LEGAL RIGHTS OF REFUGEES IN INDIA

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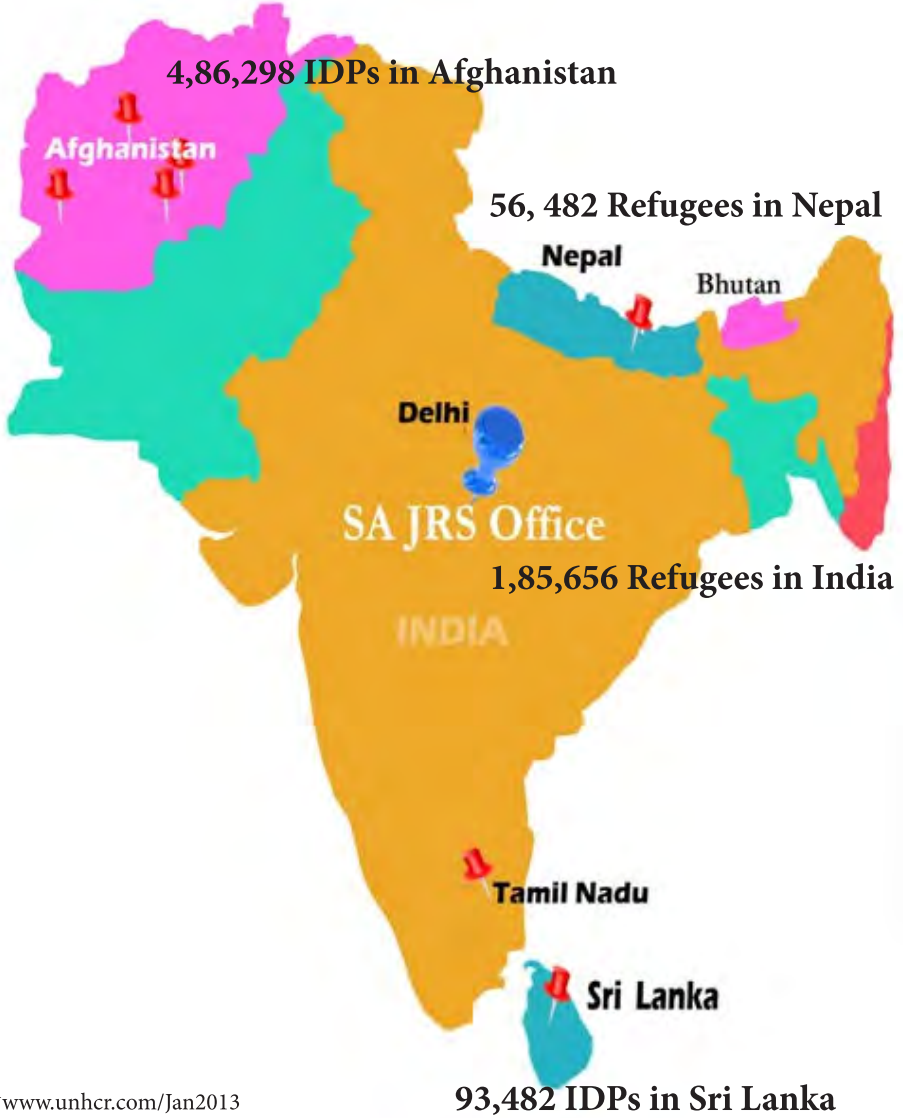

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FOREWORD

The present JRS report is a timely reminder that there is much to be done for refugee protection in India. The present Indian government's selective grant of citizenship to asylum seekers of Hindu and Sikh religious persuasion from Afghanistan, Pakistan and Bangladesh, while welcome, flies in the face of India's commitment to its own constitution as well as its international obligations to equal treatment. The overwhelming majority of the Sri Lankan Tamil refugees are Hindus. The Hindutva brigade tends to gloss over this fact and allows the Sri Lankan Tamil refugees to live in a twilight zone with little or no future. Even this flawed religious argument of the Hindutva dispensation is arbitrary and capricious. The Muslim Rohingyas from Myanmar in India are running from pillar to post to seek protection in India. Precious little has been done for them by the New Delhi dispensation.

Lest we forget, all the Bhutanese refugees were Hindu. India was their country of first asylum. Yet it donned the robes of Pontius Pilate and washed its hands of the problem by shooing these refugees into Nepal, where the government acted nobly but with little or no capacity. Again, it was organizations like JRS, which through its magnificent educational programme and schools, did much to prepare them for third-country settlement, in the main, in the United States of America.

Further afield in Europe and North America, with one or two exceptions, governments have failed to live up to their humanitarian pretensions. The semantic dissimulation practised by the painfully, regularly morally righteous Danish, Finnish and UK governments is staggering to the human rights imagination.

In this moral wasteland, the present Pope has been a beacon and sanctuary of hope. His clarion call to every Catholic parish, religious community, monastery and sanctuary in Europe to take in one refugee family that has fled "death from war and hunger" is what has put faith back into the meaning of the word compassion.

The Pope's address to the US Congress on being generous to the refugees is timely.

Elizabeth Allen, an associate professor of English at the University of California, Irvine, poses the issue brilliantly.

"President Obama's announcement that the United States will accept an additional 10,000 Syrian refugees over the next year is woefully inadequate. If parishes in Europe heed the Pope's call, Catholic sanctuaries would house 500,000 immigrants — far more than the 40,000 who entered Germany before it closed its borders September 13, but far fewer than the number who need a place to go. Clearly, the bureaucratic conditions of developed countries surrounding immigration and asylum are thoroughly inadequate to the circumstances of the current crisis.

When the Pope asks every parish to house a family, he means to personalize the crisis. He means to transcend quotas and

numbers, to urge wealthier countries to shoulder more of the burden. And he means to refute the idea articulated by leaders like Slovakia's Interior Ministry Spokesman Ivan Netik, who said that Slovakia could not accept Muslim immigrants: 'We don't have any mosques in Slovakia, so how can Muslims be integrated if they are not going to like it here?'

The Pope's call to Europe's Catholic parishes specifically crosses religious boundaries — welcoming people regardless of religious creed.

His demand recalls the peculiarly American history of antagonism to Catholic immigrants. In the 19th and early 20th centuries, when immigrants from Catholic countries such as Ireland, Poland and Italy began to arrive in great numbers, anti-Catholic sentiment ran high. New immigration laws like the 1921 Emergency Quota Act limited the number of people who could enter the country legally, to 3% of each nationality's population according to the 1910 census. Catholic churches became centers of social life and legal protection for people who were deemed incapable of being assimilated due to their faith."

Professor Allen could not be more right when she added:

"Pope Francis' call for sanctuary across religious divisions draws on the Church's complex history of protecting refugees. In the U.S. and Central America, the Church went on to protect other Catholic immigrants in the Sanctuary Movement of the 1980s. Pope Francis extends that history across the boundaries of faith in order to protect Muslims who are — like early 20th-century Catholics in America — the objects of vilification today.

The reality of mass migration is not new. Opposition to new immigrants on the basis of race, geography and creed is not new. The Pope has called for a robust resistance to such prejudices. He has thus asked the world to look carefully at the conditions under which we welcome refugees.

In answering his call, we might take it even further. Instead of identifying quotas, Europe and America alike should 'reason not the need,' to use the words of King Lear in his desperate and homeless state. The conditions of hospitality should conform more to the circumstances of the needy than to the economic anxieties of the wealthy. …" (http://fortune.com/2015/09/23/pope-francis-refugee-crisis-church-history/).

Professor Allen could be speaking of present-day India, Japan, Thailand or Australia. There is a moral void in India when it comes to refugee protection. The lack of domestic legal frameworks has led to the inconsistent treatment of refugees. Protection fluctuates, depending on the refugee's country of origin and the political relationship between India and their home country. As one commentator correctly argues, this is intentional.

"The current arrangement of managing the influx of migrants and asylum seekers through 'ad hoc' administrative decisions, based on political and security considerations, rather than specific legislative enactments is politically more convenient on the basis of India's bilateral relations with the country of origin of the refugees in question." (Nair 2007: 4)

India's ad hoc, politically expedient approach allows it to

treat refugees as political pawns, leaving them vulnerable to abuse (Khan 1997).

The historical warmth of India being an inclusive and welcoming society is wearing thin. The present JRS report is a timely reminder of what needs to be done. Will we rise to the occasion and need?

Ravi Nair
South Asia Human Rights Documentation Centre

25 September 2015

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JRS advocacy builds upon synergies among forcibly displaced people: JRS team workers and others who serve refugees; academics; human rights advocates; the public who support our work; government and UN officials.

The need to propose a uniform refugee policy, with an effective legal framework, was expressed during a UNHCR-hosted meeting of civil society groups working with refugees and urban poor, primarily in Delhi. This *Position Paper on the Legal Rights of Refugees in India* is the joint effort of the Indian Social Institute and JRS to take the proposal a step forward.

We thank Dr Joseph Xavier SJ, Executive Director of Indian Social Institute, New Delhi, for his professional guidance of the research study and publication through every stage. Sincere thanks to Fr. Joy Karayampuram SJ, Human Rights Department of the Indian Social Institute, for his support and assistance to the researchers.We gratefully acknowledge the partnership of the Indian Social Institute, and contribution of the staff in the study and documentation.

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We sincerely thank Mr. Ravi Nair, Director of South Asian Human Rights Documentation Centre and a committed advocate of the cause of refugees, for writing the foreword to this paper.

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We express our gratitude to everyone who has made this publication possible. With them we share the hope that refugees in India may regain the opportunity to live in freedom and dignity; and with them we pledge to work towards making the uniform refugee policy a reality in India.

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JESUIT REFUGEE SERVICE – SOUTH ASIA

Today we continue to be invited by Fr Arrupe and by St Ignatius, the founder of the Jesuits, to look at the world in a deeply spiritual way. We see people "so diverse in dress and behaviour: some white and others black, some in peace and others at war, some weeping and others laughing, some healthy and others sick, some being born and others dying." Due to unjust structures, a quarter of humanity lives on the edge, struggling to survive and maintain its dignity. In 2015 the world faced the worst displacement crisis since the aftermath of the Second World War, reaching up to 60 million people, of whom 38.2 million have been internally displaced in their own countries. Today's major displacements are in the Middle East, with Syria becoming the world's biggest source of refugees; Africa, especially due to the ongoing crisis in Central African Republic and South Sudan; and Central Asia. South Asia is also facing one of its worst humanitarian crises leading people, mainly from Myanmar and Bangladesh, to risk their lives in dangerous boat trips in the Andaman Sea and Straits of Malacca. Half of the world's refugees remain "invisible" in urban areas. Refugees and asylum seekers are confronted with ever higher walls and frontiers of exclusion. They are denied their right to protection in a growing environment of hostility towards migrants and refugees. Their hopelessness is a threat to the future of our world. The JRS'

goal is a world free from frontiers, where people can move freely and securely – a world where the value of hospitality is extended to everyone.

In South Asia, the JRS has been serving in Nepal, India, Sri Lanka and Afghanistan. Over the last two decades, JRS has journeyed with the Bhutanese refugees in Eastern Nepal in their daily struggle to seek a durable solution for their collective future. At first JRS vigorously supported the refugees in their poignant efforts to return home and, when it became clear that this was impossible, it tentatively proposed feasible plans for large-scale third-country resettlement – which is the solution that finally came to pass. The Bhutanese resettlement operation is considered as one of the largest and most successful. By January 2015, 94,935 refugees from Bhutanese camps had been resettled. With plans to phase down operations at the end of 2015, JRS pays tribute to everyone who contributed to the Bhutanese Refugee Education Programme over the years, to each and every refugee, Nepalese and international volunteers who lent their expertise, experience, creativity and dedication to the cause of accompanying, serving and advocating the cause of the Bhutanese refugees in Eastern Nepal.

In Tamil Nadu, India, there are 66,509 Sri Lankan refugees living in the 110 camps and 2 special camps. Over 11,824 refugees benefit directly from JRS' service in the camps through formal and non-formal education; vocational training; community services; capacity building of camp leaders, women and youth; and advocacy training and protection. In Sri Lanka, JRS serves 10,814 internally displaced persons

through pre-schools, complementary education centres, as well as multi-skill centres. Responding to the need for providing war-affected communities in the North and East with access to higher education, JRS and the Sri Lanka Province in partnership with Jesuit Commons: Higher Education at the Margins (JC:HEM) have launched online tertiary education programmes in Mannar and Vavuniya. Reorienting its mission in 2015-2016, JRS proposes to phase down/hand over lower-level education programmes to local parishes, NGOs and community-based organizations, and integrate the JC:HEM programme into the apostolic work of the Province. In Afghanistan, JRS is serving 7,867 war-affected youth, primarily in the field of education in Kabul, Herat, Bamiyan and Daikundi. It is engaged in teaching at universities and the National Institute of Management and Administration; conducting the JRS-JC:HEM online education programme at the Herat Technical Institute and in Bamiyan; conducting English language training for school teachers and less-privileged youth; and supporting the sustainable development of returnee communities. The JRS Regional Office in Delhi coordinates all these programmes, and has taken up entry-point activities in education and life-skills training for the Chin refugee community in West Delhi.

