹ The Ceylon Citizenship Act was soon followed by the Indian and Pakistani Residents Acts of 1949, which seem less draconian than the 1948 legislation in that they provided for a seven- or ten-year period of "uninterrupted residence" in Sri Lanka as a qualification for citizenship. This further disenfranchised the Estate Tamil workers who periodically returned to Tamil Nadu and had no documents to prove seven or ten years of "uninterrupted residence." In addition to the residential qualification, applicants needed an assured income that was beyond the reach of the majority of Estate Tamils. This led to both the disenfranchisement and the denial of citizenship for over 95 percent of the Estate workers; that is, for over one million people.³⁰ However, the Estate Tamils' case seems slightly different from the Tamils living in northeastern Sri Lanka. In the former case, the nature of disenfranchisement was settled through various means of dialogue and agreements with India.

Of the many cases of disenfranchisement in South Asia, I have discussed only a few. The stateless people in Sri Lanka (Estate Tamils), the Biharis, and others were legacies of the postcolonial state structure. Unlike some Estate Tamils in Sri Lanka, the Chakma in India and the Biharis in Bangladesh continue to be completely marginalized and stateless. Some Chakma (those who entered India prior to 1965) have been *de facto* accepted as citizens, but they are few in number. The Biharis still live in camps, and there has been talk of possible repatriation to Pakistan, but to this day no such political solution has been achieved. Many arguments exist against the Biharis being forced to repatriate (if the state of Pakistan would receive them), since after the formation of Bangladesh, they are both *de facto* and *de jure* Bangladeshi nationals, and therefore entitled to citizenship rights. The Estate Tamils were given some official recognition, but with the change in political regime, sometimes these rights and privileges are withdrawn; therefore, their rights are transient.

The concepts of state and citizenship directly affect the refugee situation in South Asia. I study two refugee groups in India—the Jumma refugees from Bangladesh and the Tamils from Sri Lanka. The Jumma and the Tamils refugees had sought asylum in India during various stages of internal conflicts in Chittagong Hill Tracts (Bangladesh) and Sri Lanka. These two groups have been in exile for more than ten years in the Indian states of Tripura and Tamil Nadu. Given the complexities of the region and the close ethnic affinity existing between refugee groups and their place of refuge, refugees were in exile for a long period of time. But the Jumma or Chakma refugees have been “completely and successfully repatriated” to the Chittagong Hill Tracts (CHT). The Chakma repatriated on the basis of tripartite talks between refugee communities, country of origin, and country of asylum. In the interviews and discussions that followed the repatriation to the Chittagong Hill Tracts,³¹ Mannar and Vavuniya refugee-returnees³² told stories that signalled that repatriation was “a way out”³³ as opposed to a voluntary return to their country of origin. The Tamils from Sri Lanka have had similar difficulties in their repatriation: some have been repatriated and others have continued to live in exile for more than a decade now. They were repatriated on the basis of an agreement between the countries of origin and of asylum and the UNHCR. In the cases of both refugee groups, it was evident that refugees were forced to flee their homeland due to internal conflict between groups that were seeking political representation and acceptance at par with majoritarian communities in Bangladesh and Sri Lanka.

Refugee Rights in India

In relation to almost all its neighbours, India has been more of a refugee-receiving than a refugee-generating country because of its easy accessibility of borders, its economic opportunities, and its democratic and generally “soft state”. Despite its prolonged history of receiving refugees, India does not have any particular legislation that protects or assists refugees. Unofficially, two categories of refugees receive either recognition or assistance in India: first, the Tamils from Sri Lanka and the Tibetans; and second, the Chakma/ Jumma refugees. In the case of the Tibetans and the Tamils from Sri Lanka, the Government of India accepted their presence and designated them as refugees in need of immediate assistance. In accordance with the typology, the Sri Lankan Tamils have been accorded some recognition and protection by the host state (India). Tamil refugees continue to reside in various camps in India. However, the Chakmas of Bangladesh have not been formally recognized by the Government of India. Thus, the lack of the official recognition of refugees has created refugee hierarchies in India. Some of the refugees who sought asylum in India during various stages are Tibetans, the 1971 Bengali-speaking refugees from East Pakistan, Jumma refugees from Bangladesh, Tamils from Sri Lanka, and Afghan refugees.

In terms of determining rights and privileges, the Union Legislature (Parliament) in India has the sole jurisdiction over the subject of citizenship, naturalization, and aliens. The official status of the refugee is interpreted

under the Foreigners' Act of 1940 and is normally applicable to those who have entered India under false premises. Moreover, in India, the categories of aliens,³⁴ illegal migrants, and refugees are conflated. In contrast, the international refugee regime defines a *refugee* as "one who is outside the country of nationality (or even habitual residence) due to one of five situations as stipulated in the definition of the 'well-founded fear of persecution' on the basis of religion, race, nationality or membership of a political or social group."³⁵ In the case of India, the decision of refugee determination is not based on either an individual or a group; rather, it is viewed as a bilateral issue between the country of origin and of asylum, for example, the Estate Tamils and the Chakma refugees in Assam prior to 1968. Most of these "refugees" are viewed as foreigners, and the UNHCR has the task of granting them assistance and protection.

India does not recognize refugees in any official capacity but has adopted a liberal viewpoint as stipulated in the constitution of India—Article 14: the right to equality; Article 21: the right to personal life and liberty; and Article 25: the freedom to practice and propagate one's own religion, which are guaranteed to citizens and non-citizens alike. Moreover, the Indian Supreme Court has ruled that the rights of foreigners/refugees are not to be limited to Article 21, to the "protection of life and personal liberty—no persons shall be deprived of his life or personal liberty except by procedure established by law."³⁶ In spirit, the Constitution of India also provides adequate safeguards and upholds the principle of *non-refoulement*: "no refugee should be returned to any country where he or she is likely to face persecution or torture."³⁷ Article 21 of the Constitution requires that the state shall not expel or return a refugee "in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group, or political opinion,"³⁸ which reflects the spirit of the principle of *non-refoulement*.³⁹ Some refugees⁴⁰ have benefited from some of these rights enshrined in the Constitution of India, and a few cases exist where they were successful in drawing the attention of judiciary—a few of these cases were in the High Court of Madras.⁴¹ The Supreme Court of India has also stayed orders of the deportation of refugees, for example, *Maiwand's Trust of Afghan Human Freedom v. State of Punjab*,⁴² *N.D.Pancholi v. State of Punjab*, and others.⁴³ In the matter of *Malavika Karlekar v. Union of India*,⁴⁴ the Supreme Court directed a stay on a deportation order of the Andaman Burmese refugees, since "their claims for refugee status were pending determination and a *prima facie* case is made out for grant of refugee status."⁴⁵ Given these past precedents, in 1993, the Indian Supreme Court stated that the Chakma are not entitled to citizenship under Section 6-A of the Citizenship Act.⁴⁶ However, in an earlier judgment, the Supreme Court in *Luis De Raedt v. Union of India*⁴⁷ and *State of Arunachal Pradesh v. Khudiram Chakma*⁴⁸ clarified that no one shall be deprived of his or her life and liberty without due process of law. Overall, the Indian judiciary has played a constructive role in protecting the rights of the refugees.

Even so, the application of these rights in the true sense has been difficult. The Indian state does not recognize the rights of non-citizens and has not stipulated any special rights. The rights of refugees, aliens, and asylum-seekers are not demarcated, and they are all viewed as “foreigners.” Those belonging to the “non-citizens” category have few or no specific rights. But with the liberal interpretation of the Indian judicial system to act responsibly and effectively, some of these cases have been tried on a case-by-case basis.⁴⁹ One such case was heard during the time when the National Human Rights Commission (NHRC) had approached the Supreme Court under Article 32 of the Indian Constitution to argue that Articles 14, 21, and 25 were violated. Some of these rights have been remedied by the enforcement of a few fundamental rights by the Supreme Court under Article 32⁵⁰ and by the High Court under Article 226. In one such case, when a Chakma refugee’s rights were infringed upon by an activist student union, the court directed “relief on the basis of aliens under Article 14 and 21”.⁵¹ There have also been other situations in which the courts have prevented and “stayed” such deportation proceedings.⁵²

The process of refugee determination in India has been quite indiscriminate. The process is determined neither by individuals nor groups; rather, it is based on specific evidence produced (by the refugee) to support his/her refugee claim. Each claimant has to bear the burden of proof, until all the materials are collected and collated, and independent, internationally acknowledged information is available on the region from which the claimant has arrived. In certain situations, the validity of the information obtained may be reconfirmed by the UNHCR office in the country of origin. The UNHCR office works on a limited mandate and capacity in India, providing a “subsistence allowance” to refugees on a case-by-case basis. Two of these specific cases concerned refugees who had illegally tried to leave the country and were apprehended—the case of Mehmud Ghazaleh⁵³ (an Iranian refugee) and Shah Ghazai and his minor son, Assadullah (two Afghan refugees). Ghazaleh was registered with the UNHCR and was illegally crossing over to Nepal through the Sonauli border in the district of Maharajgunj, Uttar Pradesh. The refugee was traveling with forged documents and was detained by authorities who discovered that his documents were forged.⁵⁴ The Afghani refugees were apprehended near the Attari border in Amritsar, Punjab, while illegally exiting India for Afghanistan through Pakistan. These cases prove that refugees have limited or no rights other than the few rights provided to aliens in the Constitution of India, which does not acknowledge refugees as a category. Sometimes refugees may have valid documents while entering the country of asylum (more applicable to the case of South Asia) but fail to obtain an extension of a travel permit, for example. Under such circumstances, refugees may be issued “leave India” notices. Allegations have arisen that refugees may be security threats to the “stability and integrity of the country” and have *mala-fide* intent to commit harm. Furthermore, a refugee’s detention period is not well documented or recorded until authorities have proven credentials of the individuals concerned.⁵⁵ Under

these circumstances, each person is detained by officials and *prime facie* investigated.

Despite past precedents and the Indian Supreme Court's verdict under Section 6-A of the Citizenship Act,⁵⁶ all claims of refugee protection under the Constitution and judicial impartiality can be refuted. The longevity of these laws remains a question open to interpretation. Since these cases are tried on a case-by-case basis, an opportunity exists for partisanship and for overlooking the humanitarian aspect of refugee needs. More cases of infringement of rights have occurred than the protection of such rights.

Overall, the South Asia region lacks a consensus on the definition of refugee, and its states have made meagre attempts to address this issue. The basic principle underlying India's refugee policy is to view the problem strictly from a bilateral perspective. Therefore, in the absence of specific laws, all existing laws such as the Criminal Procedure Code, the Indian Penal Code, and the Evidence Act apply to refugees as well. As for the minimum standard of treatment of refugees, India has undertaken an obligation by ratifying the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights to accord equal treatment to all non-citizens (on par with citizens) wherever possible. Presently, India, as a member of the Executive Committee of the UNHCR, has a responsibility to abide by international standards on the treatment of refugees. However, none of the countries in South Asia are signatories to the International Refugee Convention. India ratified the International Covenant on Civil and Political Rights (ICCPR) as well as the International Convention on Economic, Social and Cultural Rights (ICESCR) in 1976. As well, India ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979, under which Article 1 imposes legally binding obligations. In addition, India accepted the principles of *non-refoulement* as envisaged in the Bangkok Principles of 1966, which were formulated for the guidance of member states in respect to matters concerning the status and treatment of refugees. These principles also contained provisions relating to repatriation, the right to compensation, granting asylum, and the minimum standard of treatment in the state of asylum.

Like most postcolonial societies, countries in South Asia accorded citizenship on the grounds of blood or descent only. In India, those who fall into the category of non-citizen are the most disadvantaged. Unlike in developed countries, they do not fit into the framework of migrants. Although India has witnessed massive population movements since 1947, and while most of the refugees from the 1947 and 1971 partitions were accorded citizenship, those who entered after 1968 have not been accorded any political, social, or economic status. Interestingly, this lack of rights applies to refugees who are registered and living in camps as opposed to non-camp, unregistered refugees. Some refugees are accorded preferential treatment (minus political rights) and are viewed more generously compared to others.

The lack of official refugee status and its associated rights make it easier for asylum and host states to decide on repatriation policies, independently of the preferences of refugees. Status would determine a certain

degree of rights to refugees that would prevent the asylum state from determining arbitrary policies of repatriation with the country of origin. However, another factor exists that has influenced decisions about refugees to a lesser extent (in reality, this factor should have maximum influence): the changes prevailing in the country of origin. Since most refugees seek refuge in the South Asia region because of domestic conflict, the resolution of such conflicts would entail a massive repatriation. In the cases discussed above, India played a prominent role in both CHT and Sri Lanka conflicts, though to a lesser degree in CHT, as India did not enjoy good relations with the Bangladesh Nationalist Party in comparison to their relations with Sri Lanka. The Indian Peacekeeping Forces sent to Sri Lanka were instrumental in bringing back a ship “filled with Tamil returnees.”⁵⁷ The methods of repatriation in India have been bilaterally arranged between the countries of origin and of asylum, without any third party involvement and no interference after repatriation, even though most of these refugees have returned back to the asylum state when rehabilitation failed to accommodate them in a satisfactory manner in their countries of origin.

In this paper I have investigated the question of refugee repatriation from the perspective of India, and I have analyzed the role of the Indian state in refugee repatriation. The Indian state determined refugee position and later repatriation within the framework of politics of exclusion. The state-centric views of rights on non-citizens had a lot to do with how the Indian state decided to treat refugees. At one level, the state denied formal rights; it also reinforced refugee treatment and repatriation through arbitrary policies. While it denied status to groups, it reinforced their displaced identity through forced encampment of refugees. Repatriation of Tamil and Jumma refugees illustrates how state-centric views of rights in the Indian state were instrumental in determining the trajectory of the return process.

Conclusion

In this paper, I discuss the rights in exile of a few prominent refugee groups in India. I analyze their status in the historical trajectory of postcolonial state-formation and citizenship rights. I argue that since the Indian state does not accord formal status to refugees, neither does it accord any kind of status that would entitle them rights against arbitrariness of refugee treatment and repatriation. I point out that the asylum state provided citizenship rights to territorially demarcated people based on residence and nationality, and most of these citizenship rights were interpreted from above rather than being instigated from below to accommodate the concerns of refugees. I argue that the state policies of India failed to determine the status of non-citizens, dubbing them as “aliens.” Despite adequate provisions (in spirit and intent) stipulated within international refugee law, India has taken the position that international treaties, covenants, conventions, and agreements cannot become part of the domestic law of India. The Supreme Court has stated through a number of decisions on the subject⁵⁸ that international conventional law must go through the process of transformation in the municipal law to become part

of the internal law of the country. Moreover, courts in India can apply international law but only in the absence of conflict of interest between the provisions of international law and domestic law. In the case of such a situation, the provisions of international law sought to be applied do not contravene the spirit of the Constitution and national legislation. Furthermore, in situations of conflict, the Supreme Court has clearly stipulated that domestic law must prevail over international treaty law. The strict interpretation and reiteration of domestic law over international law (more specifically related to refugee rights) have compromised issues of refugee protection and rights in India.

Like most pluralist postcolonial societies, India pursued state-building with a strong state at the centre, and unlike Sri Lanka and Bangladesh, accommodated *most* pluralist tendencies, with the exception of the interests of refugee groups. No precedent exists to give refugees rights in asylum countries, with the exception of a few basic fundamental rights enjoyed equally by citizens and non-citizens. However, refugees are often unaware of their rights as aliens/foreigners in the country of asylum and are often unable to avail of these privileges. Also, the scope of special provisions protecting refugee rights is only in part due to the lack of official recognition of refugees in the country of asylum. If constitutional safeguards cannot be enacted to provide protection,⁵⁹ it is imperative to have well-defined legislation to protect the basic rights of refugees.

Notes

¹ Anthony, Constance G. 'Africa's Refugee Crisis: State Building in Historical Perspective,' *International Migration Review* XXV, 3, 1991, 574-591.

² Abrams, Philip. 'Notes on the Difficulty of Studying the State', *Journal of Historical Sociology*, 1(1), March 1988.

³ Mitchell, Timothy. 'The Limits of the State: Beyond Statist Approaches and Their Critics', *The American Political Science Review*, 85 (1), March 1991, 82.

⁴ Schmitter, Philippe C. 'Neo-corporatism and the State' in *The Political Economy of Corporatism*, ed. Wyn Grant. New York, St. Martin's, 1985, 33.

⁵ Rae, Heather. *State Identities and the Homogenisation of Peoples*. UK Cambridge University Press, 2002, p 15-53

⁶ Tilly, Charles. *Coercion, Capital and European States, AD 990-1990*. Oxford: Basil Blackwell, 1990, 25-6.

⁷ Giddens, A. *The Nation-State and Violence*. Cambridge: Polity Press, 1985. 104-110

⁸ Migdal, Joel S. *Strong Societies and Weak States: State-society relations and state capabilities in the Third World*. Princeton: Princeton University Press, 1988, 4.

⁹ Steinmetz, George. 'Introduction: Culture and the State', in *State/ Culture: State Formation after the Culture Turn*, ed. G. Steinmetz. London: Cornell University Press, 1999, 1-51.,

¹⁰ Rudolph, L.I. and Rudolph, S. H. *In Pursuit of Lakshmi: The Political Economy of the Indian State*. Chicago: University of Chicago Press, 1987.

¹¹ Kohli, Atul. *The State and Poverty in India*. U.K Cambridge University Press, 1987.

¹² Barkey, Karen and Parikh, Sunita (1991). 'Comparative Perspectives on the State'. *Annual Review of Sociology* 17, 1991, 536

¹³Edrisinha, Rohan. 'Constitutionalism, Pluralism, Ethnic Conflict', in *Creating Peace in Sri Lanka: Civil War, and Reconciliation*, ed. Robert I. Rotberg. Washington: Brookings Institution Press, 1999, 176.

Section 29 (1) and (2) read as follows: "(1) Subject to the provisions of the Order, parliament shall have the power to make laws for peace, order, and good government of the Island. (2) No such laws shall –(a) Prohibit or restrict the free exercise of any religion; or (b) Make persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not made liable; or (c) Confer on persons of any community or religion any privileged or advantage which is not conferred on persons of other community or religions; or (d) Alter the constitution of any religious body except with the consent of the governing authority of that body: Provided that in any case where a religious body is incorporated by law, no such alteration shall be made except at the request of the governing authority of that body."

¹⁴ *Ibid*, 176.

¹⁵ Uyangoda, Jayadeva. 'The State and the Process of Devolution in Sri Lanka,' in *Devolution and Development in Sri Lanka*, ed. Sunil Bastian. New Delhi: Konark, 1994, 90.

¹⁶ *Ibid*, 90.

¹⁷ Murshid, T. 'State, Nation, Identity: The Quest for Legitimacy in Bangladesh,' *South Asia: Journal of South Asian Studies*. 20(2)1997, 1-34.

¹⁸ Bose, Sugata and Jalal, Ayesha., *Modern South Asia: History, Culture and Political Economy*. New York: Routledge Press, 1998, 243.

¹⁹ See Brass P., *Ethnicity and Nationalism; and Language, Religion and Politics in North India* Cambridge: Cambridge University Press, 1974; and Weiner, Myron., *The Indian Paradox: Essays in Indian Politics*. Delhi: Sage Publication, 1989.

²⁰ Chatterjee, Partha. *The Politics of the Governed: Reflections on Popular Politics in Most of the World*. New York: Columbia University Press, 2004. Chatterjee, while discussing rehabilitation and compensation to displaced people especially resulting from development projects, asserts the difference between rights and entitlement. The bifurcation between rights and entitlement is typically applied to those who have voluntarily resettled as opposed to those involuntarily resettled.

²¹ Sieder, Rachel. 'Rethinking Citizenship: Reforming the Law in Postwar Guatemala,' in *States of Imagination Ethnographic Explorations of the Postcolonial State*, eds, Thomas Blom Hansen and Finn Stepputat Durham, NC: Duke University Press, 2001, 203-220

²² Brubaker, Roger. *Citizenship and Nationhood in France and Germany*. Cambridge, MA: Harvard University Press, 1992, 132.

