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REFUGEE PROBLEM IN NEPAL

*(A study report on the refugee crisis in Nepal with
reference to global situation)*

A Report for
ICJ/Nepal Section
in cooperation with
Stichting European Human Rights Foundation,
Belgium

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FOREWORD

I am glad to introduce this study on "The Refugee Problem in Nepal" prepared for ICJ/Nepal Section in cooperation with Stichting European Human Rights Foundation, Belgium. This study project was entrusted to the ICJ/Nepal Section on behalf of the Stichting European Human Rights Foundation, Belgium.

I am highly indebted to Mr. Peter Ashman of the Stichting European Human Rights Foundation for giving the ICJ/Nepal Section an opportunity to be associated with this project.

The refugee problem is in deed a formidable challenge to the world. Nepal has come under the grip of the refugee problem following the huge influx of the Bhutanese refugees in this country. The report has highlighted the global refugee problem while accounting for the refugee problem facing this country.

I thank Mr. Mukti Rijal and Mr. Amir Ratna Shrestha for their efforts in the preparation of the study report. Thanks are due to Mr. Krishna Man Pradhan, Manager of ICJ/Nepal Section, Word Processor Mr. Ganesh Man Shrestha and others who assisted in the preparation and publication of the report.

December, 1993

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LIST OF ACRONYMS AND ABBREVIATIONS USED

AALCC	- Afro Asia Legal Consultative Committee
CDO	- Chief District Officer
FAO	- Food and Agriculture Organisation
GDP	- Gross Domestic Product
HMG	- His Majesty's Government
ICJ	- International Commission of Jurists
ICRC	- International Committee of Red Cross
ILO	- International Labour Organization
INGO	- International Non-governmental Organisation
INHURED	- Institute for Human Rights Environment and Development
INSEC	- Informal Sectoral Service Centre
IOM	- International Organization of Migration
IRO	- International Refugees Organization
LWS	- Lutheran World Service
NGO	- Non-governmental Organisation
NPC	- National Planning Commission
OAU	- Organization of African Unity
OMIU	- Operation Management & Implementation Unit
SAARC	- South Asian Association for Regional Cooperation
UN	- United Nations
UNESCO	- United Nations Educational Scientific and Cultural Organisation
UNFPA	- United Nations Fund for Population Activities
UNHCR	- United Nations High Commissioner for Refugees
UNICEF	- United Nations Children's Fund
UNKRA	- United Nations Korean Reconstitution Agency

- UNRRA - United Nations Relief and Rehabilitation Administration
- UNRWA - United Nations Relief and Works Agency for Paletinian Refugees in Near East
- USA - United States of America
- VLC - Voluntary Leaving Certificate
- WFP - World Food Programme
- WHO - World Health Organisation

INTRODUCTION

Objectives

International Commission of Jurist/Nepal Section was entrusted by the European Human Rights Foundation to undertake a study on the refugee problem and practices in Nepal during January 1993. The study has been completed according to the schedule agreed upon by the ICJ/Nepal Section and the Foundation.

Refugee problem has been a global issue; and Nepal has to cope with the burdening refugee problem following the influx of the refugees over the past three years. The study seeks to deal with different aspects of refugee problem faced by Nepal with reference to the global refugee problem.

Methodology

The study is based on primary and secondary data sources. The secondary data sources include various books, journals, magazine and newspapers. The study team in order to obtain first hand informations on the refugee problems in Nepal, visited the Bhutanese and Tibetan refugee camps and met with the refugees, and agency personnel engaged in providing relief services to the refugees. The team also discussed the refugee issue with the government officials concerned. The study is basically of an exploratory nature and cannot claim to provide an analysis of all the issues connected to the refugee issue.

Chapter Scheme

The study report consists of five major chapters with several sub chapters included in them. The first chapter briefly accounts for the conceptual framework on the refugee issue with reference to historical perspectives. The second chapter takes a look at the global refugee crisis and humanitarian assistance measures. Accordingly, chapter 3 and 4 briefly examine the refugee problem in Nepal and the response measures to-tackle the growing refugee crisis.

The concluding chapter suggests some relevant measures to address the global refugee problem.

Limitations

The report is of the exploratory nature, and based on the materials available in the area concerned.

REFUGEES : CONCEPTUAL FRAMEWORK

Historical Setting

The issue of refugee and asylum is not new. The Old Testament recounts how the Lord ordered Moses that, once the people of Israel reached the promised land they should found six cities destined to provide asylum to innocent foreigners who were persecuted. In the Aztec civilization, a slave whose condition was degraded due to debt or crime he could regain his freedom if he managed to take refuge in the royal palace. An Aztec principle has it that "if a slave runs away from his owner and comes to you for protection, do not send him back. He may live in any of your towns that he chooses and you are not to treat him harshly."¹

On several occasions, the New Testament considers Christians as pilgrims on the earth. St. Peter refers to Christians as "strangers and refugees." Similarly, Muslim culture is imbued with the concept of solidarity and generosity. Hindu traditions are based on hospitality and respect of guests and asylum seekers.

In the medieval Europe, religious intolerance was at its zenith. In 1685, when the King Louis XIV repealed the Edict of Nantes, it set off the renewed persecution of Huguenots. The repeal of the Edict of Nantes represented a despicable plot which has destroyed a quarter of the people of the Kingdom.

¹ See generally, UNHCR, *Four Decades in the Service of Refugees*, 1990.

Besides, some two hundred and fifty thousand French Huguenots scattered throughout Europe finding refuge in England, Holland, Germany or in the Swiss Protestant cantons.

In the past refugee problems complicated also when minority communities were forced to accept assimilation for which they were not culturally prepared. The Kurds are a people whose known history goes back some three thousands years. The Kurds were originally nomads, they latter settled on a territory which extends over the present frontier regions of Iraq, Iran, Syria, Turkey and Central Asia. Their reasonable hopes for obtaining independence have been always dashed. The fortunes of the divided Kurdish community have been mixed, and discrimination and persecution have often been their lot.

The case of the Palestinians is intricate. They are a people developed in a region reverred by three great modern religions. Latest act of the Palestinian drama is linked to a great persecution of our century, that of the Jews in Europe during the thirties and forties. After the second world war, the idea, put forward in the early twenties became widespread, that a Jewish home should be found, in the Biblical lands. The settlement of Jewish community meant the movement of another, the Palestinians. The Palestinians are now refugees scattered across many Arab states and their problem has become a case of prolonged confrontation. But now with the signing of historic accord promising self-government for Palestinians has dawned a new era in the Middle East.² The accord promises that the security of the Israeli people will be reconciled with the hopes of Palestinian people.

² The Rising Nepal, September 14, 1993.

Indeed, human migrations are a common place phenomenon throughout history. There are few civilizations which have not experienced an epic period of exodus. Although conquests motivated many of these movements, at other times it was simply a need caused by natural or human disasters. About the beginning of the Christian era, the Bantu, apparently from the Savannah grasslands of present day Nigeria, began an impressive movement southwards in the African continent. Although the reasons which provoked the exile of an outstanding civilization like the Nok culture are not clear, it would seem that the problem of over population and inhospitable terrain, forced the Bantu to seek better territory.

In another continent too, in Latin America, the conquest of the white man caused historic exile. The Incas defeated by white mans' invasion took asylum in Machu Pichhu. The city of Machu Pichhu provides a stupendous example of asylum culture.

Throughout history men and women have thus taken the terrible decision to go into exile. The grief of exile has inspired artistic masterpieces and profound reflections, products of experience of suffering and of the new places where exile was led. The major part of Dante's work was created during his exile. Sun Yat Sen-the vanguard of the Chinese democratic revolution led his good part of life in exile. Jose Artigas, liberator of Uruguay was turned into a legend during exile. Leon Trostsky was sent into exiles during pre-Bolshevik and post-Bolshevik era. Sigmund Freud, Franz Kafka, Albert Einstien had led most of their important part of life in exile.³

³ *Supra* note 1.

Refugees Defined

However, prior to the adoption of the UN Convention Relating to the Status of Refugees in 1951,⁴ refugees were recognized on the basis of specific arrangements between states. The Refugees Convention, 1951 for the first time defined the refugees and their rights and duties. The Refugees Convention, 1951 was a product of the efforts of the nations that had just emerged out of the Second World War that had caused huge human dislocations. The Refugee Convention, 1951 recognized the international scope and nature of refugee problem which cannot be achieved without international cooperation.⁵ The Refugees Convention, 1951 drew its inspiration from the UN Charter and the Universal Declaration of Human Rights, 1948.

Article 1(2) of the Refugees Convention, 1951 defines refugee as a person who as a result of events occurring before 1 January 1951 and 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.

Clause (ii) of the Article 6A of the Statute of the Office of the United Nations High Commissioner for Refugees, 1950⁶ defines refugee as a person who, as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reason of race, religion, nationality or political opinion, is outside the country of his former habitual

⁴ Hereinafter referred as the Refugees Convention, 1951.

⁵ Preamble, **Convention Relating to the Status of Refugees, 1951.**

⁶ Hereinafter referred as Statute, 1950.

residence, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it."

The Protocol Relating to the Status of Refugees, 1967⁷ omitted "as a result of events occurring before 1 January 1951" and other words expressing geographic limitation and the state parties to the Protocol, 1967 undertook to apply Articles 2 to 34 inclusive of the Refugees Convention, 1951. It was only under this Protocol, 1967 that the temporal and geographical limitations were removed although some states can still choose to rely on the geographic limitation.