September 2015

ABSTRACT

For decades now India has been home to a large number of refugee groups while not having signed the 1951 Convention for Refugees or established a national legislation governing refugees.

This position paper examines the policies enacted by the Indian government often on a bilateral basis towards the important number of people seeking asylum in Indian territory. It emphasizes the different treatment accorded to the diverse refugee groups resulting from the absence of a national legal framework dealing with them.

To explore this issue, the paper puts forward general issues that refugees in the country face, mostly issues related to the access of their basic rights as refugees. Interviews were conducted mainly with small groups of Chin, Afghan and Somali refugees living in New Delhi.

Furthermore, the paper highlights through a case study of the Tamil Sri Lankan refugees, the lack of durable solutions for the refugees that the Indian State has assisted for more than 30 years.

In the light of its findings, this position paper urges India to create a legal mechanism treating equally the various categories of refugees. It is in the State's interest to implement a more formalized, comprehensive national legal framework dealing with refugees in the country. It also advocates the pursuit of a comprehensive solutions plan with regard to the unique situation of the Sri Lankan refugees.

1. INTRODUCTION

India has been witness to numerous migratory populations that came to this country from foreign lands and who were subsequently accepted and absorbed as one of its own. With respect to those in particular who have sought refuge here, India's stance dates back to the 16th/17th centuries when it welcomed the Parsis (Dhawan 2004: 32-80, 43-59). It has since continued this tradition of being a tolerant host, absorbing Tibetan refugees in 1959, the Bangladeshi refugees in 1971, the Chakma influx in 1963, the Tamil efflux from Sri Lanka in 1983, 1989, and 1995 (Ibid.). This trend has continued with a steady inflow of Myanmar refugees and Bangladeshi migrants over the years (Ibid.). However, running parallel to this history is a paradoxical legal discourse where, upon arrival, refugees in India are still faced with a legal vacuum where the nature and extent of their rights remain ambiguous.

Currently India hosts over 205,000 refugees like Myanmarese, Sri Lankans, Somalis and Afghans (UNHCR 2014a). These different groups of people of concern who are residing in India are dealt with by the government on a bilateral basis. Therefore, they are not subject to a atypical support and require the assistance of the United Nations High Commissioner for Refugees (UNHCR). India has not yet acceded to the 1951 Convention on Status of Refugees and the1967 Protocol, nor has it drafted a specific legislation on

Refugee Law that will treat asylum seekers and refugees on the same legal grounds. Despite the curbs on international humanitarian assistance to refugees and asylum seekers, India has been a good host country to them. For instance, the Indian government has provided basic humanitarian assistance, especially when it comes to the group of Tibetan and Sri Lankan refugees present in the country for over 60 years and 30 years respectively. Accordingly, the UNHCR has operated in India since 1969 (Mohan 2003) and today assists over 197,850 refugees and 3,779 asylum seekers (Dhawan 2004).

Notwithstanding the fact that the Government of India meets generally its international obligations towards refugees and asylum seekers, the current legal framework of India applicable to foreign nationals makes no special provision for those seeking asylum on humanitarian grounds and continues to criminalize those who fall outside its ambit, qualifying them as aliens.

The purpose of this paper is to facilitate the conversation between the multiple stakeholders involved in the assistance of refugees and asylum seekers with a view to connect them and make them work together to contribute in the creation of legal assistance for refugees and asylum seekers in India. It aims at generating a discussion on a common legal framework for refugees in India, which still has not been put in place.

An attempt will be made to draw attention to the current legal framework regarding refugees in India, to analyse its protection gaps and to put forward recommendations that aim to encourage the creation of a legal space for refugees in India.

A case study on the Sri Lankan refugees will be also undertaken to highlight the kind of differentiation the government does with certain categories of refugees as well as to point out the reasons why the case of the Sri Lankan refugees cannot be compared with the other groups of refugees from the recent waves of immigration. Consequently, propositions have to be formulated to urge the Government of India to provide better durable solutions for this group of refugees.

2. THE STATUS OF REFUGEES IN INDIA

Although one could argue that India has been generous to any flow of refugee groups in Asia, who choose this country as a refuge mostly for its porous borders, better economic opportunities and its soft-secular state system (Mohan 2003; Sharma 1996: 110), the State still lacks a proper legal framework for people seeking refuge in India. Consequently, push-backs and coercive measures to promote repatriation in violation of basic international fundamental rights have been practised in India over the years (Ibid.). This section highlights the current Indian judicial system vis-à-vis refugees in the country, taking into account the country's international obligations.

2.1 India's international obligations

Internationally, refugee protection has largely been provided under the umbrella of the 1951 Refugee Convention and 1967 Protocol, translated by nation-states into national laws. The rights and obligations under the Convention have thus been adopted into a variety of political and geographical contexts.

South Asian countries in the past have cited their own reasons for not ratifying the 1951 Convention, although India, Pakistan and Bangladesh are members of the Executive Committee which is the highest decision-making body of UNHCR. Despite India's reservation with regard to the

relevance of particular refugee patterns as stated in the Convention, it has to be emphasized that India, nevertheless, has international humanitarian obligations. Indeed, as the country that acquiesced to an accumulation of international covenants and treaties, which by definition are also applicable to refugees, the Government of India is required to respect refugees' human rights as it is bound by the international instruments (Ibid.).

India is a party to the 1966 International Covenant on Civil and Political Rights (ICCPR), where it has made a reservation on Article 13 regarding the expulsion of a person lawfully present in the territory of the State.[1] Furthermore, India ratified the 1966 International Covenant on Economic, Social and Cultural Rights, the 1963 Convention on the Elimination of All forms of Racial Discrimination and the 1979 Convention on the Elimination of All forms of Discrimination against Women (CEDAW) (Mohan 2003; Sharma 1996: 110; Gochhayat 2011; Acharya 2004: 4). Along these lines, India recognized the 1989 Convention on the Rights of the Child[2] and signed the 1984 Convention against Torture (CAT) (Gochhayat 2011: 9). It is essential to recall that India has adopted the 1948 Universal Human Rights Declaration (UDHR) whose Article 14(1) states, "Everyone has the right to seek and to enjoy in other countries asylum from persecution" (*un.org* 2014).

In addition to what has been mentioned heretofore, the Indian government has already on previous occasions shown interest in creating a legal space for refugee rights in the country. As a member of the Asian-African Legal Consultative

Organization (AALCO), India is a signatory to the Bangkok Principles (*refworld.org* 1996a) on the Status and Treatment of Refugees as adopted on 24 June 2001 at the AALCO's 40th Session in New Delhi. Even if these are non-binding principles, they intend to influence member states to adopt national legislation for the status and treatment of refugees and serve as a model to deal with the refugee problems (see *refworld.org* 1980).

Other regional initiatives include a draft refugee law for the South Asia region, which was first presented at the 1997 SAARCLAW seminar in New Delhi and then adopted by the fourth annual meeting of the Regional Consultation in Dhaka in 1997. This model law was an NGO initiative by a group of concerned citizens in collaboration with UNHCR; it was not an official document of a government organ or of intergovernmental bodies.

Although India is not a signatory to the 1951 Convention, it has had a longstanding practice of hosting asylum seekers and refugees. In this light, one could argue that its affiliation to numerous international treaties and covenants[3] as well as its initiatives on various occasions to extend protection to refugees within its territory demonstrate that it is progressive in dealing with refugee issues. More than that, adopting some binding forms of refugee protection in the country is seen as fundamental now more than ever, since the asylum seekers and refugees from various groups coming to India face unfairly different refugee regimes. Certain scholars such as Prabodh Saxena, a senior officer of the Indian Administrative Service, claim that in practice India does apply certain articles

of the 1951 Convention (Saxena 2007: 253-54). For instance, he observes that India has respected the most important basic human right of refugees, which is the principle of *non-refoulement*[4] (Singh 2014: 39). Furthermore, he claims that India provides refugees with the same treatment as it accords to aliens generally and therefore it respects article 7 regarding the exemption from reciprocity. However, this claim cannot be taken too far since there are specific situations wherein refugees are treated differentially. For example, there are major restrictions on the movement of Chin refuges, who are about 100,000 in Mizoram. In the same manner, heavy restrictions are placed on the Sri Lankan refugees in Tamil Nadu as well as on Afghan refugees. As some of them are considered as political refugees by India, the treatment differs from one group of refugees to another.

Saxena also states that India recognized article 26 of the 1951 Convention, given that refugees have the right to choose their place of residence and move freely within the territory, along with article 21 concerning the freedom of housing, stating that refugees do not need to stay in camps. He also states that India provides refugees Identity Card (conforming to article 27), applies towards its refugees a policy of non-discrimination (article 3) and freedom of religion (article 4) as well as free access to court (article 16) and public education (article 22) (Singh 2014: 39; OHCHR 1996-2014b). In fact, though India may have respected certain provisions of the 1951 Convention, it has always had a different treatment towards the numerous groups of refugees and therefore not everyone has been entitled to the same humanitarian

assistance from the Indian government, making Saxena's contention contestable in certain cases.

In any case, it has to be pointed out that all the international instruments cited hitherto can become part of the domestic law in India. Only then they are specifically incorporated in the municipal law (Mohan 2003).

2.2 The current National Refugee Law

This part draws attention to the inconsistent procedures for determining refugee status and providing protection to persons of concern seeking asylum in the Indian State as the country requires a legal framework specific to them. Important protection gaps exist in the Indian legal mechanism for dealing with this category of people.

India has no central government body, other than Foreigner Regional Registration Offices (FRRO), under the Bureau of Immigration India, to deal with refugees. As there is no governing provision of law, FRRO officials deal with asylum seekers and refugees on the basis of ad hoc policies (Mohan 2003). Moreover, FRRO does not distinguish between asylum seekers and refugees. The Government of India grants permission to UNHCR to conduct registration and refugee status determination (RSD) as well as to give to refugees, who are not extended direct assistance by the government, certain assistance.[5] UNHCR provides them de facto protection because refugees recognized under the UNHCR mandate are not considered refugees under Indian law (*aralegal.in* 2014). Consequently, people fleeing persecution from their country and seeking refuge in India are often left at the goodwill and

sympathy of the Indian government's improvised policies regarding the situation/refugee group along with the limited operations of UNHCR (Sircar 2006). UNHCR India largely works with urban refugees, especially in Delhi; its operation in other places is limited.

The authorities have, in general practice, taken cognizance of UNHCR's Refugee Certificates to allow most refugees an extended stay in India in the absence of political opposition. Therefore, while a *de jure* system of refugee protection in India does not exist, there is a system of procedures and practices that serve to create a *de facto* refugee protection regime in India.

Here, the ambivalence of India's refugee policy is clearly spotlighted in relation to its relation with UNHCR. In fact, while it seems that there is no formal arrangement existing between the Indian government and UNHCR, the country continues to sit on UNHCR's Executive Committee annual session[6] whilst it has no intention to sign and/or ratify the main legal instrument of UNHCR.

As Justice J.S. Verma, Chairman of India's National Human Rights Commission, pointed out, "the provisions of the (1951) Refugee Convention and its Protocol can be relied on when there is no conflict with any provisions in the municipal laws" (Nirmal 2001: 11).

In India, there are no municipal laws specific to asylum seekers and refugees. Consequently, considering the afflux of people seeking refuge in India, there is an important lack of specific refugee statute in the country, which restricts its judicial system in refugee cases. As a result, it has to enforce

laws which are applicable to foreigners and asylum seekers and refugees are therefore acknowledged as aliens.[7]

In this view, it is argued that the Foreigners Act 1946 poses the primary threat to the security and protection of refugees in India. The Act, essentially being an immigration law document, creates wide discretionary powers for the executive to exercise against those who are caught without a valid passport or visa. Since the Act contains no sub-categories for refugees, like any other overstaying/illegal foreigner the refugee can be caught, detained and deported. Thus, in theory this could lead to a breach of certain basic principles of international refugee law against *non-refoulement*. In urban centres like Delhi where UNHCR has a substantial presence, this law might not have been used as frequently to detain refugees with a certified claim. However, there are specific cases wherein Chin refugees have been thrown out, contrary to normal practice. So in India, there exists an arbitrary discrepancy between a seemingly refugee-tolerant executive policy and the refugee-blind statute.

Furthermore, the Foreigners Act 1946 reserves specific provisions to specific cases. Indeed, legislation has been passed regarding specific groups of refugees in India such as the Tibetans or the Ugandans of Indian origin, addressing issues related to their rehabilitation (Mohan 2003). This kind of exception to the rule, made only towards a certain category of refugees, intensifies the fact that the Foreigners Act 1946 has for too long been an interim measure governing the plight of asylum seekers and refugees in India and that a proper framework has to be put in place for anyone to have equal

rights and opportunities when seeking refuge in the country. It has to be noted that recently, a positive effort was made, resulting in the formulation of the Refugees and Asylum Seekers Protection Bill 2006.[8] It is unfortunate, however, that the same was never tabled in Parliament owing to frequent inability to reconcile humanitarian obligations and State security in the Indian context (*The Telegraph India* 2012). This position paper points again towards the existing international obligations and precedents as examples of asylum law frameworks that create a rights regime for the refugees while providing space to the State to make adjudications keeping its interest in balance.