²³ *The Times of India*, 9 May 1994.

²⁴ With the exception of Khudiram Chakma's case, the Supreme Court has not granted state protection. No further cases in which refugees have been granted any such protection exist.

²⁵ Valentine, Daniel. *Chapters in the Anthropology of Violence*. New Jersey: Princeton University Press, 1996, 75.

²⁶ See Sahadevan, P. *India and the Overseas Indians: The Case of Sri Lanka*. New Delhi: Kalunga Publications, 1995.

²⁷ Weiner, Myron. 'Rejected Peoples and Unwanted Migrants in South Asia,' *Economic and Political Weekly* 28(34), 1993, 1153.

²⁸ *Ibid*, 1159.

²⁹ Peiris, T. *Citizenship Law and the Republic of Sri Lanka*, Colombo, 1974, chapter 1. Also see Weiner 1993, 153.

³⁰ Weiner, 1993, 1154.

³¹ Interviews were conducted after refugees were repatriated to CHT. The refugee communities expressed their concerns over the circumstances under which “repatriation had taken place” along with “modalities involved in repatriation process.” Interviewed in August 2002, Khagracharri and Rangamati.

³² Interviewed in June 13-20, 2002, various welfare camps in Vavuniya and Mannar.

³³ As stated during interviews in Vavuniya, 14 June 2002.

³⁴ See Chimni, B.S. ‘The Legal Conditions of Refugees in India,’ *Journal of Refugee Studies* 7 (4), 1994, 379. Although the word “aliens” is nowhere defined, it appears in the Constitution of India (Art. 22 part 3, and Entry 17, List I, Schedule 7) in Section 83 of the Indian Civil Procedure Code, and in Section 3 (2) (b) of the Indian Citizenship Act, 1955, as well as some other statutes. Several acts are of relevance to the regulation of aliens in India including the Foreigners’ Act of 1946, the Registration Act, 1939, the Passport (Entry into India) Acts, 1967, etc.

³⁵ See Art. 1(A) (2) of the 1951 Convention on Refugees.

³⁶ See Saxena, “Legal Status of Refugees, the Indian Position,” *Indian Journal of International Law* 26, 1986, 501-515.

³⁷ Chimni, B. S. ‘The Geopolitics of Refugee Studies: A View from the South,’ *Journal of Refugee Studies* 11, 1998, 350-75.

³⁸ Article 33, Paragraph (1) of the 1951 Convention on the Status of Refugees.

³⁹ The obligation of *non-refoulement* in part of Article 33 (1) of the 1951 Convention Related the Status of Refugee Determination.

⁴⁰ Gurunathan and others v. Government of India (WP No.S 6708 and 7916 of 1992); A.C Mohd.Siddique v. Government of India and others (1998 (47) DRJ (DB), p. 74).

⁴¹ Two such cases exist where refugees were able to approach the court to argue against the issue of repatriation. The two unreported decisions of the Madras High Court in P. Nedumaran and Dr. S. Ramadoss v. The Union of India and the State of Tamil Nadu (1992) assessed the “voluntariness of repatriation process.” In the case of P. Nedumaran v. Union of India, a Sri Lankan refugee appeared before the High Court of Madras and presented a *writ* of mandamus. It advised the Union of India and the State of Tamil Nadu to permit the UNHCR official to ascertain the voluntariness of “refugees going back to Sri Lanka” and to permit refugees to continue to stay in the camps in India. The court expressed the verdict “since the UNHCR was involved in ascertaining the voluntariness of the refugees’ return to Sri Lanka, hence being a World Agency, it is not for the court to consider whether the consent is voluntary or not.” The Court acknowledged the competence and impartiality of the representatives of the UNHCR. However, the case is pending before the National Human Rights Commission of India, 13 August 1997, cited from Ananthachari, T. ‘Refugees in India: Legal Framework, Law Enforcement and Security,’” in *ISIL Year Book of International Humanitarian and Refugee Law* 7, 2001.

⁴² CrI WP No. 125 and 126 of 1986.

⁴³ N. D. Pancholi v. State of Punjab and others [WP (civil) No. 1294 of 1987, unreported].

⁴⁴ CrI. WP No. 243 of 1998.

⁴⁵ Ananthachari, 2001

⁴⁶ Chimni, B. S. ‘Symposium on the Human Rights of Refugees,’ *Journal of Refugee Studies* 7(4), 1994.

⁴⁷ 1991, 3SCC 544.

⁴⁸ See “National Human Rights Commission v State of Arunachal Pradesh and Others,” *Bulletin of IHL and Refugee Law (New Delhi)* 1(1), 1996, 147-59.

⁴⁹ Khudiram Chakma had approached the Supreme Court when his life was threatened within the state of Arunachal Pradesh. The Supreme Court observed that “the fundamental right of the foreigner is confined to Article 21 for life and liberty and does not include the right to reside and settle in this country as mentioned in Article 19 (1) (e) which is applicable only to citizens of this country.” *State of Arunachal Pradesh v. Khudiram Chakma* 1994 Supp. (1) SCC 615.

⁵⁰ Article 32 of the Constitution of India delineates the Right to Constitutional Remedies. The Supreme Court has the power to issue direction, order writs, etc. for the enforcement of any rights as enshrined in Part III (Fundamental Rights) of the Constitution of India.

⁵¹ See *National Human Rights Commission v. Union of India*, [(1996) 1 SCC 295; *Khudiram Chakma v. Union of India*, (1994) Supp. 1 SCC 614].

⁵² SAHRDC, *Refugee Protection in India*, October 1997. Writ Petition nos. 450/83; 605-607/84; 169/87; 732/87; 747/87; 243/88; 336/88.

⁵³ A. D. Cri No. 48 of 1994.

⁵⁴ The refugee was arrested and placed in the local police station at Sonauli, and a case was registered of FIR u/s 419/420/468/471 IPC read with Sec 3/6 of the Passport Act and Sec 14 Foreigners' Act.

⁵⁵ An Iranian refugee, Syed Ata Mohamadi, recognized by the UNHCR was arrested at the Bombay International airport en route to Canada. The refugee was detained for traveling under a false name. After being detained for a month, the refugee was released only with the intervention of the Bombay High Court.

⁵⁶ Chimni, 1994. B. S. ‘Symposium on the Human Rights of Refugees,’ *Journal of Refugee Studies* 7(4), 1994.

⁵⁷ Interview in Mannar, Sri Lanka, June 2002.

⁵⁸ For example, the *Gramophone Company of India v. Birendra Bahadur Pandey* AIR 1984SC 667; *Civil Rights Vigilance Committee, SLRC College of Law, Bangalore v. Union of India* AIR 1983 Knt.85; *Jolly George Verghese v. Bank of Cochin* AIR 1980 SC 470.

⁵⁹ On February 26, 2001, the Supreme Court expressed concern regarding the presence of illegal Bangladeshi migrants in India. The court explicitly stated that they were a threat both to the economy and to security of the country.

Reality of Protection: Case of Urban Refugees in Nepal

By

Laxman Lamichhane*

The trend of living in urban areas among refugee population is significantly on the rise in the beginning of new millennium and the UNHCR, host countries, and others are involved in giving protection to the refugees. Refugees living in the urban settings usually find themselves in slums, poverty, unemployment, inadequate infrastructure and overcrowding. Mostly, they are deprived from access to labour market, education, health services including other basic public services. Refugees constantly face the risk of discrimination, *refoulement*, arbitrary detention, abuse, exploitation as well as fear of deportation which further make their lives vulnerable. Creating opportunities for refugees in these settings is always full of challenge which can only be mitigated through the joint efforts of the stakeholders claiming to work for the protection and promotion of refugee rights. This would require the agencies to fully equip themselves with required capacity to understand and tackle the complex socio-economic as well as politico-legal environment of the urban spaces.

More than 50 percent of refugees live in urban areas. Eighty percent of all refugees are hosted by developing nations and 42 percent reside in countries whose per capita GDP is below 3,000 USD. Refugees arrive in cities that are unable to keep pace with the needs of their own burgeoning populations, resulting in inadequate infrastructure and stretched public services.¹ Most refugees live in poverty, sharing densely populated and poorly serviced slums with the urban poor. They frequently lack sufficient legal and social support—education, health care, market access and community networks—to obtain gainful employment or run businesses. As a result, they predominantly work in the informal sector, where there are few regulations and where the risk of exploitation and abuse, particularly for women and girls,

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is high. Refugees have few opportunities to use the skills, education and experience they possess.²

In response to this changing reality, the United Nations High Commissioner for Refugees (UNHCR) revised its policy on urban refugees in 2009. The revised policy is more rights-based and progressive than the 1997 policy it replaced. The 1997 policy, deemed punitive by many refugee advocates, promoted an encampment policy and implied that refugees in urban areas were largely young men who had the resources to provide for themselves. The 2009 policy, on the other hand, advocates for freedom of movement, the right to live where one chooses including in cities, and access to livelihoods as fundamental to enhancing the urban protection environment.³

The urban refugee population is increasing rapidly, but models for service delivery and protection have not kept pace. Applying camp-based approaches is both prohibitively expensive and inappropriate. The international and local community must identify strategies and models for assisting urban refugees that promote self-help, self-reliance and access to and support for existing host government services, as well as refugees' integration into existing development and poverty alleviation programs.⁴

Refugees, like internal migrants, seek out urban areas for access to better health care, educational systems, and economic opportunities. Some also seek the anonymity that large urban centers provide. They may leave refugee camps for the urban areas or seek refuge in countries that do not utilize a camp-based model. Some refugees seek protection that they couldn't find in the camps; some come seeking access to other forms of humanitarian assistance and the possibility of third country resettlement. While fleeing to cities is not new, what is new is that refugees are migrating to urban areas in ever greater numbers.⁵

It is evident that South Asia is one of the largest refugees hosting regions. As per current reports Nepal hosts around 400 urban refugees. According to UNHCR Nepal Fact Sheet September 2013⁶, it provides protection and assistance to some 400 urban asylum-seekers and refugees. They are considered by the Government of Nepal to be illegal migrants although in practice the authorities have been tolerant. UNHCR ensures that refugees have access to adequate reception and health facilities, and provides subsistence and education allowance. Resettlement remains the only durable solution for most of the urban refugees.⁷ UNHCR policy calls for states, municipal authorities and mayors, humanitarian agencies and civil society to join forces in meeting the challenge raised by a growing refugee population in towns and cities worldwide. The challenge is especially significant in Asia.⁸ The remote Himalayan nation of Nepal, freshly emerged from its own decade-long Maoist insurgency, may seem an unlikely destination for refugees.⁹

Theoretical Background: Defining Urban Refugees

It is difficult to find universally agreed definition of the term 'urban refugee' in refugee literature. Since, the term has been used by United Nations High Commissioner for Refugee (UNHCR) to indicate the refugee population, who live in the urban areas separately from the camp settings. UNHCR has no consistently applied definition of 'urban'. Criteria for determining what qualifies as urban are loosely based on the 1997 Comprehensive Policy Document on Urban Refugees, (for which an update is expected in the near future). By "urban", UNHCR meant national capitals, provincial capitals and district centers. Also to be included in this category, are localities which can be observed to be of such character of administrative and/or commercial importance such that they can be objectively classified as 'urban'. It is recognized that in some national capitals (and certainly in some provincial capitals) opportunities for both agricultural and non-agricultural livelihoods will exist, and indeed in some urban areas the former may even be more prevalent.

Analysis

The report published by International Rescue Committee and Women's Refugee Commission¹⁰ has discussed widely the issue of protection challenges of urban refugee populations. While highlighting on the issues of protection it maintains seven major themes: 1) challenges for programming in urban environments; 2) urban mindset; 3) advocacy; 4) data for programming; 5) livelihoods; 6) role of private sector and technology; 7) and communities, social capital and networks.¹¹ The review of the existing literature also shows that refugees are part of a number of different community structures. Communities based on nationality, spatial identification and member characteristics are discussed in the literature. In addition, urban refugees are part of broken and mixed communities and refugee-initiated community structures.¹²

UNHCR's Policy Response to Urban Refugee

In September 2009 UNHCR introduced its new policy called "UNHCR Policy on Refugee Protection and Solutions in Urban Areas" in place of the old 1997 Policy. This was supposed to be a more comprehensive and effective tool to meet the need of the people of concern. Michael Kagan calls it as, perhaps the UN's most important statement of protection strategy in the twenty first century.¹³ On paper and in rhetoric, the 2009 urban policy represents a break from fundamental flaws of 20th Century refugee practice. A previous 1997 version of this policy was understood as condemning urban refugees as "irregular movers," troublemakers who were making it more difficult for UNHCR and its partners. Camps were normal and good, and refugees should be discouraged from trying to leave them.¹⁴ In UNHCR's

words, the new policy “marks the beginning of a new approach.” Refugees are now to be reconceived as people with autonomy. The focus is to be on their rights, their legal status, and their ability to support themselves and to raise their families in dignity.¹⁵

But as always, the situation on the ground is more complicated. Four years on, the situation has not changed much, as large sections of the refugee population are compelled to stay in camps. Be it in East Africa or along the Thai-Burma border refugees are directly or indirectly forced to live in remote camps.¹⁶ This gap between policy and practice is the background for several new critiques of UNHCR’s urban refugee policy. The gist of the critiques, with varying degrees of nuance, is that old habits die hard, and while the new policy sounds good, UNHCR’s commitment to urban refugees in practice is not always clear. Camps are still abundant, and they are still central to UNHCR’s work.¹⁷

Historically, under the 1997 policy, UNHCR focused primarily on the provision of protection in urban settings, rather than on service delivery. It was believed that refugees who made their way to cities had the means and skills to provide for themselves and required little outside assistance. Only a few who were deemed vulnerable, received subsistence allowance, usually for a limited amount of time until they could find their own means of survival. Only as more was learned and as urban refugee populations continued to grow was there a recognition of the need to both revisit the policy and rethink the assistance efforts. In fact, the lack of assistance and support that was the prime reason that nearly every study on urban refugee livelihoods observed negative coping strategies including crime, the use of violence and prostitution.¹⁸

UNHCR Urban refugee policy 2009¹⁹ has set two principal objectives:

- to ensure that cities are recognized as legitimate places for refugees to reside and exercise the rights to which they are entitled; and,
- to maximize the protection space available to urban refugees and the humanitarian organizations that support them.

In doing so, UNHCR 2009 policy document has been focused on some principal ways of striving such objectives: refugee rights, state responsibility, partnerships, needs assessment, age, gender and diversity, equity, community orientation, interaction with refugees, and self-reliance. Additionally it illustrates about implying the following comprehensive protection strategies: a) providing reception facilities, b) undertaking registration and data collection, c) ensuring that refugees are documented, d) determining refugee status, e) reaching out to the community, f) fostering constructive relations with urban refugees, g) maintaining security, h) promoting livelihoods and self-reliance, i) ensuring access to healthcare, education and other services, j) meeting material needs, k) promoting durable solutions and l) addressing the issue of movement.

The question of a legal framework for refugee care in South Asia has long occupied academics, activists and lawyers in the South Asian sub-

continent.²⁰ While the discussion and debates in the highest circles have led to very little in terms of a tangible legal framework, a number of developments, within the South Asian sub-continent have equally lead to or is very likely to lead to far reaching changes in the way refugees, asylum seekers, stateless persons and “illegal” immigrants are viewed, cared for and managed. Some of these include the UNHCR’s Urban Refugee Policy of 2009 that will have far reaching implications in the possibilities it offers and the limitations in its application in countries in South Asia, the Unique Identity Project, now renamed as “Aadhar” in India, and some other lesser known executive orders that impact refugees on a daily basis.²¹ There is no different situation in case of Nepal also.

UNHCR Representation in Nepal and Urban Refugees

When Nepal saw a mass influx of Bhutanese refugees in the late 1990s, UNHCR was requested by the Government of Nepal (GoN) to extend its support and assistance for the care and maintenance of the refugees.²² Since then UNHCR has been taking care of refugees and asylum seekers residing in Nepal as per its global mandate of international refugee protection.

According to UNHCR Nepal current statistics, it has been providing protection and assistance to some 400 urban asylum seekers and refugees from different countries. However, there is a growing voice that the protection and assistance provided by UNHCR is inadequate and not justifiable compared to the increasing need of the refugee population and market situation. It is often reported that there is dissatisfaction among urban refugee groups regarding the treatment what they get from UNHCR.

UNHCR provides protection and assistance to some 400 urban asylum-seekers and refugees. The irony being that though in practice the authorities have remained tolerant, they are considered “illegal migrants” by the government authority under prevailing immigration law of Nepal. UNHCR ensures that refugees have access to adequate reception and health facilities, and provision of subsistence and education allowance. Resettlement remains the only durable solution for most of the urban refugees,²³ although third country resettlement is not a proper option for urban refugees. Since the government of Nepal has clearly said that there is no such option of naturalization available for refugees in Nepal, UNHCR Nepal has adopted third country resettlement option as a best protection tool with no other options available. Since 2005 till now about 166 urban refugees have been resettled in different countries of Europe, United States of America and Canada. It is because that GoN has taken third country resettlement as a pulling factor for refugees and it will invite more refugees in Nepal. Additionally changes in existing policy can further make Nepal as a transit point for refugees.

As urban refugees are treated as illegal immigrants under immigration law of Nepal and have been charged for overstay fee \$5 per day. There was a general trend of overstay fee waiver in case of urban refugees on request of UNHCR. But it is found that the urban refugees who went for third country

resettlement this year (in 2013) had managed to pay for over staying fee to the department of immigration and got the exit permit, without which one illegal immigrant cannot leave Nepalese territory. The issue of taking overstay fee from urban refugees is against the norm of international refugee law. It has raised a serious question that whether Nepal has conceived urban refugees as a good source of revenue. If so, then it raises serious questions regarding Nepal's intention with regard to offering protection to the urban refugees.

Government of Nepal and its Obligation under International and National Laws

Although the Government of Nepal has not yet acceded to the 1951 UN Convention on Status of Refugees and its subsequent Protocol, it has been quite generous to the refugees from whichever country they are from.²⁴ There are glaring examples to prove Nepal's generous behaviour meted out to the refugees. The simple reason why Nepal treats the refugees so kindly is nothing but purely humanitarian. It knows that there is no legal obligation on its part to provide humanitarian care like food and shelter to refugees as it is not a party to the refugees-related international convention. Its position on the current convention on refugees is not a factor deciding the type of treatment the refugees should be given.

Urban refugees who have entered Nepal from Pakistan, Sri Lanka, China (non-Tibetan), Iraq, Afghanistan, Somalia, former USSR, Burma, Ethiopia, Myanmar, Egypt, Liberia, Nigeria and Bangladesh, are deprived of refugee status from Nepal government; they are stuck in a long que for the third country resettlement and are deprived of an income. Since Nepal is not a party to 1951 Refugee Convention and there is no specific and/or applicable national legislation relating to asylum seekers/refugees, it is only imperative on the part of the government to ensure that the skill or potential of so many people is not wasted during their time in exile and that concrete steps are taken to help them by providing jobs, give them some training etc.

Many major questions are still unanswered with convincing explanation in the discourse of refugee rights regime in Nepal. In this context, it is vital to undertake in-depth analyses of political, social, economic, and legal support system/barriers for refugees in urban settings, particularly as these shape the opportunities, strategies, vulnerabilities, and livelihoods of refugees in Nepal. It is now indispensable to frame the central thrust of the contributions through considering shifts in global patterns of refugee movements and transnationalism. State policies concerning immigration, naturalization, and citizenship produce some of the structural factors shaping these complex developments, although to a large degree they are the inevitable result of globalization processes and communication superhighway. An empirical research-based evidence that the given circumstances permits accommodation/non-accommodation of urban refugees coming from "a strange land" is extremely critical to understand the mobility dynamics of the uprooted population and develop an appropriate refugee rights regime in a poverty stricken country like Nepal.