In 1969, in response to the growing African refugee problem the Organization of African Unity (OAU) adopted the Convention Governing the Specific Aspects of Refugee Problems in Africa.⁸ The African Convention, 1969 was the indirect product of the very serious and useful conference on legal economic and social aspects of African refugee problems, which was held in October 1967.⁹

The African Convention, 1969 defines the term refugee to mean every 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 being outside the country of his former habitual residence as a result of such events is unable or owing to such fear, is unwilling to return to it.¹⁰

⁷ Hereinafter referred as the Protocol, 1967.

⁸ Hereinafter referred as the African Convention, 1969.

⁹ See generally, Yetime Zarjvski, **A Future Preserved: International Assistance to Refugees**, (Geneva; UNHCR, 1983).

¹⁰ Article 1(i), **Convention Governing the Specific Aspects of Refugee Problems in Africa, 1967**.

The African Convention, 1969 however, goes to include persons who flee their countries due to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality. The Cartagena Declaration of 1984, proposing an extension of the concept of refugee as applies to Central America stipulated that a massive violation of human rights should be considered as a legal basis for the extended definition of "Refugee". A common meaning can be read from the refugee definition in both the Refugees Convention, 1951 and African Convention, 1969 which may be summed up as:

A person who owing to well-founded fear of being persecuted for reason 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, unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country former habitual residence is unable or owing to such fear, is unwilling to return to it.

The two above mentioned Conventions also have common features apart from the definition. Both emphasize the humanitarian and non-political nature of admitting refugees and outlaw subversive activities by refugees. The concept of persecution constitutes the central element of refugee in both the Conventions.

Admission or Acceptance of Refugees

Potential refugees normally seek protection across the borders of their country. Boat refugees from Vietnam mostly sought asylum in Malaysia, Thailand, Indonesia, Hong Kong and the Philippines. The Kampuchean and Laotian refugees sought asylum in neighbouring Thailand. Afghan refugees have sought asylum in Pakistan and Iran.¹¹

A refugee may be admitted by a host state on the basis of either the Refugees Convention, 1951 or the African Convention, 1969 within the OAU countries. Article 14 of the Universal Declaration of Human Rights, 1948¹² protects the rights of people to seek and enjoy in other countries asylum from persecution. The UNHCR has always pleaded for a generous asylum policy in the spirit of the 1948 Declaration and the Declaration on Territorial Asylum, adopted by the UN General Assembly 1967. The African Charter on Human and People's Rights, however, provides for the right to seek and receive asylum.

However, the refugee host states are very zealous to conserve their right of granting asylum within their territory. Problems also arise when prospective immigrants pose as refugees in order to escape immigration restrictions. This creates tension and problems of security, accommodation and maintenance. Nevertheless, by and large, states have not rejected refugees at their boarder.

¹¹ See generally, R. C. Hingorani, "Refugee Problem in Asia," in R. C. Hingorani (ed.), **Humanitarian Law** (New Delhi: Oxford & IBH Publishing Co. Pvt. Ltd., 1989).

¹² Hereinafter referred as 1948 Declaration.

There is a distinction between refugee status and asylum as the determination of refugee status is declaratory and not constitutive. This means that a state's non-recognition of an asylum does not deprive such person of refugee status if indeed he or she satisfies the requirement under the conventions. The role of the UNHCR reinforces this argument because the organization can make its own determination on the status of an asylum seeker, despite the decision of the state.

Principle of Non-refoulement

The principle of non-refoulement or non-rejection of refugees at border has grown into a customary rule of international law. Exceptions to the rule of non-refoulement for reasons of national security or mass influx were, mitigated by an invitation to states to consider, as an alternative to refoulement, "the possibility of granting to persons concerned an opportunity of going to another possible asylum, that is temporary asylum in the context of mass arrivals."

Non-refoulement is, however, a principle or norm of international law which is set out in the Clause (1) of the Article 33 of the Refugees Convention, 1951. It lays down as:

"No contracting state shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account his race, religion, nationality, membership of a particular group or political opinion.

The Principle of non-refoulement may, thus, summarily be described as importing an obligation of "no return, no expulsion." The asylum seekers are protected by the rule of

non-refoulement although they have entered in violation of the municipal law on immigration and admission of aliens. The African Convention, 1969 forbade members states to subject any person "to measures such as rejection at the frontier, return or expulsion which would compel him or her to return or to remain in a territory where his life, physical integrity would be threatened by persecution."

The basic function of the non-refoulement principle considered within the context of the law concerning asylum, is to place human beings in a position effectively to apply for asylum either in the country of first refuge or in some other country.

It can not be denied that mass arrivals had fundamentally altered the problem and that the fate of refugees was now being weighed against the real or imaginary burden which their presence imposed upon host countries. This has occurred on a number of occasions, particularly after 1978, when more than a million and a half refugees from Cambodia, Laos, Vietnam left for other countries in the region.

However, non-refoulement is a fundamental feature of asylum, a human right laid down in many instruments and, indeed, an essential condition for it.

Fundamental Rights & Freedoms

Article 26 of the Refugees Convention, 1951 provides for the rights for refugees "to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances".

Refugees are not forbidden from engaging in employment under the conventions. The Refugees Convention, 1951 expressly provides for favoured treatment as concerns refugee employment and even for exemption from restrictions applicable to aliens when refugee has had three years of residence, or has a spouse or child of the the nationality of the country of residence. Similarly, certain social and economic rights are sepcifically provided for under the Refugees Convention, 1951. This group of rights include the right to education, public relief and rationing, social security and employment, labour rights and the right to practice the liberal professions.

Under the Refugees Convention, 1951 refugees have the right of association for non-political and non-profit making associations and trade union. However, they are, in the spirit of the African and Refugees Conventions, forbidden to engage in subversion.

As lack of relief capacity of host countries circumscribe the welfare rights, the provisions are aspirational, an urge for the host countries to do their best. Many countries in Asia and Africa however cannot maintain these standards even for the benefit of their nationals.

The 39th session of the UNHCR executive committee held in Geneva on October 3, 1993 has taken note of the direct relationship between the respect of standards governing human rights, refugee movements and problems of protection. Refugees require protection, first against refoulement, against return to where their life liberty or security may be endangered and protection too, in the sense of those "minimum rights and privileges essential to their existence and security.

The country of asylum has the following obligations—

- (a) To provide adequate protection and sense of security to the refugees and his dependants.
- (b) To adhere strictly to the principle of non-refoulement.

Besides these, the Refugees Convention, 1951 also lays down certain basic conditions for the protection and welfare of refugees. These are:-

- (a) Non-discrimination.
- (b) Exemption from reciprocity.
- (c) Exemption from exceptional measures
- (d) Identity and travel documents.

However, the Refugees Convention, 1951 is silent about two major rights of refugees. They are the right to repatriation and right of indemnification.

In 1985, during the 24th session of the Afro-Asian Legal Consultative Committee (AALCC) held in Kathmandu, the delegate of Thailand at the conclusion of the discussion on the question of burden sharing proposed that a study should be initiated on a closely related aspect namely the possibility of establishment of safety zones for refugees or displaced persons in country of their origin.

The international instruments for regulating the right of asylum and the situation of refugees thus provide a charter of rights binding the ratifying states and make provisions for their implementation. But they are inadequate to deal with the scale and complexity of the numbers and problems of refugees and displaced persons. Many traditional asylum countries show increasing reluctance to abide by their terms and are introducing additional qualifications on asylum seekers.¹³

¹³ **Fortnightly Review**, vol. 18 , year 6, October 16, 1993
published by Law and Society Trust, Colombo, Sri Lanka.

REFUGEE CRISIS AND ASSISTANCE

Indeed, the phenomenon of refugees and the displaced persons of the 20th century began in 1992 with the Balkan wars, increasing alarmingly with the Russian revolution and the failure of the counter revolution in 1917. The Balkan wars drove Greeks, Bulgarians and Turks from their homes. Then Poles and Balts fled, Hungarians were driven from Romania or Yugoslavia, ethnic Germans flooded out of Poland and between 1913 and 1925, Bulgarians were forcibly moved after a change in their frontiers.

The First and Second World Wars forced millions of people out of their countries. They were ex-prisoners of war, forced labourers, exiled and fugitive people whom the wars had brought from all over, some in arms, some in slavery. The end of the great wars followed several humanitarian initiatives to solve refugee crisis and ensure protection of human rights but the refugee crisis further aggravated. The regional conflicts, natural disasters and poverty all contributed to exacerbate the refugee problem. A recent United Nations Fund for Population Activities (UNFPA) report has stated that the rapid population growth and poverty in developing countries are fuelling world migrations to an unprecedented degree. In its annual report, the UNFPA indicated that some 100 million people - or just under 2 per cent of the world population - now live outside their native country.