On a positive note, due to the non-existence of domestic legislation in the area of refugee protection, the judiciary has not yet judged it necessary to make some change regarding India's Constitution when this one could not make up for the voids. As a result, it extended the guarantee of Article 14 (right to equality) and Article 21 (right to life and liberty) to non-citizens including refugees (Ibid.).

For instance, in *National Human Rights Commission v. State of Arunachal Pradesh and Another (1996)*, the Supreme Court held that "all 'refugees' within Indian territory are guaranteed the right to life and personal liberty enshrined in Article 21 of the Constitution" (Sircar 2006; *refworld.org* 1996b). Justice Ahmadi in his judgment stated that the State is bound to protect the life and liberty of every human being, be s/he a citizen or otherwise, and it cannot permit anybody or group of persons to threaten the refugees, in this case the Chakmas, to leave the State. No state government worth the name can

tolerate such threats by one group of persons to another group of persons; it is duty-bound to protect the threatened group from such assaults and if it fails to do so, it will fail to perform its constitutional as well as statutory obligations.

Furthermore, foreigners are also entitled to the protection of rights recognized in Articles 20, 22, 25 to 28 and 32. Article 20 provides the right against prosecution under *ex-post facto* legislation, the right against double jeopardy and the right against self-incrimination – an accused can never be compelled to be a witness against him/herself. The procedural safeguards against arbitrary arrest and detention, provided in Article 22(1) and (2) are very much applicable to refugees. One of the rights guaranteed by the Indian Constitution is the right to Freedom of Religion, well described in Articles 25, 26, 27 and 28. As a citizen of a secular nation, every citizen of India has the right to freedom of religion, the right to follow any religion of his/her choice. According to this fundamental right, every citizen has the opportunity to practise and spread their religion peacefully. Refugees are entitled to freedom of religion. In case of violation of these fundamental rights they have the right to move the Supreme Court for the enforcement of these rights under Article 32 (Acharya 2004).

Notwithstanding this, the Indian Constitution does not provide any specific provision obliging the State to enforce and/or implement international treaties and conventions. Following the precedent discussion and illustrations, it is advocated that India must strive to adhere to recognition of refugee rights in conformity with international law via a specific national legislation which defines and concretises the category of refugee in the statutory form.

2.3 International Influence

In the light of India's previous reservations regarding the 1951 Refugee Convention's relevance with respect to the particular refugee patterns in developing countries, inspiration can be drawn from other refugee-receiving countries such Hong Kong (*justicecentre.org.hk* 2014). Indeed, Hong Kong has taken the initiative and has recently established a clear executive-led Unified Screening Mechanism (USM), in a territory where there exists no international obligation under the 1951 Convention (*info.gov.hk* 2014).

Initially, Hong Kong counted about 1,871 asylum seekers and 126 refugees (UNHCR 2014a) coming mostly from its neighbouring countries such as Vietnam and China. Just as India, Hong Kong SAR is not a party to the 1951 Convention and its Protocol but the territory has ratified the ICESCR and the ICCPR treaties as well as the Convention against Torture and all international instruments binding Hong Kong to secure and address to its members socio-economic, civil and political rights as well as the right to *non-refoulement* (Ramsden and Marsh 2014: 3). Originally, this region maintains a strict policy to not grant asylum as it does not have a particular legislation taking into consideration any individual seeking refuge for fear of persecution and serious human rights violations (Loper 2010: 418). Nevertheless, Hong Kong has been willing to fulfil its international obligations. It has implemented in its domestic law provisions regarding the *non-refoulement* rights in order for asylum seekers to be able to remain temporarily within the territory in order to file a refugee claim with UNHCR.[9] Like India, Hong Kong initially had no role in the investigation

of a claim under the refugee convention and left this exercise to UNHCR (Loper 2010: 436) and Ramsden and Marsh 2014: 4). However, this agreement led to legal challenges due to the lack of transparency of the UN agency in its refugee status determination (RSD) process leading the government to take action (Ibid.). In 2004, Hong Kong created its own administrative mechanism for screening of claims under the CAT Convention, giving the choice to asylum seekers to file their claim with UNHCR and/or with the government, as a result of *Secretary for Security v. Sakthevel Prabakar* (*refworld.org* 2004), which has led the Court of Final Appeal (CFA) to conclude that UNHCR did not meet the requisite high standards of fairness and to assess torture claims (Ibid.). The CFA also considered that the Convention against Torture is applicable to the territory and therefore has to be taken into consideration in the domestic law.[10] Although the government was taking a step forward in the protection of asylum seekers within its territory, it was argued that this new mechanism was not efficient, as asylum seekers would file their claim with various systems, resulting in duplication claims and later contributing to their prolonged stay in the country (Ramsden and Marsh 2014: 5). Therefore in 2009, after *refworld.org* 2011, the government had to take over the UNHCR RSD in order to improve its legal mechanism and thereupon ensure high standards of fairness for the assessment of asylum claims.[11] In the same light, other cases were brought to the CFA later where it again highlighted the need for the government of Hong Kong to strengthen its mechanism for asylum seekers. To be efficient, the new system had to reflect the international instruments on the right of *non-refoulement*

as well as to consider a wider content of persecution claim on *non-refoulement* such as, at least, torture, cruel, inhuman, degrading treatment or punishment and violations of other fundamental rights – especially those which are non-derogable.[12] In respect to the several challenges that the government screening has brought along the way, in March 2014, the government launched a Unified Screening Mechanism (USM), which covers *non-refoulement* claims on different grounds as defined under the CAT, Article 3 of the Hong Kong Bill of Rights and Article 33 of the 1951 Refugees Convention.[13] Notwithstanding this, the creation of this mechanism to promote the *non-refoulement* right to individuals entering Hong Kong can be seen as a major step towards better protection for asylum seekers in this territory as well as a good example to follow by the other Asian countries that are not a party to the 1951 Refugees Convention. Hong Kong still lacks a welfare system for those asylum seekers which most of the time lead to poverty and destitution among them (*justicecentre.org.hk* 2014). Asylum seekers in Hong Kong waiting for their recognition or the ones already recognized do not have access to basic rights. Although a legal framework has been put in place recently. Hong Kong needs to think more of a humanitarian package taking into account long-term solutions for refugees in the country (Ibid.). On this line, UNHCR, even though not responsible anymore for RSD, remains within the territory in order to work with the different stakeholders in order to secure the protection needs of asylum seekers and refugees as well as to carry on making efforts to secure a durable solution to their situation (UNHCR 2014b).

India could take Hong Kong as a good example when it comes to the different initiatives that the territory took to create a legal and unified mechanism for asylum seekers. This essentially grants a State-issued refugee status to asylum seekers, giving them a firmer legal grounding than before. National legislatives in all these cases came from the need pressed for by the civil society and the government's realization of State responsibility in the State's interest. This kind of change and initiatives towards asylum seekers and refugees could be achieved by India, in the context that the country has already a refugee-sensitive judicial framework, which could be strengthened and used to effect positive changes.

ENDNOTES

1. Signed in 1979, under Article 13, India has granted its right to apply its municipal law relating to aliens. See Mohan 2003; Sharma 1996: 110.
2. Article 22 of the Convention specifies that a child, whether unaccompanied or accompanied, who seeks refugee status, shall receive protection and humanitarian assistance in order to enjoy his/her rights set in the country of refuge as well as other human rights instruments to which the state is a party. See OHCHR 1996-2014a.
3. International treaties and covenants which take into consideration any human being do not differentiate among refugees, asylum seekers, aliens and so on.
4. Non-refoulement is a key facet of refugee law, that concerns the protection of refugees from being returned or expelled to places where their lives or freedoms could be threatened. Unlike political asylum, which applies to those who can prove a well-grounded fear of persecution based on certain category of persons, non-refoulement refers to the generic repatriation of people, including refugees into war zones and other disaster areas.
5. "Many refugees receive a small monthly subsistence allowance and all have access to the services provided by the UNHCR's implementing partners in Delhi: the YMCA, Don Bosco and the Socio-Legal Centre (SLIC). The YMCA helps refugees to find accommodation and provides access to education for children and young adults in government

schools through the provision of an education allowance. Don Bosco provides psychosocial support and vocational training such as English language classes and computer courses. It also funds other vocational courses such as beautician training and driving lessons. The support of these organizations is vital, providing a degree of support to the refugee community". See *hrln.org* 2007.

6. India joined the Executive Committee of the High Commissioner's Program (ExCom) in 1995. According to UNHCR (2001-2014), "UNHCR's governing ExCom meets in Geneva annually to review and approve the agency's programmes and budget, advise on international protection and discuss a wide range of other issues with UNHCR and its intergovernmental and non-governmental partners".
7. The principal Indian laws relevant to refugees are Foreigners Act, 1946 (Sections 3, 3A, 7, 14); Registration of Foreigners Act, 1939 (Sections 3, 6); Passport (Entry into India) Act, 1920; Passport Act, 1967 and Extradition Act, 1962. See Mohan 2003.
8. See Appendix C on the Indian Model Law on Refugees, draft by Justice P.N. Bhagwati.
9. In the Basic Law and Part II of the 1991 Bill of Rights Ordinance, which largely replicates the ICCPR, see Loper 2010: 404 - 439 and Ramsden and Marsh 2014: 4.
10. The Immigration (Amendment) 2012 gives Art. 3 of the UN Convention against Torture a statutory footing within the Hong Kong law. See *immd.gov.hk* 2012) and Ramsden and Marsh 2014: 4.
11. In late 2008, the Court of First Instance established in the case of *C and Others v. Director of Immigration and Another* that the mechanism put in place did not meet the highest standards of fairness and therefore it concluded that the government had to take over RSD, which led in 2009 to the improvement of the government's mechanism to ensure high standards of fairness for the assessment of asylum claims as well as **the signature of a** Memorandum of Understanding between UNHCR and the Hong Kong Government. See *refworld.org* 2011.
12. Such as the arbitrary deprivation of life. See Loper 2010: 23.
13. "The USM to be launched for screening non-refoulement claims on grounds of (a) torture as defined under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT claims); (b) torture or cruel, inhuman or degrading treatment or punishment under Article 3 of the Hong Kong Bill of Rights (BOR Article 3 claims); and/or (c) persecution with reference to the principle under Article 33 of the 1951 Convention relating to the Status of Refugees (persecution claims)', in UNHCR 2014b.

3. INDIA'S INCONGRUENT POLICY TOWARDS REFUGEE GROUPS

India deals with asylum seekers and refugees in three different ways: (i) those living in camps and accorded protection and assistance by the government, such as Sri Lankans and Tibetans; (ii) those who are not recognized by the government but have been granted refugee status by UNHCR under its mandate and therefore are protected under the principle of *non-refoulement* such as the Burmese, Somalis, Afghans and others; and (iii) those who have entered India and have been assimilated into the local community but are not acknowledged either by the government or by UNHCR, such as tribal refugees or the Chin living in the state of Mizoram. The government deals with these people from different countries, initially fleeing their land for fear of persecution, differently according to "political compulsions" or "not right-enabling legal obligations", leaving them unmonitored for protection and local assimilation.

3.1 Refugees recognized by the government

To certain selected groups of refugees, India's executive policy grants certain rights and privileges, leaving the question of equality and uniformity unanswered (Nair 2007: 6). Both Sri Lankan Tamil and Tibetan refugees are issued refugee identity documents (Mohan 2003) and are entitled to government

assistance. But while Tibetans live in settlements with almost unrestricted freedom, the Sri Lankan refugees are largely kept in camps under close watch and restricted movement. Geo-political considerations thus play out in the treatment of refugees by the Indian government.

During the 1959 influx of Tibetans into India, the government, not politically comfortable at that time with China, set up transit camps, offered medical facilities and food supplies as well as their refugee identity documents, travel permits, which privileges were not granted to any other group of refugees. They were also granted land to set up educational institutions and other socially useful programmes, apart from the permission to set up a government-in-exile (Mohan 2003; *hrln.org* 2007: 2).

Additionally, in exercise of the powers conferred by Section 3 of the Foreigners Act, 1946 (31 of 1946) and Section 3 of the Registration of Foreigners Act, 1939 (16 of 1939), Tibetan nationals could acquire registration certificates through the Ministry of Home Affairs. This serves as an identification document for the Tibetans in India. For international travel they can apply for identity certificates at the Regional Passport Office. Even in the case of Tibetan refugees, differential treatment exists amongst those who initially arrived in India between 1959 and 1970 and refugees arriving afterwards. While policy directives allow early Tibetan refugees identification documents, right to reside, travel and work outside of government sector, the government decided to grant substantially less assistance to Tibetan refugees arriving after 1980. According to both the United States Committee on

Refugees and the International Campaign for Tibet, the government has also denied these Tibetans both Residential Certificates (RC) and Identity Certificates (IC). Furthermore, in recent developments, children of Tibetan refugees born in India between the cut-off date of 1950 and 1987, as mentioned in the Citizenship Act 1955, can stake a claim for citizenship. They also have now been granted voting rights (Bhatia 2014): this is the first time after over 50 years of the Tibetan exile that voting right is acquiesced to Tibetans born in India between 1950 and 1987. Notwithstanding this advancement of the Indian Government towards the Tibetan refugees, it seems that the right to vote is a complex dilemma for them as most of them are rather satisfied with the status quo they have in India (*Tibetan Review* 2014b).