Clearly, the state policy to tighten up borders and even exit, reduce immigration, and limit access to citizenship is at odds with the processes of urbanization, increased population movements globally, and the development of transnational spaces and urban refugees are caught in the middle. Thus, along with the above outstanding questions, it is essential to demystify why Nepal is hesitant to enact a comprehensive legislation towards refugee protection. In the mean time, it is high time to reveal the ways in which refugees carve out a space in adverse situation and negotiate continuously with state policies and practices. Even if Nepal introduces a policy or a law regarding refugees, urban refugees will still be suffering as they need to be accepted first as refugees from Nepal government, as these people are not accepted as refugees and have been facing various social, psychological and economic problems. UNHCR provides medical and educational allowances to urban refugees that are minimal and not enough for children's qualitative education and for maintaining good health. For the Home Ministry, drawing a policy on refugees in Nepal is one of the top concerns but to enact a legislative framework is not a priority. The Home Ministry believes that if these people are accepted as refugees then there will be mass influx of refugees in Nepal and Nepal is not in the position to provide welfare and other privileges.

As a member of the international community Nepal has shown its commitment to major international human rights instruments including ICCPR, ICESCR, CAT, CEDAW, ICERD and CRC. Nepal has taken a lot of legislative, administrative and institutional measures in order to fulfil the obligations under these instruments. However, Nepal is not a party to the 1951 Refugee Convention and 1967 Additional Protocol. As a state party to the Vienna Convention on the Law of Treaties 1969²⁵, Nepal is bound by the Article 26 of the Convention which provides the principle of *pacta sunt servanda*. It is one of the basic principles of international law and means that every treaty in force is binding on the state parties and those obligations and duties conferred by the treaty must be performed by the state parties fully and in good faith.

Section 9(2) of the Nepal Treaty Act 1990, provides that any law inconsistent with the international treaties or conventions ratified by Nepal will be void. In such circumstances, the provision of the treaty or convention prevails. Through these provisions, Nepal's internationally declared commitments to the human rights of the people have been directly incorporated into the Nepalese legal system and are considered as a part of national law.

In the absence of ratification of the concerned treaties, the entire refugee protection obligation comes through other international human rights instruments on which Nepal is a State Party. Nepal currently is party to the following major human rights instruments:

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of Others 1949

- Convention on the Elimination of All Forms of Discrimination Against Women 1979
- Convention on the Political Rights of Women 1952
- Convention on the Prevention and Punishment of the Crime of Genocide 1948
- Convention on the Rights of Child 1989
- International Convention Against Apartheid in Sports 1985
- International Convention on the Elimination of all Forms of Racial Discrimination 1965
- International Convention on the Suppression and Punishment of the Crime of Apartheid 1973
- International Covenant on Civil and Political Rights 1966
- International Covenant on Economic, Social and Cultural Rights 1966
- Optional Protocol to the Convention in the Elimination of Discrimination against Women
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict 2000
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
- Optional Protocol to the International Covenant on Civil and Political Rights 1966
- Protocol Amending the Slavery Convention 1953
- Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty 1989
- Slavery Convention 1926
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956
- Universal Declaration of Human Rights 1948

National Legislation Relating to Refugees Rights

It is no doubt that no domestic laws of Nepal talk directly about refugees. However, the Part 3 of the Interim Constitution of Nepal, 2007 has provided fundamental rights to Nepali citizens. Some of these provisions are equally applicable to all the people living in Nepal which also include refugees and asylum seekers, who are residing in Nepal. The Interim Constitution of Nepal has guaranteed the following:

- The right to life with dignity of everyone (not only of the citizens of Nepal),
- No person shall be deprived of his/her personal liberty except as provided by law,
- No person shall be denied equal protection of laws (Art 13),
- Every person shall have the right to live in clean and healthy environment (Art. 16),

- Every child shall have the right to his/her own identity and name, every child shall have the right to get nurtured, basic health and social security, every child shall have the right against physical, mental or any other form of exploitation,
- Any such an act of exploitation shall be punishable by law and the child so treated shall be compensated in a manner as determined by law (Art 22),
- Every person shall have the right to profess, practice and preserve his/her own religion as handed down to him/her from ancient times having due regards to the social and cultural traditional practices (Art 23),
- Rights regarding justice (Art. 24),
- Right against physical or mental torture, nor shall be given any cruel, inhuman or degrading treatment (Art. 26),
- Right to privacy (Art. 28),
- Right against exploitation (Art. 29), and
- The fundamental right to enforce fundamental rights in an effective manner is recognised for all (Art. 32).

Nepal is not yet a State party to the 1951 Refugee Convention or its 1967 Protocol. This means that Nepal owes few obligations to refugees. Nepal does not recognize refugees as having any special status under its domestic laws. UNHCR Nepal undertakes refugee status determination ('RSD') for urban refugees that is, for all non-Tibetan refugees, who are generally resident in Kathmandu. There are presently approximately 400 urban refugees and asylum seekers in Nepal. The main urban refugee populations are from Pakistan, Somalia, Sri Lanka, and countries from Africa. UNHCR Nepal also undertakes some protection activities for urban refugees in Nepal. UNHCR's worldwide urban refugee policy provides that assistance for urban refugees should be given in a manner which encourages self-sufficiency and does not create long term dependence on UNHCR. However, such an approach assumes that urban refugees can develop independent lives in their country of asylum. This is not possible in Nepal, because Nepal does not give refugees any legal status. UNHCR's implementing partners, including the PRO PUBLIC, Kathmandu Community Centre (KCC) provide basic medical care, restricted educational facilities, minimal psycho-social support and vocational training, and limited food and financial support for urban refugees. However, due to budgetary constraints, these services are inadequate for even the most basic needs of Nepal's urban refugee population.

Role of Judiciary of Nepal in Protecting Refugee Rights

Nepalese judiciary has played pivotal role in some of the cases related to refugee issues. A *habeas corpus* case was filed by a Pakistani National Mr. Mehmud Rasid²⁶, challenging his detention on the basis of Article 14 of UDHR, Article 13 of ICCPR, Article I(2) of the Protocol Relating to the Status of Refugee, 1967 and the Convention Relating to the Status of

Refugee, 1951. He also made claim under the Universal Declaration of Human Rights and *jus cogens* of international law and the principle of *non-refoulement*. While deciding the case the Supreme Court dealt with many issues relating to the refugee rights and refugee protection in Nepal, which includes the following:

- According to the provisions of the Statute of the UNHCR, it seems that the office must carry out its business under the coordination and cooperation of the host government. As per the said mandate, an agreement had made between the UNHCR and GoN on 27 August 1989 to establish a branch office of UNHCR in Nepal. According to Article 1.02 and 4.02 of the agreement, the branch office of the UNHCR can carry out its duty and responsibility to fulfill its purpose in cooperation with the GoN in refugee matters. The UNHCR issued the Identity cards without any consultation with the GoN, which is against the agreement, on its own capacity- without consent of GoN as said agreement.
- The petitioner is not recognized as a refugee by Government of Nepal, so he seems alien and the prevailing Immigration Act apply against the petitioner which regulates entrance, presence and exit of foreigners. The duration of visa obtained by the petitioner seems expired and not prolonged yet. The litigation filed under the section 3(1) of the Immigration Act, 1992 against the petitioner accusing him staying without passport and visa.
- It does not seem that the petitioner has not immediately urged, or filed a petition to Immigration officer according to the Article 2 and 31(1) of 1951 Convention when he entered into Nepal. Therefore, the demand of the petitioner to release him by issuing an order of *habeas corpus ipso facto* would be void.
- But, the problem of refugee is an international matter and correlated with human rights issues too. Nepal has been giving refugee status to Tibetan and Bhutanese. As one of the active members of the UN, Nepal has ratified many international Instruments and has expressed its respect and commitment to them.
- In relation to the request made by the petitioners to issue the writ of the *mandamus* not to extradite him to Pakistan due to persecution or hang to death, after the imprisonment against overstay, unless and until the UNHCR manages him to third country resettlement, the petitioner be allowed to stay Nepal.
- The court quoted that CAT Committee, Committee on ESCR and Committee on CERD which have recommended Nepal to become the party to the 1951 Refugee Convention. In this context, the Court has asked the GoN to pay attention for promulgating national legislation on refugee.

In some occasions refugees and asylum seekers have filed writ petitions to the Supreme Court of Nepal in order to enforce the constitutional and legal rights. Nepal does not have any specific legislation and policy on

dealing with refugees and asylum and these issues are being dealt under the immigration laws. As the preamble of Nepal Immigration Act 1992 states, the main objectives of this legislation is to regulate and control the entry of the foreigners into Nepal, their stay and their departure and to manage the arrival and departure of the citizens of Nepal. As we can see that this piece of legislation has nothing to do with the 'refugees' and 'asylum seekers'. Till date Nepal is dealing with the refugee situation under the general immigration legislation. Section 5 of the Immigration Act prohibits the use of fake passport and visa to enter into Nepal. Section 6 of the Act empowers Immigration officer or any employee designated by the Director General to examine the documents related with the entry, stay and departure of a foreigner at any time and place.

Section 14 of this Act provides power to Nepal Government for exempting the foreigner of any class, tribe or caste or nationality from availing all or any of the provisions of this Act or the Rules framed hereunder. The Section further provides that if the Government of Nepal considers so appropriate that any foreigner's entry into, stay in or departure from Nepal may be detrimental to the national interest, may prohibit the entry, stay or departure of such foreigner.

It is believed that the Tibetan and Bhutanese refugee situation is dealt by the Nepal government through the Section 14 of the Immigration Act, which has granted group asylum to them. There are no rules, regulation and guidelines on how to use this section therefore government uses its discretion.

Role of NGOs and Civil Society

Non-Government Organizations and Civil Society in Nepal have remained quite vibrant regarding refugee rights protection. Different NGOs have been involved in refugee rights promotion such as providing free legal aid, psycho-social counseling and so on. The model refugee legislation has been drafted by civil society for the promotion and protection of refugee rights, which is supposed to provide inputs to the government of Nepal. Some Key Agencies working for Refugees in Nepal are United Nations High Commissioner for Refugees (UNHCR), World Food Program (WFP), Association of Medical Doctors in Asia (AMDA), Caritas Nepal, Lutheran World Federation (LWF), National Unit for the Coordination of Refugee Affairs (NUCRA), International Institute for Human Rights, Environment and Development (INHURED International), Forum for Protection of Human Rights (PPR Nepal), Human Rights Organization of Nepal (HURON), South Asia Forum for Human Rights (SAFHR), Bhutanese Refugee Women's Forum (BRWF), Tibetan Youth Congress (TYC).

The Reality

During an interview conducted in Kathmandu, the following things were discovered. The perception of urban refugee community towards their own status and host community is somewhat mixed in nature. Some have

expressed that they are happy with the host community whereas others are not. The major challenges faced by the refugees are identity crisis, absence of exit permits dearth of ways or opportunities by which they can fulfill their basic needs, inability to enjoy the freedom of expression etc. For some, no legal documents and discrimination on the basis of color make things worse. Some refugees complained that getting refugee status is a lengthy and uncertain process. Likewise, the refugee status given by the UNCHR is also sometimes not recognized by the GoN and they are treated as illegal immigrants. The refugees who got refugees status by UNHCR complained that the process of third country settlement is also cumbersome and tedious and not transparent.. They also complained that Nepali authorities also make unnecessary delay for processing their third country settlement process.

Refugees and asylum-seekers do not receive equal treatment in Nepal. Some are kept in UNHCR administered camps, some are in informal camps or settlements and others are in the urban centres, mainly in the Kathmandu Valley. Though in a small number, these people are visible everywhere particularly in the capital city. The police sometimes harass them and throw them into immigration detention center. Most of these “irregular movers/aliens” manage to slip out of these detention centers taking advantage of the prevailing rampant corruption in law enforcement agencies.

Conclusion

Due to the lack of clear and specific legal framework Nepal government's treatment to the refugees and asylum seekers is always based on its discretion. As already discussed the Tibetan and Bhutanese refugees are considered as refugees but others who came individually (or even in a group) are considered as 'illegal immigrants'. Nepal is yet to enact a national law for protection and regulating refugee situation. The protection of refugees is based on the culture and tradition of hospitality. Nepal is responding on the refugee question on an ad-hoc basis and thus, there is no any legally binding instrument to guarantee the refugee protection. Thus, whenever there is any change in the governments or power equation, the refugee community undergoes a tremendous psychological pressure about their safety, security, human rights and the possibility for safe and dignified return.

With the changing wave of political freedom in the neighboring countries, exodus into Nepal in recent years has not come to a halt. Although the flow of refugees in the country have not placed very significant strains on the economy and social setting, Nepal is bound to bear the burden of political and diplomatic pressure from its neighbors. The presence of such “irregular people” and ad-hoc policy of the state is adversely affecting the society, polity and most importantly, the credibility of a democratic and human rights-friendly state. The urban refugees and asylum seekers are often targeted and become vulnerable due to their “undocumented” status by corrupt public officials and other unscrupulous elements of the country. One of the major difficulties created by the absence of a legal framework for refugees and asylum seekers is that there no method of separating the ones who are really

vulnerable and who need the protection of a host state from the ordinary economic migrants and job-seekers.

Notes

¹ Women's Refugee Commission. *Bright Lights, Big City: Urban Refugees Struggle to Make a Living in New Delhi*, New York, 2011 at , <http://womensrefugeecommission.org/programs/livelihoods/research-and-resources/733-bright-lights-big-city-urban-refugees-struggle-to-make-a-living-in-new-delhi>. Last accessed on 15 November 2013.

² Women's refugee Commission, 2011.

³ Buscher, Dale., 'New Approaches to Urban Refugee Livelihood', *Refugee*,28(2), 2011,at <http://pi.library.yorku.ca/ojs/index.php/refuge/article/view/36473/33161> . Last accessed on 15 November 2013.

⁴ Women's refugee Commission, 2011.

⁵ Buscher, 2011.

⁶ See <http://www.unhcr.org>. Last accessed on 14 November 2013

⁷ *Ibid.*

⁸ UNHCR. 'Media Backgrounder: Protecting Refugees in Towns and Cities Across Asia', 2009, at (, <http://www.unhcr.org/4b1938149.html>. Last accessed on 13 November 2013.

⁹ Adhikari, Deepak., 'Somali Refugees in Nepal: Stuck in the Waiting Room', *Time*, November 9, 2010, at <http://content.time.com/time/world/article/0,8599,1936578,00.html>. Last accessed on 12 November 2013.

¹⁰ Lyytinen, Eveliina and Kullenberg, Janosch. 'An Analytical Report on Urban Refugee Research', International Rescue Committee and Women's Refugee Commission, February 19, 2013, at <http://www.womensrefugeecommission.org/programs/livelihoods/research-and-resources/908-urban-refugee-research-and-social-capital>. Last accessed on 15 December 2013.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ Kagan, Michael. 'Why Do We Still Have Refugee Camps?' *Urban Refugees.Org*, 2013, at <http://urban-refugees.org/debate/why-do-we-still-have-refugee-camps/#more-102>. Last accessed on 30 October 2013.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ UN High Commissioner for Refugees (UNHCR), *UNHCR Policy on Refugee Protection and Solutions in Urban Areas*, September 2009, at, <http://www.refworld.org/docid/4ab8e7f72.html>. Last accessed 15 December, 2013.

²⁰ Basavapatna, Sahana. Editorial, *Refugee Watch Online*, May 30, 2011 at <http://refugeewatchonline.blogspot.com/2011/05/sahana-basavapatna-lawyer-new-delhi.html>. Last accessed on 13 November 2013.

²¹ *Ibid.*

²² Government of Nepal. 'Ministry of Home Affairs: Major Activities', *see* <http://www.moha.gov.np/en/major-activities-22.html>. Last accessed on 13 November 2013.

²³ <http://www.un.org.np/unhcr>. Last accessed on 15 November 2013.

²⁴ Thapa, Hira Bahadur. 'Nepal's Generosity to Refugees', *The Rising Nepal*, 2008 at http://www.gorkhapatra.org.np/detail.php?article_id=2448&cat_id=7. Last accessed on 14 November 2013.

²⁵ United Nations. *Treaty Series*, 1969 (United Nations, Vol. 1155, 331, done at Vienna on 23 May 1969, entered into force on 27 January 1980) at, <https://treaties.un.org/doc/Publication/UNTS/Volume%20667/volume-667-I-4789-English.pdf>. Last accessed on 10 December 2013.

²⁶ Mahmud Rasid vs. Government of Nepal, *Nepal Kanoon Patrika* (Nepal Law Reporter), Part 49, 2007, 765.

Methodological Good Fit; Limitations of Quantitative Methods in Forced Migration Studies

By

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Sociological research uses quantitative, qualitative and mixed methods. Each methodology has its own strengths and weaknesses and is used, depending on the nature of the research questions and nature of problems and people that we study. In the available literature, qualitative methods are dominantly used in forced migration studies. Certain terminology used in quantitative research, such as representativeness, control group, replicability, validity, data sets¹ may not be applicable in all forms of research in sociology. In forced migration research or data collection, achieving these standards may not be possible due to various reasons. Iosifides indicates that it is difficult to obtain data from undocumented migrants in a rigorous way because of the inability to use a reliable sampling framework². Rodgers indicates that refugees/forced migrants are living in a completely different environment to “laboratory conditions” where certain quantitative techniques such as control groups are used³. Assumptions in the quantitative techniques may exclude the fact that the immigrants are living in fragile, extremely vulnerable and changing conditions.

Apart from the conditions of the migrants, it is also important to decide on the type of methodology depending on the nature of research questions. For instance, it is difficult to use quantitative methods for exploratory research questions such as investigating social processes and characteristics of immigrants. Focusing on one particular group for the purpose of an exploratory research makes application of quantitative methods difficult because of purposive exclusion of certain groups which has implications on representative sampling.⁴ Representative sampling necessitates that we use the data from the existing data sources to draw the sample and is anchored to a sampling framework. Existing data sources in terms of forced migration research would translate into registries of migrants for example.

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This, in turn means we are excluding certain groups in the research who on purpose would avoid getting registered.

These groups may be living under cover, more vulnerable, they may face different situations/challenges to the ones who are registered and there is a possibility that these groups have different status in the new environment. The representative sampling procedures could be further made complex and inappropriate given the challenges in identifying the different strata or clusters within forced migrants. They are not a homogenous group at all and their differences may translate into research gaps and policy gaps. There are safety and ethical considerations for both researcher as well as the informant in conducting large scale data collection in a forced migration environment. Along with the achievement in research quality, 'Doing no harm' is equally important in refugee research.⁵

All these concerns point towards the fact that qualitative methods are more appropriate for forced migration research as opposed to quantitative methods. But it is necessary to look at the available literature in order to generate a meaningful discourse on this subject. Here, an attempt has been made to analyse the limitations in adopting quantitative methods in forced migration studies. The first section of this paper will deal with the key terms such as research methods, qualitative methods, quantitative methods; the next section will highlight characteristics of migration and forced migration. The next section will look at the methodological aspects of available literature on forced migration and support the arguments I make on the in/appropriateness of quantitative methods to study forced migration through a case study.

Quantitative Vs Qualitative

There is an extensive body of literature available highlighting the advantages and disadvantages of using quantitative and qualitative methodologies in sociology. This section provides an overview of this debate in order to set the context to the topic this paper is going to deal with.

Quantitative research is believed to have a logical structure where hypotheses are derived based on general theories and in which data is collected through social surveys, experiments, structured observations, official statistics and content analysis. The collected data is analysed to establish whether the causalities encoded in hypothesis can be verified or rejected.⁶ In contrast, qualitative research often begins with a single case chosen purposively and usually generates hypothesis or assumptions based on the data which are mainly based on observations and records, studies the phenomenon as they naturally occur and aims to understand meanings rather than behaviour. As David Silverman puts it, '...methodologies or methods cannot be right or wrong, only more or less useful'.⁷ The researcher has to make the call on which methodology to adopt depending on the nature of the research question.

