

**NEPAL'S RESPONSE TO REFUGEE
PROBLEM : A CASE STUDY OF
BHUTANESE REFUGEES IN EASTERN
NEPAL**

BY

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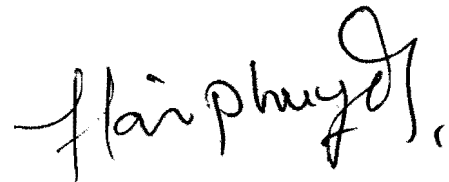
1995

DECLARATION

I hereby declare that this dissertation is written by me during the period 1995 at National Law School of India University, Bangalore.

The work in this Dissertation is original, except for such help taken from such publications and authorities, as has been referred to at the respective places. This work has not been submitted to any other university for the award of any degree.

Bangalore
2nd June, 1995


HARI PHUYAL

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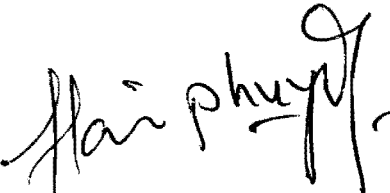
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ABBREVIATIONS

AHURA BHUTAN	:	Association of Human Rights Activist, Bhutan.
GA	:	General Assembly.
HMG	:	His Majesty Government.
HUROB	:	Human Right Association of Bhutan.
BPP	:	Bhutan Peoples Party.
BDP	:	Bhutan Democratic Party.
SUB	:	Student Union of Bhutan
RCU	:	Refugee Co-ordination Unit.
UDHR	:	Universal Declaration of Human Rights.
UNHCR	:	United Nations High Commissioner's for Refugees.
UN	:	United Nations.
UNTS	:	United Nations Treaty Series.
LNTS	:	League Nations Treaty Series.

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CHAPTER I

AN INTRODUCTION

The global refugee system is in crisis. At this historic juncture, the problem has been fuelled by the explosion of refugee influxes due to various man made causes, natural disasters and other such problems. The crisis calls for the necessary concern of various humanitarian agencies, groups and organisations to meet the situation and effectively provide the much needed relief and assistance.

This raises definitional problems of various magnitudes. The present definition which defines a refugee as a person who is outside of his country, having well founded fear of persecution based on race, religion, nationality, membership of particular social group and political opinion has serious limitations and needs overhauling and rethinking. There is necessity to amend the definition of refugee itself so as to ensure congruence with the present refugee situation.

The UNHCR has, to the limits of it's ability, as well as it's socio, economic and political compulsions played a positive role in making an attempt to the impact of the crisis. While on the one hand, considering it's own

trappings and limitations, the UNHCR needs to be commended for its assistance and affirmative role, on the other, the manner in which it has functioned, is indicative of a planned disbalanced approach. While the Afghans have been treated with an attitude of near affection, the same standards have not applied to the PLO refugees.

The post cold-war era has thrown up various new issues, which in turn have invoked a plethora of suggestions, ideas and trends. This has resulted in a need for refugee law to enlarge its scope so as to provide for the dynamics of change.

In this backdrop when one studies the Bhutanese refugee problem, one finds a need to compare the international norms of refugee law and their far reaching implications to the refugees as well as to Nepal.

There is an overriding necessity to focus on the existing refugee control machineries. In this context, legal responses according to international refugee law, needs to be studied basing on the matrix of the Nepalese legal system.

This necessity is paralleled by the need to provide information with regard to the support extended by various humanitarian agencies as well as by the Nepalese government.

The methodology adopted is empirical coupled with a critical analysis.

Data sources are, in the main, empirical collected by visiting to the refugee camps in Nepal, and interviews with government officials, refugees themselves and representatives and workers at various humanitarian agencies.

So far as secondary sources are concerned UN documents, periodicals, articles, journals, reports, information notes and news papers have been studied and obliged.

The dissertation seeks to:

- (i) Evaluate the causes of the refugee problem.
- (ii) Evaluate the status, rights, and protection available to refugees in Nepal.
- (iii) Evaluate the refugee policy of the Nepalese government.

In this context it is necessary to see whether the response of government of Nepal is in consonance with international refugee law, and if not, to give certain suggestions and recommendations. Paralleled in this is the need to look into the philosophy at voluntary repatriation as a projected durable solution to the Bhutanese refugee crisis.

Chapter two of this dissertation deals with the Geo-Politics of Bhutan. It covers the ethnic diversity, migrations history of various ethnic groups, in particular, Nepali migration to Bhutan. Latter half of the chapter deals with the genesis of the present crisis, the history protest against oppression and the mass exodus of refugees.

Chapter three covers a substantial portion of concerned international refugee law. Such as (i) it's origin and development, (ii) the concepts of asylum and non-refoulment, (iii) development of institutions concerned with refugee law, (iv) codification of refugee law, (v) definition of the term 'refugee' (vi) the determination of the legal status of refugees, and (vii), the rights of refugees. At the end of the chapter the emerging trends in refugee law have been dealt with focusing on the post cold-war scenario.

Chapter four gives an informative analysis of the Nepalese response to the refugee issue and the legal basis for protection. It also deals with state practices in respect of the provisions of the international convention. At the end, this chapter also deals with bilateral talks for a durable resolution at the problem.

Chapter five is purely based on an empirical analysis and attempts to put forth the assistance and activities provided as well as the living conditions of the Bhutanese

refugees and its impact on Nepalese life. The last part of the chapter deals with the possibilities of a durable solution and in the course the researcher has advanced some alternative suggestions.

CHAPTER - II

BHUTAN : A BRIEF INTRODUCTION OF GEO-POLITICS

Bhutan is a small landlocked Kingdom bounded by China (Tibet Autonomous Region) to its north and by India to its east, west and south. It comprises an area of approximately 47,000 sq.kms and has an officially declared population of 6,00,000¹.

There is no unanimity of opinions however among historians as to the origin of Bhutan. Some writers argue that the name 'Bhutan' is derived from the Sanskrit word 'Bhotana', 'Bhot' referring to "Tibet" and "Ana" to "end". On the other hand a famous historian² argues that in ancient times Bhutan was called "South Kirat Sandalwood Country"; 'South' because it was located South of Tibet, 'Kirat' because its indigenous people were *Kiraties* and 'sandalwood' because it was famous for its *sandalwood* trees.

According to the records of *Huien Tsang*,³ until the 7th Century Bhutan was under the Tutelage of the kingdom *Kamarupa* (present day of Assam). Thereafter, *Kamarupa* lost hold over

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1. Ahura Bhutan, *Bhutan: A Shangrila Without Human Rights: A Report*, 1993, p.1.
 2. Vikram Jit Hasrat, *History of Bhutan: Land of Peaceful Dargon*, Bhutan (RGOB), Education Department, 1980.
 3. A famous Chinese Scholar and Traveller (600 to 624 A.D).

the territory, when a band of Tibetan soldiers invaded the territory.⁴

Till the beginning of the 17th Century Bhutan was an agglomeration of numerous petty kingdoms. In 1616 A.D *Shabdrung Nawang Namgyel*, a famous Tibetan Lama belonging to the *Drukpa* sect entered Bhutan after being forced out of Tibet by his rivals. In keeping with assigned destiny, *Shabdrung Nawang Namgyel* soon established his authority over western Bhutan. He initiated an expansionist policy and unified the country as a theocratic state, and ultimately became the country's supreme Head and continued till 1907.⁵ The foundation for the present a day Bhutan was laid by *Ugen Wangchuk* by consolidating political and spiritual power with the support of the British.

During the reigns of king *Ugen Wangchuck* and King *Jigme Wangchuck* (1907-1952), Bhutan was confined to splendid isolation. Even in the domain of internal affairs the central government had little contact and knowledge of its eastern and southern provinces mainly because of the lack of communication facilities. But King *Jigme Dorji Wangchuck* in 1952 ended Bhutan's policy of isolation and initiated reforms within the country by establishing relations with other countries. In 1953 he initiated democratic reforms and established the National Assembly. In the same year, for the very first time

⁴. *Supra* note 1, pp.2-3.

⁵. Paramananda, *The Politics of Bhutan : Retrospect and Prospect*, Delhi: Pragati Publications, 1992, pp.3-5.

in the history of Bhutan, people of the Western, Eastern and Southern provinces sat together in the National Assembly in *Paro*⁶ to discuss and decide their common destiny and that of their nation. In 1952 itself, the National Assembly adopted 19 important resolutions on a wide spectrum of subjects and which are significant for the political unity of the Bhutan.

2.1. Ethnic Diversity :

The population of Bhutan mainly constitutes the three major ethnic groups and 11 small ethnic groups.⁷ All other small groups have negligible existence in different parts of the country. There is a debate about the indigenous people of Bhutan, with the *Sharchhop* claiming that they have been in Bhutan since time immemorial. But the truth appears to be different. To understand the reality, it is imperative to see the migration history of the major three contending ethnic groups.

2.1.1. *Sharchop* Period :

The question of when and from where the *Sharchhop* entered Bhutan has not been authoritatively established. However, historians are holding the view that they migrated to Bhutan from the neighbouring area of *Arunachal Pradesh* in India and *Myanmar* (Burma) and are thus considered as emigrants to

⁶. One of the major cities of Bhutan.

⁷. See, Chart No.1, on "Ethnic Diversity of Bhutan", in the annexure.

Bhutan. *Sharchhops*, who constitute about 33% of the entire population are found in Eastern Bhutan.

2.1.2. *Drukpa Period:*

During the 12th Century, as the reformist movement undertaken by *Gelukpas* in Tibet gained momentum, the very existence of the rival *Drukpa* sect was threatened. They were forced to flee to Bhutan. Thus, today those who are termed as *Drukpas* are actually decedents of the Tibetans who migrated from *Druk Ralung* in Tibet due to the persecution by the reformist *Gelukpas*. Presently, they live mainly in Western Bhutan and constitute about 15% of the total population.

2.1.3. *Nepali Period:*

The Friendship Treaty of 1624 A.D formalised between *Shabdrung Nawang Namgyel* of Bhutan and king *Ram Shah* of *Gorkha* (1606-1633) was a mile stone in the history of Bhutan. Subsequently, as per the request of *Shabdrung*, king *Ram Shah* dispatched 50 Nepali families from Nepal under the leadership of one *Bishnu Thapa* to protect and enrich the Bhutanese country. More over in 1640 AD during the reign of King *Shiva Singh Walla* of Kathmandu, a large number of Nepalis from the then kingdom of Kathmandu,⁸ were recruited to work in the *Diongs* and *Monasteries* of Bhutan. Today Bhutanese of Nepali

⁸. The Kingdom of Kathmandu was in existence before it was unified to Nepal in 1775 AD.

origin constitute around 50% of the total population and are concentrated in the southern part of the country.

2.2. Nepali Migration to Bhutan:

Nepali migration into the North-East India began with the unification of Nepal under king, *Pritvi Narayan Shah* and his successors and the consequent expansion of the kingdom of Nepal. Major causes of the migration are (i) Nepali expansionism, (ii) British encouragement, and (iii) the Treaty of *Sugauli* 1815⁹. In addition to that, Nepali migration throughout the nineteenth century and the beginning of the twentieth century was encouraged by the following three factors;

- (i) problems in Nepal, in particular repressive government policies.
- (ii) an exploitive labour system, and
- (iii) frequent famines and epidemics.

Other significant reasons are the recruitment of Nepali people in *Gorkha* regiments and their settlement in North-East India by the British, and importation of labour from Nepal to work in the newly established tea plantations in Darjeling and Duars. .

⁹. Through that treaty Nepal, lost some territory, including the district of Darjeling in North Bengal to the British India government. The original Nepalis remained in those excluded territory.

However there is no historical evidence available with regard to migration of Nepalis to Bhutan. According to the prevalent belief, in order to construct, monasteries one Tibetan king had taken some *Nepali/Newari* families to Tibet. These same people came to construct *Paro Kyichu* in Bhutan and it is strongly believed that they settled in the fertile vallies of western and central Bhutan. This statement seems to be supported by Bhutanese Foreign Minister *Dawa Tsering's* Statement who said, "The Nepalese have been settling down in our southern plains from the seventh century. We welcomed them because they were hardworking people. But they cannot be permitted to swamp us"¹⁰. Another history of the Nepalese migration into Bhutan goes back to 1624, when the first batch of skilled Nepalese artisans went to that coluntry. A formal document was signed by *Gorkha* king *Ram Shah* and first monk ruler *Shabdurg Nawang Namgyel* in this regard.¹¹

However, the correspondences of British show that they encouraged the settlement of Nepalese in Southern Bhutan until the *Duar War*. Pattern of population movement continued till the promulgation of the citizenship Act of 1958.

2.3. Genesis of Crisis :

The Bhutanese Government adopted a number of legislative policies, which restricted and regulated the conduct of Southern Bhutanese with the view to remove heterogeneity of

¹⁰. The Statement, 12 February 1991.

¹¹. The Sunday Despatch, 28 March, 1993.

their culture with that of other major ethnic groups residing in other parts. As a first step in this direction Marriage Act was passed in 1980.¹² Subsequently, the Citizenship Act¹³ was also passed in 1985. The Bhutanese government further started to adopt a number of policies which had a bearing on the whole spectrum of life. To name a few, compulsory national work, green belt policy, language policy, religious policy, a system of no objection certificate, voluntary leaving certificate etc. In what follows, a brief discussion of these measures will be given.

2.3.1. The Marriage Act, 1980:

The Government of Bhutan adopted a new Marriage Act in 1980 to control the marriage of Bhutanese citizens to foreigners. The Act provided that a non-Bhutanese married to a Bhutanese spouse must abide by the traditional customs and the government's laws in force in Bhutan.¹⁴ People were discouraged to marry a foreigner. If they married, they were not granted promotion beyond the post held at the time of marriage.¹⁵ Similarly, they would not be employed in the national defence or foreign service and those who were already there in such posts would be removed from their posts.¹⁶ Not only this they would be deprived from basic government

12. The text of the Act is in Annexure No.1.

13. The text of the Act is in Annexure No.2.

14. Section, Kha 2-9.

15. Section, Kha 2-4 & 2-5.

16. Section, Kha 2-6.

subsidies and education, both inside the kingdom and outside.¹⁷ This is very outrageous.

These provisions of the Marriage Act violate the various provisions of the international human rights instruments.¹⁸

2.3.2. Bhutanization Policy:

It is a development pursued by the Bhutanese Government in 1970s. In 1978, the National Assembly by passing a Resolution¹⁹ declared that the Government and people must observe and promote Bhutan's cultural heritage. After this, the Home Ministry came up with a circular which required that the government officials like *Mandals* and *Chimis* take oath in '*Driglam Namga*' (a code of conduct) and wear the *Dzonkha* dress. Around that time, the Home Ministry also circulated a brief compilation of the principles of Bhutanese customs and

17. Section, Kha 2-7 & 2-8.

18. Article 16 of the UDHR, States (1) "Men and Women of full age, without any limitation due to race, nationality or religion have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution". (2) "Marriage shall be entered into only with the sex and full consent of the intending spouses". (3) "The family as the natural and fundamental group unit of society and is entitled to protection by society and the state". Article 10(1) of the International Covenant on Economic, Social and Cultural Rights, States "Marriage must be entered into with the free consent of the intending spouses". Article 23(3) of the International Covenant on Civil and Political Right States, "No marriage shall be entered into without the free and full consent of the intending spouses".

19. Resolution No.40 of the 50th Session of NA.

traditions called *Palden Drukpa'i Driglam Namza* in the National Assembly. The policy was endorsed by most of the Members but a few Members from Southern Bhutan opposed it and requested that they be exempted from observing such a code, because it did not take into account the cultural differences of the communities of the South. However, despite their opposition, the National Assembly endorsed the principles and decided that all people must observe *Palden Drukpa'i Driglam Namza*²⁰. Southern Bhutanese, who are by culture distinct and have got their own cultural dress, were obliged to wear 'Gho' or 'Kira' and also obliged to follow the 'Driglam' 'Namza'. Cultural pluralism and ethnic autonomy were thereby deprived. This policy violates the provisions of the various International Instruments of Human Rights.²¹

2.3.3. Citizenship Laws:

After the Citizenship Act of 1958 one finds a marked shift of policy in the subsequent amendment. As per the 1958 Act those persons whose father was a national of Bhutan and a resident of Bhutan would be regarded as Bhutanese National. Similarly an woman married to a Bhutanese National, after fulfilling certain formalities would be enrolled as Bhutanese

²⁰. National Assembly of Bhutan (NB) 1979 (51st) Res No. 19 (7-8)

²¹. Article 1 of the 'Declaration of the Principles of International Cultural Co-operation 1966. States (1) "Each culture has a dignity and value which must be respected and preserved". (2) "Everyone has the right and duty to develop its culture". (3) "In their rich variety and diversity and in the reciprocal influences they exert on one another all cultures".

National (s.4(b)). Even though it is difficult to term the Act as fully democratic it was not manifestly discriminatory.²² However things turned from bad to worse subsequently. The revised Act of 1977 required that the applicant for citizenship to have some knowledge of the Bhutanese language both spoken and written and the history of Bhutan, which was nearly impossible for Southern Bhutanese to fulfill. Further more the applicant was required to take oath to observe the customs and traditions of the people of Bhutan.²³ which is no other than the officially propagated *Drukpa*, culture and tradition. The Act was discriminatory in another respect also. By this Act any foreign woman married to Bhutanese citizen had to fulfil the requirements of the citizen ship Act as applicable to foreigners applying for citizenship.²⁴ It was a clear departure from the earlier rule by which she would automatically acquire the citizenship upon marriage after fulfilling certain formalities. The 1985 Act was further discriminatory against woman. Whereas under the 1977 rule even though the woman did not acquire the citizenship of Bhutan, if the father was a citizen the children would become citizen of Bhutan, but the 1985 Act required both the parents to be citizen of Bhutan (S 2). Similarly, neither the husband nor the children of a Bhutanese woman married to a foreigner would be considered a Bhutanese citizen.

22. The Act is given in the Annexure.

23. Ibid.

24. Ibid.

Another provision objected by Southern Bhutanese is the cut off date. The 1985 Act provided that only a person permanently domiciled in Bhutan on or before 31, 1958 and whose name was registered the register would be deemed to be a citizen of Bhutan by registration (S 3). This is specially unfair and abnoxious, since the documentary proof required by the 1985 Act just did not exist in the year 1958²⁵. More objectionable was the attitude of the officers in implementing the 1985 citizenship Act and involved in the 1988 census which will be discussed a little later.

2.3.4. Compulsory National Work:

A system of compulsory national work has been in force for several decades now. But in 1991 use of police force was sanctioned against those refusing to report to work under the conscripted labour force. The scheme originally envisaged work for a few weeks in a year as a contribution to the nation. Today the scheme is being implemented in a discriminatory manner against the people of South Bhutan with the government extracting free and compulsory labour from certain people throughout the year irrespective of age and thus converting the national work programme into a punitive measure. Even in non-punitive situations the wages, it provides if at all, are unreasonably exploitative. The working conditions are very difficult and the work is very demanding

²⁵. (eg - enumeration in the census records which ironically only properly date back to 1972: proof of payment of taxes for land for which proper documentation was only instituted in 1977).

physically. As a result, a virtual programme of slave labour is officially sanctioned under the law, states a report.²⁶

2.3.5. Green Belt Policy :

In March 1990 a Green Belt Policy was announced, creating a green forestry Belt in the areas falling one kilometers in Southern District bordering with India. The areas brought under the scheme were not barren fields or forests, but scarce fertile cultivated lands available in the country. This is a fertile paddy land cultivated by Southern Bhutanese. Therefore they resisted the eviction of their community from such land. They also rejected compensation offered, which in their view, was quite inadequate. The 'Green Belt' programme is just one of the numerous examples of government programmes which ostensibly have a valid rationale, but which in fact is clearly discriminatory against the Southern Bhutanese.

2.3.6. Language Policy :

Another aspect of Bhutanization policy was the propagation of one language policy. As *Dzongkha* is the language of the ruling class, it was not only made the official language but was also made the medium of academic instruction (apart from English). With the result Nepali language was discouraged. Not only this, instruction in Nepali language also was stopped. In schools and public meetings too, people were required to speak only in *Dzongkha*,

²⁶. *Supra* No.1, p.12.

even though Nepali was the *lingua franca* of the south since it was mainly inhabited by the Nepali speaking people.²⁷

2.3.7. Religious Policy :

People of Nepali origin in Bhutan and elsewhere are mostly Hindus. They have their own culture, festivals and rituals. But despite this they were asked to assimilate with the minority *Drukpa* culture. With the aim of converting Nepalese of Southern Bhutan to Buddhism, the National Assembly by a resolution set for the establishment of a monk body in Nepali village of Southern Bhutan.²⁸ In some areas Hindu Nepali people were reportedly forced to eat beef and women were forced not to use *Sindur* (Vermilion powder) on their head. In the traditional ritual work of Nepalese people, Brahmins are supposed to perform the *puja* in temples. This was banned. *Drukpa* culture was imposed in all walks of life and Hindu people were forced to follow the *Drukpa* culture along with Buddhism.²⁹

27. The following excerpt of an interview given by the Bhutanese king with *The Economic Times*, Delhi (Sept. 25, 1990) explains it better. In the interview the king stated that;

"We recently decided to stop teaching Nepali in our schools. The National Assembly had suggested this years ago, but I turned down the proposal then. Now the situation as changed. I admit this is a very unpopular decision and I fully sympathise with the Nepalese.