During the early fifties the world refugee population was just one million. Today the refugee population exceeds 18

million. In the course of past years especially after the disintegration of Soviet Union and fighting in Bosnia Herzegovina more than three million refugees were forced into exile. The scale and complexity of refugee emergencies today indeed reflect the transitory and turbulent state of a world in which old power structures are crumbling and new ones are yet to emerge. Ethnic and religion tensions often aggravated by poverty, demographic pressure and environmental degradation have become a common demoninator of population displacements whether in the Horn of Africa and Sudan, in the former Soviet Union and the Balkans or in the Middle East and parts of South Asia.¹

The refugees today fall under three principal categories. First, political refugees who are mostly urban dwellers and to a greater or lesser extent educated people. The political and social upheavals have contributed to the numbers of political refugees. The second category of people are the freedom fighters but the United Nations and other international bodies do not recognize them as refugees at all. This category of people are in Africa but now with the solution of many problems especially in South Africa, Zimbabwe the number of such categories of people has declined. The third category of refugees is by far the most enormous. It consists of men, women and children fleeing from war, from racial, religious, or cultural persecution or conflict and from famine or other natural disasters. People arrive in their hundreds or thousand, hungry, thirsty, without shelter, and with no more possessions than they can carry on their back. They have to be fed, housed and provided with

¹ Extracted from a statement delivered by Mrs. Sadako Ogata at a seminar on "Problem Relating to Refugees" held in Dhaka, Bangladesh, May 1993.

emergency medical needs if epidemics are to be avoided. The type of refugee fleeing into foreign nations shows no homogeneity. Refugees come from all social level, and their reasons for migrating are frequently very diverse. These reasons range from economic exodus and personal problems, broken hearts, drug problems, religious and military reasons.²

No matter the categories of refugees, they have only one thing in common—that they have fled from their country, even the cause of their flight will be different. It may be persecution, or social upheaval or war or it may be famine which causes a disregard of borders.

Thus the mass movements of refugees continue to be a tragic fact of life, not only in the less fortunate parts of the world where underdevelopment, despotism, famine and war have hindered every solution. In fact, the enormous changes which have occurred in the international scene in the last two years, have created social, ethnic tensions inducing mass exodus in regions where the phenomenon was unknown.

Refugees Around the World

Not a single region with the exception of South America has been spared the repercussions of the massive and forced exodus of population. Iran alone houses nearly a quarter of the world's refugees (4.1 million of a total 18.9 million), three quarters from Afghanistan, one quarter from Iraq as a result of wars in these countries. The Afghan conflict, moreover, resulted in the greatest number of refugees, since these also number 1.6 million in Pakistan.

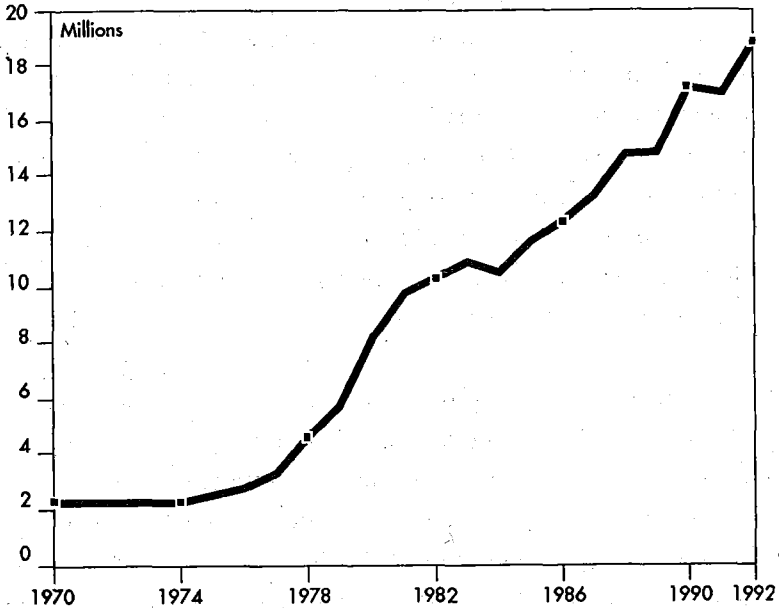
² Billy Eduard Albert Meier, **A Crusade Against Over Population** (London: Billy Eduard Albert Meier, 1993) p. 20.

Proportionate to its population, Africa has the highest number of refugees of any region. But highest progression in number of refugees over recent years has taken place in Europe where the total number leaped from 39,000 in 1990 to 4.4 million at the beginning of 1993. This is essentially due to the conflict in ex-Yugoslavia and the chaotic situation in certain countries of the former Soviet Union. In ex-Yugoslavia the number of persons uprooted is estimated at 800,000 in Bosnia Herzegovina, nearly as many in Germany, about 65,000 in Croatia and just over 500,000 in Serbia and Montenegro.

In fact, increasing nine times over the last 20 years, the number of refugees has taken a huge leap forward. Essentially three periods especially after seventies mark the inexorable progress in refugee numbers first the beginning of the Iran-Iraq conflict and Afghanistan war in the late 1970s and early 1980s. Secondly, wars in the Horn of Africa, the greater famine some what later. Finally, the conflict in ex-Yugoslavia and war in Kuwait with its consequences in Iran and Iraq. However, it must be noted that the situation with regard to refugees has considerably improved in other regions of the world particularly in South East Asia with almost total disappearance of boat people from Vietnam and the repatriation of nearly all of the Cambodian refugees in Thailand. Over-three quarters of the world's refugees live in the Thailand putting all strains on their resource, environment and development infrastructures. The number of refugee is growing relentlessly and that world could not achieve a new order and emerge from its current phase of

turmoil unless the problems of human displacements had been effectively addressed.³

NINE TIMES MORE REFUGEES TODAY THAN 20 YEARS AGO



Source: UNESCO SOURCES, July - Aug. 1993

³ See generally, Sadako Ogata, *The State of the World's Refugees - The Challenge of Protection* (Geneva : UNHCR, 1993)

Refugee Crisis & International Assistance

International community has accepted, in one or other way, the responsibility to extend assistance for refugees. Prior to the institution of the League of Nations High Commissioner for Refugees, assistance for refugees and displaced persons was in the hands of humanitarian organizations such as the League of Red Cross Societies. In August 1921, the League of Nations decided to nominate a High Commissioner for Refugees. Dr. Fridtj Nansen was delegate of Norway to the League of Nations, who had directed, on behalf of this organization, the repatriation of prisoners of war since 1919. Dr. Nansen succeeded in securing assistance for refugees from some governments and voluntary agencies and, among others, established a special identity card for those without documents known as the Nansen Passport which was recognized by fifty two states.

In 1922, The League of Nations created a stable base of work for High Commissioner. An autonomous office namely the International Nansen Office for Refugees was put into operation in 1933. The High Commissioner for Refugees coming from Germany was appointed. In 1938, The League of Nations decided that the International Nansen Office for Refugees coming from Germany should cease their activities at the end of the year and that their responsibilities should be transferred from 1 January 1939 to a new High Commissioner of the League of Nations, with headquarters in London.

Under the initiative of the then President of United States of America, Franklin Roosevelt the Intergovernmental committee on Refugees was set up to assist the orderly migration of persons who wished to leave German occupied territory. Similarly in November 1943 United Nations Relief and Rehabilitation Administration (UNRRA) was established. It organized the repatriation of those who wished and were able to return to their countries of origin.

In 1946, the International Refugee Organization was created as successor of UNRRA and inter-governmental committee. It was created with the task of "arriving at a rapid, positive and equitable solution of the problem of refugees and displaced persons".

Two other organizations were instituted in 1950 by the United Nations, the United Nations Korean Reconstruction Agency (UNKRA) which operated up to 1961 and the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA).

Finally on 14 December 1950, the General Assembly of the United Nations adopted the Statute of the United Nations High Commissioner for Refugees and the new organization began operations on January 1, 1951.

1951 United Nations High Commissioner for Refugees
(UNHCR)

1950 United Nations Relief and Works Agency for Palestine
Refugees in the Near East (UNRWA)

1946 International Refugees Organization (IRO)

1943 United Nations Relief and Rehabilitation
Administration (UNRRA)

1938 Intergovernmental Committee on Refugees

1933 High Commissioner for Refugees coming from Germany

1929 International Nansen Office for Refugees

1921 Fridtjof Nansen League of Nations High Commissioner
for Refugees

(Source : Four Decades in the Service of Refugees
UNHCR, p. 99).

UNHCR's Role and Contributions

UNHCR's presence in countries of asylum has proven over the past forty years to be a crucial factor in ensuring the protection of refugees. UNHCR makes use of the services available in the UN system in sectors such as food production (FAO), medical aid (WHO), education (UNESCO) and vocational training (ILO). The cooperation of the World Food Programme is particularly important for the supply of food aid to refugee camps. UNHCR cooperates actively with various intergovernmental organizations both for the implementation of specific assistance projects for refugees and for the promotion of legislation on asylum. The UNHCR also

maintains close contacts with donor countries which finance the UNHCR programme.

Most of the funding for UNHCR programmes comes from voluntary contributions from government, intergovernmental and non-governmental organizations and private donors. International presence is not only important for prevention of refugee flows but also for seeking solutions to refugees problems. In the context of repatriation international presence can be an important confidence building measure for returning refugees particularly when refugees choose to return to countries where security is fragile. In Cambodia, UNHCR negotiated guarantees for the safety of refugees, organized their return and provided basic reintegration assistance as well as monitoring of their security situations after their return.

In South-Africa, UNHCR monitors the safety guarantees for returning refugees which was negotiated with the government. In Somalia, the UN agency has established its presence across the border from Kenya and brought in food and basic assistance in an effort to stabilize population movements and eventually create conditions conducive to the return of refugees.