At the same time, although the Election Commission has offered for a specific category of Tibetan refugees a voting card, there is still puzzlement as regards their citizenship status (Bhatia 2014). Diverse newspaper articles have recently reported that the Home Ministry is opposed to the recognition of Indian citizenship for all Tibetans born before the cut-off date (*Tibetan Review* 2014b). This issue is rather ambiguous: while one would argue that having a voter I-card will make them lose all the privileges of being refugees, others argue that Tibetans who have voted recently for the general election are still holding their Foreigner's Registration Certificate which they must renew if they wish to be able to continue to live in India (Ibid.).

Regardless of the uncertainty of their legal status in India, it appears that the Tibetans are not sure whether they should

take Indian citizenship. The move on the part of the Election Commission came in the wake of an August 2013 Karnataka High Court order, which paved the way for granting Indian citizenship to Tibetan refugees, and which indeed would facilitate some long-term plans for them such as applying for jobs, pursuing professional education, travelling abroad or buying property (Ibid.). However, others who are preoccupied with the pursuit of the Tibetan cause view this change with apprehension, as most of them want to go back to their motherland as a long-term goal, and therefore they fear that taking the right to vote or citizenship in India would mean their relinquishing their RCs and losing their national and cultural identity as well as their legal rights to Tibet, which most Tibetans are not ready to do, still seeing themselves as people who took refuge in India but who are meant to go back to their country of origin (Bhatia 2014).

Basing on the August 2013 order by the Karnataka High Court, which cleared the way for granting Indian citizenship to Tibetan refugees, the Election Commission in its order dated 7 February 2014 said that children of Tibetan refugees born in India between the cut-off date of 1950 and 1987, as mentioned in the Citizenship Act 1955, can no longer be denied enrolment in voters' lists. The Ministry of Home Affairs challenged this decision in the wake of the Lok Sabha and state elections in 2014, citing international strategic and security concerns. However, the Delhi High Court ruled in favour of the inclusion of Tibetan refugees in the voters' list.

On the other hand, the Sri Lankan refugees, although granted acknowledgement by the State, have no freedom of movement,

no right to work and are forced to sustain themselves on limited government allowance. Moreover, only those living in the State's camps are recognized as refugees and receive cash doles and other essential items like rice, sugar and kerosene at highly subsidized rates (Mohan 2003). Basically, the lot of the Sri Lankan Tamil refugees depends upon which party is in power in Tamil Nadu (Nair 2007: 6). Their case underscores the crucial need for the Indian government to start exercising uniformity regarding the treatment of refugees and to stop offering privileges to them according to political, economical or administrative influences. (The particular case of the Sri Lankan refugees is highlighted further in Chapter 5.)

3.2 Refugees recognized by UNHCR

Some other groups such as the Somalis, Palestinians and Burmese do not receive any assistance from the Indian State; they are criminalized and denied access to basic social resources (*hrln.org*, 2007: 2); and therefore they rely mostly on UNHCR assistance. Again, the Indian government has recently decided to issue long-term visa to Burmese refugees, who are mostly from the ethnic Chin minority, but the other categories of refugees not recognized by the State, such as the Somalis, are not entitled to that privilege (Ibid.). At the same time, the Myanmar refugees get no assistance from the Indian State. Consequently, they face financial difficulties due mostly to work exploitation or lack of work and are condemned to live in the slums or share cramped accommodation with other refugees. Along with this, though the UNHCR mandate ensures that children protected by the organization have access to education, the educational

institutions insist, most of the time, on birth certificate, registration papers and fees that cannot always be provided by the refugees (Ibid.: 12-13).

The Rohingyas, who are a stateless Muslim ethnic minority population from Myanmar, faces even shoddier living conditions in India. This community arrived in Delhi in 2012 and at present UNHCR Delhi has around 9,000 Rohingyas registered with it, while thousands more remain unregistered (Bhalla 2014a). Unlike the Chin refugees, the Rohingyas do not have much support from NGOs (Ibid.) and therefore most of them are living in tented, precarious settlements dotted around Delhi, lacking basic sanitation system. They also face regular displacement, being often evicted. The Rohingyas are also present in Jammu and Hyderabad (Ibid.). Like other refugee communities, the Rohingyas have difficulties in finding jobs and fair entitlement (*On Islam* 2014). Additionally, due to their lack of identity proof and extreme poverty, they are not able to send their children to school and lack medical treatment (Ibid.)

The Somali refugee community in India is also not recognised as refugees by the government. It does not also enjoy the little privileges, such as the right to apply for residence permit, that the Myanmar community has been granted by the Indian State. In consequence, they are unable to work legally (*hrln.org* 2007: 15-16). They receive a subsistence allowance from UNHCR. However, they seem to face greater challenges than other refugee groups in finding housing, gaining access to education and medical treatment and seeking employment not only because of the language barrier but also because of

their skin colour, bringing them greater attention of the police (Ibid.: 13-14).

3.3 Unrecognized refugees

The Nepalese Bhutanese refugees are neither recognized by the Indian State nor by UNCHR and do not receive any financial/humanitarian assistance from either entity. This case demonstrates another differential treatment of refugees by the Indian government, under political influences. A mutual arrangement has been agreed between India and Bhutan under the Treaty of Friendship, signed in 1949 and updated in 2007 (*mea.gov.in* 2007), giving the Nepalese Bhutanese refugees permission to move freely across the border between India and Nepal and India and Bhutan, granting them the right to equal treatment and privileges as Indian citizens and therefore giving them the rights to residence, study and work without the need for identity documents (*hrln.org* 2007: 13-14).

The Hindu Pakistani refugee group that has arrived since 1965 and settled in Rajasthan and Gujarat areas is also not recognized by either UNHCR or the Indian State. The Citizenship Amendment Rules 200 specifically provide for Pakistanis to apply for citizenship in Gujarat and Rajasthan (Ibid.). The conditions for citizenship are that the individual must have been continuously resident in India for five years, rather than for 12 years as is the case with other foreigners applying for citizenship, and intend to settle permanently in India. On the other side, the ones who do not qualify for Indian citizenship rely on the short-term visa option or on the goodwill of the politically connected local authorities

willing to help them. As a result of this legislation, which dramatically sped up the application process, the Indian government awarded 13,000 Hindu Pakistanis Indian citizenship between 2005 and 2006 (Sanyal 2014; Arora 2014).

In a notification issued on 7 September 2015, the Ministry of Home Affairs announced that people from Pakistan and Bangladesh who had sought shelter in India before 31 December 2014, "due to religious persecution or fear of religious persecution" would be allowed to stay. The notification also listed the religions whose followers were eligible for this relaxation in the rules: Hindus, Sikhs, Christians, Jains, Parsis and Buddhists. The glaring omission of Muslims is a clear indication of the anti-Muslim agenda of the present NDA regime. Shia Muslims in Pakistan and the Hazaras of Afghanistan are constantly under religious persecution. Hazaras who have managed to escape religious persecution have been accepted by Australia. In its first year in power, the Modi government granted citizenship to 4,230 Pakistanis but not a single one of them was Christian. So India's claim of providing citizenship under "religious persecution" seems to be only half the truth.

Moreover, in adhering to its own claim of treating all refugees on equal footing without discrimination, the Government of India ought to have extended the same privilege to the Sri Lankan refugees living in India for long. A large number of the Sri Lankan refugees are of Hindu origin and only a minority are from Christianity and Islam. Why has the Government of India not considered Sri Lankan refugees for granting of citizenship? Granting citizenship to people from Pakistan and Bangladesh seems to be more of a political agenda than refugee protection.

4. THE PROTECTION SPACE OF REFUGEES IN INDIA

This part discusses the broad trends that emerge from interviews with a variety of refugee communities in India[1] regarding policies within their areas of concern.

The executive policy with respect to refugees in India is prima facie far more favourable in comparison to their statutory position. The State currently allows for the issuance of long-term visas as well as work permits renewable annually for refugees. There are also no general restrictions on them accessing government-funded healthcare as well as government schools. However, within this general umbrella, rights to healthcare and to education remain specific issues such as accessing scholarships, higher education, procuring employment, disability benefits, etc. which may be unavailable or, due to procedural requirements, inaccessible to the refugee population. This adversely affects the quality of life afforded to them. This report aims to highlight these discrepancies.

4.1 Access to education

As stated earlier, India has signed and ratified the Convention on the Rights of the Child and its optional protocols which entitle refugee children in the territory to have access to basic rights including the right to education. The 2009 Indian Right to Education Act also stipulates that refugees and asylum

seekers have access to primary education in the country (Luitel 2014). Therefore, education at the primary school level is freely available to the refugee population as a matter of right in India. However, for several reasons, refugee children do not attend school, mostly because some of them have become a supplementary financial resource to their family (Ibid.). Another reason, which has been highlighted through diverse interviews with different refugee communities,[2] is the language barrier as well as the demands of the bureaucracy that make it impossible for many refugee children to attend government schools.[3] For instance, certain refugees from Myanmar or Palestinians do not send their children to government schools where the main language is Hindi, which they find difficult to learn. Private schools, where English is mainly used, remain too expensive for certain refugees. Furthermore, in terms of administration, joining a school requires certain documents such as the birth certificate of a child that some refugees do not have in their possession (Luitel 2014; *hrln.org* 2007: 12, 19).

Along with that, the UNHCR ensures that refugees have access to education by ensuring, for example, access to bridge classes, tuition classes, language classes as well as by supporting their admission to government schools through a Refugee Assistance Programme for urban refugees in New Delhi with the partner NGO BOSCO Delhi (Luitel 2014; Matthew 2014; *unic.org.in* 2014).

Besides, in specific cases, although children are allowed to attend private/public Indian schools, the Tibetan refugee community has about 60 Tibetan refugee schools in India. Of

these schools, 28 are run by the Central School for Tibetans (CTSA), 11 Sambhota Tibetan schools, 18 Tibetan Children's Village schools and 2 Tibetan Homes Foundation schools (DeHart 2013). Along with what has already been stated earlier on the benefits the Tibetan refugee community has with the Indian government, India's Ministry of External Affairs has recently stated that there is a proposal to extend scholarship benefits to Tibetan children (Bisht 2014).

It has been more of a struggle for the Sri Lankan refugee community to get access particularly to higher education. It is harder for them to be admitted in colleges as there is a restricted quota and they are allowed to solely join art and science colleges. In 2010, a government order allowed meritorious students "to participate in the single window counselling (for Tamil Nadu Engineering Admissions) along with other students according to a merit list prepared on the basis of their (Plus Two) scores under the general category", while nothing was said about the possibility for some Sri Lankan refugee to join the medical colleges (Kumar 2014). Besides, the Tamil Nadu state has evolved, through the years, different schemes for students.[4]

However, in a preliminary interview with refugee students[5] at the Delhi University, the following issues were highlighted:

- University procedures are blind to the category of refugee applicants and do not accept any foreign national applicant without student visas and NOCs from the country of origin. Both of these are unavailable to a refugee.

- FRRO-issued certificates are unusually not accepted but in the cases that they are, admission to a refugee can only be granted as a foreign national, which would normally imply a large sum of fee.
- Private universities which accept FRRO certificates also charge them as foreign nationals; the fee structure would be unaffordable for the admission-seeking refugee.
- The students applying are therefore forced to hide their identity while applying.
- This in itself hinders their university experience as the university management becomes less accessible to them as well as their respective faculties.

It was also pointed out that one of the reasons for limited access to university is the fact that aspiring students do not have a safe intermediary to help them approach the university. A facilitative role perhaps could be played by refugee agencies to bridge the information gap, between both the refugee applicant and the university authorities.

4.2 Access to healthcare

Conversation with representatives from refugee communities[6] indicated that access to government hospitals was prima facie available to them. However, the protection challenge in this respect is the standard of treatment afforded to the refugee patients, which is aggravated by a wide communication gap between the refugees and the medical practitioner. In Delhi, translators often accompanied the Afghan and Somali patients on their visits to the government hospitals frequented by them – Safdarjung Hospital and AIIMS.[7] However, as was

reiterated by community members and community workers alike, the mere presence of translators did not help overcome sensitization issues and the patients often felt discriminated against. In the case of the Burmese Chin refugee community,[8] primarily concentrated in the Vikaspuri area of New Delhi, the presence of translators at the major local government hospital (Deen Dayal Upadhyaya Hospital) was sparse in comparison. The Chin refugees related many instances of being unable to communicate effectively at the hospital, often resulting in sub-par care.

