

- (6) 'Refugee Appellate Authority' means the appellate authority established by and under the provisions of this Act to hear appeals against orders passed by the Refugee Committee as provided under the rules framed by and under the provisions of this Act;
- (7) 'Voluntary repatriation' means the voluntary return of refugees to their country of origin on their own free and voluntary decision;
- (8) 'Travel document' means a document which is issued by the Refugee Committee for the purpose of enabling a refugee to travel outside this country in accordance with the procedure established by the rules framed by and under the provisions of this Act.
- (9) 'Country of origin' signifies, as appropriate, the refugee's country of nationality, or, if he has no nationality, his country of former habitual residence.

5. **Basic Principles for the Treatment of Refugees**—In the application of this Act due regard shall be had to the following principles;

- (a) A refugee shall neither be expelled nor returned to the frontiers of territories where his life or freedom would be threatened.
- (b) A refugee shall not be discriminated against on the basis of his race, religion or nationality.
- (c) A refugee shall have the right to receive fair and due treatment by the officials of the Government or its agencies who are engaged in relief and assistance work for the refugees.
- (d) As far as practicable, the principle of family unity shall be preserved and due consideration shall be given to the refugee women and children.

6. **Meaning of refugee**—

#### OPTION A

Subject to the provisions of this section a person shall be regarded as a refugee if :

- (a) owing to a well-founded fear of being persecuted or prosecuted for reasons of race, religion, nationality, sex, membership of a particular group or political opinion, he is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or

- (b) not having a nationality and being outside the country of the his former habitual residence, he is unable or, owing to a well-founded fear of being persecuted or prosecuted for reasons of race, religion, membership of a particular social group or political opinion is unwilling to return to it;
- (c) owing to external aggression, occupation, foreign domination, internal conflicts, massive violation of human rights or other events seriously disrupting public order in either part or whole of his country of origin, he is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin;
- (d) he has been considered a refugee under any other law in force at the time of commencement of this Act.

#### OPTION B

The term 'Refugee' shall mean a person who owing to a well-founded fear of being persecuted or prosecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such event, is unable or, owing to such fear, is unwilling to return to it.

7. **Declaration of class of persons as refugees**—

- (1) Notwithstanding anything above, the Refugee Committee may declare a class of persons under clauses (a), (b), (c) or (d) of section 6 to be refugees and may at any time amend or revoke such declaration.

Provided that no such amendment or revocation shall affect the right of any asylum seeker or any other person who is a member of the class of persons concerned and who entered this country before the date of such amendment or revocation, to continue to be regarded as a refugee for the purposes of this Act.

- (2) The Refugee Committee shall cause any declaration in terms of this section, and any amendment or revocation thereof, to be publicized in a manner as it considers will best ensure that it is brought to the attention of authorized officers and persons to whom it relates.

8. **Persons not regarded as refugees**—A person shall not be regarded a refugee for the purposes of this Act if—

- (a) he is alleged to have committed a crime against peace and security of mankind, a war crime or a crime against humanity, regardless of the time it was committed; or
- (b) he is alleged to have committed a serious non-political crime outside this country prior to his admission to this country as a refugee.

9. **Persons who shall cease to be refugees**—A person shall cease to be a refugee for the purposes of this Act if :

- (a) he voluntarily re-avails himself of the protection of the country of his nationality; or
- (b) having lost his nationality, he voluntarily re-acquires it; or
- (c) he becomes a citizen of this country or acquires the nationality of some other country and enjoys the protection of the country of his new nationality or
- (d) he can no longer, because the circumstances in connection with which he was recognized as a refugee have ceased to exist; provided that the provisions of this clause shall not apply to a person who satisfies the Refugee Committee that he has compelling reasons, arising out of previous persecution, for refusing to avail himself or so to return as the case may be.
- (e) he is alleged to have committed a serious non-political crime outside this country after his admission into this country as a refugee.

## RIGHTS AND OBLIGATIONS

### 10. Rights of Refugees—

#### OPTION A

The rights of refugees stipulated by International Conventions to which this State is a party and those customarily recognized by States will be respected and guaranteed as far practicable as possible.

