APPENDIX-1

Model National Law On Refugees*

1. Purpose of the Act

The purpose of this Act is to establish a procedure for granting of refugee status to asylum seekers, to guarantee to them fair treatment, and to establish the requisite machinery therefor. For the purpose of this Act the grant of refugee status shall be considered a peaceful and humanitarian act, shall not be regarded as an unfriendly act and does not imply any judgment on the country of origin of the refugee.

2. Terminology

In this Act, unless the context otherwise requires:

i. ‘Asylum seeker’ means a foreigner who seeks recognition and protection as a refugee.

ii. ‘Refugee’ means a ‘refugee’ defined in Section 4 and includes dependents of persons determined to be refugees.

iii. ‘Country of origin’ means the refugee’s country of nationality, or if he or she has no nationality, his or her country of former habitual residence.

iv. ‘Commissioner’ means the Commissioner for Refugees’, an executive officer, referred to in Section 8 of this Act.

v. ‘Refugee Committee’ means the ‘Committee’ established as an appellate authority by the Government under Section 8 of this Act.

3. Non-Obstante Clause

The provisions of this Act shall have effect notwithstanding the provisions of any other law including The Foreigners Act.

4. Definition of Refugee

A refugee is:

*This Model National Law on Refugees was adopted at the 4th Regional Consultation on Refugee and Migratory Movements on South Asia, held in Dhaka on 10-11 November 1997.
any person who is outside his or her country of origin, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of a well-founded fear of persecution on account of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion, or,

b. any person who owing to external aggression, occupation, foreign domination, serious violation of human rights or other events seriously disrupting public order in either part or whole of his or her country of origin, is compelled to leave his or her place of habitual residence in order to seek refuge in another place outside his or her country of origin.

5. Persons who shall be excluded from refugee status
A person shall be excluded from refugee status for the purpose of this Act if:

a. he or she has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

b. he or she has committed a serious non-political crime outside the country of asylum prior to his or her admission into this country as a refugee.

6. Principle of Non-refoulement

a. No refugee or asylum seeker shall be expelled or returned in any manner whatsoever to a place where there are reasons to believe

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1 This part of the definition is based on Article 1(A) (2) of the 1951 Convention on Refugees, which has universal approval for the refugee definition. However, taking note of the fact today's conflicts are linked to inter-ethnic violence also, ethnic identity is added in the definition given in the 1951 Convention on Refugees. It is also understood that membership of a particular social group includes gender-based persecution.

2 This part of the definition is based on a broader definition incorporated in Article 1(2) of the 1969 OAU Convention. Remembering that promotion of human right throughout the world is one of the purposes of the United Nations, and releasing that in practice there are massive violation of human rights in many parts of the world, and also finding that the Cartagena Declaration on Refugees in 1984 incorporates massive violation of human rights as a ground for treating asylum seekers as refugees, the same is incorporated in this part of the definition.

3 This provision does not mean that persons having committed politically crimes are automatically to be considered as refugees. On the contrary, when there are serious reasons to believe that the asylum-seeker has committed a politically-motivated crime to endanger the right to life or physical integrity of another person, this asylum-seeker would normally not be recognized as a refugee, unless the punishment for such crime is expected to be discriminatory disproportionate.
his or her life or freedom would be threatened on account of any of the reasons set out in sub-sections (a) or (b) of Section 4.

b. The benefit of the present provision may not, however, be claimed by a refugees or asylum seeker where there are reasonable grounds for regarding him or her as a danger to the country or who has been convicted by a final judgement of a serious crime and constitutes a danger to the community.

7. Application

a. Where an asylum seeker request to be recognized as a refugee either at the point of entry or subsequently, the country concerned shall act in accordance with the principle laid down in Section 6 and refer the case to the Commissioner of Refugees for disposal.

b. Where an application is made by an asylum seeker for determination of his or her status as a refugee, pending determination of such status, no restrictions shall be imposed on the interests of sovereignty and integrity of the State or public order.

8. Constitution of the Authorities

In order to implement the provisions of this Act the Government shall appoint:

i. Commissioners for Refugees; and

ii. A Refugee Committee as the Appellate Authority.

9. a. A Commissioners for Refugees shall receive and consider applications for refugee status and make decisions.

b. The Commissioners for Refugees shall be of a rank not less than that of an administrative Head of a District.