28. Resolution Clause III No.2.

29. *Supra* No.1, p.13.

2.3.8. No-Objection Certificate :

The government wants to be sure that Nepalis 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 to work. Normally, Nepali speakers are not given this certificates.³⁰

2.3.9. 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 policy implementation officers are assigned to seize the citizenship and other documents and to collect the signatures in the VLC from the Nepali speaking Bhutanese citizens. They also recorded the voice of refugees both in audio and video with a view to establish that their departure is voluntary. But they could do so only from them who could not flee away. Subsequently, the National Assembly of Bhutan enacted a law banning the return of those back to Bhutan who left the country and have put their on signatures in the VLC.³¹ By this Act of the Bhutan government the Nepali speaking Bhutanese have become stateless.³²

³⁰. For details, see *Refugee problem in Nepal*, Khatmandu : Nepal Law Society, 1993.

³¹. *The Rising Nepal*, August 15, 1993.

³². *Supra* note 22.

2.3.10. Census of 1988 :

The most important factor responsible for the present political crisis in Bhutan is the 1988 census, which was undertaken with the apparent intention of correcting the errors of the previous nationwide census conducted in the early 1980s. The intention of the government in the earlier census was to distribute national identity cards to all Bhutanese citizens basing on fact and information recorded by the Home Ministry, and recommendations from Village *Mandals* and district officials. By 1988, most Bhutanese had obtained ID cards duly certified by the Department of Registration. It was at this time that the implementation of the 1985 Citizenship Act was started. The National Assembly members and bureaucrats from Southern Bhutan protested against the implementation of the Act. Their main worry was the retroactive application of the law, which made 1958 as the cut-off date for citizenship. People who were citizen of Bhutan previously and even provided with ID cards, were disqualified from their status as citizen of Bhutan because either they came after 1958 or were married to foreigners. The government brought the Act into force despite people's protest and also without the approval of the Assembly.

The purpose of the 1988 census was to re-establish Bhutanese citizenship, particularly the citizenship of the Southern population, since the Ministry of the Home Affairs suspected the influx of a large number of illegal immigrants from the southern border. Home Ministry constituted census

teams comprised of members primarily from the *Drukpa* loyalist, and gave no consideration whether or not the members had experience in dealing with the illiterate public. The authorities totally dismissed any documentary evidence that either pre-dates or post-dates the year 1958. Many published reports on Bhutan also indicate that the census authorities confiscated or destroyed, wherever possible, any such documentary evidences and particularly a citizenship card which many of the Bhutanese refugees were issued and had with them.

In the 1988 census authorities set up several categories as proof of citizenship ranging from F1 to F7³³ which is as follows:

- F1 - Genuine Bhutanese.
- F2 - Returned migrants (those who had left Bhutan but returned).
- F3 - Drop-outs (those not available during time of census)
- F4 - A non-national woman married to a Bhutanese man.
- F5 - A non-national man married to a Bhutanese woman.
- F6 - Adoption case (children legally adopted).
- F7 - Non-national (migrants and illegal settlers).

³³. People who could produce the Tax Receipt of 1958 were registered under the F1 category and declared as genuine Bhutanese citizens while those who could't produce them were declared as non-nationals. For details see *Supra* note No.1.

With strict orders from the Home Ministry and the pre-set assumption that most of the said non-nationals live in southern village, the census team began census enumeration in the south requiring each family to produce a tax receipt providing residence in or before 1958 for a certificate of origin (CO) issued by a district administrator upon conformation given by a village committee comprised of village *Mandal*, assistant *Mandal* and village elders. The procedure to acquire the certificate of origin was one of the complicated methods. Therefore embarrassing to the Southern Bhutanese.

The inquires census was and localized only in the two densely populated districts, namely, *Chirang* and *Samchi*. This clearly shows the bias of Government against the Southern Bhutanese.

2.4. Petition to the King and its Consequence :

To voice against such irresponsible and discriminatory act of the government mentioned above, a petition was drafted and submitted to the King by Southern Bhutanese with the active support of many top officials including two Royal AD Council members, Teknath Rijal and B F Bhandari on 9th April, 1988.³⁴

The Petition primarily outlined the reasons for the concern of general public, pinpointing the flaws and discriminatory aspects of the Marriage Act and Citizenship

³⁴. The text of petition is in Annexure No. 3.

Acts and the methods adopted by the teams in the census enumeration. It concluded with an earnest appeal to the King for his intervention and reconsideration of the Marriage Act and Citizenship Act in order to address the grievances of the Southern Bhutanese. Soon after receiving the petition, the King visited *Chirang, Geylegphug, Samchi and Dzongkhay* to make a personal assessment of the situation. But he relied on the official versions of the district administration about the whole episode and returned to *Thimpu*. Soon after, he convened a cabinet meeting to give a decision on the petition. But, the ultimate result was that Mr T N Rijal was arrested and imprisoned on the basis of the decision of the Cabinet along with his supporters for the offence of treason. According to the reports, Mr Rijal was detained and continuously subjected to torture for three days. Later he was pardoned by the king but was forced to sign a confession statement before the Judges of High Court, to the effect that he would not meet more than three people at a time. After the termination of his sentence he paid a brief visit to India. Due to unfavourable political situation in India he went to Nepal in July 1988. In Nepal, with a view to building a movement in exile to pressurize the Bhutanese Government to bring changes in their discriminatory policy against the people of Southern Bhutan, and putting the pressure on the government, he began to contact other political figures.

2.5. Protest against Oppression :

In the beginning, protest began from census exercise and the imposition of Bhutanisation policy in the different walks of life. Protest was strong at most of the secondary schools and Educational Institutions, such as *Sheruise* College, the National Institutes of Education (NIE), and the Royal Polytechnic colleges/institutes etc. T.N. Rijal, who was the leader and magnet of the movement, contacted some of the intellectuals in eastern Nepal and they formed a Bhutan support group which gave voice to complaints made by Bhutanese inside Nepal. Meanwhile, T.N. Rijal with the cooperation of some active members from inside Bhutan, opened the people's Forum For Human Rights (PFHR) in July 1989. This organisation in the beginning brought out several publications to highlight the grievances of the Southern Bhutanese.³⁵ A number of students, even those not involved in the initial activities, left the country and joined the movement which was gaining momentum outside Bhutan. But some of them remained inside the country and started to organise people. The activist successfully launched a mass demonstration against the policy of the government.

Government resorted to violence measures to suppress the popular movement. Many leaders including Ratan Gajmere from National Institute of Education (NIE) were arrested. The responsibility for the murder of Man Bd. Chhetri, a student of

³⁵. The booklet, *Bhutan: we want justice*, was the first publication written by Ratan Gazmer and published by the funding support of NIE faculty and students.

NIE, has been attributed to the government. Students left the institute and went to Nepal to join the movement started by Rijal. In response to the request for extradition of Mr. Rijal and two other activists by the government of Bhutan, the Nepal government handed over Mr Rijal on 7th November 1989.

After the extradition of T.N. Rijal the movement was shifted to West Bengal under the leadership of young students who had already joined the movement in Nepal. Even in West Bengal, the movement had to face the problem of security. Because of that, at one time the movement turned violent like the GNLF movement³⁶.

On June 2, 1990, the first political party of Bhutan, Bhutanese People Party (BPP) was launched at *Siliguri* in North Bengal with Co-ordinating activities of other small organizations like, PFHR and student Union of Bhutan (SUB), under the leadership of R.K. Budhathoki (President of BPP). However, later the movement was fragmented and each group worked independently though movement received constant support from both outside and inside the country, particularly from the local communist party in West Bengal.

In September and October of 1990, demonstration was lunched against the repressive policies of the Bhutanese government throughout Southern Bhutan. BPP and SUB organised series of demonstrations in various places in the different

³⁶. Under the leadership of Vice-president of the PFHR some people had taken violent actions both outside and inside the Bhutan.

time till the cracking down of the demonstration. Around ten thousand people participated in the demonstration in different palaces. The demonstration was by and large peaceful except some minor incidence of violence³⁷. The security forces used force against demonstrators at *Phuntsholing*. Many people lost their lives and hundreds of people were arrested. The authorities resorted to wide spread arrest and brutal violation of families rights to curb the demonstration. Thousands of people started fleeing their villages for safety.

2.6. The Mass Exodus of Refugees:

Till June 1991, the Bhutanese government's strategy was two folds - integration and emigration. But in June, the policy changed and in *Aamdrup Jongkhar* thousands were evicted from their homes. Initially other districts in the South were not touched but that did not last for long. Because of the repressive measures by the authorities hundreds of people began to flee Bhutan everyday by Dec. 1991.³⁸

At first, people did not go directly from Bhutan to Nepal. At that time there were informal camps in India where the refugees were housed. Camps had been set up all along the Indo-Bhutan border but later on they were shifted to the West Bengal before coming to the *Maidhar* in Nepal.

³⁷. *Sunday Times*, 25th October, Calcutta, 1990

³⁸. Large-scale emigration began in June peaking slightly in September falling until November and Mass movement from December until March of 1992. For details see the chart no. , "on exodus" in the annexure.

The refugee had to constantly move here and there along the Indo-Bhutan border mainly because West Bengal and Assam State Governments were not willing to assist the uprooted people, and Assam government was not cooperative also. At first when the refugees approached the West Bengal government, they were permitted to set up the camps. Later harassment and arrest started in such a way that political workers were afraid to travel and had to go around only at nights except at their safe base at *Garganda*.³⁹ The situation in India, as explained above, got so bad that they are forced to take that decision in the middle of 1991. Not only refugees were denied to settle in camps in India, which were torn down by the Indian police but some people were abducted from Assam and the police and civil administration of Assam also reportedly allowed to Bhutanese police to come into Assam freely to arrest the dissidents. For these reasons the first batch of refugees came to Nepal to set up the camps in the middle of 1991 with the help of local people.

Before the beginning of 1991, about 3% of the current population in the refugee camps had left Bhutan. These people were relatively evenly divided between *Chirang*, *Samdrup*, *Jongakhar* and *Sarbhong*. Most likely, they left soon after the demonstrations because they were involved or afraid of being implicated in the movement. Border areas were more disturbed than *Chirang* and *Dagana*. By December 1991, more than 10,000 refugees left Bhutan, The influx continued surge up and by

³⁹. This was the motivation for moving to Nepal. This was in a way encouraged both by the Bhutanese and Indian governments.

the end of 1992 and the beginning of the 1993, 70,000 people arrived in Nepal. In the whole year 1993, 15,000 of people came as rerugee from the different Southern parts of Bhutan⁴⁰. The latest record of the screening post gives the arrival of the 2,000 people between 1994 and 1995.

Refugees in the camps give the five major reasons for leaving their country. They are: eviction, intimidation or harassment by the government officials, rape, torture, beatings by the army and police personnel.

⁴⁰. See, Chart No.2. on "the influx", in the annexure.

CHAPTER III

REFUGEE : IN INTERNATIONAL LAW

3.1. Origin and Development of Refugee Law :

3.1.1. Asylum and Non-Refoulement :

The refugee problem is as old as civilization itself or rather humanity itself although its recognition in international law is only of recent origin.¹ It evolved as a specific branch of international law only after World War I as it was necessary to tackle the mass displacements of populations, particularly in Europe. Today this problem has turned global both in terms of mass exodus as well as in terms of concern for the same.

The refugee law bears an inextricable nexus with the concept and principles behind the law of asylum.

The development of the law of asylum is founded very heavily on political considerations and strategic compulsions and expediency of the west in respect of the cold-war conflicts with the socialist block. To some

¹. Guy S Goodwin-Gill, *The Refugee in International Law*, Oxford, Clarendon Press, 1993.

countries it was conceived as an instrument to highlight human rights violations, and therefore, to discredit them.

The right to asylum can be looked at from three distinct angles.²

- (i) The right of a nation state to grant asylum.
- (ii) The right of an individual, with respect of this nation of origin to leave his country in pursuit of asylum.
- (iii) The right of an individual to be granted asylum.

In analysing the law of asylum, one is struck, by one distinct feature that is heavy state centricism of the entire perception of the concepts of asylum.

The word 'asylum' has its roots in the Greek word "asylon" which means freedom from seizure. A historic analysis will show that sacred places were first utilized as places of refuge. Asylum has a long historical record and practice, yet its precise definition of the term has been elusive. It is therefore wiser to look at from its various characteristic features.

² Roman Boed, "The State or the Right of Asylum in International Law", *Duke Journal of Comparative International Law*, Vol.5, No.1, 1994, p.1.

Asylum is viewed expressly as the sovereign right of a state. It flows from a recognition that every state, within its ambit of sovereignty has full control over all persons within its territory. The sovereign nation therefore has full discretion in respect of grant or denial of this right.³

This has been reflected in the tone of various international instruments⁴ which manifests that the right is purely a state centric one and has nothing to do with the individual.

Another perception of the notion of asylum is to view it as the right of an individual against the nation of his origin. The basis of this perception is to view asylum as the duty of the nation of origin to allow an individual to leave that nation and to seek asylum elsewhere. Certain international instruments do manifest this particular concept.⁵

³. Shigeru Oda, *Manual of Public International Law*, edited by Max Sorensen, Hong Kong: Macmillan Press, p.490.

⁴. Article 14(1) of the UDHR, Article 1(1) and 1(3) of the Declaration on Territorial Asylum, 1987, Article II(1) of the OAU convention, Article 1 of the convention on Territorial Asylum adopted by the organisation of the American States, 1954, Article III(1) of the AALCC 1966, Article 2, Declaration of Territorial Asylum, Committee of Ministers of the Council of Europe.

⁵. Article 13(2) of the Universal Declaration of Human Rights, Article 12(2) of the International Convention on Civil and Political Rights, Protocol No.4, to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 22(2) of the American

The third view is to perceive asylum as the right of an individual, as against the host state. This idea finds its roots historically in the works of Grotius and Suarez who, in keeping with the tradition of natural rights, contended very forcefully that the right to demand asylum is one of the basic right of an individual against the nation where he is desirous of seeking asylum in.⁶ This view has been completely rejected in the current international law.⁷

Although the right to grant asylum has been clearly established by international instruments as being purely the exercise of sovereignty and hence entirely a State centric right, and also that the individual has absolutely no right to demand asylum, various nations⁸ in their own constitutions have provided the right to asylum. However in this too, one sees an assertion of sovereignty. When a nation makes such a provision in its municipal laws it in itself is an exercise of its prerogative to provide a

Convention of Human Rights, Optional Protocol to the International Convention on Civil and Political Rights, UN Commission on Human Rights, Sub-Commission on Preventive of Discrimination and Protection of Minorities.

6. See, Supra note 2, p.8.

7. Right of Asylum is not guaranteed to the individual in the International Law. See, the discussion of UDHR in GA in 1948. (GADR 3rd Session, p.1, III Comm. pp.314-48). Guy S. Goodwin-Gill, *The Refugee in International Law*, Oxford: Clarendon Press, Oxford 1993, p.121. Supra note 2, p.14, para 2.

8. Czech Republic, Federal Republic of Germany, Italy, see also, Supra note 2, p.15.

personal status of asylum voluntarily by the stipulations of its municipal laws.

It has been stated above that a facet of asylum laws has stemmed from the designs of political expediency on the part of certain countries in respect of the dynamics of cold-war international relations. The evolution of the principle of non-refoulement can best be seen in this light.⁹ This is seen as the duty of a state not to return a person to a place of persecution.¹⁰ Various international instruments provide for this principle.¹¹

9. The Principle of Non-refoulement has been accepted as the Customary International Law. The positive history of the non-refoulement lies in the agreement between League of Nations' Members in 1922 and was concerned with the issue of identity certificate to the Russian Refugees for the purpose of onward travel. The 1993 agreement provides that refugee should not be returned to their country of origin. 1936 and 1938 on refugees from Germany also provides some limitation. In February 1946 The United Nations expressly accepted that refugees are displaced persons' who have expressed valid objections to returning to their country of origin should not be compelled to do so (G A Res 8(1), 12 Feb, 1946, para (c) (ii). Article 33 of the 1951 Refugee Convention Provides the basic ground of the non-refoulement.

10. *Supra* note 1, p.69.

11. Article 3(2) of the Convention Relating to the Internatinal Status of Refugee, 1933. Article 33(1) of the 1951 Refugee Convention, Article 1(1) of the Protocal Relating to the Status of Refugee 1967, Article 3(1) of the Convention Against Turture and other Cruel Inhuman Degrading Treatment of Punishment, 1984, Article 3(1) of the Declaration of the Territorial Asylum 1967. Article 11(3) of the AALCC....., Article 22(8) of the American Convention on HR. For details see, *Supra* note 2, pp.16-22.

One is thus able to perceive that while the principle of non-refoulement is generally accented, unfortunately various nations are yet skeptical about including it as a formal principle of international law.¹²

It has been noted that this principle also has inherent defects in itself such as it does not,

- (i) include the duty to grant a refuge asylum.
- (ii) impose a duty of sending the person to a safe location.¹³

As is the case with the entire ambit of international this law principle too has been a victim of selective interests on the part of the certain states. This has primarily been driven by the sole desire to highlight political oppression in the socialist block. It is mainly with this view that they made liberal interpretation of refugee law encouraging people to leave their countries. Today, the cold-war is over and the attitude of these countries seems to have to conservatism which is based on

¹². Supra note 2, pp.21-22. See also, High Commissioners Statement before Council on Security and Co-operation in Europe Implementing Meeting on Human Dimension Issues (September 27, October 15, 1993).

¹³. These being defects in the principle itself. Apart from this has been empirically shown that even nations which subscribe to this principle are often found wanting in respect of its implementation. In Practices, The Principle of Non-refoulment often amounts to little protection from persecution. For example see the case of the *Maitian Asylum - Seekers*.

political pragmatism. No better illustration is possible than the USSC ruling in *Sale V HRC*,¹⁴ which held that the non-refoulement provision of the refugee convention does not apply extra-territorially. In the case of Haitian refugees we see a view taking ground that the sea borne Haitian refugees, on their way to USA, who have not yet entered the US territory can be turned back, however not after they have entered the US territory.

3.1.2. Institutional and Progressive Development of Refugee Law:

As already mentioned, to tackle the massive displacement of individuals between the World Wars, an international office was established by the League of Nations, with the name of League of Nations High Commissioner for Refugee which existed till 1946. The United Nations Relief and Rehabilitation Administration (UNRRA), which was created during the World War II offered its assistance to the refugees in Europe and the Far East in 1943-44. The International Refugee Organisation (IRO), whose Constitution was approved by the General Assembly (GA) in 1946,¹⁵ actually came into operation in 1948 the IRO was designed to solve the problems of refugees created by the World War II and subsequently. Its aim was to

¹⁴. USSC, No.92-343, 113 S. Ct. 2549, 1993.

¹⁵. Res, 62(1), 15 December, 1946.

repatriate and settle them in the countries of origin and in the new countries which emerged after the war.

The office of the United Nations High Commissioners for Refugees (UNHCR) was established by the GA in 1950¹⁶ with the following two principal functions:

- (i) to provide international protection to refugees as defined in the Statute, and
- (ii) to seek permanent solutions to their problem.

The overall responsibility of UNHCR is spread its activities more widely both within and without the United Nations system. Other Inter-governmental Organisations, like the International Committee of Red-Cross (ICRC), National Red-Cross societies and other Non-Governmental Organisations (NGOs) all play an effective role in meeting humanitarian needs in emergency situations.¹⁷

The legal status of the refugees has been dealt with in a number of international conventions. Under the Convention Relating to the Status of Refugees 1933, which established the status of Russian, Armenian and assimilated refugees, the contracting states agreed to issue the Nansen passports to refugees residing regularly in their territory and to recognise the right of free and ready access to

¹⁶. Res, 428 (V), 14 December, 1950.

¹⁷. Guys S, Goodwin-Gill, "Refugees : The Functions and Limits of the Existing Protection System", in Nash (ed). *Human Rights and the Protection of Refugees under International Law*, p.149.

their courts of law. The convention also contained provisions relating to labour conditions, welfare and relief, and education for these refugees. Arrangement with similar content were concluded later to cover the status of refugees from Germany.¹⁸ The aim of the Convention Relating to the Status of Refugees, 1951 was to replace the preceding conventions concerning the status of refugees. The Convention Relating to the Status of Stateless Person, adopted at a conference convened by the ECOSCO in 1954, was prepared to deal with many stateless persons who were not covered by the 1951 convention. It was also applicable to individuals who are not considered nationals of any state under its domestic law.

3.2. Codification of the Refugee Law : Definition of the Term 'Refugee'

During the time of League of Nations, some treaties and arrangements categorically defined refugees as some one who is: (a) outside his country of origin, and (b) without the protection of the government of that state. As for example, in the arrangement relating to the issue of identity certificates to Russian and Armenian refugees, a Russian refugee was defined, in 1926 "to include any person of Russian origin who doesn't enjoy, or who no longer enjoys the protection of the government of the Union of the

¹⁸. Provisional Arrangement Concerning the Status of Refugees Coming from Germany, 1938, 192 LNTS, 59, Additional Protocol to the Provisional Arrangement and to the Convention 1939, 198 LNTS, 141.

