

Population Displacement in South Asia: *Advocating a New Approach*

Some 35 million people are estimated to have crossed national frontiers in the Indian subcontinent since 1947. This figure does not include the millions who have been uprooted within their own countries. In the face of such mass movements of population, the responses of governments in the region have been largely *ad hoc*, pragmatic and informal. None of the countries in the region have acceded to the international refugee convention, nor adopted any national laws on refugees. Immigration laws typically go back to the 1940s, and refugee and migratory problems continue to be handled as a matter of administrative discretion.

This article examines briefly the nature of population movements in south Asia and the response of governments. It argues that as refugee and migratory flows in South Asia become more complex, the countries in the region must reassess their position and develop a more coherent and comprehensive legal and policy framework, based on the rule of law as well as regional co-operation and solidarity.

Nature of Population Movements

To say that the history of South Asia is a history of population movements is to repeat a cliché. The partition of India in 1947 marked a watershed in that history by introducing the notion of border, and consequently the notion of legality and illegality, in the pattern of migration.

Broadly speaking, these movements can be categorised into three. The first category includes refugees.¹ Among them would fall the “partition refugees” who fled from India to Pakistan and Pakistan to India after 1947; the Bengali refugees who fled from East Pakistan to India in 1971; as well as more recent arrivals of Tamil refugees from Sri Lanka and Chakma refugees from Bangladesh to India in the 1980s, and the Bhutanese refugees in Nepal. Refugees have also sought asylum from outside the region, the most significant

being the Tibetans who came to India in the 1960s, and the Afghans who have sought refuge in Pakistan and to a lesser extent in India since 1979.

The second category comprises hundreds of thousands of internally displaced persons in South Asia. Uprooted by ethnic or religious tensions, induced or aggravated by demographic pressures, environmental degradation and economic marginalisation, they live like refugees in their own country.

Then there is a third category of uprooted people who find themselves in a limbo between national and international responsibility as people who do not meet the definition of refugees under international law but for whom no country is willing to accept responsibility. To which country do the Nepalese who left Bhutan some years ago and are living now in north Bengal belong? Or the Biharis who have spent a quarter century in Bangladesh in the hope of “repatriation” to a country which does not recognise them as its citizens? Or, for that matter, the “Bangladeshi illegals” in India.

Response of Governments

The response to this complex mix of population movements has been pitifully inadequate.

Although conflict-induced internal displacement is widespread in South Asia, only the Sri Lankan authorities have allowed international organisations to provide protection and assistance to internally displaced persons in northern Sri Lanka. Elsewhere in the region, for reasons of sovereignty and national security, governments are not keen to acknowledge the problem of the internally displaced, let alone allow access to outsiders. Awareness, even at the national level, is poor because the displacement is most frequently in remote, strife-torn areas, inaccessible to international agencies and sometimes even local NGOs, and unknown to the media.

There is a similar lack of recognition of the plight of those who fall in the grey zone of illegal migrants and/or stateless. Despite elaborate nationality laws in each South Asian country, it is not clear who is or is not a citizen - or more accurately, who can or cannot enjoy the benefits of

citizenship. With virtually free borders but no compulsory birth registration, with large economic disparities across the border but no effective policy on labour migration, illegal migration has been rampant in the Indian sub-continent for decades. Add to the inability of governments to control borders, their failure to accept responsibility for citizens who leave their territory or to provide protection to non-citizens who have lived for decades on their territory, and the ground is laid for stateless people. Without any country willing to protect them, they are easy prey to exploitation - and particularly in the case of women and children, to prostitution and trafficking. They are also easy scapegoats of social violence.

In contrast to the situation of the internally displaced, the illegal migrants or the stateless, governments in South Asia have been more forthcoming in providing asylum to refugees, notwithstanding their reluctance to become a party to the international refugee instruments or to adopt national laws on refugees. Their generosity to grant refuge can be traced to a number of factors. Firstly, it is difficult to control long borders, particularly in the absence of geographical barriers. Secondly, refugees have often shared ethnic, religious and/or linguistic affinity with the host population, creating domestic pressure to receive the refugees. Pashtuns from Afghanistan were welcomed warmly in NWFP in Pakistan, as were Sri Lankan Tamils in Tamil Nadu. Bangladesh could not refuse asylum to successive waves of muslim refugees from Myanmar, or Nepal to Nepalese from Bhutan. Thirdly, and possibly most importantly, political and strategic interests of the host country have sometimes favoured the grant of asylum. The Indian decision to receive 10 million refugees from East Pakistan in 1971 and the Pakistan policy to host 3 million Afghan refugees for more than a decade are cases in point. For obvious reasons, host governments in South Asia have been reluctant to admit the frequency with which they have used cross-border migration or refugee flows as a tool against their neighbours.

Security considerations have both encouraged countries to grant as well as withdraw asylum depending on their threat perception, and it has been possible to do so with a far greater degree of flexibility in the absence of national laws or international obligations. Refugees had no recourse when

India tightened its policy on Sri Lankan refugees after the assassination of Rajiv Gandhi, Pakistan closed its borders to Afghan refugees in 1993 or Bangladesh pressed for early repatriation of the Rohingyas in 1994.