#### OPTION B

Every refugee, till the time he stays within this country, shall have the right—

- (a) to a fair and due treatment, without discrimination as to race, religion, sex or political opinion, or country of origin;
- (b) to receive the same treatment as is generally accorded to aliens relating to—
  - (i) movable and immovable property, other similar rights pertaining thereto, and also to leases and other contracts relating to movable and immovable property;
  - (ii) education, other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges, provided however he is accorded the same treatment as is accorded to nationals with respect to elementary education;
  - (iii) the right to transfer assets held and declared by a refugee at the time of his admittance into the country, subject to the laws and regulations;
  - (iv) the right to engage in agriculture, industry, handicrafts and commerce and establish commercial and industrial companies in accordance with applicable laws and regulations;
- (c) have the same right as nationals of this country with respect to practicing their religion and the religious education of their children;
- (d) to have free access to courts of law, including legal assistance and exemption from *cautio judicatum solvi*;

### 11. Obligations of refugees—

- (1) Every refugee shall conform to the laws of this country.
- (2) A refugee shall not engage in activities which may endanger the State security, harm public interests or disrupt public order.
- (3) A refugee is prohibited from engaging in activities contrary to the principles of United Nations in particular from undertaking any political activities within the territory of this country against any country including his country of origin.

**12. Personal status—**

- (1) The personal status of a refugee shall be governed by the law of the country of his nationality or domicile or by the law of the country of his residence.
- (2) Rights acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by this country, subject to compliance, if this be necessary, with the formalities required by the law of this country, provided that the right in question is one which would have been recognized by the law of this State had he not become a refugee.

**13. Exemption from exceptional measures—**

**OPTION A**

With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, this country shall/may not apply such measures to a refugee who is a national of the said State solely on account of such nationality.

**OPTION B**

With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, this country shall in appropriate cases, grant exemptions in favour of such refugees.

**14. Provisional measures—**Nothing in this Act shall prevent the Government, in time of armed conflict or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the authority concerned that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.

**15. Industrial property and artistic rights—**In respect of the protection of industrial property, such as inventions, patents, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded the same protection as is accorded to nationals of this country.

**16. Right of association—**As regards the right of association refugees lawfully staying in the territory of this country shall/may be accorded the most favourable treatment accorded to aliens, in the same circumstances.

**17. Liberal professions—**Refugees who hold degrees or diplomas recognized by the competent authorities of this country and are desirous of practicing a liberal profession, shall be accorded treatment as favourable as possible as is accorded to aliens generally in the same circumstances.

**18. Rationing—**Where a rationing system exists, which regulates the general distribution of essential commodities in short supply, refugees shall be accorded the same treatment as practicable as possible as is accorded to nationals/aliens.

**19. Housing—**As regards housing, refugees shall be accorded treatment as favourable and/or as practicable as possible, as is accorded to aliens generally in the same circumstances.

**20. Identity cards—**An identity card shall be issued to any person recognized as a refugee in accordance with sections 6 and 7 of this Act.

**21. Travel documents—**A refugee lawfully staying in this country shall be issued travel documents for the purpose of travel outside the territory of this country unless compelling reasons of national security or public order otherwise require.

**22. Fiscal charges—**No duties, charges or taxes of any description whatsoever, shall be imposed on refugees, other or higher than those which are levied on nationals in similar situations.

**23. Transfer of acquired assets—**Favourable consideration may be accorded to an application of a refugee for permission to transfer assets which he has acquired by lawful means during his stay in this country.

**24. Families of refugees—**

- (1) The members of the family of a refugee shall be permitted to enter this country and, subject to the provisions of this Act, shall be entitled to remain herein as long as the refugee is permitted to remain, and necessary documents be issued to them.
- (2) Where a member of the family of a refugee within this country ceases to be a member of such family by reason of marriage, attaining the age of majority or the cessation of dependence upon the refugee, he shall be permitted to continue to remain in this country subject to the relevant laws and regulations.
- (3) Upon the death of a refugee, or upon his divorce from any spouse, every person who, immediately before such death or divorce was within this country as the member of the family of such a refugee, shall be permitted to continue to remain and

regularize his status in accordance with the provisions of this Act or any other applicable law.

- (4) Nothing in this section shall prevent a member of the family of a refugee, or a person who has, in terms of sub-sections (2) and (3), been permitted to continue to remain in this country from himself applying for recognition and protection as a refugee under the provisions of this Act.

### ORGANIZATIONAL ARRANGEMENTS

25. In order to implement the provisions of this Act, the Government shall establish or identify, [by notification in the Official Gazette].

#### OPTION A

- (1) A [Division/Bureau/Department/Unit] to receive and consider applications for refugee status and to make decisions; and
- (2) A *quasi* judicial Authority vested with the power to revise or review the above decisions and to make final orders thereon.

#### OPTION B

- (1) A Refugee Committee as the principal executive organ; and
- (2) an appellate authority to be known as the Refugee Appellate Authority.