Socialist Soviet Republics, and who has not acquired another nationality".¹⁹

Article 1 of the 1936 Arrangement also developed a similar view with regard to those people fleeing Germany.²⁰ Similarly Article 1 of 1938 Convention, used the term people fleeing Germany to cover:

- (a) "Persons posing or having posed German nationality who are proved not to enjoy, in law or fact the protection of the German Government", and
- (b) Stateless persons not covered by previous connections or arrangements who have left German territory after being established therein, and who are proved not to enjoy, in law or in fact, the protection of the German Government.²¹

Simpson Report²² in 1938, which defining the term refugee stressed the "essential quality" of refugee as one

19. 12 May, 1926 : 84 LNTS No.2004, See also, "Assyrian, Assyro-Chaldean, and assimilated refugee" as defined in the arrangement of 30 June, 1929 : 29 LNTS No.2006, Article 1, 1993. Convention relating to the International Status of Refugees and Reservation thereto. 159 LNTS No.3663.

20. Provisional Arrangement Concerning the Status of Refugees coming from Germany, 4 July, 1936; 171 LNTS No.3952.

21. 1938 Connection concerning the Status of Refugees coming from Germany; 191 LNTS No.4461, See also Additonal Protocal, 14 September 1939; 198 LNTS No.4334.

22. Refugees; A Preliminary Report of Survey, 1938.

"who has sought refuge in a territory other than that in which he was formally resident as a result of political events which rendered his continued residence in the former territory impossible or intolerable".²³

In the subsequent development, United Nations, also developed the content of the refugees concept. Article 14 of the UDHR provided :

- (a) Every one has the right to seek and to enjoy in other countries asylum from persecution.
- (b) This right may not be invoked in the case of persecutions genuinely arising from non-political crimes or from acts contrary to the purpose and principles of the UN.

The fundamentals of the legal concepts of the refugees can be derived from treaties, UN practices and the statute of the UNHCR. The statute defines refugee as "any other person who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence because he has or had well founded fear of persecution by reason of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the Government of the country of his nationality, or, if he has

²³. *Supra* note 1, p.3-4.

no nationality, to return to the country of his former habitual residence".²⁴

The contracting parties of the 1951 Refugee convention agreed that the term refugee would apply, first to any person considered as a refugee under earlier international arrangements; and secondly, to any person who is capable to qualify as a refugee under the UNHCR statute.²⁵

Thus, the 1951 convention provides the four basic elements to define refugee namely: (a) they are outside their country of origin, (b) they are unable or unwilling to avail themselves of the protection of that country; or to return there, (c) such inability or unwillingness is attributable to a well founded fear of being persecuted; and (d) the persecution feared is based on reasons of race, religion, nationality, membership of particular social groups, or political opinion.²⁶

The 1966 Asian-African Legal Consultative Committee (AALCC) defined refugee as a person who, owing to persecution or well founded fear of persecution for reason of race, colour, religion, political belief or membership of a particular social group: (a) leaves the state of which he is a national or the country of his nationality, or, if

²⁴. Article 6(B), Statute of the Office of the United Nations High Commissioner for Refugees, 1950.

²⁵. Article 1A(2) of the 1951 Refugee Convention.

²⁶. *Supra* note 1, p.13.

he has no nationality, the state or country of which he is a habitual residence, or, (b) being outside such state or country is unwilling to return to it or to avail himself of its protection.

It is noticed that a many treaties and conventions have tried to use the term 'refugee' as precisely as possible. But the widely accepted definition is that of 1951 convention which provides the limit of the term 'refugee'. According to this definition a refugee is "a person who has a well founded fear of persecution for reasons of race, religion, nationality or political opinion". In Africa this definition has been extended to refugees who have fled owing to external aggression, occupation, foreign domination or events seriously disturbing public order. This is confirmed in the practices of states and has been explicitly endorsed in Article 1(2) of the 1969 OAU convention. This has been rectified by 34 states.

The Central American States in '*Cartazana Declaration*' in 1984 have endorsed the definition of the term refugee provided in 1951 convention and 1967 protocol. However it also includes those who have fled because their lives safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances that have seriously disturbed public order.

The Executive Committee of the UNHCR has also extended the scope of definition for the protection purpose. The continuing and large-scale movements of uprooted individuals and groups seeking refugee from man-made disaster, stressed the necessity for co-ordination among UN bodies concerned with man-made emergencies and emergencies including refugees and displaced persons in refugee-like situation.²⁷ Similarly, the other resolutions²⁸ also indicated the eventual recognition of a general responsibility to seek solutions to the problem of refugees and displaced persons, wherever they occur.

Despite all the attempts to cover the plight of the millions of refugees, according to Dr B S Chimmni,²⁹ the existing refugee law is in crisis in the context of the end of cold-war. According to him, three major components constitutes the crisis in refugee law after the end of cold-war; are, (i) the changing character of and increase in refugee flows, (ii) the continuing economic problem of the developed countries, and (iii) the growing North-South divide.

27. See, Executive Committee 1980, Paras, 29A(c).

28. See, UNGA Resolutions 1499(XV). 1673(XVI) 1959 (XVIII) 2294 (XXII) (3143 XXVIII) 34/60. See also, UNHCR Executive Committee Report 1981 Para 57(2); Report 1982 Para 43(F).

29. B S Chimmni, *Right of Refugees, including the Right to Return, the Language of Protection and the Reality of Rejection : End of Cold-War and Crisis of Refugee Law*. Paper presented at the *World Congress on Human Rights*, New Delhi, December, 1990.

3.3. Determination of the Legal Status of Refugee :

The massive movement of refugees by various wars, military and political conflicts, internal upheavals, political turbulence, colonialism etc., has created the problem of determination of the legal status of refugee. Hence, it becomes essential to determine their legal status before any measure of assistance to such displaced person is extended either by the receiving state or by the international organisations.

Exceptionally the Agreement of 30 June 1928³⁰ and Convention Relating to the International Status of Refugees of 28 October 1933, contained no provision concerning the determination of the refugee character of the persons concerned. Immediately after the World War II, the UNRRA was set up to test eligibility of persons to get assistance. The IRO commissioned 'Eligibility Offices, 'Review Board and Semi-Judicial machineries to determine the "eligibility" for the status of refugees.³¹ UNHCR also followed the same test but the "eligibility" test differs from one State to another, either as a contracting State to the convention or as a non-contracting State.

30. (S.52, Paragraph 1(1)(a) of the Arrangement Relating to the Legal Status of Russian and Armanian Refugees).

31. Atle Grahl Madsen, *The Status of Refugees in International Law*, Vol.1, A.W. Sijotho F Leyder, Netherlands, 1966, pp.329-330.

Principally, a person becomes a refugee at the moment when he\she satisfies the definition.³² The formal declaration is declaratory rather than constructive but the problem arises where the States declines to determine refugee status, or different determinations are reached by the States and the UNHCR.³³ Paragraph 6A of the Statute provides, for the possession of a Nansen passport, a considered Convention document or some other relevant document as a sufficient proof of eligibility. The High Commissioner may require further proof, or he may dispense with any or all documentary proof according to the justifiable conditions. However, the High Commissioner's office does not, as a rule, issue eligibility certificates. But if the person is able to show that he needs such a certificate for a specific purpose, then the High Commissioners Office will issue a document to that effect.

The determination of refugee status under the UNHCR Statute may be classified as 'mandate and convention refugee' and as 'mandate' but not as a 'convention' refugees. The term 'mandate refugee' will signify a refugee within the competence of UNHCR according to the Statute or according to specific General Assembly resolutions, or according to general resolution on displaced persons, whereas conventionally a refugee is understood like a

32. In some conditions there are exceptions like 'Internally Displaced People' and in the 'Safty Zone'.

33. Guy S. Goodwin-Gill, *The Refugee in International Law*, Oxford: Clarendon Press, 1993, p.20.

person who come within the scope of 1951 convention and 1967 protocol. The 'mandate' but not 'convention refugee' can arise where the individual is in a non-contracting state or a state which adheres to the temporal or geographical limitations permitted under the convention.

The UNHCR itself will be concerned to determine status.

- (1) as a condition precedent to providing international protection.³⁴
- (2) as a intervention with a government to prevent expulsion.
- (3) as a prerequisite to providing assistance to a government which request it in respect of certain groups within its territory.³⁵

Except in some individual cases, formal determination of refugee status may not be necessary. But formal determination of mandate status, however, is often necessary in individual cases. Very few states have instituted procedures for accessing refugees claims so that intervention by UNHCR on refugee status may be required to protect the individual. However, there is no uniformity among nations for the determination of the legal status of

³⁴. (e.g., intervention with a government to prevent expulsion).

³⁵. Guy S. Good Win-Gill, *The Refugee in International Law*, Oxford: Calrendon Press, 1993, p.21.

refugees because the provisions in the convention leaves it to the contracting States to determine whether a person comes within the scope of Article 1 of the convention or not. And the contracting state may institute whatever procedure it thinks fit for the purpose of such determination subject to the Article 31(2) of the convention.³⁶

The state practice of one country in the determination of the status of refugees does not create any binding obligations on other states. Similarly, if a refugee, who has been permitted entry and residence in a first asylum State, wishes to change his residence to another state, the eligibility determination of the former is not binding on the latter State. But contracting states are obliged to recognise the validity of the documents issued in accordance with Article 28 of the Convention. Hence, what may be concluded is, (i) that travel documents lawfully issued shall be recognised; (ii) that all contracting States are free to make their own eligibility determinations and (iii) that non-contracting states are totally free and can have their own determinations. However, a person becomes a refugee the moment he leaves his own country for fear of being persecuted.

³⁶. Atle Grahl Madsen, *The Status of Refugees in International Law*, Vol.1, A W. Sijthoff F. Leyden, Netherland, 1966, p.333.

3.4. Rights of Refugees :

Refugee problem being a human rights problem, a refugee must have all rights which are provided by the U.N. Declaration and all other international human right instruments. The fundamental rights which are provided by the constitution of the host country must be applicable to the refugee.

The 1951 Refugee Convention lists the principal rights which the contracting States undertake to provide them, subject to exceptions related to each country's particular requirements. Grouped under a number of headings.³⁷ These rights constitute the most comprehensive list so far drawn up in favour of refugees. The rights which are most common and useful to the daily life of refugees at the legal and practical level, have been dealt in the following.

3.4.1. Juridical Status ;

(a) Personal Status :

Personal status of the refugees varies in accordance with the practice of various places. For example, in common law countries, personal status is determined according to a person's relation to the country of domicile. But the continental Europe and in Latin America,

³⁷. General Provisions, Judicial Status, Gainful Employment, Welfare, Administrative Measures.

the status of the individual is governed by the law of the country of nationality. The rule adopted by the Nansen Convention 1933 followed by the 1951 convention provides that; "the personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence."³⁸ However, the rights previously acquired by a refugee and dependent on personal status, more particularly rights relating to marriage shall be respected by a contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that state, provided that the right in question is one which would have been recognised by the law of that state had he not become a refugee".³⁹ What may be concluded is that the rule established in the interest of persons who have severed all connections with the country of their actual or formal nationality shall not affect the rights previously acquired by them in the latter country.

(b) Movable and Immoval Property :

The 1951 Refugee convention provides specifically that "the contracting states shall accord to a refugee treatment as favourable as possible, and that not less favourable than that accorded to aliens generally in the same circumstances, as regard the acquisition of movable and

³⁸. Article 12(1) of the 1951 Refugee Convention Relating to the Status of Refugees 189, UNTs No.150.

³⁹. Supra note 25, Article

immovable property and other rights pertaining thereto, and leases and other contracts relating to movable and immovable property".⁴⁰

(c) Artistic Rights and Industrial Property :

The 1951 Refugee convention provides that in respect of protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literature, artistic and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other contracting states, he shall be accorded the same protection in that territory to nationals of the country in which he has his habitual residence.⁴¹

(d) Right of Association :

The 1951 Refugee convention provides that the contracting states all accord to refugee, lawfully staying in their territory, the most favourable treatment accorded to nationals of a foreign country in the same circumstances.⁴²

⁴⁰. *Supra* note 25, Article 13.

⁴¹. *Supra* note 25, Article 14.

⁴². *Supra* 39, Article 15.

(e) Access to Courts :

The 1951 Refugee provide that a refugee shall have free access to the courts of law on the territory of all contracting states.⁴³ It further provides that a refugee shall enjoy in the contracting state in which he has his habitual residence, the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *Centio Judicatum Solvi*.⁴⁴ There is no obvious reason to differentiate between citizen and non citizen in the availability of legal remedies, such as habeas corpus, also other rights, for instance the right to fair trail. The Universal Declaration of Human Rights Provides that everyone is entitled to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge against him."⁴⁵ Similarly, these principles are also mentioned in the covenant on Civil and Political Rights,⁴⁶ and also in the European Convention.⁴⁷ The presumption of innocence and other procedural safeguards have been consolidated in international instruments, as the principle *ne bis in idem*; the rule against self-incrimination, the right to a speedy trail,

43. *Supra* note 25, Article 16(1).

44. *Supra* note 25, Article 16(2).

45. Article 10 of the UDHR.

46. Article 14(1) of the Convention on Civil and Political Rights, 1966.

47. Article 8 and 25 of European Convention of Human Rights.

public trial, the right to be informed about the case against one; the right to be confronted by witnesses and to compel the attendance of witnesses in one's favour, and the right to have the assistance of counsel and the opportunity of appeal or review. While the regular procedures of the judicial system should be available to the non-national, in practice remedies and procedural due process come to be qualified by various parameters like inherent political consideration, national interest, etc. which prove to be an obstacle in the exercise of the same.

3.4.2. Gainful Employment :

(a) Access to Employment :

Among all the rights of refugee, free access to employment is a very important right which in practice, means the right to an independent existence. In the case of wage-earning employment, the Convention provides that the contracting States shall accord to the refugees who are lawfully staying in their territory the favourable treatment accorded to aliens.⁴⁸ In addition to this general principle, there are some special provisions in favour of refugees who have completed three year's residence in the country,⁴⁹ or whose spouse or children possess the nationality of that country the latter are exempt from any restrictive measures imposed on aliens for

⁴⁸. *Supra* note 25, Article 19.

⁴⁹. *Supra* note 25, Article 17(1).

the protection for the national labour market. In practices more often than not the country of asylum accord priority to its national recall main the refugee. The position of such refugees is different with that of alien in the sense that at least the former retain their right to work, which is not the case for ordinary aliens, who may be denied renewal of their work permit. The Convention also invites contracting states to give sympathetic consideration in assimilating the rights of all refugees which regard to wage-earning employment to those of the nationals.⁵⁰ Such assimilation, which is normal in common law countries, is a privilege eventhough the race does not have universal application.

(b) Self Employment and Liberal Professions :

The stipulated provision concerning self-employment⁵¹ and liberal professions⁵² merely refer to "treatment as favourable as possible in any event, not less favourable than that accorded to aliens generally". But under national laws what one finds in practice is that some of the professions are often reserved for nationals. Only in special situations, they take it account the sight of the refugees with regard to employment whom contracting states have every interest in integrating as speedily as possible.

⁵⁰. *Supra* note 25, Article 17(3).

⁵¹. *Supra* note 25, Article 18.

⁵². *Supra* not 25, Article 19.

3.5. Welfare :

(a) Rationing :

The 1951 Refugee Convention provides that where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugee shall be accorded the same treatment as nationals.⁵³

(b) Housing :

The 1951 Refuge Convention also provides that as regards housing, the contracting states, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugee lawfully staying in their territory treatment as favourable as possible and, in any event not less favourable than that accorded to aliens generally in the same circumstances.⁵⁴

(c) Public Education :

The 1951 Refugee Convention expressly provides that the contracting states shall accord to refugees the same treatment as it is accorded to nationals with respect to elementary education.⁵⁵ Further, it provides that the

⁵³. *Supra* note 25, Article 20.

⁵⁴. *Supra* note 25, Article 21.

⁵⁵. *Supra* note 25, Article 22(1).

contracting states shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstance with education and, in particular as regards access to studies, the recognition of foreign school certificate, diplomas and degree, the remission of fees and charge and the award of scholarship.⁵⁶

3.6. Emerging Trends in Refugee Law :

With the end of the cold war, and the resulting emerging trends, international refugee situation has thrown up new challenges which need to be tackled namely :

- (i) Violent disintegration of nations particularly the former USSR and Yugoslavia.
- (ii) Creation of new national identities.
- (iii) Xenophobia, ethnic conflict, ethnic cleansing, resulting in mass movement of refugees and displacement.

The trend in refugee law can be viewed from two perspectives.

- (i) Evolution of strategies to prevent rather than protect refugees.
- (ii) An attempt to arrive at a durable solution to the refugee problem.

⁵⁶. *Supra* note 25, Article 22(2).

Among the preventive strategies, one is able to find two clear tendencies :

- (i) Those adopted by the international agencies such as the UNHCR; and,
- (ii) Those adopted unilaterally by many developed countries.

The major perceivable international trends may brierly be outlined as follows :

- (i) Early warning.
- (ii) Safety zone.
- (iii) Human rights monitoring systems.
- (iv) Right to return.
- (v) Right to remain.

While these are the policies adopted at the international level, certain policies are also being pursued at national level by many developed countries unilaterally. Some of these are :

- (i) motion of 'safe country',
- (ii) concept of 'first country of asylum',
- (iii) dilution of non-refoulement,
- (iv) detention,
- (v) denial of asylum,
- (vi) restrictive interpretation of instruments, and,
- (vii) carriers liability.

While attempting to arrive at durable solutions one could see three distinct methods adopted basing the various refugee instruments.

- (i) Resettlement.
- (ii) Repartition.
- (iii) Integration or assimilation.

If one sees the policies adopted and stand taken by some Western countries to localize the refugee problem in the countries of origin one finds that resettlement is a practice rarely adopted. Today it is mainly repatriation that the West seems keen to emphasise upon, although for the lack of subsequent economic support to the repatriated refugees, even this solution has been largely ineffective.

This has resulted in a situation where the international agencies such as UNHCR and UN, are keen to reemphasise on the preventive strategies rather than protection.

3.6.1. Early Warning :

This is possible in many ways. Some of these which have been suggested are the creation of data banks where information about population patterns, political situations, racial conflicts, economic deprivation, crop failures, environmental changes, danger of natural as well as man-made calamities, etc., may be stored. It may even

be possible to develop computer programmes which use variables and formulae designed on previous experience to accurately forecast possible population shifts and the need for assistance. This would enable the prevention of contingency plans, emergency programmes and could greatly enhance the efficiency and response to any natural or man-made situation which may cause a refugee influx.

This will help to collect information to prevent the refugee condition in the country of origin itself.⁵⁷

3.6.2. Safety Zone :

The idea of a 'safety zone' is one where the country of origin is called upon to designate a certain area where displaced persons may be safe so that it is possible to extend humanitarian assistance or to ensure the orderly movement of personal intending to leave.

The concept of 'safety zone' is linked to the problem of internal displacement rather than being a manifestation of the international dynamics of the refugee problem.

57. For details see, Greeg A. Beger, "Monitoring Root Causes of Refugee Flows and Early Warning: The Need for Substance", *International Journal of Refugee Law*, (special issue), 1990, p.80, and, Sharon Rusu, "The Role of the Collector in Early Warning", *Ibid.*, p.66.

The concept has two essential characteristics. (1) It must be with the consent of the state of origin. (2) It must primarily be of a temporary nature.

The major objective of creating such a zone is to :

(1) Stem the outward flow of refugees since it is possible that although the safety zone is a temporary measure. The time gained by its creation would result in the possibility of settling the problems behind the outward flow of refugees.

(2) To enable the orderly movement of persons intending to leave.

(3) Give time to neighbouring states which are ready to receive them to make proper plans.

It is to be noted that international law cannot really contemplate the creation of a safety zone in any nation which is actually under the control of another state, such a situation would tantamount to an infringement of sovereignty.⁵⁸

There is an opinion that the creation of a safety zone and the displaced persons availing its benefits, could result in an undermining of these refugees right to seek asylum in other countries or the right to leave and return to one's home country.⁵⁹

⁵⁸. Article 2(7) of the UN Charter.

⁵⁹. Article 14 of UDHR.

Proceeding on the premise that a safety zone or safe heaven can only be created with the consent of the State of Origin and ought not to be managed or controlled by any power of that state, there is considerable criticism as to the 'safe haven' and 'no fly zones' created in order to protect 'Iraqi Kurds'.⁶⁰

3.6.3. Human Rights and Monitoring Systems :

UN agencies, with the aid of NGO's and other non-government institutions, attempt to monitor governments' attitudes and human rights conditions even if it felt that this could result in an infringement of sovereignty. However, if correct and unbiased information could be collected, this can be taken as a positive development which could help prevent refugee crises.⁶¹

3.6.4. Right to Return :

This has emerged in the particular context of Haitian and Cuban refugees. It emphasises on two important notions:

⁶⁰. For details see, Secretariate's study on the Establishment of a Safety Zone in the country of origin for the displaced persons, and, the AALCC Seminar in Collaboration with the UNHCR on the Establishment of a Safety Zone for displaced person in their country of origin, September 23, 1994.

⁶¹. For details see Supra no.57.

- (i) the right not to be denied nationality⁶²
- (ii) the right to freedom of movement.⁶³

In particular it notes the right to return to one's own country. This requires one important prerequisite - i.e., the removal of circumstances which caused the movement of refugees.⁶⁴

3.6.5. Right to Remain :

This emphasises the protection of the basic right not to be forced into exile.⁶⁵ It is inextricably linked to the right to leave one's own country as well as the right to return.⁶⁶ It is an exposition of the basic right not to be arbitrarily forced into an exile. In effect it is the right not to become a refugee and to be protected in so far as one's life, liberty, and security are concerned, in a land not to be subjected to any degrading treatment and

⁶². Article 15 of the UDHR.