10. a. The Refugee Committee shall be the appellate authority and receive and consider applications for refugee status suo moto, or those made by the asylum seekers in the appeal against the decision of the Commissioner.

b. The Refugee Committee shall consist of the following three members:
i. a sitting or retired High Court Judge designated by the Government in consultation with the Chief of the Supreme Court as Chairperson,

ii. two independent members conversant with refugee matters.

11. **Finality of Order**

Every order of the Refugee Committee shall be final.

12. **Determination Refugee Status.**

   a. An asylum seeker who wishes to claim refugee status under the terms of this Act shall be heard by a Commissioner for Refugees before the determination of his or her status.

   b. During the Refugee determination interview, the asylum seeker shall be given necessary facilities including the service of a competent interpreter where required, and a reasonable opportunity to present evidence in support of his or her status.

   c. The asylum seeker, if he or she wishes, shall be given an opportunity, of which he or she should be duly informed, or contact a representative of UNHCR.

   d. The asylum seeker, if he or she wishes, shall be entitled to be assisted in the determination of the status by a person of his or her choice including a legal practitioner.

   e. Where an application by the asylum seeker is rejected, the Commissioner for refugees shall give reasons for the order in writing and furnish a copy of it to the asylum seeker.

   f. If the asylum seeker is not recognized as a refugee, he or she could be given a reasonable time to appeal to the Refugee Committee as the appellate authority for reconsideration of decision.

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4 This article is based on UNHCR ExCom Conclusion No. 8(xxv111)- 1977 on 'Determination of Refugee Status'.
g. If the asylum seeker is recognized as a refugee, he or she shall be informed according and issued with documentation certifying his or her refugee status.

13. **Persons who shall Cease to be refugees**

A person shall cease to be a refugee for the purpose of this Act if;

a. he or she voluntarily re-avails himself or herself of the protection of country of his or her origin; or

b. he or she become a citizen of the country of asylum; or

c. he or she has acquired the nationality of some other country and enjoys the protection of that country, or

d. he or she has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution; or

e. he or she can no longer, because the circumstances in connection with which he or she was recognized as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of his or her nationality.

14. **Rights and Duties of Refugees**

a. Every refugee so long as or she remains within this country, shall have the right to:

i. fair and due treatment, without discrimination on grounds of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion.

ii. receive the same treatment as is generally accorded to aliens under the Constitution or any other laws and privileges as may be granted by the Central or State Government.

iii. receive sympathetic consideration by the country of asylum with a view to ensuring basic human entitlements.
iv. be given special consideration to their protection and material well-being in the case of refugee women and children.

v. choose his or her place of residence and move freely within the territory of the country of asylum, subject to any regulations applicable to aliens generally in the same circumstances.

vi. be issued identity documents.

vii. be issued travel document for the purpose of outside and back to the territory of the country of asylum unless compelling reason of national security or public order otherwise require.

b. Every refugee shall be bound by the laws and regulation of the country of asylum.

15. Situations of Mass Influx.

a. The Government may, in appropriate cases where there is large-scale influx of asylum seekers, issue an order permitting them to reside in the country without requiring their individual status to be determined under Section 21 of this Act, until such time as the reasons for departure from the country of origin have ceased to exist, or the government decides that their status be determined on an individual basis under this Act.

b. In the case of asylum seekers who have been permitted to reside in the country under this provision, they may be subject to reasonable restrictions with respect to their location and movements, but will otherwise be granted normally the same rights as refugees under this Act.

16. Refugees Unlawfully in the country of Refuge.

The Government shall not impose penalties, on account of their illegal entry, or presence, on refugees who, coming directly from a place where their life or freedom was threatened in the sense of Section 4, enter or are present themselves without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
17. **Voluntary Repatriation**

The repatriation of refugees shall take place at their free volition expressed in writing or other appropriate means which must be clearly expressed. The voluntary and individual character of repatriation of refugees and the need for it to be carried out under condition of safety to the country of origin shall be respected.

18. **Rules and regulations.**

The Government may frame rules and regulations, from time to time, to give effect to the provisions of Act.

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5 This provision is derived from UNHCR ExCom Conclusion 40( xxxvi ) -1985 on 'Voluntary Repatriation', at para (b).