If the research question/hypothesis is linked to finding out social facts or causality, then it warrants a quantitative approach whereas if the

research questions or the aim of the researcher is to study the lived experience of a group of people or if you are asking what and how questions, then a qualitative approach is best suited. For example, if we are trying to understand the causalities that drive 'illegal migration' of Sri Lankan ethnic Tamil families and individuals into Australia by boat, then a variables constructed based on hypothesis for causalities could be formulated and tested on a sufficient sample of so called illegal migrants. However, as one may have already thought, this approach presents a multitude of operational difficulties, which may compromise the rigour and the scientific nature of the research. For instance, the variables may include low income status, ethnic discrimination, and low living standards (among others) which one can argue are measurable. However, the endeavour to construct measurable variables, usually based on published literature ignores the socially and culturally constructed nature of such variables. For example, cultural factors such as caste based marginalisation or the social stigma attached to being a female ex-combatant or concepts like alienation, power, bureaucratization, and so on are difficult concepts to pin down. This leads us to the point that Silverman makes, 'A dependence on purely quantitative methods may neglect the social and cultural construction of the "variables" which quantitative research seeks to correlate'.⁸

Further, quantitative methodology is best suited to test the applicability of already established theories in the form of hypothesis. However, given the internal heterogeneity of forced migrant groups, this theory testing may lose its meaning in the operationalisation. The steps in the research design of quantitative and qualitative research differ in that qualitative research is seen to provide more flexibility to the researcher. In the latter, the data collection feeds into the analysis and the analysis can lead to a need for further data collection (for example on deviant cases) which will then feed into the analysis in a loop. In quantitative research however, once a concept is defined, hypothesis generated and operationalised in terms of variables, the researcher is stuck with the above issues and there is no space to refine them beyond a pilot phase. This approach then necessitates a thorough understanding of the subject being researched which is questionable in terms of studies on dynamic and ever-changing groups of forced migrants. Quantitative methods also require a random sampling technique of a generally large dataset which will lead to establishing inferences occurring beyond chance. In order to draw a random sample, a sampling framework needs to be drawn based on a listing of the population in some order, which may in general prove extremely difficult to obtain in any accurate form on forced migrants who prefer keep a low profile and even evade listings and registrations on purpose.

The discussion above shows that researching vulnerable groups such as forced migrations raise operational difficulties which have an impact on the research findings and therefore should be taken into consideration in the research design phase itself.

To quote Bakewell:

Despite the efforts of a growing number of academic researchers in the field of forced migration studies, there are still many refugees and other forced migrants who remain beyond the view of the ever-expanding body of research and largely invisible to policy makers.⁹

This quotation proves that forced migration is being researched sufficiently using various methods. However, the policy impacts of these researches are invisible. One of the implicit messages here is that there is a need to rethink the methodologies used in forced migration research. This paper attempts to generate a discourse on the research methodology used in researching forced migration.

Forced Migrants

In order to understand the appropriateness of the methodology in researching forced migration, first we should understand the conditions of the people who we call 'forced migrants'. This will help us to decide what methodology can be used to research them. In the 'Foreword' to *The State of the World's Refugees: A Humanitarian Agenda*, the UN High Commissioner for Refugees Sadako Ogata pointed out:

...the problem of forced migration has become a much broader and more complex phenomenon than is suggested by the conventional image of a refugee camp. Indeed, refugees in the legal sense of the word now constitute little more than half of the people who are protected and assisted by UNHCR.¹⁰

The OAU Convention and Cartagena Declaration along with other humanitarian and human rights laws have been used to expand protection for externally displaced persons who do not meet the 1951 Refugee Convention definition but would be harmed if the principle of *non-refoulement* is not practiced. In particular, during the 1990s, largely because of changing geopolitical contexts, with regard to the concepts of sovereignty as well as the increasing recognition of the universality of international human rights and humanitarian law, considerable progress has been made in defining standards (termed guiding principles) for protection of internally displaced persons. These categories of forced migrants are not mutually exclusive. More often they are overlapping.

As Susan Martin has observed:

The victims of humanitarian emergencies may belong to more than one group, either at the same time or in close sequence. For example, war-affected populations often become displaced. Refugees returning from neighboring countries may become internally displaced persons if conflict continues in their home communities or if they cannot return to their homes for other reasons. If environmental damage, including mine fields, prevents their reintegration, they may be environmental migrants/refugees as well.¹¹

Moore defines forced migration as 'fleeing of people due to fear of persecution relocating elsewhere within or beyond the borders of country of residence'.¹² The clause of 'fear of persecution' is also used to identify forced

migrant/refugee in the 1951 United Nations Refugee Convention. Even though it is defined in a concise manner, the causes and consequences of forced migration are rather complex.¹³ This paper will not deal with these complex elements of forced migration and this section intends to provide only an overview to the subject in order to focus the discussion on the issue at hand; suitability of methodology for the research of forced migration.

Forced migration has diverse causal factors. It occurs in deteriorating living conditions and in countries where there are miserable living standards, people fleeing persecution, natural and industrial disasters. Development projects, environmental degradation, war and conflict, ethnic discrimination also lead to forced migration. The forced migrants are not a homogenous group; their characteristics differ depending on their various identities such as origin, ethno-religious affiliation, ethnicity, tribe, caste and so on. Further, it is not possible to observe all these features in any one given group of forced migrants but these are an aggregation of features observed among the forced migrants across the world. Forced migrants are considered a vulnerable group of people who are facing several issues broadly related to adverse political, economic, and social conditions. These issues are not only relevant in their countries/places of origin, but also in the host countries/locations. Bilger and van Liempt have talked about the forced migrants in terms of low status populations, minors, and members of excluded groups, unemployed or impoverished persons, people in emergency situations, prisoners or detainees, homeless minorities and refugees, traumatised persons, persons with mental illnesses and mentally incompetent people.¹⁴

It is not surprising that the researchers show a high level of interest in looking at several elements of these forced migrants with the objective of understanding their conditions and also some conduct research with policy objectives because of the issues these forced migrants face. Despite the objectives of the research, it is vital to consider in which context the research is carried out and the conditions of the people who are being researched. In this paper I will be discussing why it is appropriate or not appropriate to use quantitative techniques to study forced migrants and forced migration. According to the existing literature, a quantitative research should have certain conditionalities or characteristics such as representativeness, generalizability, control group/s, reliability, validity, datasets.¹⁵ Attempting to achieve these conditions of quantitative methodology in a fragile context of forced migration may be inappropriate. In order to justify this argument, I will be drawing the important points from the literature, mainly the aspect of representativeness, generalisability, difficulties in creating a data set, maintaining objectivity, issue of confidentiality- in the next section of this paper.

Achieving Representativeness and Generalisability

Issues on Sampling

Generalizability is the biggest constraint that most of the researchers working with forced migration face. There are number of reasons presented in the available literature explaining the difficulties in achieving generalizable results in forced migration research. The primary issue in this discourse is sampling, since random sampling is a precondition for generalizability. Lack of available reliable sources of information in terms of the migrant population, their geographical spread, which links to the geographical locations, social and demographic characteristics make random sampling difficult.¹⁶ Even in the instance where the data is available, the respective government authorities/local authorities show reluctance in releasing the figures related to the migrants because of security and confidentiality concerns.¹⁷ The census data available within the government systems may not necessarily include the new migrants. Perince also illustrates inability to estimate the total population of forced migrants that makes random sampling difficult. Rapid flows of refugees make it difficult to track the population movement.¹⁸ Because of this rapid movement, the records of whereabouts of these refugees become invalid. Refugees show a multi-directional movement as opposed to a uni-directional movement.¹⁹ This movement also leads to a situation where one refugee ends up in several lists. In summary, getting accurate, relevant, timely data for sampling is one of the biggest challenges one will face in the context of forced migration. Moreover generating a list could also put the migrants at a risky situation and prove to be counter-productive to the objective of improving living conditions of the disadvantaged people.

Generating Data Sets - Locating and Finding Respondents

On the assumption that a list was generated by some means, the other challenge is locating and finding the suitable respondents for the research. Given that forced migrants tend to live in isolation it is difficult to locate or identify them for sampling when they live outside the camps. As a result of this, large numbers of people are omitted from these studies. Forced migrants are often described in literature as hidden community groups. For various social and political reasons they prefer to remain hidden and there is no sampling framework available to include these groups in the research. In reality, because refugees live under cover, their illegal status, their adverse economic and political conditions, their reluctance to expose themselves and information about themselves hamper the attempts to achieve representation.

As a way of addressing the problem of locating the forced migrants, Bloch proposes a snowballing technique which is generally used in qualitative research. Snowballing could be through personal contacts (such as close family friends or relatives) and through association within networks such as community groups. The former has become problematic when the sample is

too small as it will generate a homogenous sample with similar social, political and economic characteristics. In the latter case, community members who are not in touch with any social, cultural, religious or any other group will be excluded from the snowballing sampling through contacts.²⁰ It is highly probable that there are such groups who live within the forced migrant population. Reliance on community groups for sampling will also create a bias in the sample. It is questionable whether the technique of snowballing will resolve the issue of sampling and its ability to generate generalizable findings. Bloch concludes that results of such survey cannot be generalized because non-probability sampling techniques were used.²¹

Site selection for research is another important factor which gets affected by the movement of migrants. Because of constant relocation, migrants themselves are not aware about their next destination.²² In quantitative methodology, sites are chosen on the basis of available statistics. As I discussed above, in the absence of accurate information regarding the refugee population, their whereabouts, there is a possibility that we will pick an inappropriate site for the research which will create practical difficulties in implementing the study and ultimately affect the quality of the findings. In extreme cases, it may lead to wrong conclusions which will have negative implications on the migrants who are already in a vulnerable condition.

In short, the factors such as the difficulties in obtaining an accurate list of migrants, inability to generate a meaningful database, complications in locating the migrants, shortcomings of the sampling methods such as snowballing and possible introduction of biases and insufficient information to pick the research site encumber the implementation of quantitative techniques to research forced migrants.

Maintaining the Objectivity - Issues Related to Trust and Confidentiality

Trust-building is a mandatory part of carrying out any social research to gather meaningful, accurate information. In the situations of forced migration, trust-building becomes even more important because we are dealing with victims of various incidents. Fear of repercussions of the survey such as the doubts about tracing them back makes the refugees step back from responding to the survey questions. It is vital to spend time with the people who are subjected to research to know about their issues and build trust which is not possible when a survey is carried out. As explained by Jacobsen, since qualitative researches are conducted over a period of time, it provides a space to interact with people and understand the local customs, it creates an atmosphere to gain trust. Whereas in the quantitative research the researcher interacts with the people for a short period of time and it is less likely that they will gain trust. It is evident that in the context of forced migration carrying out such survey will result in incorrect conclusions. One should also acknowledge that even if the confidentiality is assured, some communities are unaware of the concept of confidentiality.

The unwillingness of migrants to talk openly arises as a result of suspicion. One of the common ways of dealing with the aspect of suspicion is to gain access to communities through 'Gate Keepers'.²³ Gate keepers are the ones who are acting as facilitators in the community, with some level of trust. In the conditions of forced migration, it is hard to identify and locate these gate keepers and negotiating access will be problematic because of fear of repercussions. Even in the cases of gaining access to the gatekeepers it is not sure whether they will reveal accurate relevant information. All these factors can be attributed to the low response rate in the study communities.

Language, Selection of Interviewers and Interpreters

Translation and language used in data collection is one such thing that many researchers have to negotiate in sociology, irrespective of the methods used; whether it is quantitative or qualitative. The use of appropriate language becomes even more important for quantitative studies because there is no space for probing of questions. Translation of questions and concepts is a big issue in refugee research.²⁴ Hence the wording should be carefully used and contextualized to the language and socio-cultural aspects of the respondents. Researching forced migration brings another layer of complication to the language issue because it takes time to learn about the correct use of certain terms that may have implications in their socio-cultural aspects. For instance, as Pernice points out, asking Vietnamese respondents whether they had experienced any marital problems, this can be translated either as meaning "obstacles in a marriage," such as incompatible horoscopes or religious or regional differences, or as meaning "discord between husband and wife".²⁵ Learning these aspects that are specific to the forced migrants may take an ample amount of time and there will be very limited time available in quantitative surveys.

Another practical difficulty which impacts the 'objectivity' in researching forced migrants is finding the suitable interviewers and interpreters with the right skills/qualities. In the context of forced migration, interpreters and interviewers are recruited from the co-ethnics for various reasons such as gaining access, their knowledge on language and socio-cultural issues and of course sometimes for cost concerns. But adopting such strategy may impact the research outcomes in a negative manner. Using the interviewers known to the respondents may affect the objectivity of the research and validity and reliability of the data collected.²⁶ Respondents may not reveal true information (ex. caste) because it may affect their social life in the host country. There is also a possibility to generate biased information. Wrong interpretation of questions or responses will also affect the data quality and ultimately the quality of research. Although these issues are applicable for any social research, the implications are higher for research quality when a survey research is implemented among forced migrants because these biases can introduce serious errors in the research outcome.

Concluding Remarks

The above arguments clearly suggest that there are sufficient debates of suitability of quantitative and qualitative methods used in social sciences. There cannot be a right or wrong methodology but one should decide on the methodology based on the research questions and objectives. A quantitative approach will be useful to find the causality while qualitative approach is more suitable to study lived experience of people. Elements related to the forced migration adds another layer to the 'methodological complications'. Appropriateness of each methodology varies depending on the context the methodology is applied. The paper put forward an argument for the inappropriateness of application of quantitative methodology to study the issues of those affected by forced migration. The adverse living conditions of forced migrants and the difficult environment in which they live makes it hard to achieve the aims of quantitative research such as generating a representative sample, validity and replicability, achieving generalisability and being objective. It does not mean that survey researches cannot be done in the forced migration context, but implementation of survey would only give a partial picture of the entire situation which would lead to wrong conclusions.

Notes

¹ Rodgers, G. 'Hanging out with Forced Migrants: Methodological and Ethical Challenges', *Forced Migration Review*, 21, 2004, 48-49.

² Iosifides, T. 'Qualitative Migration Research: Some New Reflections Six Years Later', *The Qualitative Report*, 8(3), 2003, 435-446.

³ Rodgers, 2004.

⁴ Iosifides, 2003.

⁵ Jacobsen, K., & Landau, L. B. 'The Dual Imperative in Refugee Research: Some Methodological and Ethical Considerations in Social Science Research on Forced Migration', *Disasters*, 27(3), 2003, 185-206.

⁶ Bryman, A. 'The Debate about Quantitative and Qualitative Research: A question of Method or Epistemology?', *British Journal of Sociology*, 1984, 35, 75-92.

⁷ Silverman, David. *Interpreting Qualitative Data: Methods for Analysing Talk, Text and Interaction*. London: Sage, 2006, 13.

⁸ Silverman, David. *Interpreting Qualitative Data: Methods for Analysing Talk, Text and Interaction*. London: Sage, 2011, 25.

⁹ Bakewell, O. 'Research Beyond the Categories: The importance of Policy Irrelevant Research into Forced Migration', *Journal of Refugee Studies*, 21(4), 2008, 432.

¹⁰ UNHCR. *The State of the World's Refugees: A Humanitarian Agenda*, 1996, 2 at <http://www.unhcr.org/3eb7bbd04.html>, last accessed on 25 November 2013.

¹¹ Martin, Susan F. 'Forced migration and the evolving humanitarian regime', , Working Paper No. 20, Institute for the Study of International Migration, Georgetown University, Washington, DC, 2000, 3.

¹² Moore, W. H., and Shellman, S. M. 'Fear of Persecution Forced Migration, 1952-1995', *Journal of Conflict Resolution*, 48(5), 2004, 723-745.

¹³ Wood, W. B. 'Forced Migration: Local Conflicts and International Dilemmas', *Annals of the Association of American Geographers*, 84(4), 1994, 607-634.

¹⁴ Van Liempt, I., and Bilger, V. Ethical Challenges in Research with Vulnerable Migrants ed., Vargas-Silva, C., Handbook of Research Methods In Migration, UK: Edward Elgar Publishing, 2013, 451-466.

¹⁵ Rodgers, 2004.

¹⁶ Bloch, A. 'Carrying out a Survey of Refugees: Some Methodological Considerations and Guidelines', *Journal of refugee studies*, 12(4), 1999, 367-383.

¹⁷ Jacobsen, K., & Landau, L. B. 'The Dual Imperative in Refugee Research: Some Methodological and Ethical Considerations in Social Science Research on Forced Migration', *Disasters*, 27(3), 2003, 185-206.

¹⁸ Pernice, R. 'Methodological Issues in Research with Refugees and Immigrants', *Professional Psychology: Research and Practice*, 25(3), 1994, 207

¹⁹ Voutira, E., & Dona, G. 'Refugee Research Methodologies: Consolidation and Transformation of a Field', *Journal of Refugee Studies*, 20(2), 2007, 163-171.

²⁰ Welch, S. 'Sampling by Referral in a Dispersed Population', *Public Opinion Quarterly* 39(2), 1975, 237-246.

²¹ Bloch, 1999.

²² Voutria, 2007.

²³ Bloch, 1999.

²⁴ Pernice, 1994. Also see Iosifides, 2003.

²⁵ Pernice, 1994.

²⁶ Bloch, 1999.

Right to Return: The Tibetan and Bhutanese Refugees in Nepal

By

Amrita Limbu *

The refugees by the mere fact of being refugees comprise a fragile population. Compared to the nationals, they enjoy limited rights and being in another country definitely has its limitation in various aspects. Despite the ground realities, the refugees are accorded the right to enjoy all the fundamental rights and also the right to return. Right of return is perhaps the most significant and ambitious right that the refugees are supposed to enjoy. Yet this particular right remains a fantasy. Those compelled to seek refuge due to direct political events have the slimmest chances of ever returning to their homeland. On this note, let us understand why 'right to return' is an important issue for refugees, in general and the Tibetan refugees and Bhutanese refugees residing in Nepal, in particular. Several rounds of high level talks in both cases have failed to yield any results. Besides, the Tibetan refugees' right to return is clouded by the growing influence of China in Tibet and over the host countries, (of the Tibetan refugees) including Nepal. Amidst flickering hopes of return, the Tibetans in Nepal have also been denied third country resettlement opportunities that have benefitted the Bhutanese refugees. Since being displaced, both the Tibetan and Bhutanese refugees have been denied the right to return. Right to return remains not only elusive but also on the wane. The paper is based on qualitative data analysis and documentary analysis of legal framework.

The 'Right to Return' and the Reality

For millions of people in the world who are compelled to cross over international borders and seek refuge, return remains an eventual aspiration. Return however has several dynamics. Some refugees have the option to return, some are forced to return, some are not willing to return, while others

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are prevented from return. Many leave home with the intention of escaping the insecurity temporarily and returning once the problems settle down. However, for thousands of refugees who have left home for a temporary period, the situation has become ever so complicated as they are denied permission to return. Many generations of families have been compelled to live as refugees with hopes of return becoming slimmer with each passing day. Being in another country definitely has its limitation in various aspects. The right for every human being to return to their homeland is protected by the international instruments but there is a detachment between return as a right for refugees in principle and practical reality. The right to return in practice remains a fantasy.

History of nation-building clearly illustrates that refugees at some point of time have become part of the nation-building process, forced to be displaced due to political tensions. The international organisation United Nations High Commissioner for Refugees (UNHCR) itself was established in 1951 to assist the 'estimated one million people still uprooted after World War II to return home'.¹ The 1951 Convention on the Status of Refugees was adopted for the same purpose. Thus, from the very beginning 'right to return' has always been a priority as far as the refugees are concerned. Since 1951, the problems of refugees have emerged in different countries across the globe and their numbers have fluctuated with their repatriation, resettlement and local reintegration. Total number of refugees in the world is estimated to be 10.4 million at the end of 2011, a slight decrease from 10.55 million in 2010.²

It is apparent that during any crisis, the flow of refugees is towards the nearest neighbouring countries. Since the World Wars, most of the problems of refugees have shifted from the developed European countries to the developing ones. Out of the total refugees worldwide, the developing countries host four-fifth of the refugees. There is no sign of an end to the flow of refugees even as the world has firmly stepped into the second decade of the 21st century. The 'Arab Spring' or the political turmoil in North Africa and the Middle East at the beginning of 2011 led to outflow of thousands as refugees. In 2011 alone, more than 800,000 became refugees due to conflicts in Côte d'Ivoire, Libya, Somalia and Sudan; it is also the highest number in over a decade.³ Even in the last quarter of 2012, the number of Syrians seeking refuge continues to the rise.