⁶³. Article 13(2) of the UDHR.

⁶⁴. For details see, Horst - Wofrum Kerll, "New Dimensions of the Global Refugee Problem and the Need for a Comprehensive Human Rights and Development Oriented Refugee Policy", *International Journal of Refugee Law*, 1990, p.242.

⁶⁵. Article 13(1) of the UDHR.

⁶⁶. Article 13(2) of the UDHR.

torture. It is seen as an effective way to deal with the root cause of forced displacement.⁶⁷

3.6.6. 'Safe Country' and 'Country of First Asylum' :

The idea of 'safe country' and 'country of first asylum' have two components :

- (1) Those countries where the applicants are safe from persecution.
- (2) Third countries where asylum seekers have already found protection but seek asylum in search of better living standards in yet another country. The country where asylum is provided first is known as the 'first country of asylum'.

The notion of 'safe country' is distinct from the above idea in-so-far as :

- (i) It is relatively new legal instrument.
- (ii) It's object is to single out at an early stage those applicants who have nothing to fear in their home country, and are therefore presumed to have abused asylum procedure to circumvent immigration laws.

⁶⁷. For details see, the Statement made by the High Commissioner of Refugee Sadako Ogata in Geneva Human Right Commission, 3 March, 1993.

This is reflective of a desire to :

- (i) evolved more expedient asylum procedures.
- (ii) check the flow of economic and social migrants coming in through the asylum door.⁶⁸

3.6.7. Carriers' Liability :

Another noticeable trend is the imposition of more and more stringent sanctions on sea and air carriers who transport persons with inadequate or improper documents. In this regard, one may cite the effective curtailment of the movement of many Srilankan Tamils to West Europe by using this device.⁶⁹

3.6.8. Dilution of Non-refoulment :

This marks a trend towards a revival of conservatism in refugee law. A striking example is the USSC decision in Sale Vs HRC⁷⁰, where non-refoulement was held to have no extra territorial operation. This is the reflective of the some developed countries' policy perceptions attempting to return as many refugees as possible.⁷¹

⁶⁸. Many developed countries have Promulgated Municipal Laws in this light.

⁶⁹. *Supra* note 29.

⁷⁰. *Supra* note 14.

⁷¹. *Ibid*.

3.6.9. Detention :

This is a growing practice despite the fact that refugees need to find protection. This has resulted in a considerable amount of discouragement of refugee movement.⁷²

These are unique problems to tackle effectively. First, there is a need to have a strong mandate. It appears that due to the lack of sufficient mandate, even UNHCR is helpless to tackle it effectively. Secondly, as suggested by B S Chimni, there is a need to move away from the *ad hoc* basis on which the UNHCR is operating and a need to reconsider the 1951 Refugee Convention, to enable better strategies to tackle the refugee problem as well as to ensure better protection and durable solutions. It is to be noted that most of the emerging trends are the outcome of policy perspectives of individual countries and are largely in violation of the letter and spirit of international refugee conventions.

⁷². Ibid.

CHAPTER IV

NEPAL : RESPONSE TO REFUGEES

4.1. Nepal : A Brief Introduction

Nepal a Himalayan kingdom, extends across the Southern slope of the Himalaya between longitudes $80^{\circ}15'$ and $80^{\circ}10'$ east and latitudes $26^{\circ}20'$ and $30^{\circ}10'$ north. Its length measures 804 km. and its breadth varies between 148 km and 161 km. And Nepal covers an area of 1,47,181 sq.km. Out of which 28% lies above 3000 m, 60% between 300 to 3000 m and remaining 11% upto 300 m from the sea level. Most of the land surface in the hills is steep to very steep while the land from inner *Terai* is gently undulating with a slope of less than one degree.

The international boundary of Nepal with China lies in the Himalaya, either along the crest or among lesser peaks beyond it to the north. Nepal has a 140 km. long free and open border with India to 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 a non-aligned foreign policy since the late 1700s. Nepal is holding a precious balance as well between these two countries. Infact, the position of Nepal in South Asia is very sensitive.

Physically, Nepal is divided into three distinct belts, namely, *trans Himalaya* and *Himalaya* in the north, the *Mahabarat* and *Siwalik range* in the middle, and the narrow plains belt of the *Terai* in the south. *The trans Himalaya* and *Himalaya* of the north mark as the border line with China. These mountains are mostly covered with snow and have no direct transportable access except for a few seasonal pass. As a result, the population is sparse and sporadic with nomadic culture. 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 resources use and utilization is helping for the sustainable development of Nepal.

The ethnic distribution of Nepal tends to follow the same type of distribution found along the *trans Himalaya* and highland of India, Bhutan and Burma. 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 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 as *Maithili* and *Bhojpuri* speaking people.

This shows that the diverse people with different racial, cultural and linguistic backgrounds inhabit Nepal. The *Sherpas* and *Thakalis* live in the northern most region of Nepal. The *Gurung* and *Magars* live in the mountain valleys in central Nepal. The *Rais* and *Limbus* live in the same belt in the eastern belt of Nepal. The *Khasas*, *Thakuris* and *Brahmins* also live in the middle of the country. The *Newars* are concentrated in the Kathmandu valley. *Tharus* live in the areas of inner *Terai* and the *Rajbansis* and *Satars* live in all along the *Terai*. The *Rajputs* *Brahmins*, *Kayasthas*, *Yadavs* are scattered all along the southern most border of Nepal. The backward classes of Nepal such as *Sunwars*, *Danwars*, *Murmis*, *Mayhis*, *Dhimals*, *Chebangs*, *Kusundas*, *Rauteas*, *Podes* are also residing in the middle of Nepal. Few percentage of *Christians* and *Muslims* constitute the population of Nepal.

4.1.1. "Land Locked" Feature

Nepal is a land locked country. The land locked feature and the predominance of rugged mountainous areas have made the development difficult. The rugged mountains are the main barriers also for smooth transportation within the Kingdom. The roads are constructed to some extent for the necessary transportation activities. However, large part of the country remains inaccessible by modern transportation. These roads have proved "not safe" during rainy season. 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 costly to be afforded by common people of Nepal. Nepal doesn't have direct access to any third country either through land transportation or through sea 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.¹ In fact the development of the country is hindered by its geography. The land locked 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 and is at subsistence or below subsistence level. No modern technology has been applied in 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) which is amongst the lowest in South Asia region.² Nepal is rich in water resources but it could not exploit

1. See "on Foreign Aid in Nepal" in the annexure no. 4.

2. *The World Development Report*, New York : Oxford, 1991.

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 agriculture products are for exports and eighty two per cent are for raw materials. About 42 per cent of the population lives below the poverty line.³

4.2. Refugees Burden to Nepal :

Nepal had been a room for refugees since it had been freed from the *Rana* claws in 1950. Paradoxically, Nepal as it is resource starved, had to welcome "refugee guest" for twice during the period of a 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. Apart from this, the refugees fleeing the Bangladesh and Iraq also lead to the entrance of refugees in Nepal.⁴

4.2.1. *Tibetan* Refugees

Due to Chinese presence in Tibet, nearly twenty thousands Tibetans have taken asylum in Nepal since 1959. They entered into Nepal via *Naachhe Bazar* and camped in Chyaka of the *Solukhumbhu* district. Some of the Tibetans

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

4. *Human Rights Year Book*, Kathmandu: INSEC, 1992.

refugees entered into Nepal via northern border of *Rasuwa* district and camped in *Syafrubesi*. Later on, they moved and scattered in twenty one districts of the Kingdom.⁵

The Government of Nepal allocated the Tibetan refugees different camps in different parts of the Kingdom. Camps are allocated at *Sawayambhu*, *Boudha*, *Jorpati* of Kathamandu *Jawalakhel* of Lalitpur, *Chandipokhari* of Nuwakot, *Hitetar* of Tanahu, *Hyanja* and *Chhorepatan* of Kaski, *Dhorpatan* of *Baglung*, *Chhoiro* of Mustang districts.

Till today estimated number of *Tibetan* refugees is nearly twenty thousand and they are not yet being stopped from entering into Nepal. They are entering into Nepal in different capacity, as pilgrims, as economic migrants, as money mongers and as tourist. 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 grounds. She has nothing to do with the Tibeto-Chinese politics. However, the presence of *Tibetans* in Nepal has created an awkward situation for the Kingdom of Nepal. Often rumours, that some *Tibetans* involved in the anti-chinese activities, catch head lines of news papers both local and foreign. There are apprehensions

⁵. (See Chart no. "on the Tibetan Refugees" in the annexure) Not available.

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 small land locked country between two huge Asian giants has tried its best to maintain a balanced relationship with both the countries India and China. The *Tibetans* are also self-employed and generate income for their sustenance. However, their presence has been a burden to Nepal in many spheres.

4.2.2. Relief Services to *Tibetan* Refugees :

The influx of refugees in Nepal in late fifties became a vexing issue for Nepal. Nepal has friendly relations with China and has recognised the latter's control over Tibet. Therefore, Nepal has handled the *Tibetan* refugee very deftly as a sole matter of humanitarian concern. Though *Tibetan* refugees have been sheltered in various parts of Nepal for last 35 years Nepal has never allowed these refugee to engage in anti-Chinese activities from her soil. Nepal did not issue permit for the visit of *Dalai Lama* the spiritual leader of *Tibetans* in Nepal as it could infuriate the chinese authority. However, Nepal has provided every facilities to *Tibetan* refugees and extended assistance for their welfare.

4.2.3. 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 'Rangzon' in *Tibet* took a long time. As a result, second generation *Tibetan* refugees made and they are also spending their life in exile. A recent study revealed that 40 per cent *Tibetan* refugees were born before an influx into Nepal in *Tibet* and remaining 60 per cent were born in Nepal.

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

4.2.4. 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 systematized. During a span of more than thirty years the *Tibetan* refugees have been registered and issued identity card only once. Recently, the new government of Nepal has constituted a high power Citizenship Commission which is also entrusted with the responsibility of screening the

Tibetan refugees to provide the identity cards.⁶ In the course of interview the refugees at Jorpati Camp in and Kathamandu revealed that those refugees who were not availed with the identity cards had sometimes faced a situation like 'identity crisis'.

4.2.5. International Aid and Support :

International agencies had extended support in material terms to the Tibetan refugees in the initial 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 were able establish carpet and other handicraft industries. They have sustained on the income of the cottage and weaving industries they established. The facilities what they are getting from the Nepales government is better and slightly discriminatory than Bhutanes refugees because latter are supposed to work with the express permission of the authorities.

4.3. Bhutanes Refugees:⁷

His Majesty's Government of Nepal, despite its own economic problems has had to bear the burden of hosting around 95,000 Bhutanese refugees. The Ministry of Home Affairs has been entrusted with managing the refugee

⁶. As per the Frontier Administration Division, Home Ministry HMG of Nepal.

⁷. For the background see Chapter Two.

crisis. In the central level it had created an Operation Management and Implementation Unit (OMIU), to handle the camp areas. At the field level a Refugee Co-ordination Unit (RCU) is taking care of the refugees. It has also extended supervisory branch with two officials in each camps to meet the need for systematic and efficient refugee documentation and management. In addition to the security and law and order aspect, the RCU, in co-ordination with the 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 channeled 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 recognised 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 took place at Kakarvitta, the entry point on the Nepal-India border. UNHCR, in coordination with RCU, has recognised and reconstituted all the camps 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 (WFP) and many other agencies working for providing assistance to refugees, on February 4, 1992 accepted Nepalese request for further assistance till the year 1995. 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. 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.⁸

To respond the refugees and their protection after the Second World War in Europe, the Convention Relating to Status of Refugees was adopted in Geneva in 1951. The Worldwide awareness of the refugee problem resulted in the Protocol of 1967 Relating to Status of Refugees. Nepal is not a party to any of these multilateral instruments.

Similarly, the matters concerning the status and treatment of refugees were taken up by the Asian-African Legal Consultative Committee upon a reference made by the government of the Arab Republic of Egypt in 1964. And the same subject was further considered at the committee's

⁸. "Information - Note on Assistance to Bhutanese Refugees and Asylum-Seekers in Nepal", UNHCR, Nepal, 1994.

Eighth Session held in Bangkok in 1966 and the recommendations known as the "Bangkok Principles" were formulated for the guidance of the member states. The committee's recommendation concerning the definition of the term 'refugee' and also the principles regarding the right of asylum, the right to return, the right to compensation the minimum standard of treatment in the state of asylum, the obligation of the refugee and other matters such as expulsion or deportation were also endorsed. These recommendations are not binding upon Asian-African states but widely applied in their practices.

Even though Nepal has to face the refugee problem since 1950s there is still no specific legislation to deal with the problem. She is handling the issues at the political and administrative levels on a humanitarian ground. She even doesn't have the administrative rules and regulations except specific camps rule made by the Refugee Coordination Unit (RCU) in the camp areas. Not being a party to the 1951 convention and its 1967 protocol, the refugees have to be naturally treated under the law applicable to aliens in Nepal.⁹

The Constitution of the Kingdom of Nepal, 1990 accepts basic rights of the individuals which are accepted universally. The most fundamental of which is that no person shall be deprived of his personal liberty save in

⁹. The word 'alien' is mentioned nowhere in the constitution of Nepal but it mentions the word foreigner.

accordance with law.¹⁰ Right to equality is provided to each person subject to the equal protection of the laws,¹¹ which covers both the citizens and aliens. The right regarding to the criminal justice,¹² right against preventive detention,¹³ right to religion to the all individuals are stipulated in the Constitution. In the case of violation of these rights by any law or administrative rules, constitutional remedy is provided.¹⁴

In 1955 Nepal joined the UN. Since then she has been actively propagating for the cause of peace, prosperity, development and promotion of human rights both within the UN and outside it in various international and regional fora. Although Nepal is party to none of the refugee conventions, she is still keeping up with the spirit of refugee conventions. Nepal's pledge for peace, development and humanity binds her to observe the rules of the world body in good faith. General obligations of nations to observe the law of the United Nations accrue from the very law-making character of the Charter.

Nepal has always practiced tolerance and adhered to the concept of fraternity in its relation with others. She

10. Article 12, of the Constitution of Kingdom of Nepal.

11. Ibid., Article 11.

12. Ibid., Article 14.

13. Ibid., Article 15.

14. Ibid., Article 23 read with Article 88.

has absorbed the *Tibetan* refugees crisis by setting up settlement programmes. Some *Sindhis* who fled from *Sind* in late 1940s are in Nepal and have been assimilated here. Likewise, *Burmese* refugees were also assimilated through the process of naturalization.¹⁵

A brief analysis of the following Nepalese Acts is worthy of mention here:

- (i) Citizenship Act 2020 BS (1963 AD).
- (ii) Immigration Act 2049 BS (1992 AD).
- (iii) Extradition Act 2045 Bs (1988 AD).

(i) Citizenship Act 2020 :

The citizenship Act 2020 recognizes two modes of acquiring citizenship: natural and by naturalization. There are basically two principles relating to natural citizenship one is based on *Jus Sanguinis* and the other is based on *Jus Soli*. Article 3 of the Act follows *Jus Sanguinis*. The mode of acquire naturalized citizenship is incorporated in section 6 of the Act. This mechanism in the citizenship law of Nepal has been instrumental in integrating and assimilating some refugees from *Sindh*,

¹⁵. L K Upadhyaya, "Refugee : A Possible Legal Framework for Nepal", Paper presented at the workshop on "Refugee Law in Nepal, Prospects and Possibilities" organised by the faculty of law, Tribhuvan University and UNHCR, April 26-27, 1994, Kathmandu.

Tibet and Burma seen in the background of Article 34 of the 1951 Refugee Convention.

(ii) Immigration Act 2049 :

The immigration Act of Nepal is silent about the deportation of refugees. Pursuant to the provisions of the 1951 Refugee Convention, the Act in Section 14(2) retains the power of expulsion of aliens on the ground of national interest. Expulsion of aliens including refugees on the ground of national security and public order is an universally recognised principles of international law. Nepal has an open border with India and the immigration posts are limited to a very few entry points.

(iii) Extradition Act 2049 :

General principle of law prohibit extradition of political offenders. The principle that political offenders are not to be extradited has been incorporated in Section 12(1) of the Act. This clause supports the philosophy of refugee law. Similarly, the law relating to marriage and passports have natural position, and in no way, are hostile to the basic philosophy of Refugee Law.

Despite these legal provisions the Foreigners Act, empowers the government to regulate the entry of aliens into Nepal, and also their presence and departure therefrom. The Passport Act deals with the power of the

government to impose conditions of possession of a passports for entry into Nepal and the issue of passports and travel documents and trekking permission.

However, not having any particular legislation to regulate the refugee movement in Nepal, it is tackled by administrative measures. The government's policy to permit the entry into Nepal and stay thereafter is quite liberal towards aliens including refugees. Although there is no binding legal provisions which compels the Immigration Authorities to provide visa to any one who wants to enter Nepal including the alien claiming refugee status. It can be granted only on the humanitarian ground.

In this juncture it is pertinent to look into the state practice keeping in view some important provisions of international conventions.

4.4. Provisions of the International Convention and State Practice :

(a) Admission and Non-Refoulment :

A refugee when he leaves his country, first of all has to seek admission in the first country of refuge. The principle which governs the admission is that of non-rejection at the frontier. The 1951 Convention contains no provision regarding admission, but it has been argued that as regards principle of non-refoulment as stated in article

33, which expressly applies to expulsion or return, should be understood to apply and also to non-rejection at the frontier.

The Nepalese practice of the Non-refoulment is positive, ever since 1959 when *Tibetan* refugees entered into Nepal. But at that time it was declared that they were supposed to go back to their country when the situation will improve. In the case of Bhutanes refugees, right from the beginning, and after establishing the screening post on 15th May 1993, non of the refugees are denied to register their name as a refugee and to acquire the facilities to the camps. But in some cases, where there is no reasonable requirement, the 'fear of persecution' some refugees are denied to get the admission'.¹⁶

(b) Treatment of Persons Granted Admissions :

(i) No Penalties :

Article 3(1) of the 1951 Convention provides that the contracting states shall not impose penalties, on account of their illegal entry or presence, on refugees who are coming directly from a territory where their life or freedom was threatened, enter or are present in their territory without authorization, provided they present

¹⁶. As per the information given by the screening post Kakavitta.

themselves without delay to the authorities and show good cause for their illegal entry or presence. This provision is the elaboration of the Article 14(1) of the UDHR (1948) which provides:

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

Till now Nepal has not imposed any penalties on refugee either *Tibetan* or *Bhutanese*.

(ii) Wage-Earning Employment :

Wage-earning employment and self-employment¹⁷ is not similar in the case of both *Bhutanese* and *Tibetan* refugees. Being the self-sufficient, *Tibetan* refugee are engaged to the self-employment and even in wage-earning employment. Without any legal permission of the Government. In fact government is more liberal in the case of *Tibetan* refugees. So far as *Bhutanese* refugees are concerned, their activities are confined in the camps. Those who are registered can't engage themselves outside the camps in wage earning employment or self-employment. Comparatively the government is not liberal in the case of *Bhutanese* refugees. Economically, Nepal also can't provide the attractive opportunities of the employment to the refugees.

¹⁷. Article 17 and 18, the 1951 Refugees Convention.

(iii) Non-Discrimination :

Article 3 of the 1951 Refugee Convention recognises the principle of non-discrimination to refugees on the ground of race religion or country of origin. In the case of both *Tibetan* and Bhutanese refugees, this principle is applied satisfactorily in accordance with the law of land.

(iv) Freedom of Religion :

Article 4 of the 1951 Refugee Convention provides that the contracting states shall accord to refugees freedom to practice their religion and freedom as regards the education to their children. As provided by the Nepalese Constitution also, refugees are always allowed to exercise these rights.

(v) Equality of Treatment :

Article 7 of the 1951 Refugee Convention provides that a contracting state shall accord the same treatment to the refugees as is accorded to aliens generally. Nepal's practice of treatment of equality is not visibly discriminatory towards the refugees aliens. However, it is said that *Tibetan* refugees are enjoying more rights and freedoms.

(vi) Access to Courts :

Article 16 of the 1951 Refugee Convention provides the right to free access to the courts for refugee. So far there is no case which has been filed by a refugee in the Nepalese court. Which he can do constitutionally and legally.

(vii) Freedom of Housing :

Article 21 of the 1951 Refugee Convention provides the requirements of "housing". *Tibetan* refugees are free to choose their place of residence. Even *Bhutanese* refugees are free to do so, but those who are not in the camps will not get the assistance.

(viii) Freedom of Movement:

Article 26 of the 1951 Refugee Convention has provided the freedom of movement to the refugees subject to restrictions expressly mentioned by the contracting states. The freedom of movement exercised by the *Tibetan* refugees and the *Bhutanese* refugees who are residing in the camps is different. Mainly for fear of adverse economic impact the freedom of movement of *Bhutanese* refugees, outside the camp, is restricted.

(ix) Issuing of Identity Cards :

Article 27 and 28 of the 1951 Refugee Convention provides for the requirement and conditions of issuing identity cards and travel documents to the refugees. As already mentioned, for the second time the government of Nepal is issuing identity cards to the *Tibetan* refugees by which they could go abroad and come back. As regard to the *Bhutanese* refugees, the registration system is vital to those who are in the camps. Identity cards and travel documents are also being distributed to the *Bhutanese* refugees.