In Bosnia-Herzegovina, UNHCR is providing assistance not only to refugees and displaced persons but also to people who are under direct threat of expulsion either because of military attack or because of persecution and expulsion on ethnic grounds notoriously known as "Ethnic Cleansing." In Bosnia Herzegovina it has security risks of a type never known before. It has told to the use of UN peace keeping troops to provide military cover to the humanitarian activities. It created a major dilemma for the UNHCR.

However, UNHCR has launched emergency programmes for some three million refugees, internally besieged and displaced population in the former Yugoslavia. The UNHCR sent emergency teams to Armenia, Azerbaijan and Tajikistan. The resource constraints have hindered the relief services for refugees and the UNHCR, itself, is under the burden. Although the UN agency is funded well, donations were not as promising. In addition to the UNHCR, International Committee of Red Cross, (ICRC) International Organization of Migration (IOM) and other International Non-government Organizations (INGOs), NGOs are at the forefront of providing humanitarian services to refugees.

Today, international presence is not only important for prevention of refugees flows but also for seeking solution to refugee problems. In the context of voluntary repatriation, international presence can be an important confidence building measure for returning refugees particularly when refugees choose to return to countries where security is fragile. The success of repatriation is linked on the one hand to protection and security issues, and on the other to the prospects of economic and social reintegration and rehabilitation. Clean water, primary education, health care, basic income generation as much as guarantees of safety are necessary to make sure that those who return are then able to return at home.

But we live in a world in which massive violations of human rights is a every day reality. It has posed problem for protection of refugee interest. The task of protecting refugees and seeking solutions to their plight is not, therefore, just a question of logistics and relief but of putting for the humanitarian concerns as well as balancing the interest of states with the rights of refugees and asylum seeker often in very delicate situations.

REFUGEE PROBLEM IN NEPAL

Setting

Nepal, a Himalayan Kingdom, extends across the southern slope of the Himalaya between longitudes $80^{\circ} 15'$ and $88^{\circ} 10'$ east and latitudes $26^{\circ} 20'$ and $30^{\circ} 10'$ north. Its great measures 804 km and its breadth varies between 148 km and 161 km. And Nepal covers an area of 1,47,181 sq. km. The international boundary of Nepal with China lies in the Himalaya, either along the crest or among lesser peaks beyond it. Nepal has a 840 km. long free and open border with India on the South. This south international boundary is demarcated by pillars set up by the joint commission of India and Nepal. The Mechi river demarcates Nepal's eastern border with India and the Mahakali marks Nepal's western border with India.

India and China, neighbours of the Nepal, observing two different political ideology, are the great and powerful countries of the Asian continent. Nepal, has its own identity, maintaining non-aligned foreign policy since the late 1700s. As well, Nepal is holding a precarious balance between these two countries. In fact, the position of Nepal in South Asia is very sensitive.

Physical Division

Generally, Nepal is divided into three distinct belts from the geographical point of view, mainly, mountains in the north, the hills in the middle, and the narrow plains belt of

the terai to the south. The mountains of the north mark as the borderline with China. These mountains are mostly covered by the snow and have no direct transportable access. As a result, these areas are very low populated. On the other hand, the rest of two belts are used for cultivation as well as for the industry and commerce. Particularly, the Terai belt is playing vital role in the economy of Nepal. Its resource use and utilization is helping for the sustainable development of Nepal.

Ethnic Distribution

The ethnic distribution of Nepal tends to follow the same division as of the geographical division. The northern belt is largely dominated by the Tibeto-Burman speaking groups. They follow the Buddhism. The middle part of the Nepal is dominated by the Nepali speaking people and they are largely Hindu groups. And the Terai belt is mainly populated by the Indo-Aryan Hindu groups. They are largely characterised by Maithili and Bhojpuri speaking people. This shows that the diverse peoples with different racial, cultural and linguistic backgrounds inhabit in Nepal. The Sherpas and Tamangs live in the northernmost region of Nepal. The Gurungs and Magars live in the mountain valleys in central Nepal. The Rais and Limbus live in the same belt in the eastern region of Nepal. The Khasas, Thakuris and Brahmins live in the middle of the country. The Newars are concentrated in the Kathmandu Valley. Tharus live in the areas of the inner Terai and the Rajbansis and Satars live in all along the Terai. The Rajputs, Brahmins, Kayasthas, Yadavs are scattered all along the southernmost border of Nepal. The backward classes of Nepal such as Sunwars, Danwars, Murmis, Majhis, Dhimals, Chepangs, Kusundas,

Rauteas, Podes are also residing in the middle of Nepal. Few percentage of Christians and Muslims constitute the population of Nepal.

"Land Locked" Feature

Nepal is a landlocked country. The landlocked feature and the predominance of rugged mountainous areas have made the development difficult. The rugged mountains are the main barriers for smooth transportation within the kingdom. The mountainous roads are constructed to some extent for the necessary transportation activities. However, a large part of the country remains inaccessible by modern transportation. As well, these roads have proved "not safe" during rainy days. On the other hand, though numerous rivers are flowing in Nepal, these are not used for river transportation. The only alternate mode of transportation within the kingdom is air transportation, which is too costlier to be afforded by the common people of Nepal. Nepal does not have direct access with third countries either through land transportation or through naval transportation. Nepal has to depend upon India for transit connection with third countries.

Nepal is economically very weak. More than half of the total budget of Nepal is derived from foreign aid and loans. In fact, the development of the country is hindered by its geography. The landlocked position and mountainous nature brings high costs and delays in the transit of goods through neighbouring countries. Agriculture in Nepal is in the primitive stage of development. No modern technology has been applied in the agriculture so far. Nepal has no other alternative except to depend upon the limited agro products

that come out from the 26 per cent of the cultivated land of Nepal.

Nepal is ranked as one of the poorest countries of the world. The country has per capita income of US \$ 180 in 1991 amongst the lowest in the South Asian region¹. Nepal is rich in water resources but it could not exploit it due to several constraints as they are capital intensive and require sophisticated technology. Agriculture has contributed around 60 per cent of GDP. Sixty per cent of total agricultural products are for exports and eighty two per cent are for raw materials. About 42 per cent of Nepal's total population lives below the poverty line.²

South Asian Context

The geographical and economic features of all the South Asians are more or less identical. As well, the South Asians have cross-cultural and religious relations. South Asian is the homeland of many nationalities and multi-ethnic people, who not only have kin and relatives living across state borders, but share common languages and cultures with people on the other side. The sub continent has had a history of continuity and ruptures out of which the current South Asian system has emerged and the international boundary lines are delineated. This political boundary categorized the people of the South Asia into different national identity. The common geo-religio-culture of South Asia has a bearing in the development of an individual country of the region.

¹ The World Development Report, 1991.

² NPC, HMG and UNICEF, *Children and Women of Nepal: A Situation Analysis*, 1992, p. 21.

People sharing same culture and religion may be the citizens of different countries. Nepalese languages, culture and religion prevail not only in Nepal. These have been spoken and observed in some parts of India and Bhutan also. Notably, the Government of India has given constitutional recognition to the Nepali language very recently. In the same way, the religion and culture observed in the the other South Asian countries are also shared by the people in Nepal. For some years now, the South Asian nations Nepal, Bhutan, Bangladesh, India, Pakistan, Sri Lanka, The Maldives, are grouped into a common forum known as South Asian Association for Regional Cooperation (SAARC). The regional forum has been created to promote cooperation and interaction among the South Asian countries.

In some case, citizens of a particular country leave his/her homeland due to fear of persecution and enters into other country. Such situation of leaving their own country arises when the human rights have been grossly violated. They could be the unfortunate victims of racial or religious discriminations - the serious forms of human rights violations.

Human rights have been endorsed by the national legislations and international covenants. Some of the domestic legislations of a country endorse the important elements of human rights whereas the national legislations of other countries have paid less attention to human rights protection. In the South Asian context, some countries have endorsed and guaranteed minimum protection. But the Bhutan government is an exception to it and has not paid minimum respect to human rights.

Human rights are based on mankind's increasing demand for a life of dignity. No one can live without human rights. The reason is that the human rights are those conditions of life that allow human being fully to develop and use their human qualities of intelligence and conscience and actualize their spiritual needs.

The 1948 Declaration which has been known as the *magna carta* of human rights, has embodied all provisions of human rights. The United Nations member states are obliged to adhere to provisions of the 1948 Declaration. The 1948 Declaration has guaranteed right to asylum in its Article 14, which reads as:

"Everyone has the right to seek and enjoy in other countries asylum from persecution."

The next important point is that the asylum is the very basic human rights. The initiatives in both the fields of human rights and of refugees were inspired by the common objective of preserving and protecting the dignity of the individual. However, there is vital difference between the two is that while international human rights law deal with the rights and freedoms of all individuals on the territory of their state, refugee law is designed to ensure that people who are denied the national protection of these rights, have to be protected in other states. The theme of the human rights and refugee law lies in the same ideal, standard and principles. These two branches of law covering refugees and human rights are closely interrelated as refugees are often the victims of human rights violation. Also to safeguard the dignity of human being lies at the root of both. In fact refugees are created by violation of human rights. Thus refugee problem

could be interlinked with human rights violations. The case of Bhutanese refugees fleeing their homeland to Nepal is stark example of human rights violations.