South Asia is both a source of refugees and host to a large number of refugees. In fact, Pakistan hosts the largest number of refugees in the world (1.7 million), while it is Afghanistan that is the largest source of refugees (2.7 million in 2011).⁴ Pakistan hosts a large number of refugees from Afghanistan and a few hundred from Iran and Iraq. India is home to Tibetan refugees, refugees from Sri Lanka, Bangladesh, Afghanistan, Myanmar, etc, while Nepal is home to Tibetan and Bhutanese refugees. While the Afghan refugees in Pakistan, the Sri Lankan refugees, refugees from East Pakistan and *Chakmas* in India have been able to return to their country,⁵ there are other groups of refugees in South Asia like the Tibetans and Bhutanese who have been clearly denied the right to return.

The genesis of the refugee problems in South Asia is also associated with nation-building. Thousands became refugees overnight during the partition of India into India and Pakistan. The partition refugees also known as the *mohajirs* have however been reintegrated into their new homeland and are thus slightly different natured in comparison to other refugees. The Afghan and Sri Lankan refugees escaped the conflict at their respective homes; the Tibetans were direct victims of nation-building and territorial delineation; while the Bhutanese were victims of homogenisation process.

As efforts to find solutions to the refugee problem continue, about 532,000 refugees were voluntarily repatriated in 2011, while about 79,800 were resettled in 22 countries worldwide.⁶ Future of a large number of refugees remains in a limbo as their return to their homeland challenged due to difficult political tension. However, it is important to note that the right to not return has become equally sensitive for many groups of refugees who prefer not to return for various reasons of economy, security, etc.

The Tibetan and the Bhutanese are the two major groups of refugees in Nepal and are a part of that section of refugees in the world, who have not been able to return. They are unlike the groups that escaped temporary insecurity of conflict or war and have the option to return. It is important to briefly touch upon the historical context of these two and analyse the challenges in their return and examine why right to return is an important issue.

Legal Instruments Relating to Refugees

The United Nations Convention relating to the Status of Refugees adopted in 1951 is the base of international refugee law. It came after the end of World War II and was basically concerned with the refugees of Europe due to events that occurred before 1 January 1951. When other refugee crises surfaced during the late 1950s and early 1960s, a Protocol to the Convention was adopted in 1967 to remove the time limitation and broaden the geographical scope of the Convention.⁷ The Convention is based on Article 14 of the Universal Declaration of Human Rights (UDHR) 1948 that recognises the right of everyone to seek and enjoy asylum from persecution in other countries. Article 13.2 of the UDHR also recognises the right of everyone to leave any country, including one's own and to return.

Convention Relating to the Status of Refugees, 1951

The Convention defines 'refugee' as,
(any person who)...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.

The Convention sets out minimum standards for the treatment of refugees in host countries. It calls for member countries to accord rights to

the refugees at least as favourable to their nationals in regard to – freedom to practice their religion and provide religious education to their children; right to acquire property; right to non-political and non-profit making associations and trade unions; right to free access to courts of law including legal assistance; right to engage in wage-earning employment or self employment; and right to choose their place of residence and move freely within the country. The Convention prohibits expulsion of refugees or *refoulement* and rather prioritises their assimilation and naturalisation in the host country.

Protocol Relating to the Status of Refugees, 1967

Since the Convention of 1951 refers to refugees as only those before 1 January 1951 in Europe, the Protocol was adopted in 1967 to broaden the scope of the Convention. The Protocol recognises refugees without any geographic and time limitations.

International Covenant on Civil and Political Rights, 1966

A refugee's right to return is not mentioned in the most important Convention directly related to them nor in its Protocol, yet it is the most fundamental right for all refugees. The right to return for a refugee is distinctly enshrined in the International Covenant on Civil and Political Rights (ICCPR) of 1966. Article 12.2 of the ICCPR protects the right of everyone to leave any country including one's own, while Article 12.4 specifically mentions that 'no one shall be arbitrarily deprived of the right to enter his own country'.

Rights of Refugees in Nepal

Though Nepal has hosted more than a hundred thousand refugees, there are no concrete refugees' laws to guide the treatment of refugees in Nepal. Nepal is neither party to the 1951 Convention on the Status of Refugees nor its Protocol. Nepal has not adopted any national refugee law to guide its work in regards to the refugees it hosts. Similarly, none of the other South Asian countries except Afghanistan have ratified the 1951 Convention or its Protocol. There is thus no standard legislative procedure for the treatment and handling of refugees in Nepal or the rest of South Asia.

However, countries in South Asia have ratified several different international conventions, though in varying degrees. The international conventions like the ICCPR, International Convention on Economic, Social and Cultural Rights (ICESCR) 1966, International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 1965, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, Convention on the Rights of the Child (CRC) 1989, etc., provide a standard of basic rights to all human beings. In the absence of any specific national and international framework to guide the treatment of refugees in South Asia, adherence to the the international

laws or conventions instruments can provide a basis for the protection of the rights of refugees to a certain extent.

Tibetan and Bhutanese Refugees in Nepal

Nepal has been home to the Tibetan refugees since 1959 and the Bhutanese refugees since the early 1990s. At present, Nepal is home to 56,710 Bhutanese refugees, 15,000 Tibetan refugees and 260 other refugees.⁸ Other refugees in Nepal comprise of the Pakistani and Somali refugees who are mainly victims of trafficking.⁹

Nepal has ties with both Bhutan and Tibet. Nepal's trade link with Tibet is often traced centuries back, as far as 500 BC.¹⁰ Most parts of Nepal had greater economic ties and closer cultural affinity with Tibet until the early 19th century than with any other country; there were more Nepalese in Tibet than anywhere else outside Nepal, and more people of Tibetan origin than of other origin were known to be living in Nepal at that time.¹¹ Nepalese immigrated to Bhutan during the late 19th century where they settled in the uninhabited southern region as farmers.¹² While the inter-flow of Tibetans and Nepalese was obstructed by the Chinese takeover of Tibet in 1959, there was return migration in the case of the Nepali emigrants to Bhutan in the early 1990s.

The Tibetans in Nepal

Tibetan refugees refer to the people of Tibet who have been taking refuge outside Tibet since 1959 after the Chinese occupation of Tibet. A large number of Tibetans today live in India and Nepal, a few hundred live in Bhutan and some have moved beyond South Asia to Europe and America. The conflicting claim on Tibet by the present Tibetan government-in-exile and China continues to this day. While the Tibetan government-in-exile has maintained that Tibet has always been an independent state, China in 1951 through the signing of the '17-Point Agreement' with the Local Government of Tibet upheld that Tibet 'has always been a part of the Chinese Motherland'.¹³ In March 1959 when the People's Liberation Army crushed the popular anti-Chinese uprising by the Tibetans (also known as the Lhasa Uprising), the Dalai Lama was compelled to leave Tibet. Many Tibetans followed him to India while some crossed the Himalayas into Nepal and Bhutan. Approximately 80,000 followed the Dalai Lama into exile during that critical period.¹⁴

After more than 50 years, the out flux of Tibetans into Nepal and India still continues. The Tibetan refugees have been housed in settlements across India and Nepal, while some have moved out of the settlements and scattered across the two countries as well as in other parts of the world. The Central Tibetan Administration (CTA) in Dharmasala, India functions as the government-in-exile and is headed by the 14th Dalai Lama Tenzing Gyatso. In April 2011, Prime Minister Dr. Lobsang Sangay was elected to the head of the CTA by the Tibetan diasporas, in a clear indication of the shift of the Tibetan

government-in-exile towards modern democracy. The total number of Tibetan refugees is estimated to be about 128,014 including 94,203 in India, 13,514 in Nepal and 1,298 in Bhutan.¹⁵ The last census of Tibetans in Nepal was conducted by the government more than two decades back in 1990; as such there is a lack of precise data on the number of Tibetans in Nepal. The UNHCR Nepal estimates about 15,000 Tibetans to be in Nepal,¹⁶ while various sources estimate there to be about 20,000 in Nepal.

As with any other refugees, when the Tibetans initially sought refuge, it was initially assumed (by the Tibetans, the government of India and Nepal) that it was a temporary phenomenon and they would eventually return to Tibet within some time. However, it became more apparent with time that resolution to the issue of Tibetan refugee was not going to happen anytime soon. After more than 50 years, the Tibetans still live in hope of return to their homeland.

Most of the Tibetan refugees in Nepal are the children or grandchildren of those who fled Tibet in and around 1959. They are settled in ten settlements across the country. Those who arrived before 1990 are recognized by the government of Nepal, provided documentation and allowed to reside in the country. However, in the later 1989, the government stopped registering the new arrivals and also barred them from staying in the country; nonetheless, the government adopted an informal policy in 1990, also known as the Gentlemen's Agreement with the UNHCR and the Tibetan government-in-exile to allow transit to the refugees for any other country.¹⁷ As such, approximately 900 refugees cross Nepal every year for India.¹⁸ The new arrivals are quickly transited to India. Many Tibetans remain in Nepal without proper documentation and thus with an illegal status.

Tibetans in Nepal enjoy limited rights including the freedom of mobility within Nepal, and the freedom to work in the local economy but they are denied political freedom. In the five decades of stay here, they have successfully established carpet and jewellery industries. 'Tibetan refugees in Nepal are some of the most highly integrated refugees in the world'.¹⁹

The Bhutanese in Nepal

The Bhutanese refugees represent Bhutanese nationals of Nepali origin (*Lhotsampas*) who fled Bhutan in the early 1990s when the Bhutanese government announced that *Lhotsampas* who could not prove their residence in Bhutan prior to 1958 would be denied citizenship.²⁰ Along with the citizenship policy, the Bhutanese government's imposition of the Marriage Act of 1980 that denied citizenship to non-Bhutanese women married to Bhutanese men after 1958; suppression of cultural rights in the name of 'One Nation, One People' policy, resulted in thousands of *Lhotsampas* being reduced to stateless persons and increase in tensions. The subsequent public demonstration by the *Lhotsampas* was suppressed and was followed by forceful eviction.²¹ About 106,000 Bhutanese refugees who were evicted or victims of insecurity due to mass exodus were settled in seven camps in eastern Nepal.

The Bhutanese refugees have been settled in refugee camps in the eastern plains of Nepal. Unlike the Tibetan refugees, the government of Nepal has accepted the resettlement of the Bhutanese refugees in seven developed countries.

The Right to Return

The eventual return is an individual choice but its practical reality entirely depends on the two countries involved – host and country of origin. Return is most difficult for those in refugee status due to political reasons. The country of origin usually has the upper hand in manipulating negotiations of return of refugees towards its advantage. Until and unless, the two concerned parties do not converge to a meaningful conclusion, right to return cannot be realized. In the case of Tibetans and Bhutanese, its practical implementation remains a feasible expectation. The situation of the right to return for the Bhutanese refugees in contrast to the Tibetans has seemingly taken a different dynamic with third country resettlement of more than half the number that was residing in Nepal.

This particular right is severely challenged by different factors.

Challenges faced by Tibetan and Bhutanese Refugees

The possibility of the return of the Tibetan refugees to their homeland in Tibet has been clouded both due to the growing influence of Chinese authorities in their homeland as well as Nepal. On the one hand the situation in Tibet between the Tibetans and the Chinese authorities is deteriorating and on the other hand, in Nepal, the government under pressure from China is increasingly becoming intolerant to pro-Tibetan activities. On the other hand, the UNHCR (as of 2006) classified 108,000 Bhutanese as refugees in Nepal and the complex situation is getting exacerbated as more and more people are moving to Nepal and other neighbouring countries.

Situation in Tibet

In Tibet, there has been increase in political unrest since September 1987 and repression of peaceful demonstrations.²² Amidst growing tensions in Tibet and recurring protests, more than 50 Tibetans have self-immolated in protest against the Chinese rule in Tibet.²³ Even after more than 50 years of the first out flux of Tibetans from Tibet, the process continues to date.

Unsuccessful Diplomacy

Despite claim on Tibet by both the Tibetan government-in-exile and China, the former has maintained that it seeks autonomy for Tibet and not independence. There have been nine rounds of talks between the Dalai Lama and the Chinese officials that have failed to yield any results.²⁴ The latest official talk was held in January 2010.

On the other hand, since 1991 when the Bhutanese first fled and entered Nepal, there have been as many as 15 rounds of bilateral talks between the government of Bhutan and Nepal. However, the talks have failed to yield any meaningful results. The last round of talks held in 2003 failed when the Bhutanese government refused to recognize the refugees as its citizens.²⁵ The governments of Bhutan and Nepal in 1993 had agreed to form a Ministerial level joint committee to resolve the refugee crisis, but it was only in 2001 that a joint verification team was formed. The verification was carried out in *Khudunabari*, but it was only after a year that the Bhutanese government announced the results of the verification. The Bhutanese government recognised only 293 individuals of 74 families as bonafide Bhutanese out of the total population in the camp of 12,500.²⁶ Subsequent attacks on the Bhutanese verification team followed and since then the bilateral talks have never been initiated.

China's Influential Role in Nepal

China's growing influence in Nepal has severely impacted the Tibetan refugees. Nepal being a resource poor country is highly dependent on its two large neighbours India and China. China maintains a close watch over the Tibetans in Nepal and it is a prioritised issue as far as the Chinese government's interest in Nepal is concerned. Security on the Nepal-China border has been stepped up on both the sides and the government of Nepal has been accused for using the police to suppress the Tibetan refugees' right to freedom of association and expression, following increased pressure from China.²⁷ Even peaceful in-door meetings were disrupted by the police, the activists detained before important dates, and also for staging protests. Tibetans continue to leave Tibet but the number of those who transit through Nepal has also declined over the years, with only 800 seeking refuge in 2011.²⁸ The decreasing number of Tibetans who transit via Nepal is also indicative of the unfavourable environment towards them.

It is becoming more and more apparent that the issue of the Tibetan refugees is unlikely to be resolved with the Chinese government anytime in the near future, so as to create an environment for their return. Thus, the government of United States had proposed a resettlement program for the Tibetan refugees in the US, but Nepal did not respond favourably to the proposal.²⁹ The resettlement was first proposed by the former President George W. Bush in 2005.³⁰ It is apparent that while Nepal does not allow new Tibetan refugees to reside, it is in no position to give exit visas for those residing in Nepal to leave for a foreign country. It is assumed to be easier to keep the Tibetans under control within Nepal rather than when they are scattered across the globe. Thus, with no prospects of the settlement of the issue of Tibet between the Chinese government and the Tibetan government-in-exile, the Tibetan refugees residing in Nepal have no likelihood of being able to return to their homeland. The few who have taken the risk to re-enter Tibet to meet their families have been detained and deported to Nepal by the Chinese security personnel.³¹ Half a century has passed since the Tibetans first

sought refuge in Nepal. With every passing day, their hopes of being able to return have become slimmer. While the younger generation have more or less accepted the reality of the situation, the older generation or the first generation refugees still live in the hope of returning to Tibet.³²

Third Country Resettlement

In 2006, the US government first proposed to resettle 60,000 Bhutanese refugees, and the resettlement process finally began in March 2008. More than 50,000 Bhutanese refugees have left Nepal to restart their life in third countries, and as such the numbers of those remaining in camps in Nepal have decreased by 60 per cent since its peak.³³ Majority of them have been resettled in the US, while a few hundreds have been resettled in Australia, New Zealand, Netherlands, Norway, Denmark and Canada. 56,710 Bhutanese refugees remain in Nepal today.³⁴

While the younger generations have particularly been keen on third country resettlement, the older generations have held back to their dreams of repatriation to their homeland. In a campaign led by Senior Citizens Group, about 8000 Bhutanese refugees have signed a petition to be repatriated.³⁵

With the failed bilateral talks and large scale resettlement of Bhutanese refugees in third countries, the chances of the remaining refugees in Nepal to be repatriated is very slim. With no hopes of successful negotiation between the governments of Nepal and Bhutan to repatriate the refugees, efforts to resettle the remaining refugees continue. It is an indication of the fact that chances for the Bhutanese refugees to return to Bhutan sees no light in the near future.

Conclusion

It has been more than 50 years since the Tibetans first sought refuge in Nepal in 1959, and over two decades have passed since the large number of Bhutanese came across India to take refuge in Nepal. But the chances of both the groups being able to return to their homeland seem ever bleak. While more than 50,000 Bhutanese refugees from Nepal have already been resettled in the US and other developed countries, there have been similar resettlement proposals for the Tibetans in Nepal. However, the proposal has not been looked upon favourably by the government of Nepal. The resettlement was first of all proposed for the Tibetan refugees but even as thousands of Bhutanese have been resettled abroad, similar prospect for the refugees from Tibet is yet to materialise. Third country resettlements are more of a final strategy to end the protracted refugee status to overcome problems mainly due to donor fatigue.

Further, after 15 rounds of bilateral talks between the government of Bhutan and Nepal, that failed to yield any substantial result there is unlikely for any such bilateral efforts to resolve the issue anytime in the future after the verification team was attacked in the latest such effort. In the case of Tibetan refugees, the latest ninth talks between the Dalai Lama and the Chinese

authorities in 2010 concluded without any results and since then there have been no sign of high level talks. Thus, for both the Tibetan and Bhutanese refugees residing in Nepal, the chances of being able to return to their homeland is far from practical reality at least in the near future. Peaceful diplomatic negotiations have not yielded any respite for the two groups residing in Nepal to be able to return to their homeland. Since both the Tibetans and Bhutanese are results of political events, they face the slimmest chance of being able to return.

Despite the harsh realities, all refugees are entitled to return to their homeland. For the Tibetan and Bhutanese refugees residing in Nepal, the right to return for them is decisive for the following reasons.

Notion of Home and Belonging

The refugees have crossed over internationally recognised borders but it is not a reason for depriving them of the right to return. The mere fact of it being their homeland is reason enough for the Tibetans and Bhutanese refugees to be able to return to Tibet and Bhutan respectively. The younger generations who have not been able to set foot in their homeland wait for the opportunity, and the older generations who have lived their lives there wait to continue their lives in the place of their childhood.

Legal Right Accorded by the International Organisation

The international organisation through its human rights instruments has accorded every person with the right to return to one's own country. The right is enshrined in the Universal Declaration of Human Rights and specifically mentioned in the International Covenant on Civil and Political Rights.

International organisations were established to direct the way modern states function in the 20th century and henceforth, and the international treaties/instruments were adopted to guide the work of the international organisations. It is only right that the legal provisions of these international human rights instruments be respected in allowing the Tibetan and Bhutanese refugees among several others to return home.

Vulnerability in the Host Country

The refugees in any country are a fragile community accorded only limited rights and certain restrictions. The limitation to enjoyment of full rights as par the nationals is a hindrance in the full development of the refugees. They live in uncertainty in regards to longer term plans for their future. Since Nepal does not have any national laws on refugees and is not party to the international convention on refugees, the treatment of refugees differs with time and the persons in authority. The frequent changes in the government in Nepal have obstructed meaningful dialogues with the Nepali authorities on crucial issues in regard to the refugees.

Despite challenges to both the Tibetan and Bhutanese refugees' right to return, they face different levels of integration to the local community. Though, the Bhutanese refugees share ethnic, religious and cultural similarities to the large proportion of Nepalese, their integration is comparatively lower than that of the Tibetan refugees in Nepal many of who have managed to settle down with successful small scale enterprises. While the Bhutanese refugees are confined within camps and require permission to travel outside the camps, the Tibetans enjoy freedom of mobility.