(x) Right to Residence :

Nepal is practicing the conditions and requirements which are provided in the Article 32 of the 1951 Refugee Convention which states that a State shall not expel refugee from their territory save on the grounds of national security or public order. So far Nepal has not expelled any refugee on these grounds.

4.5. Towards Resolution - Bilateral Talks :

The number of refugees in Nepal having reached around 6,000 the Prime Minister of Nepal, and the King of Bhutan had a 'Special Talk' during the Sixth SAARC Summit in

Colombo in Sri Lanka in 1991 on resolving the crisis.¹⁸ 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 didn't reciprocate to the Nepalese overtures. Thimpu was disinclined into 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 where 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 call the Bhutanese nationals taking shelter in eastern Nepal as refugees. Thus the King of Bhutan sought to characterize the refugee as "displaced persons" when Nepalese Prim Minister met the former during the SAARC summit at Dhaka, the capital of Bangladesh.¹⁹

As quiet diplomacy and talks at highest level failed to resolve the issue of Bhutanese refusee, Nepal had no other alternative except to internationalize it. Immediately after returning from Dhaka the Prime Minister of Nepal called resident diplomates to his residence and apprised them of the Bhutanese refugee issue and the problem

18. For details see, *Bhutanese Refugees, Victims of Arbitrary Deprivation of Right to Nationality and Political Repression : A Report 1994.*

19. See, *The Refugee problem in Nepal : A Report,* Khatmandu : Nepal Law Society, 1993, p.50.

faced by Nepal on this account. This brought to bear some discernible impact. As a result of mounting international pressure Bhutan came back to negotiation table.²⁰

Bhutan - Nepal Ministerial Joint Committee was constituted in July 1993 to resolve the problem of Bhutanese refugee in Nepal. This committee has met five times since then but without making any substantial progress. The fifth round of Talks were scheduled to be held in Kathmandu in September 1994 but were postponed due to the general election in Nepal. After new government was formed in Nepal in November 1994 fifth round of talks were held in Kathmandu between February 28 and March 2 this year.²¹

In the first meeting (15-17 July, 1993) it was agreed to establish a Ministerial Level Joint Committee which would determine different categories of the people in the refugee camps. Specify the position of the two governments, and arrive at a mutually acceptable agreement for the resolution of the problem. The second meeting (07 October, 1993) in Kathmandu created four categories of refugees:

- (i) Bonafide Bhutanese who have been forcefully evicted.
- (ii) Those Bhutanese who emigrated.
- (iii) Non-Bhutanese people.
- (iv) Who have committed criminal acts.

²⁰. Ibid.

²¹. See, *The Bhutan Review*, February 1995.

The Ministerial level Joint Committee met two times during 1994. In Thimphu meeting (22-23 February) made a very little progress as the Royal Government steadfastly rejected a Nepalese proposal to involve an independent third party in the categorization process. In the next extended round of talks held in Kathmandu (4-8 April) the Bhutanese side extracted major concessions from His Majesty's Government of Nepal. At that meeting it was agreed that a verification team comprising five members from each country would be created. For the time being, this not only did circumvent Nepalese stand for third party involvement but, in the absence of any time frame for its establishment or completion of its mandate this only paved the way to linger the issue further. A further round of meeting became necessary to decide on these matters. Secondly, the two sides further agreed to exchange their positions on the different categories of people before the verification process. This agreement contradicted and diluted the achievement made at the first and second round of meeting which has concurred to categorise people in Refugee Camps. Bhutanese side was able to make further delay as no actively relating to identification / categorization could be taken up. Once the round ended as expected without putting a firm schedule, there was no further talks of the verification team and work on the field. And even more expectedly, with the 'positions' of the two governments with regard to the different categories of people in the camps at complete variance, the Nepalese delegation returned empty handed from the next rounds of

talks held in *Thimphu* (28-29 June), save for an agreement to meet again in Kathmandu in September. Confronted with the political crisis before the scheduled round, Nepal apparently opted not to hold discussion until after the mid-term general election were over. Accordingly it was agreed through mutual consultations to indefinitely defer the talks slated for September 1994.

After the election was over of new Government of CPN (UML) was formed in Nepal in November 94. Since this government had ideological commitment, people were expecting a concrete solution of the problem in the ensuing i.e. the fifth round of talks. Unfortunately nothing could happen save an agreement to have another round of bilateral talks in *Thimphu* very soon. According to the government source the fifth talks concentrated more on the 'categorization' issue. Both the governments have agreed to rethink about the 'categorization' for the quick, efficient and fair repatriation of the refugees.

CHAPTER V

BHUTANESE REFUGEES : PRESENT CONDITIONS, IMPACT ON NEPAL AND DURABLE SOLUTIONS

5.1 Introduction :

Millions of people throughout the world are bound to move against their will. Some are uprooted as a result of deliberate government policy. A much larger proportion are displaced by intolerable conditions of insecurity and poverty.

Compulsory mass migrations are not a new phenomenon. They are occurred throughout history and have moulded the world we live in. The slave trade of 15th to 19th centuries, for example, was one of the largest ever forced movement of populations. Three hundred years ago 2,50,000 protestants, known as the *Huguenots*, fled from France to escape religious prosecution. Colonial expansions involved brutal mass displacements in many parts of the world. As new territory was occupied indigenous populations were cleared from their lands to move way for new settlers. Military conscription and forced labour to satisfy colonial demands were also responsible for the mass movement of people accross the continent.

In the first of half of the 20th century involuntary migrations were concentrated in Europe. The two World Wars

and subsequent territorial realignment produced a series of mass displacements, refugee movements and forced repatriations, involving suffering on a mass scale. These population upheavals led to the emergence of a network of international organisations and the development of laws to deal with the problem they posed.

During the cold-war period the vast majority of involuntary migrations have taken place within and from developing countries. In the post cold-war period, about a hundred new states emerged from a colonial subordination. They inherited artificial boundaries, fragile nationality brittle political systems and economic instability has led to an unprecedented proliferation of tensions and conflicts. Local disputes were aggravated and exploited by the external powers competing for economic and political advantage.

The refugee problem has acquired a new dimension, significance and intensity in the post-cold war period. Growing ethnic conflicts has been a major source of refugee problem in the post-cold war period and has drawn the attention of the World Community. Economic underdevelopment and extreme poverty is also seen as one of the causes contributing to the refugee issue. Similarly political repression in some of the third world countries is also a significant cause of refugee problem.

The gravity of the problem in nutshell, can be understood from the UN report on World Economy and Social Survey 1994. According to the report, there are 23 million refugees and a big chunk of are being in the third world. This number doesn't include the internally displaced people. Thus, the need for a comprehensive resolution of the refugee problem, which is a prerequisite for a greater co-operation between north and south and for a smooth global development, shouldn't be over emphasised.

However, in this context the international refugee law is clearly unable to prevent states from pursuing their own interests. In the first place, that body of law is very limited in its scope. It relates to the treatment of refugees since they have fled from their country of origin and doesn't deal, with the root causes and the situation that create refugees. It is ambiguous and silent with regard to asylum-seekers, and also on the subject of physical security. Secondly, many states have declined to sign the UN Convention and Protocol. Thirdly, the states which have signed these instruments can't be forced to observe the stipulations of the convention.

The role of the humanitarian organisations in some places is also influenced by the political power. Under certain conditions they can improve the material well-being of refugee and offer them a degree of protection which they might not otherwise enjoy. Even in some cases they might help to resolve a situation which is creating refugees.

But they are unable to prevent states from taking decisions which force people into exile and keep them there.

5.2. Assistance and Activities :

In Nepal, however, there is no significant 'otherwise' interest of the humanitarian organisations in a visible form. The activities and supports provided by the UNHCR and other various international non-governmental organisations and humanitarian organisation is far better than what the Nepales Government can expected to provide.

During the field visit, the researcher I observed that the living standard of the refugees is higher than the *Sukumbasi* (Landless) peasants of Nepal. Of course, the refugees are bearing the tragedy of being uprooted from their country, but as far as their daily requirement is concerned they are not in a miserable condition of the life.

Bhutanese refugees are required to live in the camps. They are accommodated in eight camps in five locations in two districts of Nepal, namely, *Morang* and *Jhapa*. The refugees, bulk of whom comprise farming families have learnt to adjust to the new situation which is very different from their inhabitation in the high land of Bhutan. It's a life that sadly means idleness, and often, a sense of complete helplessness. A number of agencies are

involved in administration, management and implementation of welfare programmes in the camps.

5.2.1 His Majesty's Government of Nepal :

As already mentioned, despite her own economic problem HMG of Nepal has had to bear the additional burden of hosting about 100,000 refugees. In a country where the population density is high providing shelters to refugees is not easy, and entails a lot of sacrifice. Entrusted with overseeing all aspects related to refugees in the country, the Ministry of Home Affairs undertakes the task of systematic and efficient refugee documentation, management and monitoring through the Refugee Co-ordination Unit (RCU) formerly called the Operation Management and Implementation Unit (OMIU). In addition to the security and law and order aspect in coordination with the UNHCR, the RCU undertakes the task of refugees verification and documentation.

5.2.2. United Nations High Commissioner for Refugees

(UNHCR) :

Responding to the pleas of the refugee community, the UNHCR which began with *ad-hoc* humanitarian emergency relief to some 304 refugees for four months formally began assisting Bhutanese refugees from the beginning of 1992 following the request of His Majesty's Government of Nepal. The UNHCR which has a global mandate to the protection and

welfare of refugees serves as a focal point for assistance to Bhutanese refugees in Nepal. Numerous governments and agencies have channelled their contributions through the UNHCR which supervises relief and welfare activities through a number of implementing agencies.

The UNHCR also provides legal protection to all asylum seekers who have been screened and recognised as refugees. An asylum seeker is registered in the camps as a refugee only after the UNHCR ascertains that he has fled from a genuine fear of persecution in Bhutan. Refugees were initially interviewed in the camps itself but since May 1993 a formal screening takes place at *Kakarvitta* the entry point at the Nepal - India border.

The UNHCR initially established an office in Nepal in 1964 to provide assistance to *Tibetan* asylum seekers. This office was closed in 1973 and UNDP took over the responsibility on behalf of the UNHCR of providing assistance to individual asylum seekers. In 1989, at the invitation of His Majesty's Government, the UNHCR re-established its Branch office in Kathmandu.

Until the beginning of 1991, the UNHCR's work in Nepal principally involved providing protection and assistance to *Tibetan* refugees and a small number of other individual asylum seekers of various origins fleeing to Nepal. The majority of *Tibetan* refugees arriving in Nepal are *monks* and *nuns*. Some are nomads farmers and labourers. They

claim persecution on religious grounds, harassment and in some cases torture. Most of them travel through Nepal on their way to seek asylum in India.

According to a report every month approximately 250 Tibetan asylum seekers arrived in Nepal in 1992 and the flow is continuing till now with a little less margin.¹ The UNHCR determines their status and provide them with basic food, shelter, domestic needs, medical care, transportation and financial assistance on a one-time basis to enable them continue their journey to join the Tibetan Community in India.

The UNHCR is also involved in a variety of training activities in Nepal aimed at advancing understanding and acceptance of international legal instruments and standards pertaining to the protection and treatment of asylum seekers and refugees. Among such international legal instruments the UNHCR is particularly concerned with the promotion of accession to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.

In addition to this, having already established the Branch Office in Kathmandu, there is also a UNHCR sub-office located in *Bhadrapur, Jhapa* district, and a UNHCR field station located in *Damak, Jhapa*. The latter two

¹. *Activities and Assistance in 1992 in Nepal*, Kathmandu : UNHCR, 1994.

offices were specially established to deal with the Bhutanese refugee problem.

5.2.3. World Food Programme (WFP) :

The World Food Programme (WFP), the food aid organisation of the United Nations System, which provides food relief to more than 80 per cent of refugees worldwide, has been providing food items to Bhutanese refugees in Nepal since January 1992. Starting with an initial three month assistance programme amounting to US 400,350.00, WFP has since then provided food to the refugees on a continuous basis. The present arrangement with His Majesty's Government of Nepal which expires in June 1995 provides for food assistance for an estimated refugee population of 110,000. By that time WFP will have contributed an estimate US 19.7 millions by way of food aid to Bhutanese refugees, which makes it the single largest UN donor to the refugee welfare programme in eastern Nepal.

5.2.4. The Lutheran World Service (LWS) :

The Lutheran World Service (LWS), based in Geneva, whose terms of reference also mandates a relief and rehabilitation role, became associated with the Bhutanese refugee problem from the very beginning when UNHCR approached it to undertake a jointly funded assistance project. In the early stages as the only implementing

agency LWS undertook all relief activities. Today having handed over many of its earlier task, LWS is responsible for shelters, water and sanitation, health, infrastructure, access and internal roads constructions in all the refugee camps. In lien with its objective of involving local NGOs to the extent possible LWS has begun phasing out its regular activities in the camps. So that after mid-1995 it will provide only technical back stopping teams to support other organisations.

5.2.5 Save the Children Fund (SCF), UK :

In the early stage various organisations provided assistance in the health sector on an *ad-hoc* basis. However, with the situation in the over populated camps reaching alarming proportion the need for a single agency totally responsible for the health sector became imperative. The United Kingdom's Save the Children Fund (SCF) took this responsibility from June 1992. The fund concentrated on preventives care. With the result the problem which was threatening to reach crisis level was slowly brought under control. Since then health care needs in the camps have been effectively addressed. Proper medical attention is provided in the camps where a number of Basic Health Units (BHUs) have been established according to population. Locals in the vicinity of the camps are also given access to these facilities, including in-patient treatment. When required refugee patients are referred to the neighbouring district Hospital or even to

Kathmandu. The programmes of SCF in the camps are administrated by a total staff strength of 1297 of whom 2 are expatriates, 126 are Nepalese and remaining 1169 Bhutanese.

5.2.6 Oxford Committee For Famine Relief (OXfam):

Despite having been driven out of their homes, Bhutanese women in the refugee camps took courage and organised themselves to make effective use of their free time. Under the banner of the Bhutanes Women Association (BWA), the women initiated a programme of non-formal education initially in *Timai* Camp with the assistance of Oxfam. Impressed with the interest and initiative of the refugee women and the success of the pilot project, Oxfam quickly began a programme of its expansion and diversification. A supplementary income generation programme was also introduced. Both the schemes have been expanded. The education programme now covers other camps and enrolls males as well, and the income generation project has been diversified its activities from knitwear to the production of blankets, shawls, carpets, soaps etc.

5.2.7 Nepal Red Cross Society (NRCS) :

Through the active support of the International Committee of Red Cross and the Red Cross Society, Nepal Red Cross Societies (RCS) at the district level have been active since Bhutanese refugees started trickling into the

country. Initially RCS assisted refugees on an *ad-hoc* basis, but in the recent past long-term activities have been initiated. Besides providing emergency medical assistance which includes medical supplies and ambulance services, RCS has imparted training to fire fighting units and has also provided clothes, blankets, mosquito nets and other essentials clothing items to the most needy refugees. In order to preserve the forest cover in and around the camps, NRCS has also initiated reforestation programme by involving refugees in tree plantation work. Today, one major responsibility of NRCS is the procurement and distribution of food and other items which the society has taken over from LWS.

5.2.8 CARITAS Nepal :

Realizing the importance and value of proper education, this sector has been given top priority. The overwhelming enthusiasm shown by children and parents attracted the interest of many who wished to help in the education of refugee children. CARITAS/Nepal, which initially assisted in meeting the basic needs of refugees (food and clothing etc), took up the daunting task of running schools in the camps. Beginning with a School in *Timai*, schools in other camps were also begun as their population stabilised. In addition to the substantial contribution which it gets from UNHCR, CARITAS mobilises additional funds from international donors to manage the growing needs of the education sector.

The Bhutanese Refugee Education project is managed by CARITAS/Nepal through the Bhutanese Refugee Education Co-ordination Committee (BRECC) which has resource persons selected from among refugees as well as five professional volunteers from APSO (Ireland). These volunteers have extensive experience of teaching in Bhutan and are now engaged in training, monitoring and curriculum development. The New Approach to Primary Education (NAPE), familiar to Bhutanese children has been adopted in the camp Schools.

The schools are set up in each camp for students up to the eighth standard (which is considered as Secondary School) while a single central secondary school in *Beldangi* camp provides education upto class X. Because of the pressure on a single school in each camp, the primary school have been broken down to provide pre-primary sections. As of end December 1994, the total number of students in the refugee camp schools is 35,352, including 246 studying in the *Beldangi* Secondary School. There are presently 735 teachers, including 12 who teach at the Secondary School. At the primary level the male - female student ratio is a healthy 53:46. At the secondary level, however, female enrollment drops down to 23.9 per cent.² A total of 208 students were interviewed by CARITAS and UNHCR for scholarship in October. All but 50 sought upper secondary year (11 and 12) education. The vast majority of

². See, chart No 3 "on Education" in the annexure. It includes also Non-Formal Education.

the applicants were male. An additional 10 scholarships of UNHCR were announced.³

5.2.9. Centre for Victims of Torture (CVICT):

CVICT a local NGO has been involved in assisting the Bhutanese refugee since April 1992, although they do not have the permanent presence in *Jhapa* and *Morang*. CVICT is responsible for running programmes for training selected refugee women as rape counsellors who then work in the camps using a low key approach. Kathmandu based CVICT trainers visit the camps on a monthly basis to supervise and provide in-service training to counsellors.⁴

5.3. Present Living Conditions of the Bhutanese Refugees :

As already mentioned the present living conditions of the Bhutanese refugees is improved and they are managing their life comparatively 'comfortably' among the South Asian refugees in this region. Of course, being the refugees, they are deprived of various rights and their original living standard what they had in Bhutan. But the supports and assistance provided by the UNHCR and other various agencies including Government of Nepal is reasonably good and helpful to manage their lives in the

3. *Situation Report on Bhutanese Refugees in Nepal : 01 Oct - 31 Dec*, Khatmandu : UNHCR, 1994, p.12.

4. See, "Assistance to Bhutanese Refugees and Asylum seekers in Nepal", Information Note by UNHCR, Nepal, 1994, p.6.

camps. The oldest camp *Tirar* is not that much well managed but rest of the camps have maintained the 'International Standard' to improve the life of the refugees. The facilities provided by the UNHCR and other various agencies are as follows :

5.3.1. Shelter :

Initially, temporary shelters for the refugees were prepared by Lutheran World Service with the help of UNHCR, but latter these shelters have been changed into permanent shelters. The shelters are prepared under the guidance of UNHCR in all camps taking into view the family size it has to accomodate. Specific number of refugees are allowed to stay in a shelter. During the course of visit to the camp by the researcher most of the refugee were found complaining about the right to privacy in the shelter.

5.3.2. Water :

A central water system has been established in all the refugee camps by digging a deep borewell. Water storage tanks have also been placed in all the camps. Several distribution points are also maintained to provide required quantity of water. There is no complain of the water system the refugees.

5.3.3. Sanitation and Solid Waste Disposal :

A single latrine facility is provided to each family of refugees instead of common latrines in the all camps. Required number of plastic containers are placed in every camps for waste disposal purposes. The self initiations to keep the camps clean by various refugee committees is also significant. Refugees complained that containers are not adequate in number to meet the requirements of the refugees. 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.

5.3.4. Food Distribution :

World food programme is taking care of distributing food stuff directly to camps warehouses in adequate quantities. Volunteer refugees are also involved in the distribution system. 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 camps. It has received US 7.0 million from the UNHCR to implement these activities and has spent about 0.9 million from its own resources. But now other agencies are slowly taking part in all these activities. As mentioned by the refugees

during the camp visit, they are satisfied with the food distribution system and quantity⁵.

5.3.5. Non-Food Items :

Especially, the Nepal Red Cross Society distributes non-food items like clothes, medicines and provides ambulance services. The Red Cross and Save the Children Fund jointly run the treatment facilities to 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 more than once. 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 refugees of all the camps.

5.3.6. Education :

A secondary level school has been established in all the camps. Qualified refugees are managing and teaching in the schools. Necessary teaching materials and books to the students are supplied by the CARITAS/Nepal. English is the main medium of teaching. Subsequently *Nepali* and *Jonkha* languages are also used in the teaching.

⁵. The present ration-scales are given in chart no. ⁴ in the annexure.

Teacher training workshop is also taking place on a regular basis to the refugee teachers. These workshop were considered to be very successful and both facilitators and trainees felt that they benefitted greatly from participating in such training programmes⁶.

5.3.7. Communication :

Both VHF and HF systems have been established in order to give opportunity to refugee to contact their friends families of the other camps. Basically the communication system is made for the administrative purposes.

5.3.8. Security :

The security system in all camps has been managed with the help of local authorities and refugees. One police post on each camp has also been set up in all the camps. A set of rules have also been enacted by the RCU, CDO office and UNHCR in order to maintain law and order in the camps⁷. However, the constitutional validity of the rule is quite doubtful.

⁶. See, chart no.3, "on Education" in the annexure.

⁷. This is the only official set of rules regarding the refugees in Nepal, which talks about the regulations in the camps.

5.3.9. 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 raw materials for them and pays for the end of products which are related later distributed among the refugees themselves. This facility is basically aimed at imparting skills to refugees to make them self-reliant and to kill the idleness.

5.3.10. Camp Management :

Various committees are working for the betterment of conditions in the camps. RCU is one of the main implementing agency to maintain the camp management. Local committees are also constituted according to the encouragement of the UNHCR under the convenorship of the elected refugee in every camp. A secretary is also appointed among the refugees to assist the convenor. Several sectors head and different committees are constituted for the self and efficient management of the camp. According to the UNHCR officials, this is the process towards the self-management of the camp by refugees themselves⁸.