Refugees Burden to Nepal

Nepal had been a room for refugees since it had been freed from the Rana claws in 1950. Paradoxically, Nepal being resource starved country had to welcome "refugee guest" for twice during the period of half century, from its neighbouring countries. For the first time, refugees had sought refuge in Nepal in 1959 and then in 1990. In 1959, there was a influx of Tibetan refugees while in 1990 Bhutanese refugees fled to Nepal in a massive number. The causes and consequences of the Tibetan and Bhutanese refugee influx have been briefly accounted for in the pages to follow. Apart from this the refugees fleeing the Bangladesh war of independence in 1971 and civil wars in Afghanistan and Iraq also led to the entrance of refugees in Nepal.³

Tibet: A brief

Tibet was inhabited by the people speaking Tibetan language and they follow their traditional culture. Their language belongs to the Tibeto-Burmese family. Tibet covered the area of 600,000 square miles, and is composed of a plateau averaging some 11,800 ft. This plateau is surrounded by the Himalayas, the Karakorum, Kumlung and Altay - Tagh mountains. The east west length is 2500 kms. Tibet is the source of many river such as the Yangtze, Mekong, Brahmaputra, Salween, Indus, Sutlej, Kali Gandaki, Trisuli, Manas and Subansiri. With all these physical distribution,

³ INSEC, Human Rights Year Book, 1992.

Tibet was a huge empire during the seventh century under the reign of the Tibetan King Song-tsen Gampo.⁴ However, the suzerainty of the China over Tibet continued and it was considered as a part of China.

In 1949, communists came to power in China and they asserted that Tibet was part of China. As a result the relations between Tibet and China worsened during the early twentieth century. The Chinese declared that Tibet would be liberated from the Dalai Lama, they sent heavy reinforcements, alongwith better arms and supplies. Lastly, there was "17 Point Agreement" between China and Tibet concluded on 1951 May 23.⁵ Due to this development, the Tibetans felt that their culture was in jeopardy under the diktat of China. As a result, about 120, 000 Tibetans had left their country in 1959.

Tibetan Refugees in Nepal

Due to the Chinese presence in Tibet, nearly twenty thousand Tibetans have taken asylum in Nepal since 1959. They entered into Nepal via Namchhe Bazar and camped in Chyalsa of the Solukhumbu district. Some of the Tibetans refugees entered into Nepal via northern border of Rasuwa district and camped in Syafrubesi. Later on, they moved and scattered to twenty one districts of the Kingdom. These are Kathmandu, Lalitpur, Bhaktapur, Taplejung, Sankhuwasabha, Solukhumbu, Dolkha, Rasuwa, Sindhupalchowk, Nuwakot, Gorkha, Tanahu, Kaski, Manang, Baglung, Nawalparasi, Mustang, Dolpa, Jumla, Darchula, and Humla.

⁴ The Scientific Buddhist Association, **Tibet: The Facts** (Dharmasala: Tibetan Young Buddhist Association, 1990) p. 3.

⁵ *Id* at 8.

His Majesty's Government of Nepal allocated them different camps in different parts of the Kingdom. Camps are allocated at Sawayambhu, Bouddha, Jorpati of Kathmandu, Jawalakhel of Lalitpur, Chandipokhari of Nuwakot, Hiletar of Tanahu, Hengja and Chhorepatan of Kaski, Dhorpatan of Baglung, Chhoiro of Mustang.

Till today, estimated number of the Tibetan refugees is nearly twenty thousands and they are not yet being stopped from entering into Nepal. Tibetan refugees are entering into Nepal in different capacity, some are as pilgrims, others as economic migrants, some are as money mongers and some are as tourists. It is found that the influx of Tibetan refugees is 9868 in the period spanning from 1960 to 1984 and 12620 in the period spanning from 1985 to 1990.

Nepal gave asylum to the Tibetan refugees on humanitarian basis. She has nothing to do with the Tibeto-chinese politics. However, the presence of Tibetan in Nepal has created an awkward situation for the Kingdom of Nepal. The Tibetans might be involved in the anti-Chinese activities. There are apprehensions that Nepal could be the centre of anti-chinese activities which could hamper the relations of Nepal with China. Thus, the Tibetan issue always has been a sensitive issue for Nepal's foreign policy. Nepal, being a yam between two huge boulder, has maintained balanced relationship with India and China. The Tibetans are also self-employed and generate income for their sustenance, However, there presence has been a burden to Nepal in many spheres.

Bhutanese Refugees

Bhutan : A Brief

Bhutan, a tiny Himalayan Kingdom, is situated in South Asia. The Wangchuk dynasty has been ruling the Kingdom since the King Ugen Wangchuk took over by the support of British. The present king is the fourth king of the Wangchuk dynasty. The credit of the unification of Bhutan goes to the Ngawang Namgyal who had defeated the Tibetans by 1939 and consolidated the fiefdoms of the area. As well he established himself as a theocrat. Bhutan had lost its cultivable land known as Duars to the British when it had broken war with Britain in 1965.

Bhutan is the homeland of the different communities, such as Ngalung, Sarchops and Nepali speakers. Among the communities of the Bhutan, Nepali speakers dominate by their majority. But the Bhutan government claimed that Nepali speakers constitute only 30 per cent whereas Ngalungs and Sarchops are constitute 33 and 37 per cent of the population respectively. But the actual statistics of the community distribution of Bhutan is different. The Bhutan Peoples Party has repeatedly claimed the Nepali speakers hold 53 per cent, Sharchop hold 31 percent and the Ngalung hold only 16 per cent. Interestingly, the minority community Ngalungs is the ruler of the Bhutan. The bureaucracy and other important portfolios are directly controlled by the Ngalung community. No other community people are recruited into the higher and crucial post, though they are qualified and competent.

Nepali speakers had been settled in Southern Bhutan by an invitation of the Dorji family. The Dorji family encouraged the Nepali speakers settlement in the Southern Bhutan, by the authorization of the Bhutanese Government where Drukpas were afraid to spend even one night. It shows that the migration probably took place during the mid 1800s. One point that requires to be noted here is that the migration of Nepali-speakers into the Bhutan was not directly from Nepal. In the beginning of the migration, the Nepali speakers were migrated from Kalimpong. This indicated that migration of Nepali-speakers into Bhutan is step migration. In other words they migrated from adjacent Indian-regions. These Nepali speakers are known as "Lhotsompas". They had to work hard to settle in the Southern Bhutan as that part was heavily forested and malaria infected. Besides, they paid tax to the government also. These Nepali speakers received citizenship in 1958 and the cross community marriage between Nepali and Drukpas were also encouraged. The Nepali language was officially recognized. The Nepali settlers had opportunity to learn and educate in their own language.

Bhutan has special ties with India since 1949 by the virtue of Treaty of Friendship Between the Government of India and the Government of Bhutan. The Agreement entered into between Bhutan and India on 8 August 1949. Bhutan had handed over the Defence and Foreign Affairs power to India by the virtue of Article 6 and 2 of the Agreement. As a result Bhutan is not free to take any decision on these two issues.

'Ethnic Cleansing' Policy of Bhutan

In Bhutan the minority rulers want to be secure that their ruling position may remain unthreatened. To further this policy, the Druk government adopted a "ethnic cleansing" policy and implemented it. Their target was to sweep out the majority community i.e. Nepali speakers from their kingdom, so that they could rule the country in their own whim and caprice. In fact, the minority rulers had a fear in their heart that they may be overthrown in case the country started functioning with democratic norm. Keeping this fear in mind, they voiced a slogan "One Nation' One People." In fact this act of ethnic cleansing amounts to 'ethnocide'. The Druk government adopted following measures in order to implement their ethnic and culture cleansing policy:⁶

- i. The Bhutan Citizenship Act, 1985,
- ii. The Bhutan Marriage Act, 1980,
- iii. Drig Lam Namzha,
- iv. Thrim Shung Chenpo,
- v. Green Belt Policy,
- vi. No Objection Certificate
- vii. Voluntary Leaving Certificate.

1. The Bhutan Citizenship Act, 1985

The Bhutan Citizenship Act, 1985 is enacted mainly to evict the Nepali speakers from that Himalayan Kingdom. Section 3 of the Act bears the feature of *ex post facto*. This section has identified 31 December 1958 as the cut off year for the recognition of citizen by registration. Under this criteria

⁶ ICJ/Nepal Section, *How Compelled Bhutanese Citizens to Become Refugees*, 1993, p. 10.

also the person who seeks citizen by registration should produce the evidence that he was registered in the Bhutanese Home Ministry by the cut off year. The identification of the cut off year is not justifiable because of two reasons, one, the cut off year cannot be identified the prior year by the Act enacted subsequent. Two, no other evidence should be demanded from the person who could show that he has been residing from the person seeking citizen by registration. Interestingly, the tiny himalayan kingdom had no systematic record system till 1970s. The analysis of this provisions makes us clear that the provision for citizenship by registration is merely a "fashion clause." The Nepali speakers were charged as "Ngolops", - anti-national element by the government on the accusation that they demanded the 1977 to be cut off year instead of 1958.