Contribution to Peace and Harmony in Origin Country

The Tibetan and Bhutanese refugees residing in Nepal are representative of the vulnerable minority population in their country of origin. Though there are bound to be various challenges for return of refugees, if the government in power accepts the return of its citizens, it will definitely help to boost the relationship between the government and its vulnerable population, here between the Tibetans and Chinese, and *Lhotsampas* and Bhutanese government. The return will ease the tensions through display of trust and acceptance of its citizens by the governments. The return of the Tibetan refugees to Tibet thus could act as a catalyst for peace between the tense ethnic Tibetan population and the Chinese authorities in Tibet and thus contribute to peace and harmony. Similarly, the return of Bhutanese refugees to Bhutan could be a display of acceptance by the government in power towards the minority *Lhotsampas*.

Right to return is an exclusive right that is inherent to every human being. It not only has legal significance but the vulnerability factor of refugee-hood in host country makes their right to return more urgent. The return of refugees also has the potential to contribute to peace and harmony in the country of origin. Coming to the 21st century when the countries are adopting more strict immigration policies to manage the financial and other resource constrains that refugees bring along, the right to return for the refugees holds more significance today than before. But as evidenced by the situation of the Tibetan and Bhutanese refugees in Nepal, their right to return remains not only elusive but also on the wane. Yet right to return is the most ambitious right that every refugee craves.

Notes

¹ UNHCR. 'Refugee Figures,' at <http://www.unhcr.org/pages/49c3646c1d.html>. Last accessed on September 13, 2012.

² UNHCR. *A Year of Crises: UNHCR Global Trends 2011*. Geneva: United Nations High Commissioner for Refugees, 2012.

³ *Ibid.*

⁴ *Ibid.*

⁵ Samaddar, Ranabir, ed., *Refugees and the State: Practices of Asylum and Care in India, 1947-2000*. New Delhi: Sage Publications, 2003.

⁶ UNHCR, 2012.

⁷UNHCR. *Refugee Protection: A Guide to International Refugee Law*. Geneva, United Nations High Commissioner for Refugees, 2001.

⁸UNHCR. '2012 UNHCR Country Operations Profile – Nepal: Working environment,' at <http://www.unhcr.org/pages/49e487856.html>. Last accessed on 10 September 2012.

⁹Adhikari, Deepak. 'Somali Refugees in Nepal: Stuck in the Waiting Room,' *Time*, November 10, 2009.

¹⁰ Schrader, H. 'Trading Patterns in the Nepal Himalaya.' *Bielefelder Studien zur Entwicklungssoziologie* 39 (1988), as cited by Thieme, Susan, in *Social Networks and Migration: Far West Nepalese Labour Migrants in Delhi*, 12. Munster: LIT, 2006.

¹¹ Dor Bista, Bahadur. 'Nepalese in Tibet,' *Contributions to Nepalese Studies* 8 (1), 1980.

¹² Cultural Orientation Resource Centre. 'Bhutanese Refugees in Nepal,' *Cultural Orientation Resource Centre Refugee Backgrounder* 4, 2007.

¹³ The 17-Point Agreement was signed under pressure and it was denounced by the Dalai Lama in June 1959 after leaving Tibet. Tibet Justice Center. *Tibet's Stateless Nationals II: Tibetan Refugees in India*. Oakland: Tibet Justice Center, 2011.

¹⁴ BBC. '1959: Dalai Lama escapes to India' at http://news.bbc.co.uk/onthisday/hi/dates/stories/march/31/newsid_2788000/2788343.stm. Last accessed on 14 September 2012..

¹⁵ Based on Demographic Survey of Tibetans in Exile 2009 by the Planning Commission of Central Tibetan Administration in 2010 (Central Tibetan Administration. 'Tibet in Exile,' at www.tibet.net. Last accessed on 10 September 2012.

¹⁶ UNHCR. '2012 UNHCR Country Operations Profile – Nepal: Working Environment', at <http://www.unhcr.org/pages/49e487856.html>. Last accessed on 10 September 2012.

¹⁷ United States Bureau of Citizenship and Immigration Services. 'Nepal: Information on Tibetans in Nepal,' 9 June 2003, at <http://www.unhcr.org/refworld/docid/3f51fbfb4.html>. Last accessed on 10 September 2012

¹⁸ UNHCR, Country Profile, 2012..

¹⁹ Banki, Susan. 'Refugee Integration in the Intermediate Term: A Study of Nepal, Pakistan, and Kenya, New Issues in Refugee Research', Working Paper No. 108. Geneva: United Nations High Commissioner for Refugees, 2004.

²⁰ Cultural Orientation Resource Centre. 'Bhutanese Refugees in Nepal,' *Cultural Orientation Resource Centre Refugee Backgrounder* 4, 2007.

²¹ Pattanaik, Smruti S. 'Nepal-Bhutan Bilateral Talks and Repatriation of Bhutanese Refugees,' Institute for Defence Studies and Analyses, 1992. Also see Banerjee, Paula and Samaddar, Ranabir. 'South Asian Experiences of the Right to Return,' *Refugee Watch Online*, 2006 at <http://refugeewatchonline.blogspot.in/2006/08/south-asian-experiences-of-right-to.html>. Last accessed 5 December 2012.

²² Forbes, Ann Armbrecht. *Settlements of Hope: An Account of Tibetan Refugees in Nepal*. Cambridge, M.A.: Cultural Survival, Inc., 1989.

²³ BBC. 'Two Tibetan teenagers die in self-immolations,' 28 August, 2012 at <http://www.bbc.co.uk/news/world-asia-china-19394488>. Last accessed on 11 September 2012.

²⁴ BBC. 'Tibet Profile,' at <http://www.bbc.co.uk/news/world-asia-pacific-17046222>. Last accessed on 16 September 2012

²⁵ UNHCR. 'Nepal: Bhutanese refugees head West,' Integrated Regional Information Networks, 21 June 2010 at <http://www.unhcr.org/refworld/docid/4c247e3017.html>. Last accessed on 11 September 2012.

²⁶ Dhungana, Shiva K. 'Third Country Resettlement and the Bhutanese Refugee Crisis: A Critical Reflection,' *Refugee Watch* 35, 2010.

²⁷ Amnesty International. *Amnesty International Annual Report 2012 – Nepal*. London: Amnesty International, 2012 at <http://www.unhcr.org/refworld/docid/4fbc392037.html>. Last accessed on 12 December 2012.

²⁸ *Ibid.*

²⁹ Giri, Anil. "Resettlement, safe passage for Tibetans: Nepal sitting on US officials' calls", *Ekantipur*, 23 February 2012, at <http://www.ekantipur.com/2012/02/22/top-story/resettlement-safe-passage-for-tibetans-nepal-sitting-on-us-officials-calls/349324.html>. Last accessed on 11 September 2012.

³⁰ A letter sent by three congressmen to the President of Nepal, Ram Baran Yadav through the US mission in Nepal on 9 December 2011. For details see http://tlhrc.house.gov/docs/statements/2011dec09_Tibetan_Refugees_President_of_Nepal.pdf. Last accessed on 11 September 2012; http://tlhrc.house.gov/docs/statements/2011dec09_Tibetan_Refugees_President_of_Nepal.pdf. Last accessed on 11 September 2012.

³¹ UNHCR. 'China: Tibetans blocked from return,' *Radio Free Asia*, August 30, 2012. at <http://www.unhcr.org/refworld/docid/5040b003c.html>. Last accessed 10 September 2012.

³² Tarodi, Tunga. 'Revisiting Home: Tibetan Refugees, Perceptions of Home (Land) and Politics of Return,' Working Paper 266. Bangalore: The Institute for Social and Economic Change, 2011.

³³ UNHCR. '2012 Regional Operations Profile – South Asia, Working Environment,' at <http://www.unhcr.org/pages/49e45b156.html>. Last accessed on 11 September 2012..

³⁴ *Ibid.*

³⁵ UNHCR. 'Nepal: Bhutanese refugees head West,' Integrated Regional Information Networks, 21 June 2010, at <http://www.unhcr.org/refworld/docid/4c247e3017.html>. Last accessed on 11 September 2012.

Borders and Movements: People in the Borderlands of Central Asia

By

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In an interesting essay named “Travels in the Margins of the State, Everyday Journeys in the Ferghana Valley Borderlands”, Madeleine Reeves describes the journey of Saodat-opa from the village where she spent her married life to her childhood home where her parents and brothers live. Saodat opa had been married to Illkhom aka thirty years ago when they had met as foreign language students in Leninabad, now Khujand and had left her family home to live with her husband. The two hundred kilometer distance separating the two villages had never been considered large till the establishment of independent state borders and the attempt of the state to assert territoriality and foster the perception of ‘otherness’. As Saodat Opa travels through Batken in Kyrgyzstan to cross into the Tajik border transformation in everyday geographies become apparent.¹ Restrictions at state borders have become a part of everyday reality for people in the Ferghana Valley who wish to move from one part to another to get to the local market, visit friends or relatives who now happen to be citizens of a different state or even to reach ancestral burial grounds. Yet, this study of the travel of an Uzbekistani Tajik from Sokh *rayon* in Uzbekistan to the industrial town of Komsomolsk in the Tajik SSR, her family home, illustrates how even in the face of restrictions imposed by the three nationalizing states that now share the valley, common cultural practices dominate interaction among the people. Reeves argues that while the transformation of everyday geographies is a reality for the many individuals who now live at ‘the margins of the state’ it is mediated at the local level by a large reservoir of common experiences and shared cultural practices. Reeves’ essay however, is in contrast to most writings on the Ferghana today that tend to focus on conflict as endemic to the valley and support their argument through a plethora of myths and prejudices that exist about ownership of land among the people. In the light of changes in political geographies, with the construction of clearly demarcated political spaces within securitized borders of states, these have assumed new salience.

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Territorial boundedness is central to the assertion and representation of the state as sovereign. It is difficult to imagine the concept of the state without a corresponding finite stretch of territory. However, excursions into the state's geographical margins show that even the borders of the most securitized states are more porous than any map would convey. For those living in the borderlands of the newly nationalizing states in Central Asia, and especially in areas where the location of the international boundary is, or has been historically contested, the divergence between the cartographic division of national space and the everyday experience of the 'border' is not merely of academic interest. Quite how state assertions of 'territorial integrity' should translate into the movement of goods and people across the state's edge is a question on which daily life invites reflection. How to have 'secure' borders that can nonetheless allow free trade across them? How to prevent resources from being siphoned out illegally, without this entailing draconian document checks every few kilometers? How to sustain relations with friends and relatives across a border when transport is increasingly fragmented along national lines? What to do with uncultivated territory, the jurisdiction of which is contested, in a situation of acute land shortage? How to balance limit and flow, connection and separation, inclusion and exclusion? All of these are issues that one is constantly confronted with in the Ferghana Valley, which is a site where contradictions between the 'securitization' of the border and local livelihoods and movements are constantly in tension.

The Ferghana Valley now spreads across eastern Uzbekistan, Kyrgyzstan and Tajikistan.² One of the more fertile areas of the region, it is densely populated with an ethnically diverse population, where traditionally seasonal movement was a way of life and land and water was shared accordingly. The Ferghana Valley had been under a single political entity for most of its history. The Soviets divided it between the Uzbek, Kyrgyz and Tajik Soviet Socialist Republics as constituent segments of the USSR. It was these Republics that formed the basis of the independent states of Uzbekistan, Kyrgyzstan and Tajikistan. When the region was a part of the Soviet Union the administrative boundaries between the three Union Republics were vaguely defined and of little salience locally. Republican boundaries became international borders but their immediate impact on the life of the people at the borders was slight. The framing of the relationship between nation, people, ethnicity and territory by the state were different from those of borderland dwellers. In addition, contested maps meant that there was often debate on the exact location of the lines dividing the states. In the mental map of most of the inhabitants living at the borders a clear demarcation did not exist and ethnic divisions, so important to discourses of national independence, was foreign to most. In any case the border of the functional state was even more contorted and people moved employment and residence backward and forward over borders during their lifetimes.

This fluidity, as far as the Uzbek-Kyrgyz border was concerned, changed in 1999 when the border became a key issue in the complex domestic power struggle in both the states and thousands of hectares of land along the border was fenced, bridges were destroyed, markets were discontinued and cross border bus routes were terminated. Close knit communities that lived on both sides of the border were affected by the concomitant squeeze on trade. Issues of inclusion and exclusion, based on notions of 'belonging' determined by citizenship came to the forefront as movements were strictly monitored. This was evident both during the events of May 2005 when Uzbeks crossed into Kyrgyz territory following the events in Andijan and the events of June 2010, which pitted the Uzbek and Kyrgyz inhabitants of the Kyrgyz city of Osh against each other. The violence that followed and the consequent movement of ethnic Uzbeks from Uzbekistan to Kyrgyzstan (in the first case) and Uzbeks from Kyrgyzstan towards the Uzbek border (in the second) led to re-negotiation of internal and external boundaries. In the course of the events, the fact of being a 'Kyrgyzstani' Uzbek, as distinguished from an Uzbek living within the territorial boundaries of Uzbekistan, became important. And what was essentially a state discourse now appeared in the everyday discourse of the people at the margins of the state. This article will explore the processes that underlie this re- negotiation within the context of the imposition of 'new' ethnic borders in the Ferghana Valley. It will bring into focus how transforming political scenarios within the region affected notions of belonging and encouraged behaviour that led to violence and forced movement of a particular ethnic group. In the course of the conflict not just institutional factors but also the image that the two ethnic groups had about each other came into play. The article begins by looking into the background of the conflict in Soviet delimitation efforts.

Delimitation and Conflict

With the defeat of the poly-ethnic Kokand Khanate in 1876, its heartland the Ferghana Valley was declared an *oblast* with several *uyezds* level administrative territories. Most *uyezds* comprised multi ethnic entities. This was complicated by the fact that the Ferghana Valley was home to both nomadic and sedentary populations and their proportions in the *uyezds* varied greatly. It is not surprising that the implementation of the national territorial delimitation plan in the Ferghana Valley particularly its eastern and southern sectors was the most difficult task in the entire process of delimitation. Both the Uzbek SSR and the Kyrgyz ASSR disputed the final settlement and both demanded that the process be reconsidered.

There also remains the historical geopolitical reality that the Ferghana Valley was part of the Khanate of Kokand, while post delimitation Uzbekistan was principally constituted out of the Emirate of Bukhara. The inclusion of a part of the Ferghana Valley within Uzbekistan proved to be problematic and continued to be so after the independence of the Republic. Conflicting claims

sprang up in many places of the Ferghana Valley after the delimitation of 1924. The Kyrgyz ASSR wrote several petitions to the Soviet government requesting Isfara and Sokh volosti which had been allocated to the Uzbek SSR. In 1927, when new republican boundaries were drawn, it was decided that Sokh and Isfara would remain within the boundaries of the Uzbek SSR. However administrative borderlines in the Ferghana were often neither enforced nor even established on the ground. Similarly, in the 1930's, there was violence between Kyrgyz practicing transhumance and the sedentary Tajiks in the area of the Vorukh enclave, as Tajik farmers allegedly began to extend their settlement to the Kyrgyz winter encampment of Bedek. In the ensuing violence many were injured and Soviet authorities allocated Bedek to the Tajik SSR while resettling the Kyrgyz herders to another area predominantly inhabited by the Kyrgyz. This is an example of a decision in the 1930's which was based on land use rather than on the established boundaries of national territorial delimitation. There were similar incidents some leading to violence in 1969, 1970 and 1975.³

This conflict history was shaped by the encounter of two different modes of production (agriculture versus animal husbandry) and lifestyles (sedentary versus transhumant) and the related construction of moral authority for land claims. This is exemplified by the fact that the land into which cultivation was expanded appeared to the Tajiks as empty 'desert' land, lying idle and awaiting cultivation. Conversely to the Kyrgyz, it represented ancestral grazing land and pastures, which were used extensively for cattle breeding. Yet, the conflict was also reconfigured with a shift in the mode of production and lifestyle. In the course of the Soviet period, the Kyrgyz gradually adopted a more sedentary lifestyle while still predominantly engaged with animal husbandry. With this shift not only their claims to land and water altered, but their strategies to assert these claims also took on a new form, exemplified through the building of settlements.

Subsequent building and resettlement projects and the institutionalization of social life tended to thoroughly ignore republican borders, indeed to shift them entirely in practice through the leasing of land from collective farms on one side of the border to another. 'Pastoralist' Kyrgyz populations were resettled into 'planned villages' further down the valley in such a way that the summer migration patterns now traversed the land of the neighbouring republic. Reservoirs and canals were built entirely ignoring the republican boundary line, tractor stations nominally under the jurisdiction of one republic were built on the land of the neighbouring republic, new Tajik *mahallabs* that were subordinate to state farms in the Tajik republic were built on the outskirts of villages that were themselves administratively part of the Kyrgyz SSR. Such arrangements, motivated in part by acute water and land shortage and in part by the fact that the delimitation of the 1920's had left several Tajik collective farms with minimal room to increase in size were entirely pragmatic within the context of broader Soviet state formation. It was never assumed that a long term land-lease from one Union republic to its neighbour would result in the creation of what are now known as enclaves of one independent state inside

another.⁴ Yet, with the collapse of the Soviet Union this is precisely what has happened. The borderlands of the Ferghana Valley have become a cartographic conundrum with dozens of villages now situated in such a way that travel along the single road connecting villagers to their nearest source of water, their local bazaar or place of worship entails the crossing of an international border.

Two lines of arguments discursively bestow legitimacy to claims for disputed territories. The first refers to historical legacy, and brings to the forefront the fact that final decisions need to be based on pre-Soviet borderlines and related maps. Ambiguities arise from the territorial differences of Soviet demarcations and their incomplete endorsement within Soviet institutions. The question of which map becomes legally binding for the new states is at the heart of discussions. For example in their disputes while Tajikistan insists on the map of delimitation of 1927, Kyrgyzstan insists that decisions should be made on the 1958 Parity Commission maps. In addition the Tajiks and the Kyrgyz also refer to pre Soviet sources in order to bestow legitimacy. In the case of the Tajik people this entails written documents and archaeological artifacts while the Kyrgyz people mainly refer to oral accounts. A second argument refers to actual land use. Here, ambiguities arise about whether citizenship or ethnicity bestows legitimacy to the user. Also questions arise about what land use constitutes in the first place and what form of land use bestows legitimacy to territorial claims.

This also brings into question frequent representations of Soviet republican borders as virtually nonexistent, but at the same time shows their multifaceted nature. Of course, contrary to the present situation, these boundaries were invisible to the point of being nonexistent in the sense of border guards and fences. Moreover, freedom to move within the Ferghana Valley was unrestricted. However, republican boundaries were by no means unimportant with regard to the nexus of territory and nationality and often strongly contested. By virtue of territorialization of land use and mode of production along the lines of nationality, as well as by Soviet extension of irrigated agriculture into the foothills of the Ferghana Valley, irrigation systems became the sites of contestation in the region. At the same time, evidence that past territorial claims were framed in terms of nationalities may express the link between membership in 'official' nationalities and access not only to land but also to national rights and significant political, economic and cultural resources. Conversely, the articulation of claims in the concept of Soviet nationality policy accommodated and reworked cultural histories of land use.

With the collapse of the Soviet Union and the formation of independent states, three of which now share the Ferghana Valley, some of the issues were reopened. The geopolitics of the Ferghana Valley bears witness to the multiplicity of possible political constructions of space. It clearly demonstrates that both the material borders at the edge of the state and the conceptual borders designating it as a boundary need to be taken note of. This became evident following the incidents at Andijan in 2005 and Osh in 2010.