⁸. For details, see, "Assistance to Bhutanese refugees and Asylums seekers in Nepal," (Information Note by UNHCR, Nepal) 1994. Chart No... on the camp management is also given in the annexure.

5.4. Impact on Nepal :

Nearly 87,000⁹ Bhutanes refugees are camped in different camps namely, *Khujunabari* North and South, *Goldhap*, *Timai*, *Beldangai* I, II and III of Jhapa district and *Sanischara* of *Morang* district of eastern Nepal.¹⁰

The influx has been registered and identity cards have been issued to refugees. While registration process was completed, it was found that all the refugees are genuine citizens of the Kingdom of Bhutan. In the process it is found that 79% possess citizenship certificates, 13% possess land tax receipts, 6% possess school certificates marriage certificate, court documents, service documents, hospital cards etc. Only 2% could not produce any documents. According to them they had documents but were seized by the Bhutanese officials. The influx of Bhutanese refugees in this country has created a grave problem. An attempt will be made throw light on these problems in greater details in the paragraph that ensue.

⁹. The exact number of Refugee in Nepal is not available. But as per the information given by sources in the Home Ministry 87,000 Bhutanese refugees are approximately camped in eastern Nepal, 8 thousands of Bhutanese refugee are outside the camps, and 20 thousand authorised Tibetan Refugees are in Nepal.

¹⁰. See the map of camps areas and population distribution in the annexure.

5.4.1. 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 has made livelihood of the Nepalese citizens difficult. The scarcity of foodstuffs is being acute day by day. As a result price of the most of the commodities has gone up. Since the refugees are not allowed to work outside the camp, a majority of them have virtually nothing to do and pass the whole day idly. They are said to be indulging in the act bordering on nuisance. 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. During the field visit it was found that many of the refugees were passing off their time by playing cards and drinking liquor. Such type of acts have created social conflicts and disorders in the life. It was 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.

5.4.2. Environmental Pollution :

The refugee camps area covers 265 hectares of land protected for afforestation. The trees of peripheral areas 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

markets. It is estimated that the daily consumption of fuelwood by refugees is 150 tons. The landscape nearby the refugee camps has turned bold.

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

5.4.3. Cultural Pollution :

It was found that many 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 danger of promiscuity and the killer HIV virus. Since the refugee are living in groups at one congested place where privacy is not simply possible, easy access to male-female relationship and contact to outsider results in 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.

Thus the presence of Bhutanes refugees in Nepal is putting strains on all aspects of Nepalese social and cultural life. The economic aspects of the impact has not been dealt in this chapter, but the employment opportunities are creating problem among the local people and refugees, though refugees are not formally allowed to work outside the camp.

5.5. Refugee-Affected Areas Rehabilitation Programme

(RARP) :

RARP refers to a portfolio of micro projects which are self-contained, small-scale, unsectoral, community-oriented and designed for quick execution and focussed impact on refugee-hosting areas of *Jhapa* and *Morang* districts in eastern Nepal. These projects will be carried out by locally based NGOs, Village/District Development Committees and District offices of HMG line ministries within an overall project planning and management framework administrated by the Canadian Centre for International Studies and Co-operation (CECI) under a partnership agreement with UNHCR.

These projects were identified through impact and needs assessment surveys of the refugee-affected areas commissioned by UNHCR, UNDP, the Lutheran World service and Oxfam; and they were evolved in consultation with local communities and development authorities to ensure consistency and complementary with existing development

plans and schemes in this region. The RARP portfolio is open-ended and the initial list of projects may be updated, revised or expanded in light of new impact and needs assessments and implementation possibilities. Additional projects can be added to the portfolio if they meet the stated aims and objectives of the RARP programme, are in line with established regional development plans and priorities, do not entail recurring costs which cannot be sustained from an identifiable source and are of interest to potential donors.

5.5.1. Why RARP?

The concentrated presence of some 95,000 asylum-seekers in two of the most densely populated districts of Nepal is having a great impact on the already endangered environmental resources and local economy. The most visible example is the extensive damage to the forest reserves and village pastures adjoining the camps, where refugees have collected the fire wood or foraged their animals. Transportation of large quantities of relief supplies and construction materials to camps causes rapid deterioration of access roads. Water and land resources around camps are increasingly polluted. The Refugees compete with locals for jobs, places in secondary schools, hospitals and other facilities.

HMG faces growing demands from local constituencies to compensate the affected areas through special development

assistance, as distinct from rehabilitation efforts. Such demands are further fueled by the sight of internationally financed assistance operations directed exclusively at the camps, bypassing local communities.

As Nepal has few resources available to apply to such unforeseen needs, it has appealed to the international community to share more of the wider costs of hosting the Bhutanese influx and has specifically requested UNHCR to take the lead in co-ordinating special assistance measures focussing on the affected areas.

5.5.2. Implementation of RARP :

The institutional framework for implementing, monitoring and evaluating the RARP projects is provided for by the UNHCR-CECI Partnership Unit (PFCU) in *Damak, Jhapa* district, headed by an internationally recruited project manager with experience in community - based development projects, the PFCU acting in consultation with district authorities, local communities and the UNHCR sub-Office, *Jhapa*, performs the following functions :

- (a) Prioritized projects for execution.
- (b) Prepares detailed project design, specifications and resource obligation and performance schedules.
- (c) Identifies suitable local implementing agencies.
- (d) Recommends projects and implementing arrangements to the Kathmandu based Project Review Board (PRB).

- (e) Upon receiving approval from the Project Review Board, enters into contracts for project execution with the selected implementing agency and makes related arrangements for technical support/back stopping.
- (f) Disburses funds to the selected implementing agency, monitors project execution and evaluates project results; prepares reports required by donors.
- (g) Carries out further impact and needs assessments, or required, in order to update, revise or expand the RARF portfolio.

5.5.3. Financing :

The initial budgetary requirements of RARF, reflecting the starting composition of the project portfolio, amount to US 617,262.00. UNHCR does not have a mandate to finance projects for non-refugees under its regular programmes. Its contribution has been made possible by a limited terms grant of US 200,000 from the High Commissioner's Special Trust Fund supported by the Japan Committee for Refugee Relief.¹¹

Very recently this programme is expanded and a huge amount is going to be spent in the refugee affected areas at the request of the local authorities and the communities.

¹¹. For details, see, *Briefing Note on the Refugee affected Areas Rehabilitation Programme (RARF) in Eastern Nepi*, Khatmandu : UNHCR, 1994.

5.6. Durable Solution :

The phrase 'durable solution' is a misleading one. Refugee is a continuous process. Unless and otherwise a political solution is sought for the total effort throughout to be a piece meal solution. Infact, there can be a issue-wise durable solution which largely depends on the cause-factor of the country of origin.

The prevention of the refugee condition is the more important than catering their problem. Despite it being a human right problem, stopping the human rights violation in the country of origin helps to bring down the problem at the botton level. The violaion of the civil and political rights is not the mere condition of the refugee issue. At the same time violation of the economic, social and cultural rights, right to self-determination and right to development should also be considered as a background of the refugee conditions.

However, officially, three different durable solutions are used to tackle the refugee problem. They can choose to go back to their own country which is called voluntary repatriation. They can be taken from the country to which they have initially fled to another country which has agreed to admit them which is called resettlement. They can also be accepted permanently in the country which first gave them asylum which is called local settlement.

In the history refugee dynamics most of the repatriations which have taken place have occurred in responses to the changes in the country of origin, for instance, a change of government; the end of war or the withdrawal of the colonial power etc. The General Assembly, when establishing UNHCR, called upon governments to assist in the promotion of voluntary repatriation, which was declared to be one of UNHCR's principle functions.¹² It seems that better option of the durable solution of the refugee issue is the voluntary repatriation. The prerequisite for the voluntary repatriation is the change of the attitude of the government towards the refugees or the political change which necessarily is the change of the government.

To come to the Bhutanese refugees, issue the prerequisite for the voluntary repatriation is the democracy and a fair human rights condition in Bhutan. If not so, there must be a clear attitude towards the Southern Bhutanese about their ethnic autonomy.

Even though some of the refugees are even trying to settle down in Nepal basically in small towns and urban areas, a majority of the refugees are willing to go back their home. Economically most of the refugees are incapable to maintain their lives without the support of UNHCR because Nepalese government has already shown its

¹². G A Res 428(V), para, 2(d); Annexe, Paras 1, (8c), 9.

incapability to support them. The refugees are rising inside the camps and they are scattered. Therefore, the UNHCR is encouraging them to go back to their home as a voluntary repatriation measure. But there is a little possibility for them to do so until and unless the bilateral talks resolve the problem successfully.

Nevertheless at every stage the UNHCR and other humanitarian agencies including both the governments have a vital role for their repatriation of the refugee. Mainly UNHCR has a great responsibility for safe repatriation of the refugees.

Voluntary repatriation being an efficient as a difficult scheme for implementation some international principles have been developed both to protect refugees as well as to foster this solution. It is worth recalling the following principles.¹³

- (i) Refugees have a right to return voluntarily to their country of origin. This right, recognised in international law, is normally respected by countries of origin.
- (ii) Repatriation must only take place at the freely expressed wish of the refugees themselves.

¹³. Rick A. Stainsby "The Seven Principles of Voluntary Repatriation", *Refugee*, No.57, Oct. 1988, pp.33-4.

- (iii) Voluntary repatriation must be carried out under conditions of safety and dignity, preferably to the refugees, place of residence in their country of origin.
- (iv) There should be a monitoring of situation of returnees to ensure that the basic conditions of safety and dignity have been met.
- (v) The UNHCR should wherever appropriate, take initiatives to promote voluntary repatriation, provided the circumstances which gave rise to refugee movement have changed fundamentally and to an extent to permit return in safety and dignity.
- (vi) the action in favour of voluntary repatriation should receive the full support and co-operation of all states involved.
- (vii) Where necessary and possible, the UNHCR should establish and implement assistance programmes for returnees.

Regarding the conducive voluntary repatriation of refugees, it is required to qualitatively distinguish between the application of the cessation clause in article 1(5) and (6) of the 1951 Refugee Convention and the promotion of voluntary repatriation. Where conditions prevailing in a refugee's country of origin evince a fundamental change of circumstances of such a "profound and

enduring nature"¹⁴ as to bring the refugees need for international protecting to an end, the cessation clause in Article 1(5) and (6) would normally apply. But for the application of cessation clause the following three basic criteria must be fulfilled:

- (i) there should be a major political and significant social change in the country of origin;
- (ii) it should be a truly effective change;
- (iii) it must be a durable change.

However, the logic behind the encouraging voluntary repatriation is to give the refugee an opportunity to voluntarily return home before formally he/she ceases to be a refugee. In this context the following two conditions must be fulfilled:

- (i) The process of bringing about a 'fundamental change of circumstances' in the sense of the cessation clause is often subtle and reflected over a number of years. At some point along this process, the changes that have occurred may create sufficient condition permitting voluntary repatriation.
- (ii) While considering the cessation clause the essential element is the fundamental, effective and durable character of the changes, whereas, the central focus to the promotion of refugee repatriation is the voluntary nature of the repatriation.

¹⁴. Executive Committee Conclusion No.69 (XL III).

The basic underlined philosophy of the above two points is that there must be a drastic socio-political change in the country of origin of the refugee. But the situation in Bhutan has not changed nor is likely to be changed in foreseeable future. The minority government is still head bound to settle actively regulating the political and ethnic issues in its own terms, and thus violating the basic and fundamental human rights of the people. By and large, in this context, if the voluntary repatriation process starts it will be against of the underlined philosophy of voluntary repatriation because the repatriation should ensure that there will be no fear of persecution, violence of human rights or new departures.

In fact, in this context, for a fair repatriation there must be a change in Bhutan which can accommodate all the refugees in the safe condition that they were before their departure.

During the time of voluntary repatriation, the government of Nepal and Bhutan have to sign an agreement smoothing the bottleneck for useful and true repatriation. The role of the UNHCR and any other UN agency to monitor and engage in rehabilitation programme after repatriation should be there as per the philosophy of voluntary repatriation. Which is very essential in the given Bhutanese refugee scenario.

In conclusion, for the durable solution of the issue, the bilateral talks should be continued. In case, if both countries think it necessary to involve India as a mediator there is no constraint in doing so. In fact, it would be an effective political measure. However, at the same time UNHCR and refugees also shouldn't be forgotten in that process. As a suggestion, according to the preferable conditions, both the spontaneous repatriation and organised repatriation are possible in the case of Bhutanese refugees. However, to solve the problem responsibly and meaningfully, organised repatriation is the preferable one in the long run.¹⁵

¹⁵. Repatriation either can be organised or spontaneous. Organised repatriation takes place with the agreement of all the parties concerned. Spontaneous repatriation on the other hand, takes place at the initiative of and is managed by the refugee themselves. For details see, G J Coles, *Voluntary Repatriation: A Background Study*, Geneva: UNHCR & International Institute for Humanitarian Law, 1985. And also see, B.S. Chmni, "The Meaning of the Words and the role of the UNHCR in Voluntary Repatriation", *International Journal of Refugee Law*, Vol.5, No.3, 1993.

CHAPTER VI

CONCLUSIONS

6.1. Conclusions :

Refugees are a problem of global concern over the world today. In respect of the peculiarities of this situation, and keeping in mind the back drop one may come to certain conclusions.

The necessity of amending the definition of the very concept of refugee is of prime importance. As of now, the definition only covers civil and political rights, there is no mention of socio-economic or cultural rights. It is shortcoming which has significant implications in the given the peculiarities of the situation. Further, the definition, does not touch upon economic refugees, temporary refugees etc. There is a necessity of evolving the fresh definition in the light of the OAU Convention and Cartazana declaration. These instruments have covered all the possible causes of the refugee problem.

The close of the cold-war introduces new dimension to the refugee problem. This was paralleled by the evolution of new concepts into refugee law. A number of UN Agencies and in particular the UNHCR has, on an ad-hoc basis taken up the challenges posed by these new developments. The UNHCR has

historically, to this day, has always taken up the challenges posed by refugee crisis and has offered humanitarian assistance to the best of its ability. The UNHCR, however, being financially dependant on voluntary contributions, has not always been able to live up to its goals, and often fallen short of the targets which it has set up for itself.

The role of the UNHCR, in extending humanitarian assistance in this particular context too, though limited and constrained has been very beneficial. It is essential that such assistance should continue until a full and final solution may found to this problem.

One of the primary principles of international refugee law, namely, the principle of non-refoulment, has been adhered to by Nepal. However, even in this regard, Nepal has been adhering to this principle indirectly as a policy stand rather than incorporating it as an integral part in its legal regime.

The primary factor of deterrence behind Nepal's shying away from ratifying the 1951 refugee convention is given that the Convention does not enforce strict burden sharing, but rather insists voluntary contribution. There is a fear that consequent to ratification, Nepal may be imposed with an unmanageable burden with no guarantee of external assistance. Simultaneously, the 1951 Refugee Convention doesn't provide the provision of the compensation to the refugee producing country.

The Bhutanese refugee problem is essentially a creation of the depopulation policies of the Bhutanese Governments. In this context, it executed series of policies and measures which were the prime reasons behind the present situation. These measures, in addition to fomenting the refugee problem, were also the cause behind serious violations of human rights, and ethnic and cultural rights.

The physical condition of Bhutanese refugees, in the context of comparative global refugee situations, is relatively better. Thanks to the availability of a modicum of assistance. Their plight however lies in desire to return to their homeland, and in essence it is the deprivation of their citizenship rights, homes, jobs and property which is central to their problems.

The initial welcome, which such refugees felt in the host country, on account of ethnic similarity has today gradually eroded, given the perceptible burden that they have begun imposing on the local economy. This is a condition which could greatly hamper any regular continued assistance including that from the UNHCR which they might have been benefitting from. In the given context, the refugees and the Nepalese Government, appear keen on arriving at a durable solution to their problem.

Given the fruitlessness and frustrations of the outcome of the bilateral negotiations, there is another dispute as to what ought to be the final means to a permanent solution.

The possible means to arriving at a solution as perceptible today are:

- (i) Trilateral talks.
- (ii) Internationalization of the refugee problem.

So far as the solutions is concerned, political parties and organizations of the refugees as well as Human Rights Organizations have been making concerted and continuous attempts to find a solution. However, the time that such an attempt may involve, every measure may prove expensive for Nepal as well as the refugees.

As regards the former solution, the involvement of India, could be on invitation by either Nepal or Bhutan could be a step. India's involvement bears meaning if one takes into account the Indo-Bhutanese friendship treaty. It would be politically expedient to involve India, as it would be position to force Bhutan to forge a durable solution besides hastening the political process as a whole.

It is also necessary to highlight the necessity of an independent UN Agency to monitor the situation as well as the need for the participation of representatives of the refugees themselves in the trilateral talks.

While on the one hand the above measures may be emphasised, on the other, one must note that any solution requires certain preconditions among them necessarily being-

- (i) Democratization of Bhutanese Politics.
- (ii) Ensuring just conditions of human rights.

As a short term measure, what may be worked towards, is the recognition of the ethnic and cultural rights of the Southern Bhutanese.

Another conceivable solution is the assimilation of these refugees within local communities in Nepal. However, in the context of exploding population, coupled with the economic on the local communities, this is not feasible. Further more such an assimilation may open the flood gates for millions of potential refugees in future. Thus the option such a measure would be a blunder for Nepal.

Another possible answer could be the resettlement in a third country. The option of moving to any other country would be open only to the educated few. For a great majority, resettlement in India could be the only hope. As in the case of Tibetan refugees, those who were evicted from Bhutan and settled in North Bengal indicates that North Bengal would be a viable location. However, given the newly generated fear of "Greater Nepal" and "Greater Sikkim", it would be difficult to convince the Government of India, in particular the State Government of West Bengal to agree to such a proposal.

Given the compulsions of the situation and the inviability of other solutions, it seems that repatriation

would be the only solution. This would also be advanced in keeping with the desires of the refugees themselves. Such repatriation would have to be under the monitoring, guidance and supervision of certain independent UN agencies which would have to provide the security, special care, etc. for the refugees.

Bilateral talks, which have not achieved much headway in respect of categorization, there is a need for Nepal to reorient its strategy, and take up the matter with a more concerted and technical approach.

Given the fact that a number of Tibetan refugees are already staying in Nepal, and that the influx of refugees, seems to be turning into a common phenomena, there is a need to underline the necessity and importance of a codified legislation in Nepal - a sort of Refugee Act - so that Nepal could have a clear, transparent, systematic, and objective approach towards these issues.

The only existing universal instrument is the 1951 convention. Its provisions, besides being of general applicability are also of fundamental significance.

There is a need to incorporate new values, international commitments, and also a moral fibre in the positive law so that conditions may be created for the progressive development of refugee law. Taking into account the social and

humanitarian concerns, it is suggested that Nepal should accede to the 1951 convention.

6.2. Recommendations :

- (1) PREVENTIVE STRATEGIES SHOULD BE INITIATED to handle the refugee problem properly. An independent monitoring body within UN has to play a vital role with the help of recently established UN office for Research and Collection of Information (UNRCI), to the early warning mechanism and potential refugee emergencies with the support of Secretary-General and Security Council.
- (2) HUMAN RIGHTS MONITORING SYSTEM should be developed to tackle the refugee flow, as Security Council has shown its growing concerns in human rights and refugee emergencies.
- (3) THE REGIONAL ARRANGEMENT should be made on the Long-term basis to provide the relief and assistance as well as conflict resolution machinery.
- (4) THE UN DEFINITION OF REFUGEE should be amended to bring in the light the OAU Convention, which should provide -
 - (a) no distinction between 'POLITICAL' and 'ECONOMIC' refugees.
 - (b) complete respect to the principle of NON-REFOULEMENT in regard to the 'TEMPORARY REFUGEE'.

In this regard Article 45 of the 1951 Convention can be invoked.

- (5) VOLUNTARY NATURE OF REPATRIATION should be ensured for the durable solutions.
- (6) The INTERNATIONAL and UNIFORM concepts and practices should be encouraged instead of UNILATERAL practices. UNHCR should take initiative for the better protection of refugees.
- (7) An attempt should be made to address the causes of refugee movement, by lobbying the international community to bring about international instruments which call upon Governments to respect and safeguard peoples basic civil and political rights, as well as the rights of minorities.
- (8) An attempt should be made to create regional and international mechanisms that would promote appropriate shared responsibility for the needs of refugees.
- (9) International assistance should be extended towards countries of asylum. Voluntary repatriation, in safety and dignity, should be emphasised.
- (10) Where migrants are documented, they ought to be placed on a higher pedestal and attempts should be made to give them some form of meaningful employment, though it may be temporary.
- (11) As regards the Bhutanese refugee problem BILATERAL TALKS have proved fruitless as Nepal is not able to handle it properly, INDIA MAY BE INVITED for

amicable solution of the Bhutanese refugee problem. In case of failure of the both BILATERAL and TRILATERAL talks, issue should be INTERNATIONALIZED to pressurise Bhutan.