The absence of laws or international obligations has also encouraged inconsistent and even discriminatory treatment among groups of refugees. For instance, in India, Sri Lankan refugees have access to government schools but not Afghans. In Pakistan, Afghan refugees have the right to work but not Iraqis.

Preferring an informal, flexible approach to refugees, the South Asian countries have been reluctant to accede to the UN Convention and Protocol relating to the Status of Refugees, which sets out the international standards for identification and treatment of refugees. Their argument has been that the Convention is a tool of the Cold War, irrelevant and inappropriate for the needs of the sub-continent, and/or that its standards are too onerous for developing countries. This argument does not address the fact that over 139 countries around the world have ratified or acceded to the Convention, including many in Africa, Asia and Latin America.

The attitude of South Asian governments to United Nations High Commissioner for Refugees, the world body mandated to deal with refugees, is also cautious. Some governments have criticised UNHCR for being too ready to complain about the rights of refugees but not helpful enough in trying to prevent or solve the refugee problems. Although Pakistan, Bangladesh and Nepal have allowed UNHCR to provide protection and assistance to refugees (and Sri Lanka to internally displaced persons and returnees from India), UNHCR's role is limited in India, and non-existent in Bhutan.

UNHCR's ability to find solutions to refugee problems have been complicated by the preference of governments in the region to pursue the bilateral route to resolving refugee crises, for instance between Bangladesh and India (Jummas), Nepal and Bhutan (Bhutanese of Nepali origin), Bangladesh and Myanmar (Rohingyas) and India and Sri Lanka (Tamils). The success of bilateral negotiations has been mixed, as the contrast between the successful repatriation of Jumma

refugees from India to Bangladesh and the stalemate on Bhutanese refugees in Nepal shows. It has been clear however that the involvement of UNHCR in the Rohingya repatriation to Myanmar and the Tamil repatriation to Sri Lanka gave credibility to the operations and confidence to the returnees.

Looking Ahead

The response to large-scale population movements in South Asia has been either to do nothing or to take a band-aid approach. Yet these are not issues that will disappear simply if they are ignored. Moves towards a global economy, ease of travel and advances in information technology are creating new pressures for population movement, even in remote parts of this sub-continent. The numbers and categories of uprooted in South Asia are varied and growing. They share a common need for protection and assistance. They raise not only humanitarian concerns, but also impact on security and stability. Fears of being flooded with illegal migrants of another religious or ethnic origin have provoked violence, for instance in Assam. One must not forget that large-scale population movements in this region have been both a consequence as well as a cause of conflict. One must not also ignore the beneficial effects of migration, if properly managed, to promote economic development and regional stability.

The time is ripe for reassessment. If population movements in south Asia are to be better managed, then a more comprehensive and coherent approach needs to be adopted to simultaneously address the needs of the people concerned, as well as the causes which uproot people. It needs to be multi-faceted, integrating political, humanitarian, social and economic interests, and combining national, regional and international elements. Population movements are by nature transnational and cannot be tackled through *ad hoc* national measures. Nor can an effective system be developed if it ignores the fundamental principles of human rights, humanitarian and refugee law because no movement can be effectively managed if it leaves people exposed and unprotected.

The challenges are manifold. Two important ones will be: first, to encourage a shift away from unilateral and bilateral moves towards regionalisation and multilateralism. One of the difficulties is to identify a forum where regional co-operation on refugee and migratory problems can be pursued. SAARC is the only regional organisation, but has so far avoided sensitive and controversial issues. Nevertheless, with a number of states in the region moving towards democracy and the rule of law in recent years, a new momentum has been created for co-operation and solidarity.

The second is to create a framework for accountability. Although responses to refugee and migratory flows will always involve political considerations, administrative discretion should not be totally unfettered when human lives and liberties are at stake. Governments in the region must be made accountable to their own parliamentary and judicial systems as well as at the international level on how they treat nationals as well as non-nationals on their territory. This is why it is important that all the South Asian countries adopt national laws and accede to the international refugee and human rights conventions. On a positive note, the judiciary and the National Human Rights Commission in India have taken up the issue of the rights of refugees, setting a positive precedent for others in the region.

An interesting initiative has been launched by a group of eminent persons in the SAARC countries, under the auspices of the United Nations High Commissioner for Refugees, to promote a “model” national law on refugees and examine the feasibility of a regional declaration. Building a constituency for refugees among policy makers and opinion leaders could be an important first step towards a wider awareness of the larger problem of forced displacement and migratory movements in South Asia.

The views expressed in this article are those of the author in her personal capacity and do not necessarily reflect the views of UNHCR.

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Note:

¹ According to the UN Convention relating to the Status of Refugees, a refugee is a person who is outside his/her country because of well-founded fear of persecution on grounds of race, religion, nationality, political opinion or social group. UNHCR's mandate also extends to refugees who have fled their country because of war, civil conflict and large-scale violence.