26. **Composition of Refugee Committee**—The Refugee Committee shall consist of the following members, namely:

- (a) a high ranking official designated by the Minister-in-charge of refugee affairs in the Government who shall be its Chairman; and
- (b) such number of other officials from the immigration social welfare, law and justice and other relevant departments.

27. **Functions of the Refugee Committee**—The functions of the Refugee Committee shall include:

- (1) to designate such officials as may be necessary to receive and consider applications for refugee status and to grant (or refuse) asylum seekers refugee status according to the relevant provisions of this Act;

- (2) to supervise the observance of the refugees rights and duties as stipulated in this Act;
- (3) to propose the refugee policy and make appropriate proposals and recommendations to the Government concerning the refugee matters; and
- (4) to coordinate the activities or policies of the various Government ministries and departments relating to refugees.

28. **Consideration of applications by the Refugee Committee**—The Refugee Committee shall consider every application referred to it in terms of Article 27 within a reasonable time (sixty days) of the application being so referred. It may, within that period of time make such inquiry or investigation as the Committee may consider necessary.

29. **Withdrawal of refugee status**—

- (1) If at any time the Refugees Committee considers that there are reasonable grounds for believing that a person who has been recognized as a refugee for the purposes of this Act, should not have been recognized on account of such person having made his application for recognition based on fraud, false and deliberate misrepresentation or any other abusive grounds, the Committee shall cause a written notice to be served upon the person whose status as a refugee is under reconsideration:
  - (a) informing such person of the fact that his status as a refugee is to be reconsidered; and
  - (b) inviting such person to make written representation to the Committee within a period of fourteen days from the date of service of the notice, regarding his status as a refugee.
- (2) The Committee shall consider every written representation made before it and where appropriate the views of the representative of the UNHCR and, may cause such inquiry or investigation to be made as it thinks necessary.
- (3) Upon receipt of the report on the inquiry or investigation and after giving an opportunity to the person against whom proceedings are taken, the Refugee Committee may withdraw the recognition of the person concerned as a refugee; and shall cause the person concerned to be notified of the decision in the matter.
- (4) Any person who is aggrieved by the decision of the Refugee Committee withdrawing his recognition as a refugee may, within

fourteen days of being notified of such withdrawal, appeal to the Refugees Appellate Authority.

- (5) If a decision is taken to withdraw the status of refugee he should be given an opportunity to remove himself from this country or to get his status regularized under any other law of this country.

### 30. Expulsion of refugees—

- (1) The Refugee Committee may order expulsion of any refugee in accordance with relevant laws and procedures if it considers it to be necessary or desirable on grounds of national security or public order.
- (2) Before making an order in terms of sub-section (1), the Refugee Committee shall cause a written notice to be secured upon every refugee whom it intends to expel and affording him the right to make a representation to the Committee.
- (3) Before ordering expulsion of any refugee under sub-section (1) the representative of the UNHCR shall be informed.

## APPELLATE AUTHORITY

31. **Refugee Appellate Authority**—The Government may, by notification in the Official Gazette, establish with effect from such date as it may specify an appellate authority to be known as the Refugees Appellate Authority.

32. **Composition of the Refugee Appellate Authority**—(1) The Refugee Appellate Authority shall consist of:

- (a) an eminent person preferably a jurist (judge of the Supreme Court) who shall be its President
- (b) four other members who shall have adequate knowledge or experience of dealing with matters relating to immigration, foreign affairs and national security.

### 33. Jurisdiction of the Refugees Appellate Authority—

- (1) The Refugee Appellate Authority shall have exclusive jurisdiction over all matters arising out of the application, interpretation and implementation of the provisions of this Act.
- (2) Any asylum seeker or, as the case may be, any refugee aggrieved by any order made by the Refugee Committee in respect of

sections 29 and 30 may appeal to the Refugee Appellate Authority within fourteen days from the date of the order.

*Provided* that the Refugee Appellate Authority may entertain an appeal after the expiry of the stipulated period if it is satisfied that there was justifiable cause for not filing it within that period.

34. **Power to make rules and disposal of appeals**—The Refugee Appellate Authority shall determine its own rules of procedure relating to matters referred to it. In so far as possible the Refugee Appellate Authority shall dispose of an appeal made before it within a period of sixty days.

35. **Finality of orders**—Every order of the Refugee Appellate Authority shall be final.

36. **Rules and regulations**—The Government may adopt such rules and regulations as are required or are necessary or expedient to give effect to the provisions of this Act.