- (12) ORGANISED and SAFETY REPATRIATION should be encouraged, where, independent UN agency must involve to monitor the REPATRIATION and REHABILITATION of the refugees.
- (13) Nepal has to initiate for the CODE OF CONDUCT of the repatriation and it has to be signed by the both Nepalese and Bhutanese Governments for the fair repatriation.
- (14) UNHCR and other HUMANITARIAN ORGANISATIONS must continue their SUPPORT and ASSISTANCE to the Bhutanese refugees.
- (15) The prerequisite of the repatriation is the DEMOCRATIZATION OF THE BHUTANESE GOVERNMENT, if not so, ETHNIC AUTONOMY should be given to the Southern Bhutanese.
- (16) Nepal should promulgate the REFUGEE LEGISLATION to handle the refugee problem as a long term measure.
- (17) Since NEPAL is following all the general and specific provisions of the 1951 CONVENTION, it SHOULD SIGN the Convention to response the refugee problem progressively.

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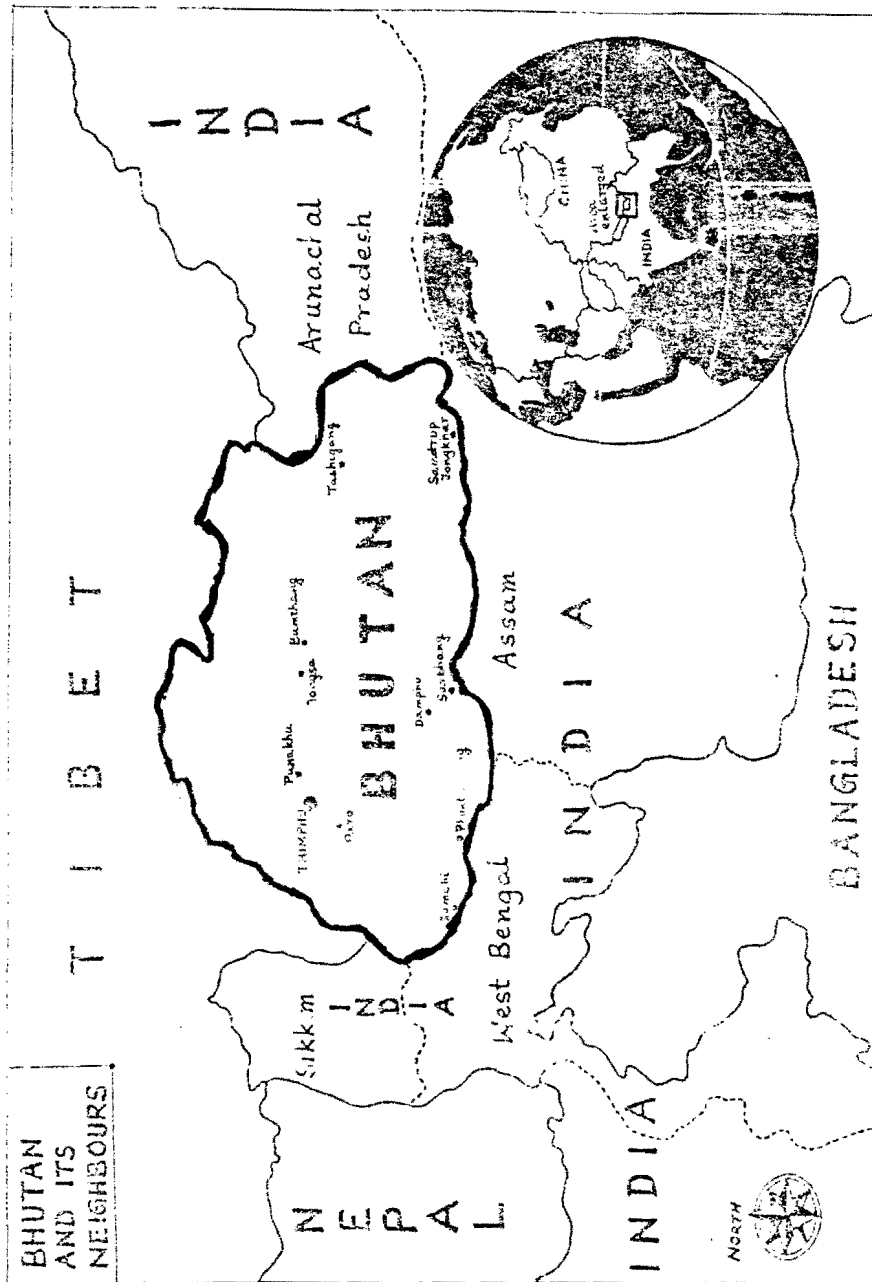
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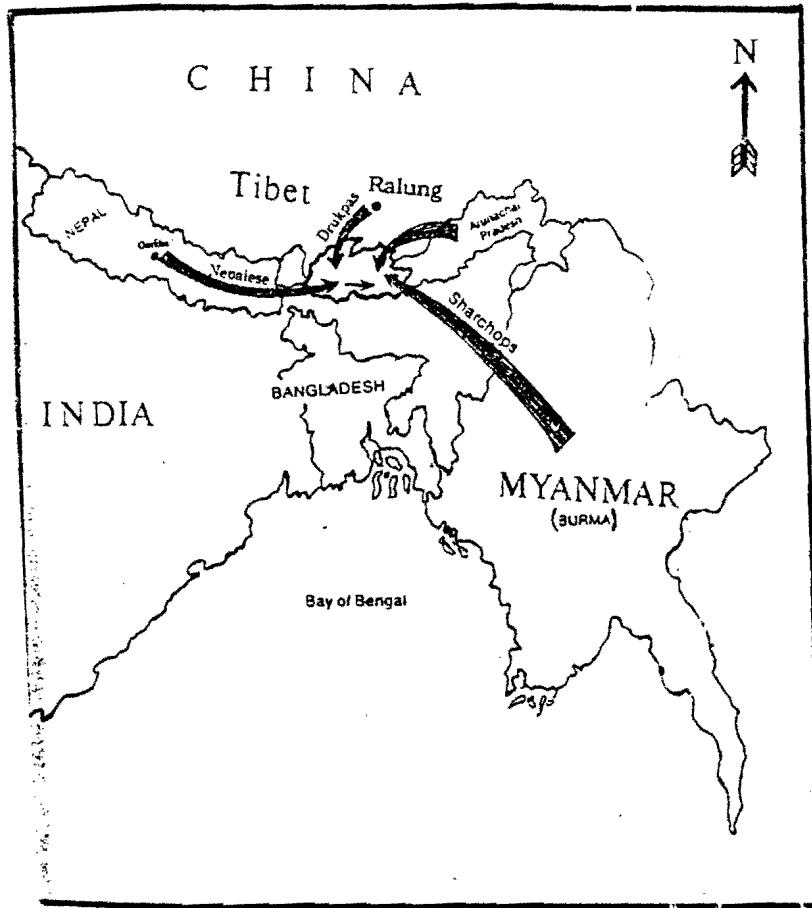
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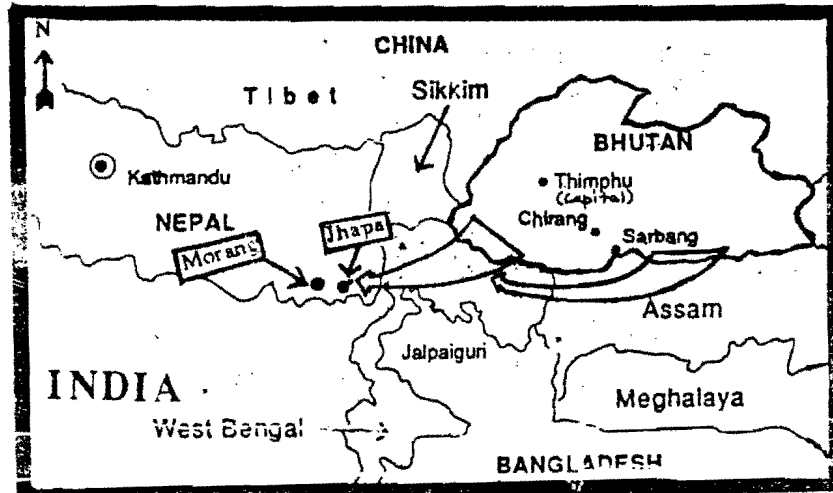
ANNEXURES



Migration History of Three Major Ethnic Groups



Source: ANURA BHUTAN



Locations of Refugee Camps in eastern Nepal

Source: AHORA BHUTAN

Refugee Camps in the Eastern Nepal:

- (i) Timal
 - (ii) Khudanabari, [North and South] (2 camps)
 - (iii) Goldhap
 - (iv) Baldangi, I, II & III (Three camps)
 - (v) Pathari Sanishare
- } Jhapa
- } Morang

Total 8 Camps:

ETHNIC DIVERSITY OF BHUTAN

- | | |
|------------------------|-------------------|
| 1. Dravidian Adhivasis | 8. Brokpas |
| 2. Bumthangpas | 9. Dagpas |
| 3. Doyas | 10. Drukpas |
| 4. Gasapas | 11. Khengpas |
| 5. Kurteopas | 12. Mangdipas |
| 6. Nepalese | 13. Sharchhopas |
| 7. Sikkimese | 14. Tibetan, etc. |

MAJOR ETHNIC GROUPS

- | | | |
|---------------|-------|-------------------------|
| 1. Sharchhops | _____ | Eastern Part of Bhutan |
| 2. Drukpas | _____ | North West of Bhutan |
| 3. Nepalese | _____ | Southern Part of Bhutan |

The Influx of Refugees:

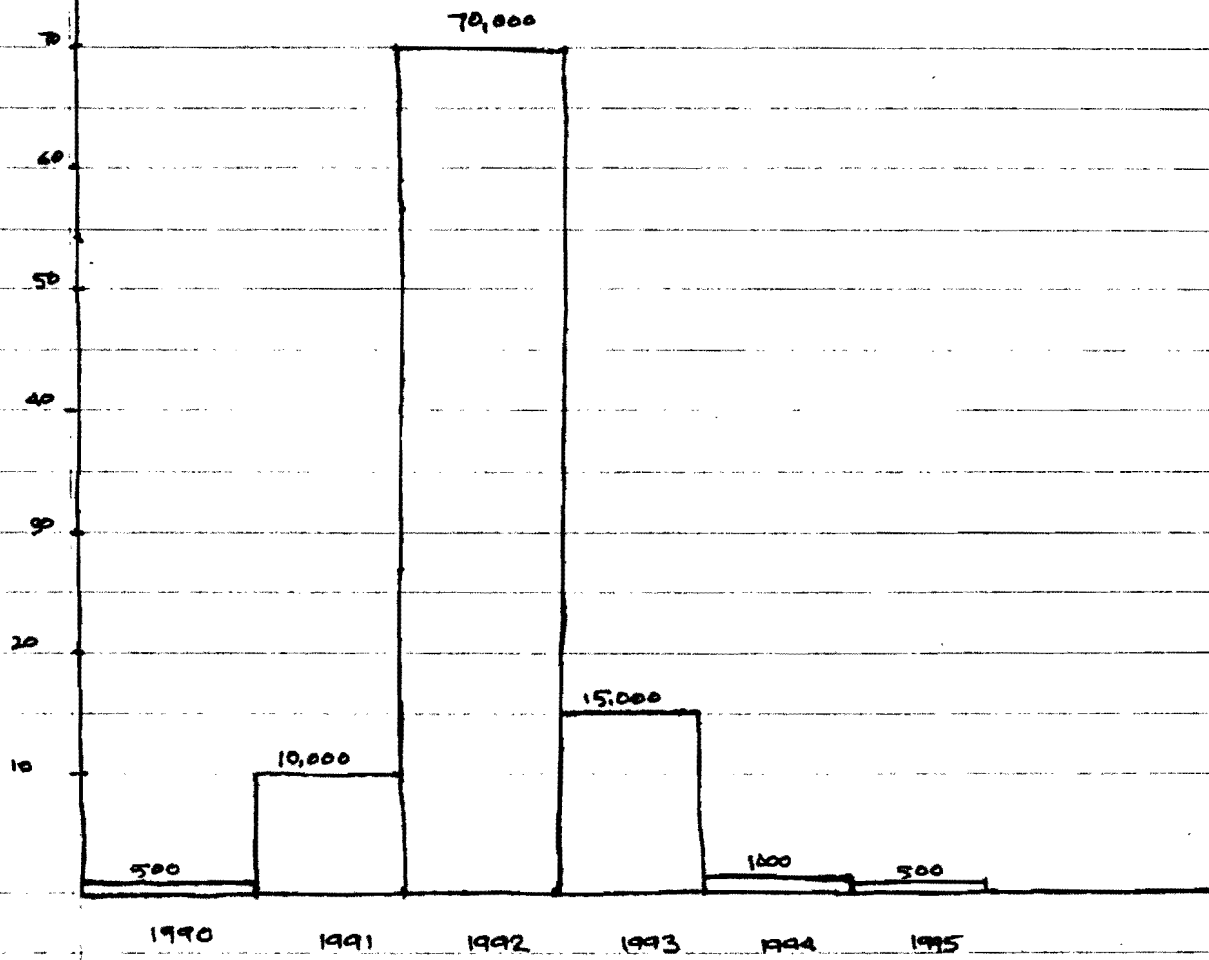


Chart on Education

Education type	Students			Teachers		
	M	F	Total	M	F	Total
Primary	15,712	13,864	29,576	483	71	554
Secondary	132	114	246	12	-	12
NFE	1,234	4,296	5,530	40	123	169
Total	17,078	18,274	35,352	541	194	735

Source: UNHCR, Nepal, 1994.

Rationing Chart

Basic rationing:

Rice 430 gr./person/day
Pulses 60 gr./person/day
Vegetable oil 25 gr./person/day
Sugar 20 gr./person/day
Salt 10 gr./person/day

Supplementary rationing:

Blended food 80 gr./person/day
Sugar 15 gr./person/day
Vegetable oil 10 gr./person/day

Source: UNHCR, Nepal 1994

DEMOGRAPHIC PROFILE

POPULATION BREAK-UP IN PERCENTAGE TERMS

Ethnic Group	Percentage of Population
Drukpas	15%
Sharchhops	33%
Southern Bhutanese	50%
Others	2%
Total	100%

DEMOGRAPHIC REPRESENTATION IN NATIONAL ASSEMBLY

Ethnic Group	Reps. in Assembly	Rep ^s n. Percentage
Drukpas	77	51%
Sharchhops	58	38%
Southern Bhutanese	16	11%
Total	151	100%

ANNEXURE No. 1

**BHUTAN MARRIAGE ACT, 1980
Marriage with a non-Bhutanese**

Marriage with a non-Bhutanese Kha 2-1

If a Bhutanese citizen wants to obtain a marriage certificate from a court of Law to enter into matrimony with a non-Bhutanese spouse whether residing in the kingdom or outside, he/she will be required to produce two persons as guarantors before the court. One of them must be a reliable Bhutanese citizen in the knowledge of the court and both of them must possess thorough knowledge about the bride and the groom. Thereafter, the matter shall be processed in accordance with the article kha-1-5 as mentioned above (Ref-Thrimshung 1957, article kha 2-2).

A non-bhutanese married to a Bhutanese citizen must abide by the traditional customs and the citizenship act. Kha 2-2

The question whether a non-Bhutanese spouse shall acquire Bhutanese citizenship or not whether he/she shall be allowed to live in the kingdom or not shall depend on the citizenship act, traditional and cultural requirements and the government directives issued from time to time.

Rules and regulations to be followed by a non-Bhutanese married to a Bhutanese citizen. Kha 2-3

A non-bhutanese married to a Bhutanese souse must abide by the following rules and regulations irrespective of whether he/she acquires citizenship.

Promotions shall not be granted to a Bhutanese citizen married to a non-Bhutanese. Kha 2-4.

Any Bhutanese citizen working under the Government of Bhutan shall not be granted promotion with effect from June 11, 1977 if married to a non-Bhutanese or such a person will never get promotion beyond the post he/she held at the time of marriage with the non-Bhutanese. Such a person shall not be promoted beyond the post of subdivisional officer.

Promotions shall not be granted to a Bhutanese citizen married to a non-Bhutanese. Kha 2-5.

Whichever post a Bhutanese citizen held prior to marriage with a non-Bhutanese or prior to June 11, 1977, such a person shall not be granted promotion beyond the post he held from the date of marriage with the non-Bhutanese or after June 11, 1977.

A Bhutanese citizen married to a non-Bhutanese shall not be employed in the national defence department or in the Ministry of Foreign Affairs. Kha 2-6.

Any Bhutanese citizen employed in the national defence department or in the Ministry of Foreign Affairs shall be removed from such services if he/she is married to a non-Bhutanese. No Bhutanese shall be employed in these two departments if married to a non-Bhutanese.

A Bhutanese citizen married to a non-Bhutanese shall not get facilities enjoyed by other citizens. Kha 2-7

A Bhutanese citizen whatever status he/she may enjoy shall not be entitled to other facilities and welfare of the government including the following assistance upon marriage with non-Bhutanese:

- (a) Distribution of land.
- (b) Cash loans.
- (c) Seeds for cultivation and oxen for ploughing fields.
- (d) Livestock and income generating livestock schemes of the department of Animal Husbandry.
- (e) Treatment abroad and
- (f) Grant of capital for factory, industry or trade.

A Bhutanese married to a non Bhutanese shall not be entitled to education and training abroad. Kha 2-8

A Bhutanese citizen receiving education and training under the government funding shall not be entitled to the

following facilities and welfare upon marriage with a non-Bhutanese:

- (a) No assistance shall be provided by the government to undertake education or training either inside Bhutan or outside.
- (b) Government assistance being rendered for education or training shall be discontinued from the day of marriage.
- (c) The expenses incurred by the government on education or training until the day of marriage will be required to be refunded to the government.
- (d) A Bhutanese citizen undergoing education or training abroad under a foreign scholarship shall lose it immediately upon marriage with a non-Bhutanese. In such a case the government of Bhutan shall request the concerned foreign government to stop the funding.

**Religion of a non-Bhutan married to a Bhutanese citizen.
Kha 2-9**

If a non-Bhutanese married to a Bhutanese citizen is allowed to live in the kingdom, then, he/she shall not be permitted to preach other religion or start a new religion except the religion of the kingdom of Bhutan.

A non-Bhutanese married to a Bhutanese citizen shall be required to follow the culture of the kingdom and the government orders. Kha 2-10

A non-Bhutanese married to a Bhutanese citizen, if allowed to live in the kingdom irrespective of whether he/she

acquires the Bhutanese citizenship shall be required to follow the traditional customs, government orders and laws in force in the kingdom.

A non-Bhutanese married to a Bhutanese citizen shall be required to comply with the Marriage Act. Kha 2-11.

A non bhutanese married to a Bhutanese citizen irrespective of whether he/she acquires Bhutanese citizenship or not shall be required to abide by the rules included in the provisions of this Marriage Act on all matters of Marriage.

ANNEXURE No 2.

CITIZENSHIP LAW OF 1958

The National Law of Bhutan

Having found necessary to amend the law relating to the acquisition and deprivation of Citizenship which has been in force till date, His Majesty the Druk Gyalpo, in accordance with the suggestions put up by the Royal Advisor, people and the monastic body, is pleased to incorporate the following change:

1. This law may be called the National Law of Bhutan 1958 and shall be effective throughout the Kingdom of Bhutan.
2. This law shall be in force throughout the Kingdom of Bhutan from the day of its enactment.
3. Any person can become a Bhutanese National:
 - a. If his/her father is a Bhutanese National and is a resident of the Kingdom of Bhutan; or
 - b. If any person is born within or outside Bhutan after the commencement of this law provided the previous father is a Bhutanese National at the time of his/her birth.
4. (a) If any foreigner who has reached the age of majority and is otherwise eligible, presents a petition to an official appointed by His Majesty and taken an oath of loyalty according to the rules laid down by the Government to the satisfaction of the concerned official, he may be re-enrolled as a Bhutanese National, provided that:
 - i. the person is a resident of the Kingdom of Bhutan for more than ten years; and
 - ii. owns agricultural land within the Kingdom.(b) If a woman, married to a Bhutanese National, submits petition and takes the oath of loyalty as stated above to the satisfaction of the concerned official and that she has reached the age of majority and is otherwise eligible, her name may be enrolled as a Bhutanese National.
- (c) If any person has been deprived on his Bhutanese Nationality or has renounced his Bhutanese Nationality or forfeited his Bhutanese nationality the person cannot become a Bhutanese national again unless His Majesty grants approval to do so.
5. (a) If any foreigner submits petition to His Majesty according to rules described in the above sections, and provided the person has reached the age of majority and is otherwise eligible, and has served satisfactorily in Government service for at least five years and has been residing in the Kingdom of Bhutan for at least 10 years, he may receive a Bhutanese Nationality Certificate. Once the certificate is received, such a person has to take the oath of loyalty according to the rules laid down by the Government and from that day onwards, his name will be enrolled as a Bhutanese National.
 - (b) Any foreigner who has reached the age of majority and is otherwise eligible, can receive a Nationality Certificate provided that in the opinion of His Majesty his conduct and his service as a Government servant is satisfactory.
6. Any person who:
 - i. becomes a national of a foreign country and resides in that country; or
 - ii. has renounced Bhutanese nationality and settled in a foreign country; or
 - iii. claims to be citizen of a foreign country if pledges oath of loyalty to that country; or
 - iv. registered as a Bhutanese national but has left his agricultural land or has stopped residing in the Kingdom; or
 - v. being a bona-fide national has stopped residing in the country or fails to observe the laws of the Kingdom as per his National Certificate, shall forfeit his nationality.
7. (a) If a Nationality Certificate has been obtained on presentation of false information or wrong facts or omission of facts, the Government may order the Certificate to be cancelled.