Though the Act has enshrined the provision of citizenship by naturalization, it is not possible at all, people to get citizenship by naturalization. Section 4 of the Act contained certain mandatory provisions to get a citizenship by naturalization in such a way that the Nepali speakers could not make use of the provisions of the Act.⁷

2. The Bhutan Marriage Act, 1980

This Act is enacted to discourage Nepali speakers from marrying their community member out of the Himalayan Kingdom. Severe punishment has been inflicted by the Act to those who marry their own communities for out of the kingdom. This Act conflicts the sentiment of the 1948 Declaration. Thus, its can be said that the Act has been used

⁷ See, Id at 11 to 13.

as one of the strong measures to implement the alleged 'ethnic cleansing policy.'

iii. Drig Lam Namzha

The Druk Government has enforced the cultural code which is called "Drig Lam Namzha". The minority rule government has declared their culture as immutable and asked the people of Bhutan to follow the same. How people practising different culture can accept the alien culture ? Government imposed heavy punishment to those who do not follow this cultural code. In other words, the government adopted the intimidating tactics to force the people to follow the dress and culture code.

iv. Thrim Sung Chenpo

It is interesting to note that the Bhutan has no written constitution. King is ruling the country on his own whims. His order is law. His order is justice. There is no rule of law and no room for due process of law. The principles of criminal jurisprudence are not given due respect. This national law declares any action against the Tsa (the King) wa (the Kingdom) Sum (the Government) is treasonable and punishable by death. This provision was approved by the Tshongdu (the Parliament) in March 1990.⁸ Once the person is designated as anti national he/she shall, summarily, be penalised with inhuman punishment, such as capital punishment and exile.

⁸ *Himal*, July/August 1992, p. 13.

v. Green Belt Policy

The southern part of Bhutan was not place of inhabitant. This place was heavily forested and malarious. Today, the southern Bhutan is producing good amount of agriculture products, and is strategic gate to India. All this was made by the heavy efforts of Nepali - community. The Druk government took a policy to evacuate the Nepali speakers from this part. Thus, the government announced that this part is going to be made green belt and the Nepali speakers are allotted land to the northern Bhutan where Nepali speakers simply could not adjust due to climatic condition. This way Nepali speakers were compelled to leave their homeland.

vi. No Objection Certificate

The government wants to be sure that Nepali speakers are not employed in any part of the kingdom. Thus, the government declared that the Nepali speakers should obtain "no-objection certificate" from the government either to work or to do anything. Normally, Nepali-speakers are not given this certificate.

vii. Voluntary Leaving Certificate (VLC)

The Druk government has prepared a VLC. Its objective is to collect the evidence that the Nepali speaking Bhutanese citizen have renounced their citizenship voluntarily. The ethnic cleansing policy implementation officers are assigned to seize the citizenship and other documents and to collect the signatures in the VLC from the Nepali speakers Bhutanese citizens. They also recorded the voice of refugees both in audio

and video that support that their departure is voluntary. But this could be possible only from them who could not flee away. Subsequently, the National Parliament of Bhutan enacted a law banning to return into Bhutan to those who left the country and have put on signature in VLC.⁹ By this act of the Bhutan government the Nepali speaking Bhutanese citizens have become stateless.

Above discussion shows that the Bhutan government has seriously and rigorously implemented a kind of ethnic cleansing policy. Besides, the government has deployed military personnel in the Southern Bhutan. The military personnel applied various methods against the Nepali speakers, such as robbery, rape, arson and other methods. As a result the Nepali speaking Bhutanese citizens are compelled to leave their homeland with broken heart. And then they entered into India. But Indian government also did not allow them to take there shelter there and send off them to Nepal. As a result Nepal is accomodating 85,043 Nepali speakers Bhutanese citizen in its eastern part of the land by the end of 1993, reports the local OMIU.¹⁰ Rastriya Samachar Samiti (RSS) reports that the Bhutanese government is ruthlessly pursuing with its plan of expelling Bhutanese of Nepalese origin without any reason through intimidation and other means and driving away a whole family of any of its member was found dwelling in Nepal.¹¹

⁹ *The Rising Nepal*, August 15, 1993.

¹⁰ *The Kathmandu Post*, January 24, 1994.

¹¹ *Ibid.*

Bhutanese Refugees: Impact on Nepal

Nearly 100,000 Bhutanese refugees are camped in different camps namely, Khujunabari North and South, Goldhap, Timai, Beldangi I, II and II ext and, Sanischare of Jhapa and Morang district of eastern part of Nepal. These refugees are passing their painful days in the hutments of refugee camps with faint hope to go back to their homeland safely and respectfully.

The influx have been registered and issued them refugee identity card. While registration process completed, it has proved that all the refugees are genuine citizens of the kingdom of Bhutan. It is found that 60% possesses citizenship certificate, 18% possesses land tax receipts, 16% possesses school certificates, marriage certificate, court documents, service documents, hospital cards and 2% could not produce any documents as their documents were seized by the Bhutanese officials. The influx of Bhutanese refugees in this country has created a grave problem. The impact created by the presence of Bhutanese refugees are discussed below:

1. Social Pollution

The presence of Bhutanese refugees has created social pollution in Nepal. The very presence of the refugees in the eastern part of Nepal made livelihood difficult to the Nepalese citizens. The scarcity of foodstuffs has been created. As a result price of the most of commodities have been hiked. The refugees do not have to do any work whole day. They are passing off their ideal life. It is rightly said that the 'idle mind is devil's workshop'. They are said to be indulging in the act bordering on nuisance act. It is also reported that theft,

violence, rapes and physical assaults are increasing in the vicinity of the refugee camps due to the refugees placed in the camps there.¹² It is revealed that the most of the refugees passing off their time by playing cards and drinking liquor¹³. Such type of acts have created social conflicts and disorder in the life. It is also revealed that some of the women refugees are indulged in 'flesh trade'. Such type of activities of the refugees are an anathema to the social life of the people in eastern Nepal.

2. Ecological Strain

The refugee camps area covers 265 hectares of land protected as afforestation. The trees of peripheral area of the refugee camps have been cleared by the refugees for fuel, though they are supplied with kerosene. The refugees are indulging in selling off the woods to the local market¹⁴. It is estimated that the daily consumption of fuel wood is 150 tons per day by refugees. The landscape nearby the refugee camp is turned bald.

The faecal and other solid waste dumped around the refugee camps have contributed to pollute the environment. The nearby residents have repeatedly complained that the solid waste of the camps should be managed properly.

¹² Rajendra Sharma, "Bhutanese Refugees Threaten Jhapa, Morang Environment", *The Rising Nepal*, May 3, 1993.

¹³ Dharma Adhikary, "Pains of Bhutanese Refugees", *Sadhana (The Family Digest)*, Falgun 2049 B. S., p. 28.

¹⁴ *Gorkhapatra*, 2049/11/24 B.S.; *Kantipur*, 2049/12/15 B.S.

3. Cultural Pollution

It has been revealed by the press reports that most of the refugees are trying to settle in Nepal. They try to slip out of the refugee camps. They are residing in the city outside the refugee camps.

Despite the presence of a host of NGOs, government units and volunteers working for the welfare of the refugees, there is not a single unit making the refugees aware of the dangers of promiscuity and the killer HIV virus. Since the refugees are living in groups at one congested place where privacy is not simply possible, easy access to male - female relationship and contact to outsider can result into an AIDS epidemic. There is another health problem surfacing in the camps. Almost all camps have patients suffering from Vitamin B2 deficiency of which no individual or agency seems aware. The birth rate among the refugees is astonishingly high. They now are convinced that having more children is beneficial as every new born baby brings in, among others, an extra 430 grams of rice and other foodstuffs.¹⁵

Thus the presence of Bhutanese refugees in Nepal is putting strains on all aspects of Nepalese social and cultural system.

¹⁵ Bhutanese refugee women quoted in an article entitled "Bhutanese Refugees and WFP Assistance", *The Rising Nepal*, November 30, 1993.

NEPAL'S COMMITMENTS TO AND PRACTICE ON CARING FOR REFUGEES

There are conventions and declarations adopted by the United Nations for the protection of refugees and stateless persons which can be grouped together as Convention on the Reduction of Statelessness, 1961; Convention Relating to the Status of Stateless Persons, 1954; Convention Relating to the Status of Refugees 1951; Protocol Relating to the Status of Refugees, 1966; Statute of the Office of the United Nations High Commissioner for Refugees 1950, and Declaration on Territorial Asylum, 1967. These conventions and declarations were adopted in order to reduce statelessness, extend humanitarian assistance to stateless persons and refugees. The Convention Relating to the Status of Refugees and its Protocol aims at providing assistance to refugees through international solidarity and cooperation. These instruments are left open for accession to or ratification by the states. Of course, these legislation shall create obligations to only those who are party to them. Most of the states are not party to these instruments. These non-party states are not obliged to abide by the obligations contained in the instruments. The record shows that 14 states are party to the Convention on the Reduction of Statelessness as of March 1, 1989¹. Three states have signed the convention but they are yet to ratify². Likewise 35 states are party to the Convention Relating to the Status of Stateless persons³. Eight states have yet to ratify the convention⁴.

¹ Human Rights: Status of International Instruments, (Geneva: UN, 1989).

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

Similarly, 101 states are party to the Convention Relating to the Status of Refugees and Protocol Relating to the Status of Refugees⁵.

Notably, the SAARC members, namely Nepal, Bhutan, India, Sri Lanka, Pakistan, Maldives and Bangladesh are not party to the International legislation for protection of refugees⁶.

Interestingly, Nepal and its neighbouring countries, Bhutan are not party to the above conventions. Nepal is not therefore bound to commit to the provisions contained in the convention. However, it is to be noted that Nepal as a member of the comity of nations can not refrain from fulfilling international humanitarian obligations. The Universal Declaration of Human Rights and other human rights covenants created general obligation for Nepal to work for protection of human rights and promote the effectiveness of international humanitarian law. Nepal, especially after the restoration of multi party democracy has put democracy and human rights high on the agenda and pronounced human rights as the cornerstone of her foreign policy. It demonstrates Nepals' commitment to the protection of human rights and fulfillment of humanitarian obligations. It is this readiness to fulfill humanitarian obligations and also the hospitable Nepali culture, that she absorbed the Burmese of Nepalese origin displaced from that country in early sixties.