Andijan 2005

The *vilayat* of Andijan is situated in the eastern part of the Ferghana Valley. In May 2005 there were demonstrations in Andijan city, the Uzbek part of the Valley, when thousands of protestors took to the streets of Andijan, attacking a prison to protest the detention of 23 prominent businessmen.⁵ The men were charged with anti-constitutional activity and forming a criminal and extremist organization, *Akramia*, accused by the Uzbek government of having links with the outlawed radical Islamic party *Hizb-ut-Tahrir*. The arrested men formed the backbone of Andijan's small business community giving employment to thousands of people in the impoverished and densely populated Ferghana Valley. Armed demonstrators then went to a prison and freed nearly 2000 inmates, including men accused by the Uzbek government of criminal activities. Disorder ensued with reports that suggested that the government had lost control of parts of the country's northeastern border. As troops moved on the central square in Andijan to disperse the crowds a wave of Uzbek refugees moved northwards to the border of Kyrgyzstan. The Kyrgyz government claimed that about 1500 Uzbek refugees crossed into Kyrgyzstan following the event. Among them some were accommodated in tents provided by Kyrgyz authorities just a couple of hundred yards from the Uzbek border along the Kara Darya in the Suzan region of Jalalabad. About 700 reportedly found refuge in Uzgen, a town in the Osh province while many more found refuge with friends and relatives in the Osh and Jalalabad provinces.

While the numbers were not large the Kyrgyz government was keen on finding a solution to the problem. In addition to the possibility of destabilization due to a spread of the Andijan events in southern Kyrgyzstan, there was also apprehension that any change in the population patterns could exacerbate long-standing Kyrgyz-Uzbek border issues. About forty sectors of the Uzbek-Kyrgyz border have not been delineated. This often leads to clashes between groups. It is not surprising therefore that the Kyrgyz government had been categorical that while it had provided temporary refuge to the Uzbeks who crossed over, they should return when the situation in Uzbekistan would stabilize.

On July 29, 2005 Uzbek refugees were evacuated from facilities in Kyrgyzstan, to temporary housing in Romania. The Uzbek government, which had sought their return, claimed that the evacuation, facilitated by the UNHCR and the International Organization for Migration, violates the 1951 UN Convention on the status of refugees and its 1967 Protocol. The Uzbek government has also underlined that this evacuation was uncalled for, since the number of people involved did not pose any threat of disturbance on the Uzbek-Kyrgyz border. 439 Uzbeks were evacuated to Romania where they spent several months before moving on to permanent destinations. Among those evacuated were 14 of 29 Uzbeks held in a detention centre in Osh and accused of criminal activity. The rest of the 15 were sent back to Uzbekistan

where they are accused of serious crimes. This has been contested by the US and the UNHCR who have designated 11 of the 15 as refugees.

Osh 2010

In the Osh and Jalalabad provinces of Kyrgyzstan, which is part of the Fergana Valley, the Kyrgyz constitute a clear majority. However, in both the districts the Uzbeks constitute a significant minority. In some cities and districts, like cities of Osh, Uzgen and in Aravan district the ethnic Uzbeks form a majority or near majority. This is because historically Osh, Jalalabad, Uzgen and other settlements were inhabited by sedentary Uzbek traders and farmers, while the nomadic and semi nomadic Kyrgyz moved between winter camps and summer pastures in the surrounding mountains. However, border delimitation and the forced migration of the 1930's disrupted centuries old economic and social structures and ethnic Kyrgyz increasingly started to settle in the valleys and lowlands, which put pressure on land and water resources in areas already inhabited by ethnic Uzbeks. The problems became more acute as the population grew. Grievances over land and water distribution increasingly took on an ethnic dimension in the mid to late 1980's as ethnic, linguistic and cultural identities became stronger.

The November 1989 Supreme Court decision to replace Russian with Kyrgyz as the official language of the Kyrgyz Soviet Socialist Republic prompted the Uzbek community in Osh to create the organization *Adolat*, which also promoted the creation of an Autonomous Osh Province and complained about the under-representation of the Uzbeks in government structures and public services. The Kyrgyz counterpart organization, *Osh Aymaghi*, created in May 1990 focused on the economic deprivation and land shortage faced by ethnic Kyrgyz. Responding to Kyrgyz demands for land, the Kyrgyz dominated administration of Osh allocated plots of land for a housing project on land owned by an Uzbek dominated collective farm. On June 4, 1990, the local police had to use force to disperse crowds of Uzbeks and Kyrgyz who had gathered on the disputed plot of land in the outskirts of Osh. The fighting spread to Uzgen and ended only with the intervention of Soviet troops.⁶

While everyday tensions between the Kyrgyz and the Uzbeks in southern Kyrgyzstan had always existed there was no apparent socio-economic reason for inter-ethnic conflict to break out in 2010.⁷ Both groups had learned ways to co-exist despite scarcity of land and water for decades. Inter ethnic ties were strong enough in the region to keep peace in the region even though the economic and political cleavages between the groups had widened after the collapse of the Soviet system. These have to be seen in the context of the ouster of President Kurbanbek Bakiyev, when clashes erupted in various parts of the state. In some cases the violence reflected the economic grievances directed at minorities. In some places shops belonging to ethnic Dungans and Uighurs were torched and in other places the land and homes belonging to ethnic Russians and Meshkhetian Turks were seized. There were repeated demands that Kyrgyz land

should belong to Kyrgyz people. Immediately after his ouster, President Bakiev went to Jalalabad, his home region where he enjoyed considerable support. Even though he left for Belarus soon after, his brief time in Jalalabad shifted the epicenter of the political struggle from Bishkek to southern Kyrgyzstan. In the weeks following his ouster Bakiev's supporters attempted to stage a comeback from the south by organizing their own demonstrations and forcibly taking over government offices. To counter Bakiev's strong support in the south, the interim government reached out to the Uzbek population, which had traditionally not been involved in politics. The Uzbek's new found role as power brokers in Kyrgyzstan emboldened the Uzbek community to make political demands, which included proportional representation for ethnic Uzbeks and state recognition of the Uzbek language. The draft constitution, published on May 21, however, did not reflect these demands.

This increasing involvement of ethnic Uzbeks in the political struggle in Kyrgyzstan, did not sit well with the Kyrgyz, who saw the political domain as their prerogative. Violence erupted in southern Kyrgyzstan when a large crowd of ethnic Uzbeks gathered in the centre of Osh on the evening of June 10 in response to fights between small groups of Kyrgyz and Uzbek men earlier that day. The final numbers and ethnic breakdowns of the casualties remains unclear, but the events triggered rumours which escalated the level of the violence. The violence also spread to the cities of Jalalabad and Bazaar Kurgan. Most reports indicate that Uzbek neighbourhoods and property were selectively destroyed. With few exceptions, the authorities failed to stop the violence once it had erupted. And security forces seemed to respond differently to acts of violence depending on the ethnicity of the perpetrators. There were sweep operations in a number of Uzbek neighbourhoods looking for weapons and alleged perpetrators of violence and large scale detentions. In the aftermath of the violence, ethnic Kyrgyz and Uzbeks retreated into neighbourhoods that were largely ethnically homogeneous and were separated by ad hoc barricades and military checkpoints. As the violence against the Uzbeks escalated ethnic Uzbeks (particularly women and children) crossed over to Uzbekistan in large numbers. Estimates put their number at 100,000.

Uzbekistan's relations with Kyrgyzstan had deteriorated in 1999 following assassination attempts against the President. Apart from disputes over land and resources, Uzbekistan became increasingly exasperated at what it regarded as Kyrgyzstan's inability to control its own porous borders. Following the latest 'revolution' in Kyrgyzstan, Uzbekistan kept its border with its neighbour sealed. When the news of the first clashes spread, Uzbek borders were closed. It was only on June 12, that Uzbekistan agreed to take in refugees and stayed open till June 14. Most of the refugees were sheltered in temporary refugee camps in the Andijan province of Uzbekistan bordering Osh and Jalalabad. Initially, families fleeing the violence were welcomed in private homes in the Andijan province. However, unprepared to deal with the influx, the Uzbek authorities closed the border with people still waiting to enter. This prompted criticism of both its border and refugee policy from both domestic and

international human rights organizations. Officially Tashkent was forced to choose between policy consistency (a tight border regime) and pressure to allow some relief to refugees of predominantly Uzbek ethnicity. The state acted with caution and there was an uneasy balance between concern over previous uncontrolled flow of refugees and a more pro active form of humanitarian aid for co-ethnics. There was an overriding fear that if a majority of the refugees refused to return then the demographic landscape of the Ferghana valley would be transformed.

Most of those who had been allowed to enter were subsequently urged to return by Uzbek security forces within two weeks to Kyrgyzstan on instructions from the Kyrgyz provisional government which was keen to have them back in the country before a constitutional referendum. Many, however, were reluctant to go back, unsure about whether they would be able to live alongside their Kyrgyz neighbours. There have subsequently been attempts by the *aksakals* of both communities to resolve issues and recently Osh's Uzbek Music and Drama Theatre (that had been burned down during the violence) reopened for performance. It is also remarkable that Uzbekistan's attitude to co-ethnics abroad defied predictions dating back to the early post independence period when it was considered that the Uzbeks would act as patrons of Uzbeks abroad. On the contrary the state has made respect for state sovereignty a key dimension of its domestic and foreign policy. Contacts with Uzbeks abroad have been limited and the state has traditionally refrained from commenting on the conditions of co-ethnics in the neighbouring republics. Not only has Tashkent not intervened, it has looked at Uzbek co-ethnics with caution. Uzbeks abroad are not seen as Uzbekistan's own Uzbeks and thus are not of Tashkent's concern. When refugees, including some ethnic Uzbeks, escaping from the Afghan and Tajik conflicts in the 1990 sought refuge in Uzbekistan, the latter sought to impose restrictions on the numbers who would be allowed to enter. Refugees have been constructed as posing a challenge to the order the regime seeks to impose.

A large part of the writings that looked into the causes of the conflict underlined institutional failure as the principal factor that led to the violence.⁸ An interesting departure is a study that looks into ethnic myths, fears and prejudices in the making of the conflict. Kyrgyz mythology emphasizes the importance of the unity of the Kyrgyz people and the territorial integrity of the Kyrgyz land. In Kyrgyz mythology, southern Osh and Jalalabad provinces of Kyrgyzstan have been occupied by ethnic Kyrgyz since time immemorial notwithstanding the movement of people and the rise and fall of empires. In response to the argument that the Uzbek population used to outnumber the Kyrgyz in the area and thus from a historical perspective Osh should belong to ethnic Uzbeks, the Kyrgyz argue that the post delimitation census under-represented the presence of the Kyrgyz in and around Osh. Many rural areas with Kyrgyz majority were unrightfully given over to Uzbekistan as the people were deliberately misclassified in the census. The dominant perception held by ethnic Kyrgyz about the Uzbek is that they are outsiders who have not been

sufficiently grateful for the success that they have achieved in the Kyrgyz republic. They are also ethnically associated with Uzbekistan, a state that in recent times indulged in indiscriminate border shootings and shutting off gas supply to Kyrgyzstan. There are also fears that the Uzbeks seek autonomous status within Kyrgyzstan. Another factor that exacerbates Kyrgyz ethnic fears is the existence of several disputed areas along the border between Uzbekistan and Kyrgyzstan.

Due to geographic proximity, communication and cross border interaction, the Uzbek minority in Kyrgyzstan shares its national mythology with Uzbeks living in Uzbekistan. Uzbek mythology has claimed Uzbek legitimacy to the territory of the Ferghana Valley, including Osh province that has always been inhabited by settled Uzbek trades and farmers, while the nomadic and semi nomadic Kyrgyz moved between winter camps and summer pastures in the surrounding mountains. Many Uzbeks in the Osh region prioritize the legitimacy of kinship practices over the demarcation of artificial state boundaries and continue to consider themselves as the original urban residents and cultural guardians of the city and consider ethnic Kyrgyz to be outsiders. One method of recognizing this is the tendency to live in homogeneous ethnic neighbourhoods, *maballas*. There is also concern about Kyrgyz nationalism and discrimination of Uzbeks.

Articulations of notions of 'the border' in the contested terrain of post Soviet space and legitimation of claims to exercise control over it meant that notions of inclusion and exclusion are now strongly ingrained. Both the incidents showed the unwillingness of the states to allow any changes in demography. There is unwillingness to allow citizens to settle across the border or let 'others' settle along the margins of the state. In the first case (Andijan 2005) the Kyrgyz were unwilling to allow the Uzbek refugees to stay as they feared a change in the demography of the southern regions where the Uzbeks were already present in significant numbers. Following the Osh incidents, the Uzbek state was unwilling to allow the influx of large numbers of fleeing Uzbeks from Kyrgyzstan to settle in the bordering areas of Andijan and Namangan. Interestingly enough, the interim government in Kyrgyzstan wanted the Uzbek migrants to come back to Kyrgyzstan in order to legitimize their constitutional process which was coming up for referendum. Both the incidents shed light on how the concretization of borders reflects on notions of belonging.

Notes

¹ Reeves, Madeleine. 'Travels in the Margins of the State, Everyday Journeys in the Ferghana Valley Borderlands', in *Everyday Life in Central Asia Past and Present*, ed. Jeff Shahadeo and Russell Zanka. Bloomington and Indianapolis: Indiana University Press, 2007.

² Starr, S. Frederick ed., *Ferghana Valley the Heart of Central Asia*. Armonk, New York, London, England: M.E. Sharpe, 2011.

³ Bichsel, Christine. *Conflict Transformation in Central Asia: Irrigation disputes in the Fergana Valley*. London and New York: Routledge, 2009.

⁴ Reeves, Madeleine. 'Unstable Objects: Corpses, Checkpoints and "Chessboard Borders" in the Fergana Valley', *Anthropology of East Europe Review*, 25(1), 2007.

⁵ There have been a large number of writings on the Andijan events including a booklet by the Uzbek President Islam Karimov written as a response to questions by the international media, "The Uzbek People Will Never Depend on Anyone". Most of these are also written from a particular perspective and some have faced criticism for their interpretation of the events. See for instance, Shirin Akiner, "Violence in Andijan, 13 May 2005, An Independent Assessment", Central Asia-Caucasus Institute, Silk Road Studies Programme, *Silk Road Paper* 2005. There are also numerous reports on the events in the international media, websites and reports by groups like the OSCE.

⁶ Tishkov, Valery. "'Don't Kill Me, I'm a Kyrgyz': An Anthropological Analysis of Violence in the Osh Ethnic Conflict", *Journal of Peace Research*, 32(2), 1995.

⁷ Bond, Andrew R. and Koch, Natalie R. 'Interethnic Tensions in Kyrgyzstan, A Political Geographic Perspective', *Eurasian Geography and Economics*, 51(4), 2010. Also see Reeves, Madeleine. 'A Weekend in Osh', *London Review of Books*, 32(13), July 2010.

⁸ Megoran, Nick. 'Shared Space, divided space: Narrating Ethnic histories of Osh', *Environment and Planning A*, 45, 2013.

Tibetans in India and Citizenship Rights: The Legal Battle

By

Shuvro Prosun Sarker*

The issue of granting Indian Citizenship to the children of Tibetan parents born in India, between January 26, 1950 to July 1, 1987 and enlisting their names in the voting list are two big decisions taken in favor of this vulnerable population. The recent decision of the Election Commission of India to enlist the names of Tibetans in the voting list who were born in India between January 26, 1950 to July 1, 1987, has come up after two judgments of two different High Courts of India.¹ However, there are differences of opinion in the two key Ministries regarding these judgments. Firstly, this note tries to look into the history of arrival of Tibetans in India. Secondly, to look upon the existing law of citizenship of India by birth and finally, analyze the two judgments which has favoured children of Tibetan origin

Arrival of Tibetan Refugees and the Issue of Citizenship

Just after a decade of getting independence, India again faced the regional influx of refugees from Tibet in 1959.² It is well recorded that Prime Minister of India, Jawharlal Nehru, personally decided the grant of asylum to the Dalai Lama and his entourage in India. Following this decision a large number of Tibetans were coming to India. Govt. of India had decided to provide them with basic necessities and issued registration certificates to them. Again during the 1979-1980 a new wave of refugees had come from Tibet. Government of India (GOI) deported many of them who came directly from Tibet but allowed those who came to India via Nepal.³ This time the estimated number was about 25000 and GOI decided not to provide them with registration certificates. However, this population got their registration certificates showing themselves as unregistered children of Tibetans who came to India before 1962.

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Again after 1994 there was a mass influx of Tibetan refugees in India and Central Tibetan Administration (CTA) in Dharamsala, then adopted policy measures to let them stay in India for certain period.⁴ New arrivals were divided into categories and a specific time frame was given to them to remain in India. This decision was the result of India's changing attitude towards Tibetan refugees because of growing tension over security measures and development of Indo-China relationship. Due to China's request, India has also refused to allow Tibetan monks closely related to Dalai Lama to stay in India as refugee. In 2005, India and the CTA came with an agreement to allow Tibetans to come to India through Nepal for the purposes of education, pilgrimage and other works. The Indian High Commission in Nepal started to provide special entry permit for the Tibetans for entering into India. It is important to note that the two categories of persons, except for persons entering for pilgrimage, have the opportunity to get registration certificates in India for staying a longer period beyond the time fixed in the special entry permit. As per the estimate of various organisations like CTA, GOI, UNHCR, even now 1500 to 3500 Tibetans come to India annually.⁵ It is noteworthy to see India's changing attitude to the Tibetans coming to India and pointing out the flaws of Indian authorities to take proper policies or one standard policy. Policies regarding granting refuge to the Tibetans in India has changed from time to time which has actually led to ambiguity. It is always important for a country like India to make a balance between humanitarian reasons and security concerns which must be in lacking in ad-hoc administrative measures of 'power and care'.⁶

However, the Tibetan leaders always discouraged the refugees to take up Indian citizenship due to several reasons, but the young generation wants to get it as a means to achieve success in their individual life. In several instances, the young Tibetans have filed writ petitions before High Courts to get appropriate direction about their status of citizenship in India. Some of the reasons for discouraging the younger generation from acquiring citizenship are⁷:

1. That this might act as a blow towards the freedom struggle of Tibet,
2. Fear of loss of Tibetan identity and culture,
3. Loss of refugee status might affect the funding in aid, and
4. Fear of diminishing sympathy of the Tibetan freedom struggle.

Citizenship (Amendment Act) 1986 and the Changed *Lex Soli*

The original Indian Citizenship Act, 1955 in its Section 3, Sub-section (1), Clause (a) provided "every person born in India or after the 26th day of January, 1950 will be a citizen of India by birth". However this provision of providing Indian citizenship has been amended by the Citizenship (Amendment) Act, 1986. At present the Section reads as follows:

“Citizenship by birth:

1. Except as provided in sub-section (2), every person born in India,-
 - a. on or after the 26th day of January, 1950, but before the commencement of the Citizenship (Amendment) Act, 1986 (51 of 1986);
 - b. on or after such commencement and either of whose parents are a citizen of India at the time of his birth, shall be a citizen of India by birth.
2. A person shall not be such a citizen by virtue of this section if at the time of his birth-
 - a. his father possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and is not a citizen of India; or
 - b. his father is an enemy alien and the birth occurs in a place then under occupation by the enemy.”