Another protection challenge faced by the refugee community was the inability to access private healthcare, especially in an emergency. Private hospitals were preferred by the refugees expecting better standard of care, or at times when there was unavailability of beds in emergency cases. Refugees were unable to access private hospitals in such cases due to high cost and impossibility of refund from UNHCR or its implementing partners. Some relief is granted in this regard due to a recent Supreme Court order (*sci.nic.in* 2007) which provides for reservation of beds for the underprivileged, in private hospitals built on government land. Refugees come under the purview of this judgement (*Millennium Post* 2014). However, the need for them to procure documentation to show that their family income is less than the minimum wages for unskilled labour hinders their access.

Other public health services, such as access to health camps and campaigns (eye clinics, polio camps, etc.) were generally found to be accessible. Adequate support has also been provided by UNHCR and implementing Medical Centres and dispensaries partners.

4.3 Access to social benefits and welfare schemes

In the absence of any legally established standard of rights and duties towards refugees, there are special protection challenges faced by particularly disadvantaged sections of the refugee population – including women, the elderly and the disabled. In case of single women or widows who are head of family, no state-funded welfare scheme applies to the refugees.[9] The situation is the same for any state welfare schemes for the elderly or the disabled; they can only be accessed by Indian nationals.[10] However, a few welfare schemes, such as the Janani Suraksha Yojana scheme (2005), which provides financial assistance to pregnant women and new mothers, are available specifically for refugee women and children.[11] Additionally, the Ministry of Women and Child Development funds the Ujjwala scheme designed to prevent and combat the trafficking of women and children for commercial sexual exploitation[12] and the Swardhar scheme for women in difficult circumstances.[13]

It may be noted that the Indian government provides specific schemes to refugees that it recognizes. In addition to what has already been underlined, the Indian government has several times implemented schemes for such refugees. For instance, in 2012, the Tamil Nadu Chief Minister Jayalalithaa ordered extension of the government's comprehensive health insurance scheme to Sri Lankan Tamil refugees; a scheme initially targeting poor people in the state was extended to them.[14] Through the years Tamil Nadu has decided to contribute actively to the welfare of Sri Lankan Tamil refugees within the state by giving them certain access to benefits

established for Indian nationals as well as contributing to their own well-being.[15]

In the case of Tibetans, the Indian government has recently introduced the Tibetan Rehabilitation Policy 2014 that widens the welfare of Tibetan refugees in India, including guidelines on the extension of land lease agreements, and the benefits available to Tibetans under central and state government welfare schemes. Tibetans living in India can now avail the benefits of the MGNREGS, Rajiv Awas Yojana, NHRM and the public distribution system. Tibetans can also avail loans from the nationalised banks (Bisht 2014). The policy also grants Tibetans the right to undertake economic activity and pursue any job for which they are professionally qualified; these can include nursing, engineering, accounting, medicine, etc. (Wangdue 2014). While it has been pointed out that the Indian government does not treat equally the Tibetan refugees living in or outside their settlements, it has clarified that all Tibetan refugees are equally entitled to all its development schemes as any Indian citizen.[16]

This statement reiteratively brings confusion to the situation of refugees in general in India and the variation in the benefits accorded to them by the State. Obviously, geo-political considerations dominate in India's approach while dealing with Tibetan refugees with superior treatment, which is denied to other refugees.

4.4 Access to criminal justice system, safety and security

In accordance with Article 2 of the ICCPR that India is signatory to, refugees have the right to equality before the

law, right to equal protection of the law and non-discrimination (based on race, gender, national, social origin and lack of property) in their country of asylum (Nirmal 2001: 5).

An interview with select members of different refugee communities[17] revealed that the refugees were largely able to report crimes and access police stations. In most cases, legal representation and support came from UNHCR and implementing partners who facilitated reporting of the crimes and registering of complaints. The interviewees, however, maintained that the crimes reported were usually not followed through and no effective redress was available to them. This was particularly problematic in cases where the aggrieved faced an imminent threat, like in the case of a refugee woman who, facing repeated sexual harassment and fearing sexual assault, approached the police. Her safety in the scenario could not be guaranteed. In the absence of any emergency shelters (either UNHCR or state-run) available to the victim, he or she remains in an extremely vulnerable space. The protection challenge here, apart from availability of safe spaces, is the general lack of accountability on the part of the criminal justice system which cannot adequately ensure their security. In this line, it can also be pointed out that very few dare report their cases to the police not only because the persons in authority would be the perpetrators but also because of the shame reflected on their community and/or family. However, recently, the Delhi court has ruled in favour of a Burmese refugee who was a victim of rape by an Indian national.[18] This demonstrates that refugees are also heard by the justice system in India, which sets a good example of a

positive step in establishing accountability of criminal justice for refugees. In the case of sexual harassment, it has to be borne in mind that even though India has seen little change in this matter, the country has a bad reputation regarding sexual harassment of women. Therefore, although refugees are seen as more vulnerable, this issue affects also Indian women and therefore is not only a refugee-oriented issue. Indeed, according to the Delhi court in the case of the Burmese refugee,

> "It is time for realization that certain category of sexually depraved behaviour is totally unacceptable in the Indian socio-legal system which seeks to protect the chastity – the first virtue of a woman – ... crimes against women are on the rise and they can be curbed by awarding deterrent punishment to perpetrators of this grave offence." (Shakil 2013)

There are also cases where the police themselves were perpetrators and harassed the refugee community members in the absence of adequate sensitization. The police in certain instances would refuse to accept UNHCR-issued refugee identification and would only accept a visa as acceptable documentation.

4.5 The visa regime for refugees

There are huge discrepancies in the case of the application of the visa/residence permit regime amongst the different refugee communities.[19] In general, the Foreign Regional Registration Office (FRRO)[20] does not take into consideration the UNHCR refugee status for issuing stay visas or residence permits. Applicants need to individually apply through the Ministry

of Home Affairs (MHA), aside from their refugee status claim at UNHCR. Then considering compelling situations like threat to life, etc. the stay permits might be granted, but that is entirely at the discretion of the Ministry. The application procedure does not allow for a special waiver for recognized refugees. For example, an overstaying Afghan refugee will not be granted an exit visa until payment of overstaying penalties, which might be several thousands of rupees.[21] The procedure particularly disadvantages Afghan nationals who have arrived later than 2009 and cannot apply for stay visas or residence permits. For other nationalities, short-term visas are generally applicable on a renewable basis but the procedural requirement includes residential proof, which is difficult to obtain.

In December 2013 the MHA in consultation with UNHCR allowed the issuance of long-term visas for UNHCR-recognized refugees. Such an application was made upon the referral of UNHCR with claims to be presented with necessary residential proof. Amongst a total number of 15 applicants, however, till April 2014 only one applicant was deemed successful.

The visa regime makes no distinction between an overstaying foreigner and a recognized refugee.[22] Therefore even a recognized refugee is liable to the same fines or risks similar deportation.

This differential treatment, by which the State engages in systemic discrimination as no common administrative procedure is followed, goes against the essence of the Indian Constitution. It is essential that the Indian government establishes uniformity in the treatment of asylum seekers and

refugees within its territory, and renounces its ad hoc policies towards them based on regional politics and economy as well as administrative reasons.

END NOTES

1. Interviews were conducted by Jesuit Refugee Service (JRS) staff with different refugee community members in Delhi in 2014. All meetings were facilitated by the JRS office in Delhi. The representatives interviewed were mainly of Afghan, Somali and Chin nationalities but in the case of access to criminal justice and of safety issues some African nationalities were present. Interviews were conducted mostly in a focused group, separating women and men, and in the same age range.
2. Interview conducted with a focus group of 15-20 Chin student community members with the Chin Student Union, aged between 18 and 24 years. Interview of a JRS scholarship holder in Delhi University individually, and interview with the Vice President of the Chin Community. JRS 2014.
3. Ibid., and Luitel 2014.
4. See Appendix D regarding the welfare of Tamil Sri Lankan refugees in Tamil Nadu state.
5. See Note 2.
6. The representatives interviewed were of Afghan, Somali and Chin nationalities. JRS 2014.
7. Interview with refugee members, community workers from Refugee Community Development project. JRS 2014.
8. Interview with President, Chin Refugee Committee. JRS 2014.
9. However, in certain cases they are eligible to subsistence allowances by UNHCR.
10. Issue discussed with a small group of Afghan women, aged between 30 and 50 years, mainly covering access to medical services during pregnancy. JRS 2014.
11. This scheme provides for financial assistance of Rs. 500 per birth up to two live births to pregnant women who have attained 19 years of age and belong to the below poverty line (BPL) households, and in a way is aimed at alleviating maternal and neonatal mortality by promoting institutional delivery among poor pregnant women. The scheme is under implementation in all states and Union Territories (UTs), with a special focus on Low Performing States (LPS) (*nrhm.gov.in* 2013).
12. Launched in 2007, the target group of this scheme are women and child victims who have been trafficked as well as the sections of the population vulnerable to trafficking. They include slum dwellers, children of sex workers, refugees, homeless victims of natural disasters,

and so on. This scheme is being implemented by various NGOs. Immediate relief to victims includes the provision of food, shelter, trauma care and counselling to the rescued victims. Later on, victims are provided skill training, capacity building, job placement and guidance in income generating activities (*archive.india.gov.in* 2012).

13. Launched in 2002, this scheme is implemented by governmental and non-governmental agencies. It targets women in difficult circumstances and those vulnerable, including widows, destitutes, ex-prisoners, mentally challenged, homeless migrants, refugees (due to natural calamities), victims of terrorist violence and victims of criminal and sexual abuses. It provides them with food, shelter, clothes and offers them counselling and socio-economic rehabilitation support (*wcd.nic.in* 2002).
14. "She allocated Rs 25 crore for improving basic facilities in the camps in the state where they are lodged. She also allocated Rs 4.33 crore for improving drinking water supply and more than Rs 20.66 crore for repairing houses, road works and for creation of library, ration shops and sanitation facilities in the camps ... The Chief Minister decided to grant a one-time grant of Rs 10,000 each to 416 women's self-help groups of the refugees, setting apart Rs 41.60 lakh. Ms Jayalalithaa has also ordered increase in the incentive given to 1,000 students of the refugee families pursuing higher studies which would cost the state exchequer Rs 20.98 lakh ..." (One in India 2012).
15. See Appendix D on the welfare of Tamil Sri Lankan refugees in Tamil Nadu State.
16. Letter from Ministry of Home Affairs, in Bisht 2014.
17. Interview (separately) with the Vice President of the Chin Community, a small group of Afghan women refugees, aged between 30 and 50 years, and a group of mixed ethnicities of Somali, Afghan and other African nationalities, aged between 17 and 20 years. JRS 2014.
18. The court sentenced the convict to 10 years of jail as well as a fine of Rs 60,000. The victim was entitled to Rs 2 lakh compensation under the Delhi Victims Compensation Scheme. See Shakil 2013.
19. See Note 17.
20. Interview with FRRO official. JRS 2014.
21. Interview with a refugee group of about 10 young men from Somalia and Afghanistan, ages ranging between 16 and 23. JRS 2014.
22. Interview with FRRO official, JRS (2014).

5. CASE STUDY: THE SRI LANKAN REFUGEES IN TAMIL NADU

The Sri Lankan Tamils have sought refuge in Tamil Nadu, India, through multiple waves of displacement starting from the 1983 ethnic riots in Sri Lanka. Approximately 130,000 Sri Lankan Tamils sought refuge within the state (ADRA India 2014).

For over 30 years now, the Sri Lankan refugees in India have been living in protracted, precarious living conditions as India lacks a legal framework for refugees. Nevertheless, one can argue that India has been a good host country for Sri Lankan refugees over the years. A non-signatory to the Convention of Refugees, the Indian government has granted them protection recognizing their flight from violence and torture in their country (*hrln.org* 2007: 7).

After the end of the war in Sri Lanka in 2009, it was expected that a large number of refugees would repatriate to their country of origin. However, due to the lasting political instability in Sri Lanka, even six years after the end of the war was announced, UNHCR India still counts 65,674 Sri Lankan refugees living in over 100 state camps (Ibid.). In addition to this number, around 34,600 refugees live outside the camps (ADRA India 2014: 8) and an unknown number of refugees are detained in special camps, which are a euphemism for sub-jails which are maintained by the 'Q' branch, due to their alleged LTTE affiliation.

Today, in total, there are about 100,000 Sri Lankan refugees in Tamil Nadu (Bhalla 2014b).

Despite the fact that a large number of them have lived in the state camps for more than two decades, and provided by the Indian government with a monthly package including a small stipend per adult, rice ration, as well as basic services such as free education and healthcare, electricity, shelter and sanitation facilities, their living conditions are still temporary, insufficient, and inadequate to their basic needs (*hrln.org* 2007: 7). Furthermore, the refugees are subjected to severe restrictions within the camps as they have a 7.00 pm curfew which constrains their freedom of movement and their access to employment (Ibid.). Not to be forgotten is the discrimination that the Sri Lankan refugees face from the locals, especially when it comes to the lower pay they receive from their employers compared to the pay local employees receive (Himanshi 2013: 15).