Relief Services to Tibetans Refugees

The influx of refugees in Nepal in late fifties was delicate issue for Nepal. Nepal has friendly relations with her neighbouring country China and recognised the Chinese

⁵ Ibid.

⁶ See, *Supra* note 1.

suzerainty over Tibet. And Nepal has handled the Tibetan refugee issue very deftly as a matter of humanitarian concern. Tibetan refugees have been sheltered in various part of Nepal for last thirty years. Nepal has never allowed the Tibetan refugees to engage in the anti Chinese activities from her soil. Nepal did not issue permit for the visit of His Holiness Dalai Lama in Nepal as it would infuriate the Chinese authority. However, Nepal has provided every facilities to Tibetan refugees and extended assistance for their welfare.

(a) Establishment of Camps

Tibetans refugees are residing in different parts of Nepal for more than three decades. They waited, for that period, passing life in exile, with a much cherished dream that the days of quick repatriation will come. Ironically, their dream for "Rangzen" in Tibet took a long time. As a result the second generation Tibetan refugees has come and they are also spending their life in exile. A study revealed that the 40 per cent Tibetan refugees were born in Tibet and remaining 60 % of them were born in Nepal. All these refugees are sheltered in different parts of Nepal, mainly, Kathmandu, Pokhara, Solukhumbhu, Walung, Rasuwa, Chiti, Dhorpatan, Jumla, Mustang and Dolpa. In Kathmandu, the camps for them are located at Swoyambhu, Bouddha, Jorpati. In Lalitpur, the Tibetan refugee camp is situated at Jawalakhel. Likewise, the camps for Tibetan refugees are situated in Chandipokhari of Nuwakot, Hiletar of Tanahu, Hengja and Chhoreptan of Kaski, Dhorpatan of Baglung and Chhoiro of Mustang.

The refugees themselves are taking care of the camp management including the management of school and health facilities for them and their children.

(b) Distribution of Refugee Identity Card

The Tibetan refugees were distributed refugee identity card at the time of their arrival. Unfortunately, distribution of the identity cards to them was not systematised. During the span of more than thirty years the Tibetan refugees have been registered and issued identity card only once. As the identity cards were not issued to them regularly they are facing identity crisis in every step, reported by a Tibetan refugee of the Pokhara camp. However, the refugee identity cards are being distributed to Tibetan refugees very soon⁷.

(c) International Aid and Support

International agencies had extended its support in material terms to the Tibetan refugees in the beginning stage of influx. UNHCR also took initiatives in taking care of the refugees. As Tibetan refugees had entered into Nepal along with their skills, they could establish carpet industry and other handicraft industries. They have sustained on the income of the cottage and weaving industries they established.

Relief Services to Bhutanese Refugees

His Majesty's Government of Nepal despite its own economic problems has had to bear the burden of hosting around 100,000 refugees. The Ministry of Home Affairs has been entrusted with managing the refugee crisis. It has created an Operation Management and Implementation Unit (OMIU) to meet the need for systematic and efficient refugee documentation and management. In addition to the security and law and order aspect, the OMIU, in coordination with the

⁷ An official associated with the Home Ministry of the HMG has informed the research team in this regard.

United Nations High Commissioner for Refugees (UNHCR) is undertaking the task of refugee verification and documentation.

UNHCR which has a global mandate for the protection and welfare of refugees serves as the focal point for all assistance to Bhutanese refugees in Nepal. Numerous agencies have channelled their contributions through the UNHCR which supervises all relief and welfare activities through a number of implementing agencies. The humanitarian UN agency provides legal protection to all asylum seekers who have been screened and recognized as refugees. Asylum seekers are registered in the camps as refugees only after UNHCR has ascertained that an individual has fled from a genuine fear of persecution. Refugees were initially interviewed and registered in the camps itself but since May 1993 formal screening takes place at Kakarbhitta, the entry point on the Nepal-India border. UNHCR in coordination with OMIU has reorganized and reconstituted all the camp administration and management committees. Training has been imparted to different categories of staff and volunteers.

By the request of HMG, the UNHCR and other international agencies have extended material support to the Bhutanese refugees. Still these international agencies are extending support. The United Nations World Food Programme and many other agencies working for providing assistance to the refugees. The WFP first started providing food assistance to Bhutanese refugees on February 4, 1992 and approved Nepalese request for further assistance this year. As per the agreement between the government and WFP, the Lutheran World Service has been assisting in the management and distribution of WFP supplied food to the Bhutanese

refugees.⁸ Recently, an agreement between Nepal Red Cross Society and the UNHCR took place enabling UNHCR to undertake the entire distribution of food and non food items to the Bhutanese refugees.⁹

Shelter

Initially, temporary shelters for the refugees were prepared by Lutheran World Service with the help of UNHCR. But later on these shelters have been changed into permanent nature. The shelters are prepared under the guidance of UNHCR in all camps. The shelters are prepared on the number of family basis. Specific number of refugees are allowed to stay in a shelter.

Water

The central water system have been established in all the refugee camps. A deep borehole has been established in most of the camps for the water system. Water storage tanks have also been placed in all of the camps. Several distribution points are also maintained to provide required quantity of water.

Sanitation and Solid Waste Disposal

Quite a number number of latrines facilities have also been constructed in all the camps. Required number of plastic containers are placed in every camps for waste disposal purposes. They are not adequate enough to meet the requirements of the refugees.

⁸ The Rising Nepal, November 30, 1993.

⁹ The Kathmandu Post, January 31, 1994.

Necessary preventive measures have been taken to protect the refugees from the mosquito infected diseases. Red Cross and other agencies have supplied bed nets to the refugees.

Food Distribution

World Food Programme is taking care in distributing all food commodities directly to camp warehouses in adequate quantities. The Lutheran World Service is the main implementing agency responsible for food distribution, shelter, water and sanitation, health infrastructure, access and internal roads construction in all the refugee camps. It has so far received US\$ 7.0 million from the UNHCR to implement these activities and has spent about \$ 0.9 million from its own resources.

Non-food Items

Especially, the Nepal Red Cross Society distributes non-food items like clothes, medicines and ambulance services. The Red Cross and Save the Children Fund jointly maintain treatment facility at each camp to treat the sick and prevent the spreading of diseases.

Lutheran World Service (LWS)/Red Cross/OXFAM have distributed blankets in the camps. LWS distributed all used clothes to the refugees of all the camps. With a view to conserving forest, LWS has distributed kerosene stove and kerosene to all the refugees of all the camps.

A health centre has been established in the refugee camps alongwith the medicine and medical personnel. UNHCR is taking responsibility patients to send the ailing refugee patients to good hospital, if necessary.

Education

A secondary level school has been established in all the camps. Qualified refugees are managing and teaching in the school. Necessary teaching materials and books to the students are supplied by the CARITAS/Nepal.

Teacher training workshop is also taking place on the regular basis to the refugees teachers. These workshop were considered to be very successful and both the facilitators and trainees felt that they benefitted greatly from participating in such training programme.

Communications

Both VHF and HF systems have been established in order to give opportunity to refugees to contact their friends/families of the other camps.

Security

The security system in all the camps with the help of local authorities and refugees has been managed. The police post has also been set up at certain camps. A camp rules also have been enacted by the UNHCR and CDO office in order to maintain law and order in the camps.

Income Generating Activities

OXFAM is launching income generating activities like sewing and knitting. Many women and men are engaged in weaving sweaters with assistance from OXFAM which buys them raw materials and pays for the end products which later are distributed among the refugees themselves. It is basically aimed at imparting skills to refugees to make them self-reliant.

Camp Management

Different committees are constituted for the betterment of the camps. A higher level committee named OMIU has been constituted under the chairmanship of Chief District Officer (CDO). And the local committees are also constituted under the convenorship of refugee in every camp. A secretary is also appointed among the refugees to assist the convenor.

'Quiet Diplomacy' and Bhutanese Refugees

HMG of Nepal is seriously committed to resolving the Bhutanese refugees issue. Nepal has requested the Bhutanese government to repatriate the Bhutanese citizens. However, Bhutanese government did not reciprocate to the Nepalese overtures. Thimpu was disinclined in to seriously address the issue of Bhutanese refugee in Nepal. Several attempts on the part of Nepal to negotiate with Bhutan and settle the refugee impasse bore no fruits. Finally, a major breakthrough took place in Vienna at the Human Rights Conference that the Prime Minister of Nepal and the King of Bhutan had a dialogue. But outcome of this dialogue was not satisfactory. The Bhutanese government was not ready to give the refugees status to the Bhutanese refugees taking shelter in eastern Nepal. Thus, the King of Bhutan Jigme Syngde Wangchuk

sought to characterize the refugees as "displaced persons" when Nepalese Prime Minister Girija Prasad Koirala met the former during the SAARC summit at Bangladesh capital Dhaka. But the Nepalese prime minister rejected the Bhutanese design to stalling the solution of the problem.

At this juncture Nepal had no other alternative except to internationalize the issue. Prime Minister of Nepal briefed the resident diplomats on the Bhutanese refugee issue. But the Nepal thought it wise to best pursue the efforts to settle the issue through bilateral talks and negotiation.

