

# The necessity to develop a Regional Refugee Framework for South Asia

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There are more than [two and half million](#) refugees in the South Asian countries, with majority of them residing in Pakistan, Bangladesh and India. At the same time, the South Asian countries are the place of origin for at least 3 million refugees, with Afghanistan being the country of origin for nearly 2.5 million refugees. Evidently, there is a significant refugee population in the South Asian countries and considering the Rohingya refugee crisis, these numbers are set to increase. At the regional level, there is only the [South Asia Declaration on Refugees](#) which was adopted in 2004 by the [Eminent Persons Group](#) but the States are under no obligation to adhere to provisions of the declaration.

None of the South Asian countries, except Afghanistan, are signatories to the 1951 Convention Relating to the Status of Refugees. This stems from the fact that some States do not view the convention to be appropriate or adequate for their region/country to handle refugee situations. One of the criticisms of the 1951 Convention is that the provisions of the convention are euro-centric and are not in consonance with their regional requirements of South Asia. There is also an apprehension that their policy-making autonomy will be threatened if they accede to the 1951 Convention.

This fact helps us understand that the refugee framework needs to be tailored according to the needs and requirements of the specific regions in order to overcome the pertinent bureaucratic/political hurdles in adopting a refugee framework and also to lay down efficient ways of handling the refugee situation.

## **Learning from the Convention Governing the Specific Aspects of the Refugee Problem in Africa (OAU Convention, 1969)**

Consider the 1969 OAU Convention, which has 46 signatories in Africa. Through this Convention, the scope of the term 'refugee' was expanded to also include persons fleeing due to external aggression, foreign domination, occupation or any event which seriously disturbed public order. Unlike the 1951 Refugee Convention, the OAU Convention does not provide for an exception of "national security" to the principle of non-refoulement while explicitly expanding its applicability to the "frontiers", thereby establishing asylum as a right. This regional convention was the first international instrument to formalize the concepts of responsibility sharing, temporary protection as well as voluntary repatriation.

It is evident that the regional framework for the African countries proved to be much more advanced, effective, appropriate and acceptable than the 1951 Refugee Convention as it is specifically developed by considering the needs of African refugees and member States.

## Protection of refugees in South Asia

There are numerous reasons for the increasing refugee population in South Asia, be it the Rohingya exodus, the conflicts in Afghanistan, Iraq and Syria, the India-Pakistan partition, the Bangladesh war, the Sri Lankan war etc. The South Asian States have been handling the refugee crisis and the refugee population based on administrative decisions as none of the States have any domestic legislation to handle the matters relating to refugees.

- **India**

Specifically, India is a host to Tibetan and Sri Lankan refugees and has even recognised them officially. The government provides financial and strategic support to these refugees and has focused on providing them the basic amenities. At the same time, India is also a host to a significant Rohingya population and they have neither been recognised officially nor do they avail any benefits/services through the government. The Rohingya refugees are completely handled by NGOs and INGOs while the government is adamant on deporting them by referring to a fictitious threat to national security. The government's response to the refugee crisis is politically motivated and until and unless there is a refugee framework for the region, the arbitrary decisions of the government will remain unstoppable.

- **Pakistan**

Pakistan has been a host to more than [2 million Afghan refugees](#) and the Pakistani prime minister has recently ignited talks about offering citizenship to the Afghan refugees who were born in Pakistan. In contrast, Pakistan has earlier stated that it cannot carry the burden of hosting Afghan refugees anymore and [lakhs of those refugees](#) have been forcibly repatriated in 2016 alone. The government authorities have been called out several times by human rights organisations for their [cruel treatment of refugees](#) which had led them to leave Pakistan unwillingly. Similarly, in January 2018, the Pakistan government gave only 30 days for millions of Afghan refugees [to return to their homeland](#) despite the worsening security situation in Afghanistan.

- **Bangladesh**

Bangladesh is currently hosting more than a million refugees from Myanmar. [More than 9 lakhs](#) of these Rohingya refugees are residing in the settlement at Cox's Bazar, making it the [world's largest refugee settlement camp](#). Despite being a welcoming host and providing its support to the Rohingya refugees, the government of Bangladesh has stated that it [won't be accepting any more refugees from Myanmar](#). The foreign secretary noted that Bangladesh is paying the price for showing empathy towards a persecuted minority. The government of Bangladesh

had earlier tried to initiate repatriation of the Rohingya refugees to Myanmar but it could not go through as Myanmar failed to provide any assurance in terms of safety of the Rohingyas and their citizenship issues.