The refugees living outside the camps do not benefit from the government package. Most of them, middle/upper middle class people, decided to live outside the camps for better social integration and for a better education for their children. These refugees live mostly on the help they receive from their relatives living abroad. Although they have no time restriction and can move around as they wish, they also have to register themselves at the nearest police station (Ibid.).

On a brighter note, the support of several NGOs in the empowerment of Sri Lankan refugees has led many refugees to gain educational qualifications and vocational skills in India (Bhalla 2014b). In addition, seats in colleges are reserved for

Sri Lankan students, though there is no grant attributed to them to pay the tuition fees (Himanshi 2013: 14).

The Government of India has so far spent more than 200 crore (Indian) rupees on providing relief facilities to the Sri Lankan refugees (Ibid.). However, the long-term durable solutions in favour of the Sri Lankans who sought refuge in India over 20 years ago, and in favour of the ones who are born and brought up in India, remain an uncertain and distant dream as they are still denied Indian citizenship and lack true local socio-economic integration. And for the ones willing to repatriate to their home country, the process is slow, though a majority of the youth have no ties with Sri Lanka and see India as their home (Ibid.). Indeed, according to a recent study done among 368 refugees in Tamil Nadu (living in and/or out of camps), about 67 per cent of the respondents have stated that they would prefer local assimilation, against 23 per cent preferring voluntary repatriation and 4 per cent interested in resettling in a third country (ADRA India 2014: 5).

In spite of advocacy efforts present at both local (within the Tamil Nadu state) and international scales, the fate of the Sri Lankan refugees in search of durable solutions is a complex and long process which will affect the civil society of the host country, its socio-economic trends as well as its foreign policy.

6. RECOMMENDATIONS AND CONCLUSION

6.1 Recommendations

Following from the preceding observations and analysis, the following recommendations are put forth:

As a foundation to have a new national refugee law it is advocated that an amendment to the Foreigners Act of 1946 is brought into force. In fact, as there is no reference nor any acknowledgment of a "refugee" within the text due to the fact that there is no distinction made with a "foreigner", the text should include a definition of the term refugee as well as a special category dealing particularly with this category of people, just as it has a special category for "foreigner".

These modifications are necessary not merely to bring in line the State's practice and its legislative intent, but also to foster and respect its international humanitarian obligations. For instance, the 1946 Foreigners' Act penalises non-Indian citizens who enter the country without any valid identity documents and they may be banned from entering the country. In the case of a person seeking asylum in India because of fear of (future) persecution in its country of origin, he is liable to be returned to the country he is fleeing from because Indian law does not recognize probably the most important basic right of a refugee, which is the right to *non-refoulement*.

Therefore, as it is common to see people of concern fleeing their country by land, a refugee status determination system should be put in place at the borders of India. In fact, like Hong Kong, India should put into place a unified screening mechanism which will aim at respecting the *non-refoulement* right of individuals seeking asylum and also at avoiding to "*refoule*" people subject to persecution and severe human rights violations back in their country of origin. This system may also pave the way for taking care of both the security and the human aspects since the authorities in place will be fully aware of the different categories of foreigners (taking into account economic migrants, asylum seekers) and therefore will be aware when to treat a "foreigner" on a humanitarian ground rather than as an illegal migrant. Additionally, putting in place this kind of system should avoid (long) detention period as decisions on the status of the person as well as the documents this person should be issued to enter the country will be made at the borders. This mechanism should be put in place in every Indian state in order to be accessible to the people concerned. This mechanism could reassess and redefine UNHCR's role in the process, allowing it to perform an appropriate role in other issues in relation to refugee protection. In fact, the agency in relation with other stakeholders (local NGOs, public/private organizations such as schools, training centres, health centres, etc.) could focus on elaborating long-term solutions for refugees such as resettlement for the ones with specific vulnerabilities, access to welfare schemes as well as socio-economic integration, for instance. One of the main points which should be taken into account is that the assistance from the State to each refugee

group, and consequently, to each individual refugee, should be equal. A scheme for refugees may be designed to meet their basic needs (such as having a recognized identity card) but also to give them the possibility to succeed in their life (access to higher education).

Under these circumstances, the amendment of the 1946 Foreigners' Act and the implementation of a unified, state-driven system of *refugee status determination* will be a step forward in ensuring a legal status for refugees in India. It is believed that these changes made towards refugees will be in the best interest of national security too. Indeed, at present, anyone who flees from their country to come to India is forced to go underground. This situation results in people seeking asylum in India being off-the-grid, living in a self-sufficient manner without being a beneficiary of any support from the government and therefore in their being engaged in criminal activities. The recommendations made hitherto would directly lead to promoting the interest of national security by allowing the population of refugee groups to enjoy basic rights and privileges.

Furthermore, in terms of the particular case of the Sri Lankan refugees in India, it is recommended that a special policy be made to address their issues as they have been refugees for over 20 years in Tamil Nadu. Not only their case but also the case of other refugees warrants that the Government of India finds durable solutions for their well-being.

Within the refugee framework, the Sri Lankan refugees have to be provided with all three options, namely, repatriation, assimilation in the host country and resettlement to the third

country. In this connection, listed below are several recommendations to improve the lot of Sri Lankan refugees in India:

First of all, as a recent study has revealed, at least 12 per cent of the Sri Lankan refugees wish to repatriate to their country of origin (ADRA India 2014: 5). On this line, before considering a legal status for the Sri Lankans in India, it may be beneficial to facilitate and expedite the process of their repatriation. Accordingly, an information campaign should be done throughout Tamil Nadu regarding voluntary repatriation and what the refugees should expect on their return to their homeland. This should include the logistic matters (e.g. free flight tickets for the family, welcome by an NGO/UNHCR/IOM in Colombo) as well as the rehabilitation of the returnee in their country (e.g. financial help for at least six months depending on the situation of the household, help in finding a job, education, accommodation, and help in acquiring legal documents as well as land restitution, if any). This kind of help may come from the Sri Lankan government and from the several NGOs present in Sri Lanka in order for the returnees to be able to integrate again into their country. Importantly, a psychological cell should be made available to returnees for a certain period of time after their return to be sure that they have continual support in their new environment.

NGOs should be the main organizations involved in the process of rehabilitation through education, vocational training, job placement and so on. Likewise, the Sri Lankan government should work together with the NGOs to facilitate

the process of voluntary repatriation and rehabilitation, including a fast process regarding legal documents issuance and land restitution. In fact, these legal matters should be solved, if possible, before the process of voluntary repatriation starts. Also, none of the refugees coming from India should be approached by the authorities and questioned on the reasons for their flight from their country upon their arrival in Sri Lanka. The return of the refugees has to be a smooth process with an attitude of openness and welcoming. Moreover, debriefing has to be done appropriately before voluntary repatriation in a transparent manner by UNHCR and organizations working with refugees.

Secondly, for Sri Lankan refugees, resettlement to a third country might not be a viable option. Not only do they need to be under the protection of UNHCR to have the opportunity for resettlement but also, they do not face any particular security problems in general and have been assimilated in their country of refuge (due mostly to their cultural similarities with the Tamil Nadu locals and their language).

However, in extraordinary cases, who still live under fear of security threat resettlement to a third country will be the only option. It is distressing to note that there are specific cases, who feel that they are continued to be targeted due to their alleged affiliation to LTTE, both by Sri Lankan government and government of India, even six years after the end of the war was announced.

Thirdly, citizenship should be acquired by Sri Lankan refugees under the Citizenship Act 2011.*

* See Appendix F for the Indian Citizenship Act 2011 bill.

On the other hand, if for some reason or other, the Indian government still acknowledges that the Sri Lankan refugees are illegal migrants, the following should apply to the refugees in terms of their legal status in India:

- All the refugees born in India should be able to choose between their Sri Lankan nationality or Indian nationality. Only one will be taken into consideration.
- All the refugees born from an Indian national should obtain Indian citizenship. The parent being the refugee should also obtain Indian citizenship if he/she so wishes in order to promote family unification.
- All refugees married to an Indian national should obtain Indian citizenship after five years of marriage.
- All refugees as well as their household who have been economically assimilated in India in terms of owning a business or working for a certain period of time in India should obtain Indian citizenship.
- All other refugees, for whom the foregoing criteria do not apply, should be issued a long-term visa, giving them the opportunity to live, study (with local fees) and/or work in the country. After a certain period of time, the visa option should be re-assessed against citizenship (taking into account, for example, the amount of annual income, level of education acquired, etc.).

Again, in terms of citizenship acquisition, an information campaign should be implemented not only to be able to manage the afflux of refugees requesting for their nationality/naturalization, but also to be certain that the refugees receive

the right information and are not misled. Along this line, acquiring citizenship should be free and NGOs should work together to facilitate the process and help the Indian government in this task in order for the process to not be slow, for instance.

It is today even more necessary to advocate strongly for the fundamental rights of Sri Lankan refugees in India, treating them as human beings and not as aliens, in order for them to finally be able to have a chance to have a decent life and a prospect of peace for their children and their coming generations. More pressure should come from the international civil society to urge the Indian government as well as the Sri Lankan government to work with the NGOs and offer more durable solutions to the Sri Lankan refugees.

6.2 Conclusion

This position paper has shed light on the present situation of refugees in India and has suggested appropriate actions which can be taken in order to create a legal space for refugees within the territory and to be able to respond to their needs.

Through the years, India has managed its migration flows by deciding to deal with them through administrative policy rather than as a legal requirement. In fact, though India has been a signatory to diverse international treaties and covenants pertaining to issues related to refugees, it is not a party to the Refugee Convention and the Protocol, and has not implemented any lawful statute for asylum seekers and refugees within its territory. On the one hand, it is recognized that India in practice has clearly demonstrated its ongoing efforts to change and strengthen the situation of the refugees

in the country being part of different non-official/non-governmental regional processes such as the annual sessions of the Asian-African Legal Consultative Committee and the Fourth Informal Consultation on Refugee and Migratory Movements in South Asia, for instance. These are part of the initiatives of civil society organizations. On the other hand, despite the fact that these initiatives are seen as valuable steps towards prospective changes in the refugees' plight, the procedure for determining refugee status is still lacking in the country. In the absence of a national law for refugees in India, the different groups of refugees coming mostly – but not only – from the neighbouring countries have each been under a different refugee regime, some groups being in precarious conditions (e.g. Somali, Afghan and Myanmar refugees) while others enjoy full humanitarian assistance from the State (e.g. the Tibetan refugees).

This paper has advocated that the Government of India consider the implementation of a national legal framework for refugees in order that they may be equally treated on the same ground where the domestic law will not be in conflict with the diverse human rights regimes that India has endorsed.

REFERENCES

Acharya, B., 2004. The law, police and practice of refugee protection in India, https://notacoda.files.wordpress.com/.../acharya-the-law-policy-and-practice-of-refugee-protection-in-india.pdf, accessed 7 November 2014.

ADRA India, 2014. Exploring durable solutions for Sri Lankan Tamil refugees in India, New Delhi: Tata Institute of Social Sciences.

aiadmk.com/public-department (All Indian Anna Dravida Munnetra Kazhagam website), 2014. http://aiadmk.com/public-department/, accessed 17 November 2014.

Ananthachari, T., 2001. Refugees in India: legal framework, law enforcement and security, http://www.worldlii.org/int/journals/ISILYBIHRL/2001/7.html#Heading22, accessed 30 October 2014.

aralegal.in (ARA Legal), 2014. About refugees in India, http://www.aralegal.in/refugees-in-india, accessed 31 October 2014.

archive.india.gov.in (National Portal of India), 2012. Ujjwala Scheme, http://www.archive.india.gov.in/spotlight/spotlight_archive.php?id=42, accessed 18 November 2014.

Arora, K., 2014. Pak Hindus seek refuge in Delhi, http://timesofindia.indiatimes.com/city/delhi/Pak-Hindus-seek-refuge-in-Delhi/articleshow/34067840.cms, accessed 12 November 2014.

Bhalla, N., 2014a. Myanmar Rohingya stuck in refugee limbo in India, http://in.reuters.com/article/2014/09/15/us-foundation-stateless-india-rohingya-idUSKBN0HA07F20140915, accessed 10 November 2014.

Bhalla, N., 2014b. Five years after war, Sri Lanka refugees reluctant to leave India – survey, http://www.trust.org/item/20141029085451-ru1cx/?source=fiHeadlineStory, accessed 31 November 2014.

Bhatia, V., 2014. They would rather be Tibetan refugees than Indian voters, http://indianexpress.com/article/india/politics/they-would-rather-be-tibetan-refugees-than-indian-voters/, accessed 12 November 2014.

Bhuyan, A., 2013. Delhi's little Burma, http://www.business-standard.com/article/beyond-business/delhi-s-little-burma-113111400885_1.html, accessed 12 November 2014.

Bisht, G., 2014. Tibetan refugees to be given benefits of welfare schemes, http://www.hindustantimes.com/punjab/chandigarh/tibetan-refugees-to-be-given-benefits-of-welfare-schemes/article1-1225177.aspx, accessed 17 November 2014.