The quiet diplomacy pursued by Nepal was, however, able to yield some results. A ministerial joint committee of Nepal and Bhutan, held in Kathmandu on 7 October 1993, came out with concrete steps in regard to resolving the refugee problem. Both the party agreed to categorize the refugees in the following manner:

1. Bonafide Bhutanese who have been forcefully evicted,
2. Those who emigrated,
3. Non-Bhutanese people,
4. Who have committed criminal acts.

In regard to categorisation of the refugees, the two government agreed to specify their position and reach a mutually acceptable agreement. Then the next ministerial joint committee meet, slated in Thimpu for February, 1994 is expected determine the mechanism for verification of the refugees. Notably, both the parties have expressed mutual satisfaction with the progress achieved.

1993 Highlights of the Quiet Diplomacy

- April 9. On the eve of SAARC Summit in Dhaka, the King of Bhutan and Prime Minister of Nepal meet and discuss the issue of Bhutanese refugees in Nepal.
- April 12. On his return from Dhaka PM Girija Prasad Koirala announces the failure of bilateral talks.
- April 20. Nepalese Prime Minister Mr. Girija Prasad Koirala briefs diplomats based in Kathmandu on the failed talks between him and the King of Bhutan.
- April 24. In an interview to the voice of America, PM Girija Prasad Koirala voices Nepal's willingness to hold direct bilateral talks with the King of Bhutan to resolve the refugee problem.
- April 25. The Nepalese PM despatches a letter to the King of Bhutan, May 26, in response to the Nepalese Prime Minister's letter offering to continue bilateral dialogue to resolve the problem of Bhutanese refugees. The King of Bhutan sends a communication inviting a ministerial level delegation to Nepal.
- July 1. Addressing the joint session of the Nepalese Parliament His Majesty King Birendra Bir Bikram Shah Dev Says "Nepal will continue diplomatic efforts for an early solution of the Bhutanese refugee problem."

- July 15. A Nepalese delegation led by Home Minister Sher Bahadur Deupa arrives in Thimpu for first Bhutan-Nepal talks.
- July 18. Nepal and Bhutan agree to form joint ministerial level committee.
- August 22. "We are convinced that the quiet diplomacy carried out between Nepal and Bhutan, offers the best chance for working out a solution to this difficult situation. I am confident that our friends in Nepal and Bhutan have the wisdom and ability to tackle and solve even this difficult question "says Indian PM P. V. Narasimh Rao during his visit to Bhutan.
- October 4. Bhutanese delegation led by Home Minister Dago Tshering arrives Kathmandu and calls on PM at his residence.
- October 5. First meeting of the joint ministerial committee held in Kathmandu.
- October 6. HM the King of Nepal grants audience to the Bhutanese Home Minister.
- November 3. Thirtyfive NGOs participating in the South Asian Conference of PARINAC in Kathmandu demand a review of the categorization agreement between Nepal and Bhutan.

A ministerial joint committee has been headed by the Home Minister Sher Bahadur Deupa from the Nepal side and

his Bhutanese counterpart Lynpo Dago Tshering of their respective delegations. Other members of the joint committee representing Nepal include Kedar Bhakta Shrestha, Joint Secretary, Ministry of Foreign Affairs and S. K. Regmi, Joint Secretary, Ministry of Home Affairs. The Bhutanese side include Dasho Jigme Y. Thainely, Home Secretary and Dasho Dev Narayan Katwal, Senior Judge of the National High Court of Bhutan. The joint committee is formed to seek a "speedy and durable" solution to the problem of the people in the refugee camps in eastern Nepal.

In respect of the outcome of the ministerial joint committee, mixed reactions have been expressed. The president of CPN - UML Mr. Man Mohan Adhikari remarked that the Nepal has lost its stand in respect of Bhutanese refugees.¹⁰ But Mr. Kedar Bhakta Shrestha, who was one of the members of the ministerial joint committee from Nepal, reacted that Nepal's interest was to resolve the refugee problem, not to break down the environment of dialogue and negotiation with Bhutan.¹¹ Nepalese Home Minister Mr. Sher Bahadur Deupa opined that the talks between Nepal and Bhutan were a move towards positive and right directions in solving the refugee problem.¹² Similarly, Royal Nepalese Ambassador to India and Bhutan, H. E. Chakra Bastola remarked that the positive steps have been taken by the joint ministerial committee in finding solution to the refugee issue.¹³

Though the joint committee is a positive step as claimed by the Nepalese officials, real solutions to the problem seem no in sight at least for the near future. Nepal will definitely

¹⁰ *Deshanter Weekly*, October 10, 1993.

¹¹ *Ibid.*

¹² *The Rising Nepal*, October 8, 1993.

¹³ *Supra* note 2.

take a stand for the repatriation of all those sheltered in the camps, few believe that the Drukpa Kingdom will agree to take. Any future proposals for partial return are sure to be opposed by the refugees and create further divisions among the refugee groups.¹⁴

Another baseline issue for the refugees that has yet to be addressed is the guarantee of human rights upon their return.¹⁵

¹⁴ See generally, David B. Thronson, *Cultural Cleansing: A Distinct National Identity and the Refugees From Southern Bhutan*, (Kathmandu: INHURED, 1993).

¹⁵ *Id.* at 51.

EPILOGUE

The preceding discussions show that the refugee problem is being complicated in the world today. Not a single region in the world is free from the scourge of refugee influx. Solution to the refugee problem is inextricably linked to the human rights situation in the world. Individual persecution, massive violations of human rights and armed conflicts all of which are exacerbated severe economic problems which heightened social frictions. Nationalistic, ethnic or communal tensions have become the common denominations throughout the world.

Releasing the 'State of the World's Refugees - The Challenge of Protection 1993' recently, the United Nations High Commissioner for Refugees (UNHCR), Ms Sadaka Ogato stated that traditional methods of refugee protection were no longer adequate, they must be complemented by innovative means to prevent conditions that result in refugee outflow, and efforts to promote repatriation solutions for those who had already fled. Some suggestions noted below are relevant to cope with the overall challenges of refugee protection and promotions of human rights world wide.

- The definition of refugees should be extended to include fear of persecution based on gender recognizing that in many instances women and girls are subjected to rape and other forms of violence.
- Consultations should be improved to seek state's support for granting of asylum to those in need of international

protection, to promote accession to the international refugee instruments, to cooperate in monitoring refugee situations specifically of women and children refugees.

International protection must be provided to those forced to flee violence and persecution through granting of asylum. States must accept their responsibility to respect and safeguard fundamental human rights so that people did not have to seek protection outside their own countries.

States must live upto their humanitarian commitments and, fully grasping the link between the refugee problem and issues of international peace and stability, respond again with generosity to the needs of world's refugees.¹

Lastly, prevention remains the best solution to a refugee problem. Humanitarian action on behalf of refugees must be firmly rooted in a broader framework of political initiatives.

Nepalese Context

Though Nepal has faced the onslaught of refugee influx it has no obligations except humanitarian to provide refugee to the asylum seekers. Nepal is not a party to the Refugee Convention, 1951 - a fact which is also discussed in the preceding chapters. However, Nepal - a member state of the United Nations is obliged to fulfill human rights commitments enshrined in the 1948 Declaration. As the country has endorsed over 14 human rights related international conventions Nepal is obliged to contribute towards human rights protection.

¹ Quoted from the Address by President of the UN General Assembly HE Mr. S. R. Insanally, November 10, 1993.

But concerning the special obligations caring for the refugees Nepal has neither ratified the Refugee Convention, 1951 nor enacted any legislation concerning it. Nepal has, however, a mechanism under the Home Ministry for setting policy to oversee the refugee affairs. Though there is no defined policy of the government in relation to refugee issue, recently the it has felt the need to formulate a well defined policy in this connection. The government has initiated consultations on evolving a defined clear policy in responding to the refugee problem facing the country.

In connection to the ratification of the UN Convention Relating to the Status of Refugees 1951 and its Protocol 1967, Nepal has been approached by the concerned UN agency time and again. According to a Law Ministry official such requests had come even during the deposed Partyless Panchayat Polity. However, Nepal is in such a geostrategic position that endorsement of the Refugee Convention, 1951 might not be desirable considering the fact that none of its neighbours have done so. A country with scarcer resources and weaker institutional capability, Nepal is in no position to bear the obligations likely to be created by the refugee influx. The South Asia is now in the state of turmoil. As the Tibetan and Bhutanese refugees have imposed burden upon Nepal, further influx of refugees from other neighbouring enclaves could be highly taxing and burdensome to her.²

At this backdrop what Nepal can do is to formulate an internal legislation to respond to the refugee problem immediately and work with its neighbouring countries

² This view is expressed by the government official claiming anonymity.

towards endorsing the humanitarian conventions. Nepal is a multiparty democracy and has pronounced the fact that the human rights is the cornerstone of its foreign policy. It should work to promoting the respect of human rights worldwide and contribute significantly to see that refugee problem is tackled through preventive measures.

As to the settlement of the Bhutanese refugee issue Nepal should be active in diplomatic front to ensure the safe and honourable repatriation of the refugees to their homeland- Bhutan. It is believed that this issue could not be solved with India remaining as a spectator. Nepal should persuade India to exert pressure on Bhutan to take the Bhutanese refugees back honourably and safely.