- (b) i. If any citizen or national, engages in activities against His Majesty, or any national of Bhutan; or
 - ii. When Bhutan and India are engaged in a war with some other country if any citizen or national of Bhutan is found indulging in business, correspondence or helping the enemies; or
 - iii. If any person, within the period of five years from the day when he was enlisted as a Bhutanese National, if imprisoned in any country for more than one year, the person is liable to be deprived of his nationality without prior notice.
8. To implement this law, if necessary, His Majesty may incorporate any additional rules.
9. This law supersedes all laws, rules and regulations, ordinances relating to the acquisition and forfeiture of nationality from the day of its commencement.

Appendix II

CITIZENSHIP ACT - 1958 (AS REVISED BY THE LHENGYEL SHUNGSOG IN ITS 8TH SESSION HELD ON MARCH 22, 1977)

Conditions required for the grant of Citizenship

1. In the case of government servants an applicant should have completed 15 years of service without any adverse record.
2. In the case of those not employed in the Royal Government, an applicant should have resided in Bhutan for a minimum period of 20 years.
3. In addition, an applicant should have some knowledge of the Bhutanese language both spoken and written and the history. Only those applicants who fulfil the above requirements may apply for grant of Citizenship to the Ministry of Home Affairs, which will ascertain the relevant facts and submit the application to the Royal Government for further action.

Eligibility and Power

1. The power to grant or reject an application for Citizenship rests solely with the Royal Government. Hence, all applicants who fulfil the above conditions are not necessarily eligible for grant of Citizenship.
2. Any applicant hold the Citizenship of another country or with criminal records in other countries or those who are related to any person involved in activities against the people, the country and the King should not be granted Citizenship even if all the other conditions are fulfilled.
3. A person granted Citizenship by Royal Government is required to register his/her name in the record of the Royal Government from the date of the grant of Citizenship.
4. All those granted Citizenship are required to pledge (subscribe) to the following oath to be administered by the Home Minister:
 - a. Henceforth, I owe allegiance only to His Majesty the King of Bhutan.

b. I shall abide by and observe the Rules and Regulations of the Royal Government with unswerving reverence.

c. I shall observe all the customs and traditions of the people of Bhutan.

d. I shall not commit act against the TSA-WA-SUM: the king, country and people.

e. As a citizen of Bhutan, I hereby take this oath in the name of Yeshey Geompo and undertake to serve the country to the best of my abilities.

Special Grant of Citizenship

1. A foreigner in possession of special or extraordinary qualifications will be granted citizenship without consideration of the required conditions except for the administration of the oath of allegiance.

Renouncement and Re-application for Citizenship

1. In case a Bhutanese citizen, who having left the country returns and applies for citizenship, the Royal Government shall keep the applicant on probation for a period of at least two years. On successful completion of the probation period, the applicant will be granted citizenship provided the person in question is not responsible for any activities against the Royal Government.
2. A foreigner who has been granted Bhutanese Citizenship may apply to the Royal Government for permission to immigrate with his/her family. Permission will be granted after an investigation of the circumstances relating to such a request. After grant of permission to immigrate, the same person may not re-apply for Bhutanese citizenship. In the event of an adult family member of any person permitted to leave the country, does not wish to leave and makes an application to that effect, the Home Minister will investigate the matter and will permit such persons to remain in the country after ascertaining that the country's interest is not harmed.
3. If anyone, whether a real Bhutanese or a foreigner granted citizenship, applies for permission during times of crisis such as

war, the application shall be kept pending until normalcy returns.

Procedure for Acquisition of Citizenship

CHA

1. When a Bhutanese woman is married to a foreigner, only she is a citizen, her husband and children will not be considered a Bhutanese citizen. If they desire Bhutanese citizenship, such cases will be considered in conformity to the procedure laid down in this Act applicable to foreigners applying for citizenship.
2. When a Bhutanese man is married to a foreign woman the children will be considered Bhutanese. The wife will have to fulfill the requirements of this Citizenship Act as applicable to foreigners applying for citizenship.
3. In the case of Bhutanese citizens residing in other countries, the Citizenship Law subhead KA-12 No.2 which is reproduced below, shall be applicable.

Reproduction of Thrimshung KA 12 - 2

1. With the exception of a genuine Bhutanese whose family domiciled in Bhutan but he himself had to stay away in other country in connection with works of the Royal Government, private business or religious practices but other who live in foreign countries, serve the government and people of such countries or have settled in a foreign country or holding official post of a foreign government are considered non-nationals.

Registration Procedure

CHA

1. All children born of a father who is a Bhutanese citizen should be registered in the official record within one year of their birth whether the children are born inside or outside the country.
2. All children born within the country are required to be listed with the Dzongkhag or the Duingthag of their birth. Children of Bhutanese parents born in other countries should be recorded with the Royal Bhutanese Embassies. Where there are no

Embassies nearby the information should be conveyed to the Home Ministry through correspondence.

3. If a child is more than one year and not registered within that period, registration is not permitted but may apply for registration to the Home Ministry by the concerned local authority. The Home Ministry will then investigate the matter before granting permission for the registration.

Validity of Census Record

JA

1. All census reports must bear the Seal of the Royal Government and the signature of an officer not lower in rank than a Dzongdag. Other records will not be acceptable.

Enquiry of Kashog

NYA

1. All Kashogs with the people which were not granted by His Majesty will be investigated into by the Home Minister and reported to the Royal Government.

Penalty for Violation of Rules

TA

1. Anyone having acquired Bhutanese citizenship involved in act against the King or speaking against the Royal Government or being in association with people involved in activities against the Royal Government shall be deprived of their Bhutanese Citizenship.
2. In the case of any person knowingly presenting false information at the time of applying for citizenship, the Kashog granting him/her citizenship will be withdrawn after due verification of the false information presented.

THA: Status of the Provision

1. In case of conflict between the provisions of this Act and the provisions of any previous laws, rules and regulations, provisions of this Act shall prevail.

Appendix III

THE BHUTAN CITIZENSHIP ACT, 1985

1. THIS ACT MAY BE CALLED THE BHUTAN CITIZENSHIP ACT, 1985. It shall come into force from Twenty-third day, 4th month of Wood Bull year of the Bhutanese calendar corresponding to June 10, 1985. In case of conflict between the provisions of this Act and the provisions of any previous laws, rules and regulations relating to citizenship, the provisions of this Act shall prevail.

2. CITIZENSHIP BY BIRTH

A person whose parents are both citizens of Bhutan shall be deemed to be a citizen of Bhutan by birth.

3. CITIZENSHIP BY REGISTRATION

A person permanently domiciled in Bhutan on or before December 31, 1958 and, whose name is registered in the census register maintained by the Ministry of Home Affairs shall be deemed to be a citizen of Bhutan by registration.

4. CITIZENSHIP BY NATURALIZATION

A person shall be deemed to apply for Bhutanese citizenship to the Ministry of Home Affairs in Forms KA-1 and KA-2 must fulfil all the following conditions to be eligible for naturalization:

- i. The person must have attained the age of 21 years, and 15 years in the case of a person either of whose parents is a citizen of Bhutan;
- ii. The person must be mentally sound;
- iii. The person must have resided in Bhutan for 15 years in the case of Government employees and also in the case of applicants, either of whose parents is a citizen of Bhutan and 20 years in all other cases, and this period of residence must be registered in the records of the Department of Registration;
- iv. The person must be able to speak, read and write Dzongkha proficiently;

- v. The person must have good knowledge of the culture, customs traditions, and history of Bhutan;
- vi. The person must have good moral character and should not have any record of imprisonment for criminal offenses in Bhutan or elsewhere;
- vii. The person must have no record of having spoken or acted against the King, country and people of Bhutan in any manner whatsoever; and
- viii. The person must be prepared to take a solemn Oath of Allegiance to the King, Country and People of Bhutan according to the prescribed Form KHA. On receipt of the application Form KA-1 and KA-2 for naturalization, the Ministry of Home Affairs will take necessary steps to check all the particulars contained in the application. The Ministry of Home Affairs will also conduct written and oral tests to assess proficiency in Dzongkha and knowledge of the culture, customs, traditions and history of Bhutan. The decision of the Ministry of Home Affairs on the question of eligibility for naturalization shall be final and binding. The Royal Government of Bhutan also reserves the right to reject any application for naturalisation without assigning any reason.

5. GRANT OF CITIZENSHIP

- a. A person whose application for naturalisation has been favourably considered by the Ministry of Home Affairs, shall take the Oath of Allegiance according to the Form KHA of this Act.
- b. A person shall then be deemed to be a citizen of Bhutan upon receiving a Kashog from His Majesty the King of Bhutan in accordance to Form GA of this Act.

6. TERMINATION OF CITIZENSHIP

- a. Any citizen of Bhutan who acquires the citizenship of another country shall cease to be a citizen of Bhutan. The wife/husband and children of that person if they are Bhutanese citizens shall have the right to remain as citizens

of Bhutan provided they are permanently domiciled in Bhutan and are registered annually in the Citizenship Register maintained by the Ministry of Home Affairs.

- b. Any citizen of Bhutan who has acquired citizenship by naturalisation may be deprived of citizenship at any time if it is found that naturalisation had been obtained by means of fraud, false representation or the concealment of any material fact.
- c. Any citizen of Bhutan who has acquired citizenship at any time if that person has shown by act or speech to be disloyal in any manner whatsoever to the King, Country and People of Bhutan.
- d. If both the parents are Bhutanese and in case the children leaving the country of their own accord, with the knowledge of the Royal Government of Bhutan and their names are also not recorded in the Citizenship register maintained in the Ministry of Home Affairs, then they will not be considered as citizens of Bhutan. (Resolution No. 16(2) adopted by the National Assembly of Bhutan in the 62nd Session.)
- e. Any citizen of Bhutan who has been deprived of Bhutanese citizenship must dispose off all immovable property in Bhutan within one year, failing which, the immovable property shall be confiscated by the Ministry of Home Affairs on payment of fair and reasonable compensation.

ANNEXURE No. 3.

His Majesty, King of Bhutan,
Tashichhodzong, Thimphu

CONFIDENTIAL

May it please Your Majesty,

As Your loyal subjects, and having had the proud privilege of serving Your Majesty in the Royal Advisory Council as the representatives of the people of Southern Bhutan, we beg to submit this petition on an issue of paramount significance for the peace and progress of our nation. Most humbly, we submit that the issue needs the most careful and urgent consideration of the Royal Government. We would be failing, we believe, both Your Majesty and the people of Bhutan if we did not bring this matter before Your Majesty.

2. Some alarming reports have reached us regarding the census exercise currently underway in the southern dzongkhags. According to these reports, we understand that :

- 2.1 The Census Teams are questioning the people with undue threats and classifying them into various categories.
- 2.2 The Teams are demanding that people produce evidence of their having settled in the country before 1958, even going to such an extent of asking old people with children and grand-children born in Bhutan to provide evidence of their arrival in Bhutan, or else be declared non-nationals
- 2.3 In many instances, Citizenship Identity Cards already issued have been confiscated or withdrawn.
- 2.4 Gups and chims formerly considered knowledgeable and authoritative sources in census matters are not being

taken into confidence and are not permitted to testify the credentials of their village people. Some of them have even been reprimanded for suggesting at DVT meetings more rational ways for conducting the census.

3.5 Illiterate and simple village people are being coerced into signing documents, the contents of which are not known to them. This has intimidated and instilled fear in the people.

3. On receipt of these reports, we took the liberty of enquiring about this matter with the Department of Immigration and Census. We were informed by the Secretary of the Department that this was a routine population census exercise. Notwithstanding this explanation, which was conveyed to the people, there are still misgivings because the methods employed by the Census Teams belie this statement. We, therefore, beg to submit that perhaps the Census Teams have overstepped their mandate. This has resulted in panic and confusion among the people. This is disturbing the peace and tranquillity that has reigned in the hearts of Your Majesty's loyal subjects fostered by the enlightened policy of the Government. This policy was clearly reflected in Your Majesty's statement at Gaylegphug during the National Day Celebrations in 1978 that people settled in southern Bhutan are true citizens and cannot be considered or treated otherwise. The renewed confidence and national pride generated by Your Majesty's benign policy is, however, being undermined by the current exercise.

4. There are wide-spread feelings among the people that the actions of the Census Teams in randomly categorizing people, and affecting the status of many citizens, are unjust and contravene the assurance of Your Majesty. It is the humble submission of the people that :

4.1 The classification of people as nationals, non-nationals and people without status are based on incomplete documentation and hearsay. The cavalier manner in which the exercise is being carried out does not conform to the seriousness of the issue at hand and is an affront to the dignity of the people and denial of their inherent rights as citizens of this Kingdom.

4.2 The classifications are based on narrow and literal interpretations of the Citizenship Act. This has resulted in the deprivation of national status of a large segment of the population of Southern Bhutan, particularly children. Despite the law providing for citizenship to children born to Bhutanese fathers before 1985, the retrospective application of a provision of this Act makes stateless even those loyal subjects who have been serving the Royal Government.

4.3 The people are concerned that no distinction is made between non-national spouses and other applicants for citizenship. In some cases, the Teams and local Government officials have even informed individuals

concerned that the children and spouse would be deported. This has been a source of great distress and is shaking the very foundation of the family and society. Due to social barriers, inter-community marriages were seldom practised. Even among the Southern Bhutanese, inter-caste marriages have been rare owing to customs and traditions. These circumstances, coupled with communication difficulties, compelled many Southern Bhutanese to seek spouses outside the country. Your Majesty may be aware that according to the customs of Southern Bhutan the wife becomes a part of the husband's family and for all purposes her links with her own family are severed after marriage. With the ongoing exercise, many families are now being torn between their loyalty to the country and their love and responsibility for the family.

4.4 The people are concerned that, even as the census is underway, an order has been issued forbidding Bhutanese citizens married to non-nationals to stand for election to the National Assembly. This order penalizes and deprives them of their participation in the national forum. It is also the feeling that this order undermines the confidence of the people in this august body.

4.5 The manner in which the Census Teams were fielded and the disregard of the authority of gups and chinlo have led the people to believe that this is not a routine exercise as it is made out to be. Unfortunately, this has been reinforced by the fact that in a matter of such great significance even the representatives of the people from Southern Bhutan in the Royal Advisory Council were not consulted.

4.6 The historical factors which have resulted in the establishment of the Southern Bhutanese community in the Kingdom, and the evolutionary process through which indissoluble links have been created between the people and the state, only emphasize the importance of the issues of nationality and status. The rights of property and other privileges vested in the people over the years, and the corresponding duty to the country through the payment of taxes, contribution of labour and other services to the nation, underscores the nexus between this country and the people of Southern Bhutan. The manner in which the current census is being implemented appears to be questioning these very bonds.

3. In connection with the whole gamut of concerns which are now pressing for attention, we cannot help but recall that it was at the very initiative of the people of Southern Bhutan, urged by their desire for the security and stability of this country, that the process of review of the Citizenship Act of 1977 was started. This is ample proof that the people fully shared the concern of the Government to stem the possible settlement of illegal immigrants in Southern Bhutan. The primary responsibility for the control of unauthorized immigration has, however, always vested with the Government. At this juncture, to view the people with suspicion and to

blame them for allegedly colluding with the immigrants to secret them into the country is unfair and unjust. We cannot also fail to recollect the various occasions when Your Majesty so graciously assured the people of Southern Bhutan that their interests and welfare would be fully protected in implementing laws and policies in the Kingdom. It was in this context the representatives of Southern Bhutan in the National Assembly raised the matter of revision of some of the provisions of the Citizenship Act 1977 to accommodate the concerns of the people of Southern Bhutan. However, owing perhaps to the dismissive voice of the southern members in the National Assembly, the 1985 Citizenship Act was passed. Much to the dismay of the people in Southern Bhutan, this Citizenship Act echoed their worst fears by surpassing even the provisions of the former Act in its stringency, particularly for the people of Southern Bhutan. This is not to suggest that the law is discriminatory or based on racial or ethnic grounds. However, the fact that the thrust of the legislation is felt mainly by the people of Southern Bhutan has given rise to speculation that a bias is implicit in the law, though unintentional. This is causing such consternation among the people.

3. In these difficult circumstances, the people of Southern Bhutan most humbly beg Your Majesty for protection and relief. We have always served Your Majesty, the Royal Dynasty and this Kingdom with unswerving faith, unfaltering loyalty and total dedication, and it is our fervent desire to continue to do so in the future. We pray in our deep distress that Your Majesty may be pleased to Command that :

6.1 The retrospective effect of the 1985 Citizenship Act, whereby 31st December 1958 is fixed as the cut-off date, be amended so that the cut-off date is 19th June 1985, the date of the Act coming into force.

6.2 The provisions of the 1985 Citizenship Act be amended so that children born of any Bhutanese citizen automatically acquire Bhutanese citizenship.

6.3 The provisions of the Citizenship Act 1985 be amended to provide privileged procedures for non-national spouses of Bhutanese citizens to acquire citizenship within the shortest possible time.

7. We have taken the liberty of bringing these issues before Your Majesty for most compassionate consideration. We have done so in the conviction that Your Majesty is the sole dispenser of our destiny and it is in Your Royal wish that the fate and future of the people of Southern Bhutan depends. May we express our deepest gratitude to Your Majesty that we have never had an occasion to even feel the slightest disappointment in our lives from the wisdom of Your Majesty's decisions. At this critical time, when our very foundations,

in this Kingdom are jeopardized by the magnitude of the problem confronting the people of Southern Bhutan, we have turned to Your Majesty with full faith that our prayers will receive the most gracious favour.

We humbly remain,
Your Majesty's most obedient servants,

Thimphu
09. April 1968

(TEAPAT RIZAL) (D. P. BHANDARI)
COUNCILLORS

BHUTANESE ORGANIZATIONS (In Exile)

A. POLITICAL PARTIES

1. BHUTAN PEOPLE'S PARTY (BPP)
2. BHUTAN NATIONAL DEMOCRATIC PARTY (BNP)
3. BHUTAN CONGRESS PARTY (BCP)

B. HUMAN RIGHTS ORGANIZATIONS

1. PEOPLE'S FORUM FOR HUMAN RIGHTS OF BHUTAN (PFHRB)
2. HUMAN RIGHTS ORGANIZATION OF BHUTAN (HUROB)
3. ASSOCIATION OF HUMAN RIGHTS ACTIVISTS OF BHUTAN (AHURA BHUTAN)

C. OTHER NON-GOVERNMENTAL ORGANIZATIONS

1. STUDENT UNION OF BHUTAN (SUB)
2. YOUTH ORGANIZATION OF BHUTAN (YOB)
3. BHUTAN WOMEN'S ASSOCIATION (BWA)
4. BHUTAN WOMEN'S AND CHILDREN'S ORGANIZATION (BWCO)
5. BHUTAN HEALTH ASSOCIATION (BHA)
6. ASSOCIATION OF BHUTANESE PROFESSIONALS AND TECHNICIANS (ABPT)

Annexure No. 4
Foreign Aid in Nepal

Year	Share of Foreign Aid in Development	Share of Loans in Total Foreign Aid
1961-62	82.1	1.6
1969-69	63.3	3.9
1972-73	37.4	20.8
1974-75	40.0	26.9
1989-90	61.1	75.1
1990-91	52.7	74.3
1991-92	62.4	75.8

Source: Eight Plan (1992-96), National Planning Commission HMG, Nepal.

REFUGEE CAMP STATISTICS

(As on 30 November 1994)

	TIM	GOL	BEL1	BEL2	BELE	PAT	KBN	KBS	TOTAL
CCM	15	16	15	15	15	15	14	11	116
CCB	7	7	7	7	7	7	7	4	53
SH	4	4	7	9	5	12	4	3	48
SSH	17	16	25	36	20	48	15	8	185
ASSH	17	16	25	36	20	48	15	8	185
CSV	40	40	70	40	35	66	40	25	356
FFV	60	94	125	183	125	120	76	40	828
WFP	24	1	36	71	47	122	21	13	335
VHW	76	60	45	37	36	97	76	*	477
CHV	79	46	101	132	63	133	62	*	616
TCH(P)	61	5	90	137	39	92	63	*	556
TCH(S)				12					12
STDS(P)	2903	2814	4858	6655	3179	5367	3533	*	29309
STDS(S)				247					247
BIRTHS	585	471	1358	1399	416	1052	151	90	5522
DEATHS	401	221	568	848	125	650	32	16	2911
FAMILIES	1447	1348	2523	3310	1679	2897	2980	666	16850
POP	8230	7887	14908	18435	9248	16869	7047	3632	86254

CCM	Camp Committee Member	
CCB	Camp Counselling Board	
SH	Sector Head	
SSH	Sub Sector Head	
ASSH	Asst Sub Sector Head	
CSV	Camp Security Volunteer	
FFV	Fire Fighting Volunteer	
WFP	Women's Focal Point	(Incentive from OXFAM)
VHW	Volunteer Health Worker	(Incentive from SCI)
CHV	Community Health Volunteer	(" ")
TCH	School Teachers	(Incentive from CARITAS)
STDS	Students	

REFUGEE CAMPS

TIM	Tinai, Jhapa	BELE	Beldangi-Extension, Jhapa
GOL	Goldhap, Jhapa	PAT	Pathri (Sanischare), Morang
BEL1	Beldangi-I, Jhapa	KBN	Khudunabari (North), Jhapa
BEL2	Beldangi-II, Jhapa	KBS	Khudunabari (South), Jhapa