Bose, T.K., 2000. Policies and laws towards refugees, *Human Rights Solidarity*, 10(10), http://www.hrsolidarity.net/mainfile.php/2000vol10no10/745/, accessed 10 November 2014.

Das, R., 2014. When the law gives no refuge, http://www.thehindu.com/opinion/op-ed/when-the-law-gives-no-refuge/article6142577.ece, accessed 18 November 2014.

DeHart, J., 2013. Educating Tibet: Government in Exile to oversee all schools in India, http://thediplomat.com/

2013/05/educating-tibet-government-in-exile-to-oversee-all-schools-in-india/, accessed 18 November 2014.

Dhawan, R., 2004. *Refugee Law and Policy in India*, New Delhi: Pilsarc.

Fortune.com, 2015. http://fortune.com/2015/09/23/pope-francis-refugee-crisis-church-history/

Ghosh, P., 2014. More than one lakh Sri Lankan Tamil refugees live on low rations in dingy camps, http://www.hindustantimes.com/india-news/sri-lankan-tamils-caught-in-the-straits-of-sorrow/article1-1210124.aspx, accessed 3 November 2014.

Gochhayat, S.A., 2011. Protection of refugees in India, http://ssrn.com/abstract=1957146, accessed 5 November 2014.

Himanshi, R., 2013. Sri Lankan refugees in India: the problem and the uncertainty, *International Journal of Peace and Development,* 1(1), 1-29.

The Hindu, 2013. Study favours citizenship for Sri Lankan refugees in Tamil Nadu, http://www.thehindu.com/news/cities/Tiruchirapalli/study-favours-citizenship-for-sri-lankan-refugees-in-tamil-nadu/article4830631.ece, accessed 3 November 2014.

hrln.org (Human Rights Law Network), 2007. Report of refugee populations in India, www.hrln.org/admin/issue/subpdf/Refugee_populations_in_India.pdf, accessed 11 November 2014.

immd.gov.hk, 2012. Immigration (Amendment. Ordinance no. 23 of 2012, http://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CBwQFjAA&url=http%3A%2F%2Fwww.immd.gov.k%2Fpdf%FImmOrd2012.pdf&ei=WoppVNX8GouVuASv9oH4Bw&usg=AFQjCNG_5ZEdaQstFCJqfuHzHfk_GBfWYw, accessed 17 November 2014.

info.gov.hk, 2014. Hong Kong Information Service Department, Press Release, http://www.info.gov.hk/gia/general/201402/07/P201402070307.htm, accessed 13 November 2014.

justicecentre.org.hk (Justice Centre Hong Kong), 2014. Meeting the bare minimum: Hong Kong's new screening process for protection, http://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=eb&cd=1&ed=0CBwQFjAA&url=http%3A%2F%2Fwww.justicecentre.org.hk%2Fframework%2Fuploads%2F2014%2F03%2FUSM-Briefing-Meeting-the-Bare-Minimum-HK-New-Screening-Process-for-Protection.pdf&ei=D6VpVLWXFdC2uQTn3oDoCQ&usg=AFQjCHkOIhQ_syPz12Z2nCC81ELLor36Q&bvm=bv.79142246,d.c2E, accessed 11 November 2014.

Khan, Asad, 1997. *Seminar Report: Refugees in the SAARC Region: Building a Legal Framework*, UNHCR, May.

Kumar, D.S., 2014. Higher education remains a struggle for refugees, http://www.newindianexpress.com/states/tamil_nadu/Higher-Education-Remains-a-Struggle-for-Refugees/2014/06/22/article2293215.ece, accessed 11 November 2014.

Loper, K., 2010. Human rights, non-refoulement and the protection of refugees in Hong Kong, *International Journal of Refugee Law*, 22(3), 404–439.

Luitel, G., 2014. EOI called by the UNHCR India for education and child protection in Delhi (Refugee program), http://india.fundsforngos.org/refugees/eoi-called-unhcr-india-education-child-protection-delhi-refugee-program/, accessed 17 November 2014.

Matthew, Fr. Jose, 2014. Refugee youth meet 2014 held in New Delhi, http://donboscoindia.com/english/bis/default_ms.php?newsid=7066, accessed 19 November 2014.

mea.gov.in (Ministry of External Affairs, Government of India), 2007. India-Bhutan Friendship Treaty, *mea.gov.in/Images/pdf/india-bhutan-treaty-07.pdf,* accessed 12 November 2014.

Millennium Post, 2014. Designated pvt hospitals cannot deny free aid to refugees, says DHS, http://www.millenniumpost.in/NewsContent.aspx?NID=52915, accessed 20 November 2014.

Mohan, S., 2003. India, UNHCR and refugees: an analytical study, *Journal of Peace Studies,* 10(3).

Nadar, G., 2014. We have been treated well in India, this is the best model of refugee welfare, http://www.rediff.com/news/special/we-have-been-treated-well-in-india-this-is-the-best-model-of-refugee-welfare/20140212.htm, accessed 3 November 2014.

Nair, Arjun, 2007. *National Refugee Law for India: Benefits and Roadblocks,* New Delhi: Institute of Peace and Conflict Studies, http://www.ipcs.org/pdf_file/issue/51462796IPCS-Research Paper11-ArjunNair.pdf, accessed 5 September 2013.

Nirmal, B.C., 2001. Refugees and human rights, www.worldlii.org/int/journals/ISILYBIHRL/2001/6.rtf, accessed 7 November 2014.

nrhm.gov.in (National Rural Health Mission, Government of India), 2013. Maternal health - Janani Suraksha Yojana: Background, http://nrhm.gov.in/nrhm-components/rmnch-a/maternal-health/janani-suraksha-yojana/background.html, accessed 18 November 2014.

OHCHR, 1996-2014a. Convention on the Rights of the Child, http://www.ohchr.org/en/professionalinterest/pages/crc.aspx, accessed 10 November 2014.

OHCHR, 1996-2014b. Convention relating to the Status of Refugees, http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx, accessed 24 November 2014.

One in India, 2012. TN announces welfare measures for Tamil refugees, http://www.oneindia.com/2012/03/24/tn-announces-welfare-measures-for-tamil-refugees.html, accessed 17 November 2014.

On Islam, 2014. Rohingya Muslims trapped in India camps, http://www.onislam.net/english/news/asia-pacific/472167-rohingya-muslims-trapped-in-india-camps.html, accessed 12 November 2013.

Ramachandran, S., 2013. India's refugee policy is an example for the rest of the world to follow, http://www.thehindu.com/opinion/interview/indias-refugee-policy-is-an-example-for-the-rest-of-the-world-to-follow/article4269430.ece, accessed 31 October 2014.

Ramsden, M. and Marsh, L., 2014. Refugees in Hong Kong: developing the legal framework for socio-economic rights protection, *Human Rights Law Review*, 1-33.

refworld.org, 1980. Guidelines for national refugee legislation, with commentary, adopted by OAU/UNHCR group in 1980, http://www.refworld.org/pdfid/3ae6b32610.pdf, accessed 17 September 2015.

refworld.org, 1996a. Bangkok Principles on the Status and Treatment of Refugees ("Bangkok Principles"), http://www.refworld.org/docid/3de5f2d52.html, accessed 11 November 2014.

refworld.org, 1996b. National Human Rights Commission vs. State of Arunachal Pradesh and Another 1996 SCC (1. 742; Writ Petition (C) No. 720 of 1995, India: Supreme Court, 9 January 1996, http://www.refworld.org/docid/3f4b8de54.html, accessed 7 November 2014.

refworld.org, 2004. *Secretary for Security v. Sakthevel Prabakar*, FAVC 16 of 2003, Hong Kong: Court of Final Appeal, 8 June 2004, http://www.refworld.org/docid/413da4754.html, accessed 17 November 2014.

refworld.org (Immigration and Refugee Board in Canada), 2010. Sri Lanka/India: Status of Sri Lankan Tamil refugees in India, including information on identity documents, citizenship, movement, employment, property, education, government aid, camp conditions and repatriation (2008-January 2010), http://www.refworld.org/docid/4dd23fd82.html, accessed 3 November 2014.

refworld.org, 2011. *C and Others v. Director of Immigration and Another*, Civil Appeals No. 132-137 of 2008, Hong Kong: High Court, 21 July 2011, http://www.refworld.org/docid/4e37ec822.html, accessed 17 November 2014.

Sanyal, A., 2014. Indian citizenship, visas made easy for minority refugees from Pakistan, Bangladesh, http://www.ndtv.com/article/india/indian-citizenship-visas-made-easy-for-minority-refugees-from-pakistan-bangladesh-587389, accessed 12 November 2014.

Saxena, Prabodh, "Creating legal space for Refugees in India," *International Journal of Refugee Law*, (2007), 19(2): 246-272.

sci.nic.in, 2007. *Social Jurist, A Lawyers Group vs Government of NCT of Delhi and Ors.* on 22 March, 2007, and corresponding Supreme Court Order dt.27/07/2011 - In

the matter of SLP(C) No.18599/2007 *Dharamshila Hospital & Research Centre Vs. Social Jurist & Ors*, http://www.sci.nic.in/outtoday/sc1859907.pdf

Sengupta, I., 2008. UNHCR's role in refugee protection in India, http://infochangeindia.org/agenda/migration-a-displacement/unhcrs-role-in-refugee-protection-in-india.html, accessed 3 November 2014.

Shakil, S., 2013. People morally bound to protect refugees: Delhi court, http://timesofindia.indiatimes.com/city/delhi/People-morally-bound-to-protect-refugees-Delhi-court/articleshow/26059118.cms, accessed 18 November 2014.

Sharma, N., 1996. Refugees of South Asia: need for a regional mechanism, *Kathmandu Law Review,* 1(1), 103-122.

Singh, S.P., 2014. Human rights of refugees in India: legal perspectives, *CPJ Law Journal,* 4, 33-48.

Sircar, O., 2006. Refugees are not illegal migrants, http://infochangeindia.org/human-rights/analysis/refugees-are-not-illegal-migrants.html, accessed 7 November 2014.

The Telegraph India, 2012. Some refugees are more equal, http://www.telegraphindia.com/1121226/jsp/opinion/story_16361434.jsp#.VE4qQyKUec0, accessed 3 November 2014.

Tibetan Review, 2014a. To be or not to be a citizen: the Tibetan dilemma, http://www.tibetanreview.net/to-be-or-not-to-be-a-citizen-the-tibetan-dilemma/, accessed 12 November 2014.

Tibetan Review, 2014b. Whither Citizen Tibetan?, http://www.tibetanreview.net/whither-citizen-tibetan/, accessed 12 November 2014.

un.org (United Nations), 2014. The Universal Declaration of Human Rights, http://www.un.org/en/documents/udhr/index.shtml#a14, accessed 10 November 2014.

UNHCR (United Nations High Commissioner for Refugees), 2001-2014. Executive Committee, http://www.unhcr.org/pages/49c3646c83.html, accessed 10 November 2014.

UNHCR, 2014a. Hong Kong (Special Administrative Region of China), Statistics as of January 2014, Statistical Snapshot, http://www.unhcr.org/pages/49e488026.html, accessed 17 November 2014.

UNHCR 2014b. Timeline on UNHCR and the development of refugee protection in Hong Kong, https://www.unhcr.org.hk/preview/unhcr/en/about_us/Timeline%20on%20UNHCR %20Hong %20Kong%20.html, accessed 17 November 2014.

unic.org.in (UN Information for India and Bhutan), 2014. UNHCR: Education helps young refugees in India hope for a bright future, http://www.unic.org.in/display.php?E=12869&K=, accessed 19 November 2014.

Wangdue, T., 2014. Indian Government formalizes the new Tibetan Rehabilitation Policy, http://www.contactmagazine.net/articles/indian-government-formalises-new-tibetan-rehabilitation-policy/, accessed 17 November 2014.

wcd.nic.in (Ministry of Women and Child Development, Government of India), 2002. Swardhar: a scheme for Women in Difficult Circumstances, http://wcd.nic.in/revisedswadhar.htm, accessed 18 November 2014.