It is necessary to understand the mindset of the GOI to analyze the 1986 amendment. The Citizenship (Amendment) Bill was tabled in the Parliament on October 16, 1986. The statement of reasons of this bill, along with other things, proclaimed that a large number of persons of Indian origin have entered the territory of India from Bangladesh, Sri Lanka and some African countries. Considering their clandestine entry and prolonged stay, the Govt. of India took a serious view to make the provisions of the Citizenship Act relating to the grant of Indian citizenship by birth more stringent. With a view to preventing automatic acquisition of citizenship of India by birth, it is proposed to amend the Citizenship Act, 1955 to provide that every person born in India after the commencement of the amending Act will become a citizen of India by birth only if at the time of his birth either of his parents is a citizen of India.⁸ During the discussion of the bill, the Minister of State for Home Affairs Mr. P. Chidambaram explained the objects of the bill as follows:

A large number of people for various reasons have come into India and are coming into India. I would not set store by any statistics because these figures are far from accurate, but some figures are incontrovertible. While the overall increase of population in the whole of West Bengal is around 22 per cent, we find that in some of the border districts the rate of increase is as high as 29 per cent, 30 per cent and in some cases even 37 per cent. Why is this so? It is so because India today, in this part of the world, is looked upon as a country of great opportunity and people are coming into this country. While it is the primary responsibility of the Central Government to prevent such clandestine entry, this responsibility cannot be discharged without the willing cooperation of the bordering States. That cooperation, I am sorry to say, is not always forthcoming. We have our own problems. Not that we are not generous to people who want to come to this land. But we cannot be generous at the cost of our own people, at the cost of our own development and we cannot bear the burden of clandestine entry of a large number of people. You call them refugees, you call them deprived people. We cannot bear that burden for very long. Therefore, I think the time has come to tighten up our citizenship laws. I am not saying that this is the end of the

exercise. But the place to begin is to tighten up our citizenships laws, and tell the world that India will grant citizenship only under very strict conditions; our laws are being made more stringent. This is all that the Bill does.⁹

In the case between *Namgyal Dolkar vs. Govt of India, Ministry of External Affairs*¹⁰, the Delhi High Court has cleared the position of law that every child born in India, irrespective of parents' nationality, between January 26, 1950 and July 1, 1987 are Indian citizen by birth. This case began when the child (of parents of Tibetan origin), Namgyal Dolkar, was denied Indian passport by the Regional Passport Officer (RPO), Delhi. She applied for Indian passport by fulfilling every requirement in the application form. In the application form she mentioned that she is an Indian citizen by birth and she has not applied for any passport previously. After a long enquiry, the RPO issued a letter on December 12, 2008 for explaining her about the suppression of material information about her earlier application of Indian passport. She personally appeared before the RPO on December 16, 2008 and found that the issue of RPO's letter was with regard to the information about her *Tibetan* identity certificate dated April 21, 2005. However, she was verbally informed by the RPO that she has to surrender the *Tibetan* identity certificate to get the Indian passport. On December 18, 2008 she appeared before the RPO to surrender her *Tibetan* identity certificate, but the concerned officer refused her application and advised her to apply for Indian citizenship as her application stated that her parents are *Tibetan*. Then, she sent demand notice and legal notice to the RPO to issue the passport claiming her Indian citizenship by birth. When nothing happened, she moved before the Delhi High Court with a writ petition to get appropriate direction for the RPO to issue the passport. The Court in an order on March 24, 2009 directed the respondent (RPO) to complete such enquiries as are necessary in this regard and communicate the response either accepting the passport application in which case, issue passport or if there are grounds to deny the same, do so through an appropriate order but in accordance with law within six weeks from the date of order. However nothing has happened. Then she filed a civil contempt petition before the same High Court. In the mean time the RPO issued a communication with regard to the order of Delhi High Court dated March 24, 2009. In that communication the RPO mentioned that the petitioner is not an Indian citizen by birth as per Section 3(1) of the Citizenship Act, 1955. The court while dealing with the contempt petition expressed that the petitioner was born within the cut off dates mentioned in the Citizenship (Amendment) Act, 1986. So there is no doubt that she is a citizen of India by birth. On the ground of identity certificate which the petitioner got as a *Tibetan* refugee is just a travel document which is provided to the refugees of stateless persons. By stating herself as a *Tibetan* national in the identity certificate, the petitioner did not waive her right to be an Indian citizen by birth. It can only happen when the petitioner renounces his or her Indian citizenship as per the provision of the Section 8¹¹ of the Indian Citizenship Act, 1955. Finally the Court quashed the RPO's Order dated March 24, 2009 on the ground that the petitioner is a citizen of India and directed the RPO to reconsider the

petitioner's application of Indian passport within a period of eight weeks. Finally the petitioner was issued an Indian passport.¹²

This judgment of the Delhi High Court has the limitation as a precedent in judicial process and for executive purposes within the jurisdiction of Delhi High Court. So controversy arises when this decision of the court has to be implemented in other States in India.

The case between *Tenzin Choephag Ling Rinpoche vs. Union of India*¹³ came before the Karnataka High Court for the identical reason which was decided by the Delhi High Court in 2011 in Namgyal Dolkar's case. The petitioner of this case, Tenzin Rinpoche, was born in November 18, 1985 in Mcleodganj Dharamsala, Kangra District, Himachal Pradesh. The petitioner applied for Indian passport and the application was denied by a letter of the RPO dated February 19, 2013 after consulting with the Ministry of Home Affairs, GOI whereby it was stated that children born to Tibetan parents cannot be automatically claim themselves as citizen of India unless they get a registration under Section 9(2)¹⁴ of the Indian Citizenship Act, 1955. However, it was not clear before the Court and for the author to know the rationale of the decision of the RPO dated February 19, 2013. The Court finally relied on the judgment of the Delhi High Court and observed that:

“Having noticed the decision rendered by the High Court of New Delhi, I am of the opinion that if a similar circumstance arises, certainly the petitioner would be entitled to the benefit the conclusion reached therein inasmuch as I see no reason whatsoever to take a different view from what has been stated by the Delhi High Court.”

The law certainly gets clearer with the two judgments by two different High Courts. However, there is a possibility of the GOI to move before the Supreme Court to get the decision against these two judgments. The Ministry of Home Affairs (MHA) sent one note to the Ministry of External Affairs (MEA) to file an appeal before the Supreme Court of India which the MEA has not acted on. However, Officials in the MHA is of the view, after getting input from the Intelligence Bureau, that this decision of the Election Commission to list the names of the Tibetans in the polling roles may embitter the relationship between India and China.

Conclusion

The judgments of the two High Courts have fixed the administrative malpractice in interpreting the law against the refugees in India. The mindset of Indian bureaucracy is always in a messy setup to put the vulnerable refugees in a dilemma as a part of ad-hoc refugee protection strategy. This issue of citizenship by birth will become a greater question in cases when other refugee groups or the undocumented migrants in India would claim this right for their children. However, strategically there is no reason for the MHA's input of Indo-China conflict over this issue.

Notes

¹ Nair, Shalini. 'Children of Tibetan Refugees Can Now Vote,' *Indian Express*, February 11, 2014.

² Kaufman, E. 'Shelter from the Storm: An Analysis of U.S. Refugee Law as Applied to Tibetans Formerly Residing in India,' *Georgetown Immigration Law Journal Vol. 23*, 2008-2009, 497, 530.

³ *Ibid*, 535

⁴ *Ibid*, 536

⁵ *Ibid*, 553

⁶ Samaddar, R. 'Power and Care: Building the New Indian State', in *Refugee and the State: Practices of Asylum and Care in India 1947-2000*, ed, R. Samaddar. New Delhi: SAGE Publications, 2003.

⁷ Kharat, R. 'Gainers of a Stalemate: The Tibetans in India', in *Refugee and the State: Practices of Asylum and Care in India, 1947-2000* R. Samaddar. New Delhi: SAGE Publications, 2003.

⁸ *Statement of Reasons*, Citizenship (Amendment) Bill, 1986.

⁹ Rajya Sabha, Discussion on the Citizenship (Amendment) Bill, November 19, 1986.

¹⁰ W.P.(C) 12179/2009, Judgment dated 22 December, 2010, Delhi High Court.

¹¹ 8. Renunciation of citizenship: (1) If any citizen of India of full age and capacity, makes in the prescribed manner a declaration renouncing his Indian citizenship, the declaration shall be registered by the prescribed authority, and, upon such registration, that person shall cease to be a citizen of India. Provided that if any such declaration is made during any war in which India may be engaged, registration thereof shall be withheld until the Central Government otherwise directs.

(2) Where a person ceases to be a citizen of India under sub-section (1) every minor child of that person shall thereupon cease to be a citizen of India: Provided that any such child may, within one year of attaining full age, make a declaration in the prescribed form and manner that he wishes to resume Indian citizenship and shall thereupon again become a citizen of India

¹² Kalra, Vandana . 'Citizen Nymgal', *Indian Express*, January 27, 2011.

¹³ WP No. 15437 of 2013, High Court of Karnataka at Bangalore

¹⁴ Section 9(2): If any question arises as to whether, when or how any person has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf.

Report

Reflections on the Decade of Forced Migration Studies

By

Ishita Dey*

The evolution of the field of forced migration has undergone various shifts since its inception. On one hand, the increasing situations of forced displacement and mobility within borders forced the international humanitarian institutions of care to recognise “Internally Displaced Person”, similarly on the other hand, climate change and environmental displacement has propelled the international community to re-think how to conceptualise people who are being forced to migrate due to climate change and environmental reasons. With shared borders and borderlands, people are constantly on the move due to multiple reasons. In the decade long engagement with forced migration studies, Mahanirban Calcutta Research Group (MCRG) has engaged with the shifting contours of forced migration studies of South Asian region in particular and the discipline in general through their engagement in research and South Asia’s flagship educational programme- UNHCR certified Annual Winter Course on Forced Migration. The course in its Eleventh year, organised an inaugural roundtable reflecting on the decade of the forced migration studies as it has evolved in the curriculum of the Winter Course taking into account the changes in the field. Ranabir Samaddar, Director, MCRG, commented that the evolution of the course, restructuring of the module of the course particularly the introduction of the module/s on internally displaced persons and climate change indicated the broadening of forced migration studies beyond refugees. The debate on law extended beyond the discussions around 1951 Convention and issues of borders, and borderlands became more crucial as protracted situations of displacement (in case of refugees) led to statelessness. It is against this

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evolution, Ranabir Samaddar request the panelists to reflect on the changing field of forced migration.

At the outset, Paula Banerjee, argued that the evolution of the course should be located against the backdrop of how the field has evolved in the global South. It emerged as a challenge to the establishment. Most of the work focussed on policy documentation compared to “documenting voices”. The challenge was to bring back the question of narrative into the field of forced migration. There was an attempt to move beyond the folds of methodology. She referred to creative writings from South Asian subcontinent which brought forth multiple perspectives. There was a distinct shift in mode of writing and subjectivities. This scholarship involved a critical reading of events, and its effect on human beings. As circumstances changed, with an increasing number of internally displaced persons, people at the risk of being displaced due to environmental reasons, and the increasing collapse of categories and reasons of displacement, it was felt that not only there needs to be a distinction between refugee and IDP but also the nature of forced migration itself. At this juncture, it was felt to address the “mixed and massive flows of migration” and how to encapsulate the changing course of events, subjectivities in the fold of “forced migration studies”. It was also felt that the concerns around forced migration need to be looked through a gendered lens for a critical reading not only in its impact but also in resettlement and rehabilitation efforts. Similarly, experiences and impact on forced migration differ across gender, age and particularly its impact on physically challenged or people with life threatening diseases and it was felt to develop tools and methodologies to address these concerns through various dialogic exercises organised as part of the short courses in collaboration with organisations, research centres across India. As the discourse on trafficking underwent a change, CRG’s research showed that it was difficult to disaggregate labour from sex and nationality.

Partitioning of the subcontinent has led to multiple re-drawing of borders and CRG’s work on the partition has shown that the experiences across gender, caste and minorities are varied and there needs to be an interdisciplinary approach to document the multiple effects it has continued to produce as issues of statelessness haunt people living on enclaves. Borders, sovereignty has assumed a new dimension because situations of protracted displacement also tend to create stateless people. In a nutshell the decade long study has attempted to reclaim “our” space of creating “grand narratives” as the field has undergone a change.

Sabyasachi Basu Ray Chaudhury discussed the geo-political backdrop against which the shift in forced migration studies needs to be situated. At the outset he pointed out that in the context of South Asia partitioning of the sub-continent has not only been responsible for redrawing of borders but it also shaped the lives of millions who were forced to flee. Some, among them were forced to move twice. Through the case of Chakmas of Chittagong Hill Tracts, he illustrated how the re-drawing of borders has reduced “refugees” to being “stateless”. Added to these, are the development, environmental and disaster related reasons which forces “forced migrants” to remain

undocumented. The research work produced as part of the ten year course on forced migration engaged with these issues which was a collaborative research platform of researchers, policy makers. CRG has organised a series of consultation workshops in collaboration with state and national human rights institution/s on questions of resettlement and rehabilitation and was one of the first organisations to work on Internally Displaced Persons. He pointed out that the shift in forced migration studies has been the changing circumstances, and the recognition of those in the ambit of international protection framework which has been instrumental in working towards regional frameworks of protection in South Asia. CRG's work on ethics of care and protection brings about the ways in notion of "care" and "rights" are juxtaposed in policies of care and protection. He ended with a note that while anthropologies of reconciliation are one of the ways to address subjectivities of forced migration, the issues of caste, and gender as research here shows needs a closer introspection.

The discussion revolved around the scope of broadening forced migration studies and the need to give significance to disability studies, the critical role right to return plays in the issues around resettlement, and the challenge in forced migration studies to incorporate the changing geo-political circumstances within its fold.

Book Review

The Hoot Reader: Media Practice in Twenty- First Century India.
Editors: Sevanti Ninan, Subarno Chattarji. New Delhi: Oxford
University Press. 2013. Pages 361. Price: Rs. 650/-

Enquiring into Media Practice: *The Hoot Reader* and our Times

I came across *The Hoot Reader: Media Practice in Twenty First Century India* for the first time when preparing for a workshop on social media. *The Hoot Reader* was one of the more crucial references for someone who has never worked in the media business; but has been analysing media texts as part of her training in the Humanities.

Thehoot.org is a website dedicated to turn the gaze of the media upon itself, to enquire into media practice, ethics and politics, and, in the words of the editors of the reader, Sevanti Ninan and Subarno Chattarji, “to preserve press freedom.” Since 2001, thehoot.org has generated considerable content covering all aspects of Indian media: *The Hoot Reader* aims to do something more. It collates content over a decade (from 2001 to 2011) to two ends: first, it allows the disparate and scattered archive of thehoot.org to be structured around certain key themes, and second, through introducing each section with editorial comments, it enables conversations between different articles and sections.

The themes around which the reader is organised are: Caste; Conflict, Communalism, Terrorism; Gender; Law and Justice; Ethics; Community; “Shackling the Media”; “Dissecting Media Practice”; Business; New Media and “Same Story, Multiple Versions”. The introduction to the reader lays down the socio economic context during which the Indian mediascape changed expanded drastically and changed in myriad- through the rise of coalition politics, naxalism, terrorism, digital communication, the media sphere also registered a significant rise in the number of English publications, an unprecedented presence of regional language publications, new arrangements with the electronic media, the opening up of the radio to the private sector, permissions for community radio and very importantly, social media.

A closer look at some of the sections:

“Caste in Media”, interestingly titled, by the very act of its naming, draws attention to the structural casteism inherent in media establishments: a concern that has erupted yet again in the last two weeks with the *Dalit Camera*

expose of *The Hindu's* casteist politics of food: whereby they forbid staff members from bringing non vegetarian food to its canteen. Caste and vegetarianism is closely linked in India, and *The Hindu's* directive to its non vegetarian employees to not cause discomfort to its vegetarian (and established upper caste staff) reeks of blatant casteism. This recent insight ties in closely with what Shivam Vij discovers in his visit to the newsrooms of Lucknow. It is not only that very few Dalit or OBC people are ever employed in the newspaper business, even when employed they are marginalised in the newsroom. A further concern of the section is the manner in which caste is represented in mainstream media- solely through the tropes of violence and corruption. Jyoti Punwani's article on the coverage of Dalit protests in the aftermath of Khairlanji by the English language press solely in the form of civic nuisance strengthens the concerns raised in this section of the reader.

"Gendered Media" is not solely concerned with the fact that heightened representation of women in the newsroom does not automatically translate into greater equality either for women performing the task of the news provider as well as the women who are being represented. Instead, the confluence of multinational capital and conservative agendas produce new forms of oppression: the Malayalam magazines' concerted drive in favour of purdah, the framing of the young Nisha Sharma as the brave Indian woman who refused to pay dowry but at the same time could not imagine beyond an arranged marriage, or the simultaneous and contradictory figurations of Sunanda Pushkar in various magazines that reeked of bad journalistic practices in their attempts to present the various facets of her life and personality. However, an interesting contrast to the otherwise grim picture of media and gender is Sevanti Ninan's article titled "The Prime Minister throws a Tea Party", describing a gathering of women journalists at the then Prime Minister Atal Bihari Vajpayee's residence on the occasion of the International Women's Day. Described with a lot of humour, it reports the Prime Minister as remarking that he did not know there were so many women journalists.

"Debating Media Ethics" is one of the bigger themes included in the reader, and understandably so, since the decade in question has had the ethics of media practice emerge as one of the major bones of contention: through the Radia tapes, sting operations and the coverage of terror attacks.

Unlike most of the other sections where the writers undertake fairly close textual analysis to uncover the ideological underpinnings of certain news reports or publications, the final section, "The Media Business" looks into the economics of media- the "manner in which networks of capital, information, and power intermesh and circulate". In "Money Matters", Bharat Bhushan takes on the task of laying down for the uninitiated (such as this reviewer herself) the various money making enterprises that established media houses need to undertake to keep the newspapers cheap and affordable. From government advertisements (which may or may not put curbs on what kinds of news gets carried on the newspaper) and corporate advertisements to "specialized pages" (where promotional news blurs the boundary between news and advertisement) to various ancillary projects like content generation and reselling, survey, exhibitions and fairs etc. He claims that the earlier

boundary between the newsroom and the advertising/ PR departments is no longer held sacrosanct, and in the increasing confusion between the editor's new role as also an organiser of funds, the readers find it difficult to distinguish between "news" and paid content.

The Hoot Reader takes care to present a significant number of articles by people who are not media practitioners by profession. Gautama Polanki's tongue in cheek reading of the television coverage of the Susairaj case, done from the perspective of one who watches the news, not one who produces it--urges the media to go over known facts dispassionately and painstakingly, instead of "getting a bunch of ill-informed talking heads to throw live tantrums".

However, the "New Media" section of the reader left much to be desired. Especially since thehoot.org actively uses the website format, social media plug in etc. for their production and dissemination, a section comprising only three articles, one on Shashi Tharoor's ill fated tweets, one of internet access and the third on the use of technology as the fifth estate; simply does not suffice.

Expectedly, much of the reader deals with news of "national" importance, and English language journalism, even though there are significant contributions from and about regional media. Foremost among it are discussions from the Malayalee public sphere- which probably attests to the vibrant culture of media critique already in place in Kerala. Kashmir and the Hindi newspapers also register a significant presence- the North eastern states less so.

Any researcher in Social Sciences or Humanities is accustomed to Bengal standing in for the nation- in this reader the Bengal bias is negatively corrected. This almost total omission is probably reflective of the curious self sufficiency and absence of criticality that mainstream Bengali media, based in Calcutta, suffers from.

The Hoot Reader carries on and develops on the task that thehoot.org set itself- that of self reflexivity extremely necessary in the context of media practice, and this reader will be of immense value to the casual reader, the curious media observer, media practitioners and researchers.

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NOTES FOR CONTRIBUTORS

Articles submitted for consideration of publication in REFUGEE WATCH should be around 5000 words. Book reviews can be around 1000 words and review articles can be around 2000 words. Articles will have endnotes and not footnotes. Endnotes should be restricted to the minimum. Round-tables can also be proposed for publication. Enquiries about possible submissions are welcome.

For submission of articles and all other matters, correspondence should be addressed to the Editor, Refugee Watch, Mahanirban Calcutta Research Group, GC-45, First Floor, Sector-III, Salt Lake, Kolkata – 700 106 or paula@mcrpg.ac.in. For book review and review-articles, correspondence to be addressed to Anita Sengupta, Review Editor, Refugee Watch, at the same address or at anitasengupta@hotmail.com.

Authors will have to submit articles both hard and soft copies (in MS Word). All articles are peer reviewed and it may take 3 to 4 months before a decision is reached on the proposed publication. Contributors will get 2 copies of the journal.

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See also “Refugee Watch Online” (<http://refugeewatchonline.blogspot.com>) for brief news, reports, views and comments on issues of forced displacement.

REFUGEE WATCH

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