The brief overview of the refugee situation in the above three countries which are hosting nearly 90 percent of the refugee population in the South Asia provides insights into the arbitrariness of the host states, lack of safety for refugees in the host countries, the massive economic burden on the host countries which are hosting lakhs of such refugees, the rules of voluntary repatriation which are continuously flouted due to the absence of any mandatory obligation etc.

In order to work towards providing better protection to the refugees in South Asia along with ensuring that none of the member countries are drained economically as a result of hosting refugee population, there is a dire need to develop a regional framework which will be binding on the South Asian member states, in a manner similar to that of the 1969 OAU Convention.

It is necessary to have a binding regional framework as ad hoc responses to all the refugee situations are not adequate and often fail to address the situation comprehensively. Some scholars are in favour of having national legislation over a regional framework, however, a dialogue between the member States to develop a regional framework will facilitate the processes of national legislation as well. The principle of responsibility sharing in terms of hosting refugees, providing economic and strategic support, facilitating peaceful cross-border movement when necessary etc. cannot be achieved merely through national legislations.

Developing such framework will ensure that the decisions related to the refugees are not steered due to political motivations or whims and fancies of some politicians or administrators. Thereby, providing a better support system for the refugees across the 8 member States.

### **The way forward**

The proposed regional framework for Refugees in South Asia should necessarily take into account the following suggestions.

- **Responsibility sharing**

This must definitely feature in the regional framework to ensure that no member State is overburdened. A request for responsibility sharing should be such that it can be initiated by a member State hosting refugees after putting forth the reasons for such a request and by clearly laying down the support that is sought from all the member States combined. It can be further divided into the following aspects –

1. Hosting refugees – Every member State, must be open to receiving and hosting refugees from other member States. The criteria of such sharing process can be determined by considering various factors such as the habitable area of each member State, population and population density of each member State,

economic status of each member State, availability of external support from INGOs, NGOs, donors and other key role players etc.

2. Economic and Strategic Support – In addition to sharing the responsibility of hosting refugees, the member States should also be able to provide necessary economic and strategic support, if any need arises. The extent of such support shall again be determined by numerous factors such as the economic condition of member States, necessity of providing such support etc.

- **Voluntary repatriation and other durable solutions**

The member States must work together towards achieving one of the three durable solutions, i.e. voluntary repatriation, local integration, resettlement in a third country. In order to work towards these solutions, the regional framework must necessarily include practical mechanisms to realise these solutions, which all the member States can adopt and implement. Solutions in the form of voluntary repatriation and resettlement in a third country essentially require involvement of more than one member State and hence cannot be effectively guided by national legislations. While such legislations can be adequate to oversee the specificities regarding local integration of refugees, a regional framework would be vital in setting out common standards and guidelines for all the member States, thereby ensuring better protection for the refugees.

- **ID cards for the Refugees**

The regional framework should provide a skeletal mechanism to issue a unique ID card to the refugees residing in each member State. The responsibility to issue such cards must be on the respective member States and there should be certain guidelines for issuing such IDs. The refugees holding such IDs must be provided with basic amenities in a manner similar to that provided to the citizens of the respective member States. It will not only ensure that the refugees can access basic amenities and services but will also assist the member States in keeping a record of the refugees. The member States must be allowed to determine the process for issuing such IDs but such mechanisms should be in consonance with the standards laid down by the regional framework.

## **Conclusion**

It is important to understand that each region has its own peculiarities in regards to the refugee situation and as explained, South Asian States need to develop and adopt a regional refugee framework to ensure better protection for the refugees and also to ensure that none of the member States are overburdened due to the refugee situation.

Moreover, initiating a dialogue about the regional refugee framework for the South Asia can in fact lead to positive developments among the member States in regard to developing a national legislation as well. Only when the member States can develop and implement such a framework, the human rights of the refugees in South Asia can be better protected.

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