## B. Establishment of “Safety Zones” for the Displaced Persons in their Country of Origin

People have been uprooted by persecution, conflict and famine in all ages. What is unique at the present time is the massive scale of such movements. The world's refugee population is estimated to be 17 million,<sup>1</sup> while the displaced within the borders of their own countries are 24 million people, largely women and children, who have abandoned their homes in search of food and water. Armed conflict, forced relocation, communal violence, natural and ecological disasters, systematic violations of human rights, as well as traditionally recognized sources of persecution combine to produce these massive involuntary movements within and outside state borders. There is nothing to suggest that this trend will be reversed in the immediate future.

The problems faced by the internally displaced persons are to be seen in the larger context of the post-cold war period in which long suppressed ethnic and religious conflicts have been unleashed in many parts of the world. At the same time, there is a greater willingness on the part of the international community to address these problems and to try and develop

1. UN Document, ECOSOC, Commission on Human Rights, E/CN. 4/1992/23, para 5.

for the internally displaced persons standards and mechanisms comparable to those that assist and protect refugees.<sup>2</sup>

The crisis of the internally displaced persons from the perspective of the international community is that they fall within the domestic jurisdiction and are therefore not covered by the protection normally accorded to those who cross international borders and become refugees. International responses to emergencies involving them have been taken up by agencies like UNHCR, UNICEF or the ICRC, but in the absence of a clear mandate and an international body with special responsibility for the protection of internally displaced, the international response has been *ad hoc* in the appointment by the Secretary-General in 1991 of an Emergency Relief co-ordinator to improve the provision of relief and assistance to those caught up in humanitarian emergencies.<sup>3</sup>

**Principles of existing law :** Human rights and humanitarian law may be seen as the principal sources of existing protections for the internally displaced persons; along with refugee law, they also may be the foundation for articulating a basis for further protections. While these bodies of law are conceptually distinct, they have influenced and informed each other and also contributed to a general corpus of laws capable of application to the problems experienced by the internally displaced.

Unlike refugee law, which largely applies only when a border is crossed, or humanitarian law, which applies to situations of armed conflicts, human rights law proclaims broad guarantees for fundamental rights of all human beings. *The International Bill of Human Rights*, composed of (a) Universal Declaration of Human Rights; (b) International Covenant on Economic, Social and Cultural Rights; and (c) International Covenant on Civil and Political Rights, represents the basic body of human rights law, which recognizes the inherent dignity and equality of all human beings and setting a common standard for achievement of their rights. Although human rights law provides a basis for protection and assistance for internally displaced persons, it does not directly address some of the situations affecting the internally displaced, such as forcible displacement and access to humanitarian assistance.

Since the UN has established protected areas or Safe Zones in time of armed conflicts such as in Cambodia, Bosnia, Rwanda, Somalia, the

2. There is adequate legal protection provided to refugees by virtue of the 1951 Convention and the 1967 Protocol, the 1969 OAU Convention, 1984 Cartagena Declaration as well as the Bangkok Principles, 1966.

3. U.N. ECOSOC Commission on Human Rights (Res 1991/25), 1991.

AALCC's study on the question has concentrated on the legal concept of a Safety Zone for internally displaced persons in the armed conflicts and to formulate basic principles. The Committee has been focussing on legal aspects of the following issues:

1. The circumstances under which a Safety Zone could be established.
2. Whether international organizations should be entrusted with the responsibility of the management of a Safety Zone.
3. The status of the Safety Zone.

### The formulation of a legal framework for the establishment of a Safety Zone for Displaced Persons

The AALCC in co-operation with the UNHCR has formulated "A Legal Framework for the Establishment of a Safety Zone for Displaced Persons in their country of origin" in order to incorporate basic principles agreed upon by the international humanitarian laws and the decisions of international organizations. As is shown in the following document, the framework is divided in seven parts, namely (1) the aim of establishing a Safety Zone; (2) conditions of the establishment; (3) supervision and management; (4) duties of the Government and the conflicting parties concerned; (5) rights and duties of the displaced persons in a safety zone; (6) protection of the officials of the international organizations who manage the safety zones; (7) closure of the safety zone.

### The legal aspects of these issues

The answers to some aspects of the three issues raised by the Committee are found in the framework.

- (1) The circumstances under which a Safety Zone could be established.

A Safety Zone shall be established only when a considerable number of displaced persons arises as a result of armed conflicts or civil wars, and when their life and property are threatened as the consequence. Mass voluntary exodus or forced displacement of thousands of people from their places of residence will be necessary conditions for the establishment of a Safety Zone. The Safety Zone shall be established only by the decision of the Security Council of the United Nations with the consent of the Government concerned and of the parties to the conflict. The Security Council must judge the conflict as a threat to the peace or a mass violation of human rights. Both the Government and the conflicting party should regard the measures as taken for the protection of the life