Annexure A

UNHCR INDIA

Fact Sheet | March 2014

Operational objectives

- Support the Government in protecting and assisting refugees and asylum-seekers in urban settings Expand partnerships with civil society networks to aid refugees and asylum-seekers
- Support appropriate durable solutions for all refugees
- Advocate for the adoption of a national refugee law consistent with international standards Increase awareness about refugee issues and statelessness
- Strengthen the partnership with the Government of India on global issues of concern to UNHCR

Persons of Concern (as of 30 January 2014)

	Asylum Seekers	Refugees
Assisted by the Government		174,689 Tibetan – 109, 015 Sri Lankan – 65,674
Assisted by UNHCR	3,779 Myanmarese–2,349 Afghans – 1,163 Others - 267	23,161 Afghans – 10,389 Myanmarese–11,511 Somalis – 728 Others - 533
Grand Total	3,779	197,850

Convention	Dates of Accession
1951 Refugee Convention	-
1967 Protocol	-
1954 Statelessness	-
1961 Statelessness	-
ICCPR	10 April 1979
ICESCR	10 April 1979
CAT	-
CRC	11 December 1992
CEDAW	9 July 1993
Who does refugee status determination (RSD)?	UNHCR

Annexure B

ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION

"FINAL TEXT OF THE AALCO'S 1966 BANGKOK PRINCIPLES ON STATUS AND TREATMENT OF REFUGEES" AS ADOPTED ON 24 JUNE 2001 AT THE AALCO'S 40TH SESSION, NEW DELHI

Article I

Definition of the term "refugee"

1. A refugee is a person who, owing to persecution or a well-founded fear of persecution for reasons of race, colour, religion, nationality, ethnic origin, gender, political opinion 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 he has no nationality, the State or Country of which he is a habitual resident; or,

(b) being outside of such a State or Country, is unable or unwilling to return to it or to avail himself of its protection;

2. The term "refugee" shall also apply to every person, who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

3. A person who was outside of the State of which he is a national or the Country of his nationality, or if he has no nationality, the State of which he is a habitual resident, at the time of the events

mentioned above and is unable or unwilling due to well-founded fear thereof to return or to avail himself of its protection shall be considered a refugee.

4. The lawful dependents of a refugee shall be deemed to be refugees.

5. A person having more than one nationality shall not be a refugee if he is in a position to avail himself of the protection of any State or Country of which he is a national.

6. A refugee shall lose his status as refugee if:

   (i) he voluntarily returns permanently, to the State of which he was a national, or the Country of which he was a habitual resident; or

   (ii) he has voluntarily re-availed himself of the protection of the State or Country of his nationality;

   (it) being understood that the loss of status as a refugee under this sub-paragraph will take place only when the refugee has successfully re-availed himself of the protection of the State of his nationality;) or

   (iii) he voluntarily acquires the nationality of another State or Country and is entitled to the protection of that State or Country; or

   (iv) he does not return to the State of which he is a national, or to the Country of his nationality, or if he has no nationality, to the State or Country of which he was a habitual resident, or if he fails to avail himself of the protection of such State or Country after the circumstances in which he became a refugee have ceased to exist. (Provided that this paragraph shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality).

(v) if it becomes evident to the country of refuge that the refugee acquired the refugee status on the basis of false information, incorrect documents or cheating which influenced the decision of national authority to grant him refugee status.

7. A person who, prior to his admission into the Country of refuge, has committed a crime against peace, a war crime, or a crime against humanity as defined in international instruments drawn up to make provisions in respect of such crimes or a serious non-political crime outside his country of refuge prior to his admission to that country as a refugee, or has committed acts contrary to the purposes and principles of the United Nations, shall not be a refugee.

Article II

Asylum to a Refugee

1. Everyone without any distinction of any kind, is entitled to the right to seek and to enjoy in other countries asylum from persecution.

2. A State has the sovereign right to grant or to refuse asylum in its territory to a refugee in accordance with its international obligations and national legislation.

3. The grant of asylum to refugees is a humanitarian, peaceful and non-political act. It shall be respected by all other States and shall not be regarded as an unfriendly act so long as its humanitarian, peaceful and nonpolitical nature is maintained.

4. States shall, bearing in mind provisions of Article X, use their best endeavours consistent with their respective legislation to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality.

Article III

Non-refoulement

1. No one seeking asylum in accordance with these Principles shall be subjected to measures such as rejection at the frontier, return or expulsion which would result in his life or freedom being threatened on account of his race, religion, nationality, ethnic origin, membership of a particular social group or political opinion.

   The provision as outlined above may not however be claimed by a person when there are reasonable grounds to believe the person's presence is a danger to the national security or public order of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

2. In cases where a State decides to apply any of the above-mentioned measures to a person seeking asylum, it should grant provisional asylum under such conditions as it may deem appropriate, to enable the person thus endangered to seek asylum in another country.

Article IV

Minimum standards of treatment

1. A State shall accord to refugees treatment no less favourable than that generally accorded to aliens in similar circumstances, with due regard to basic human rights as recognised in generally accepted international instruments.

2. The standard of treatment referred to in paragraph 1 shall include the rights relating to aliens contained in the Final Report of the Committee on the Status of Aliens, to the extent they are applicable to refugees.

3. A refugee shall not be denied any rights on the ground that he does not fulfil requirements which by their nature a refugee is incapable of fulfilling.

4. A refugee shall not be denied any rights on the ground that there is no reciprocity in regard to the grant of such rights between the receiving State and the State or Country of nationality of the refugee or, if he is stateless, the State or Country of his former habitual residence.

5. States undertake to apply these principles to all refugees without discrimination as to race, religion, nationality, ethnic origin, gender, membership of a particular social group or political opinion, in accordance with the principle of non-discrimination.

6. States shall adopt effective measures for improving the protection of refugee women and as appropriate, ensure that the needs and resources of refugee women are fully understood and integrated to the extent possible into their activities and programmes.

7. States shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Principles and in other international human rights instruments to which the said States are Parties.

8. States shall give special attention to the protection needs of elderly refugees to ensure not only their physical safety, and to the extent possible, the full exercise of their rights, including their right to family reunification. Special attention shall also be given to their assistance needs, including those relating to social welfare, health and housing.

Article V

Expulsion and deportation

1. Save in the national or public interest or in order to safeguard the population, the State shall not expel a refugee.

2. Before expelling a refugee, the State shall allow him a reasonable period within which to seek admission into another State. The State shall, however, have the right to apply during the period such internal measures as it may deem necessary and as applicable to aliens under such circumstances.

3. A refugee shall not be deported or returned to a State or Country where his life or liberty would be threatened for reasons of race, colour, nationality, ethnic origin, religion, political opinion, or membership of a particular social group.

4. The expulsion of a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before the competent authority or a person or persons specially designated by the competent authority.

Article VI

Right of return

1. A refugee shall have the right to return if he so chooses to the State of which he is a national or the country of his nationality or if he has no nationality to the State of which he is a habitual resident and in this event it shall be the duty of such a State or Country to receive him.

2. This principle should apply, inter alia, to any person who because of foreign domination, external aggression or occupation has left his habitual place of residence, or who being outside such place desires to return thereto.

3. It shall be the duty of the Government or authorities in control of such place of habitual residence to facilitate, by all means at their disposal, the return of all such persons as are referred to in the foregoing paragraph, and the restitution of their property to them.

4. This natural right of return shall also be enjoyed and facilitated to the same extent as stated above in respect of the dependants of all such persons as are referred to in paragraph 1 above.

Article VII

Voluntary repatriation

1. The essentially, voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will.

2. The country of asylum, in collaboration with the country of origin, shall make adequate arrangements for the safe return of refugees who request repatriation.

3. The country of origin, shall provide all necessary documents to expedite their return on receiving back refugees, facilitate their resettlement and grant them the full rights and privileges of nationals of the country, and subject them to the same obligations.

4. Refugees who voluntarily return to their country shall in no way be penalised for having left it or for any of the reasons giving rise to refugee situations. Whenever necessary, an appeal shall be made through national information media and through the relevant universal and regional organisations inviting refugees to return

home without risk and to take up a normal and peaceful life without fear of being disturbed and punished, and that the text of such appeal should be given to refugees and clearly explained to them by their country of asylum.

5. Refugees who freely decide to return to their homeland, as a result of such assurances or on their own initiative, shall be given every possible assistance by the country of asylum, the country of origin, country of transit, voluntary agencies and international and intergovernmental organisations to facilitate their return.

Article VIII

International Co-operation on comprehensive solutions

1. Voluntary repatriation, local settlement or third country resettlement, that is, the traditional solutions, all remain viable and important responses to refugee situations, even while voluntary repatriation is the preeminent solution. To this effect, States may undertake, with the help of inter-governmental and nongovernmental organizations, development measures which would underpin and broaden the acceptance of the three traditional durable solutions.

2. States shall promote comprehensive approaches, including a mix of solutions involving all concerned States and relevant international organizations in the search for and implementation of durable solutions to refugee problems.

3. The issue of root causes is crucial for solutions and international efforts should also be directed to addressing the causes of refugee movements and the creation of the political, economic, social, humanitarian and environmental conditions conducive to voluntary repatriation.

Article IX

Right to compensation

1. A refugee shall have the right to receive compensation from the State which he left or to which he was unable to return.

2. The compensation referred to in paragraph 1 shall be for such loss as bodily injury, deprivation of personal liberty in denial of human rights, death of the refugee or of the person whose dependant the refugee was, and destruction of or damage to property and assets, caused by the authority of the State or country, public officials or mob violence.

3. Where such person does not desire to return, he shall be entitled to prompt and full compensation by the Government or the authorities in control of such place of habitual residence as determined, in the absence of agreement by the parties concerned, by an international body designated or constituted for the purpose by the Secretary-General of the United Nations at the request of either party.

4. If the status of such a person is disputed by the Government or the authorities in control of such place of habitual residence, or if any other dispute arises, such matter shall also be determined, in the absence of agreement by the parties concerned, by an international body designated or constituted as specified in paragraph (3) above.

Article X

Burden Sharing

1. The refugee phenomenon continues to be a matter of global concern and needs the support of international community as a whole for its solution and as such the principle of burden sharing should be viewed in that context.

2. The principle of international solidarity and burden sharing needs to be applied progressively to facilitate the process of durable solutions for refugees, whether within or outside a particular region, keeping in perspective that durable solutions in certain situations may need to be found by allowing access to refugees in countries outside that region, due to political, social and economic considerations.

3. The principle of international solidarity and burden sharing should be seen as applying to all aspects of the refugee situation, including the development and strengthening of the standards of treatment of refugees, support to States in protecting and assisting refugees, the provision of durable solutions and the support of international bodies with responsibilities for the protection and assistance of refugees.

4. International solidarity and co-operation in burden sharing should be manifested whenever necessary, through effective concrete measures where major share be borne by developed countries in support of States requiring assistance, whether through financial or material aid (or) through resettlement opportunities.

5. In all circumstances, the respect for fundamental humanitarian principles is an obligation for all members of the international community. Giving practical effect to the principle of international solidarity and burden sharing considerably facilitates States fulfillment of their responsibilities in this regard.

Article XI

Obligations

A refugee shall not engage in subversive activities endangering the national security of the country of refuge, or any other country or in activities inconsistent with or against the principles and purposes of the United Nations.

Article XII

Rights granted apart from these Principles

Nothing in these Articles shall be deemed to impair any higher rights and benefits granted or which may hereafter be granted by a State to refugees.

Article XIII

Co-operation with international organizations

States shall co-operate with the office of the United Nations High Commissioner for Refugees and, in the region of its mandate, with the United Nations Relief and Works Agency for Palestine Refugees in the Near-East.

NOTES, COMMENTS AND RESERVATIONS MADE BY THE MEMBER STATES OF AALCO

Introductory Remarks

1. These notes, comments and reservations are an integral part of the main document of the Revised Bangkok Principles.

2. The Revised Bangkok Principles are declaratory and non-binding in character and aim *inter alia* at inspiring Member States for enacting national legislation for the Status and Treatment of Refugees and as a guide to deal with the refugee problems.

3. In all the Articles and paragraphs where it is referred to "**The unwillingness of the refugee to go back to his country of origin, nationality or habitual residence**", it is fully understood that this unwillingness is not a choice that the refugee can exercise on his own regardless of the consent of the country of asylum but means that the reasons of his well-founded fears are still persistent and that his life or liberty if he is compelled to return would be

threatened. Moreover the refugee can invoke convincing reasons out of previous persecution for refusing to return to one of the States mentioned above.

4. When the words "he" or "his" are used in the text, should be read to include "she" or "her".

Article I

1. The Government of **Bahrain** proposes the deletion of the phrase "**disturbing public order in either part or the whole of his country of origin or nationality**" in para 2 of Article I.

2. The Government of **UAE** proposes the addition of "**the country of his habitual residence**" in para 2 of Article I in order to make it consistent with para 3 of the same Article.

3. The Government of **Singapore** expressed its reservation to article 1(2) as it is too wide, and may result in undue pressures on receiving states in dealing with large number of refugees under this broader definition.

4. Referring to the present Article 1(2) being similar to Article 1(2) of the 1969 OAU Convention governing the specific aspects of refugee problems in Africa.

5. The Government of **India** is not in favour of the expanded definition of refugees given in para 2 of Article I. The definition drawn from Human Rights and humanitarian law instruments is too broad in its scope.

   The universally accepted criteria of "**well-founded fear of persecution**" should remain the core of the definition. Any expansion of the definition of refugees will have an adverse effect on promoting the concept of 'durable solutions' and may result in the weakening of protection afforded to genuine refugees.

6. The Government of **Oman** in para 4 of Article I proposes to relate the concept of "**lawful dependents**" to the national legislation of the country of asylum, for this concept can change from one country to another.

7. The Governments of **Pakistan** and **Bahrain** propose the deletion of the word "**permanently**" in para 6(i) of Article I.

8. The Government of **Bahrain** proposes the deletion of the entire sentence "**it being understood that the loss of status as a refugee under this sub-paragraph will take place only when the refugee has successfully re-availed himself of the protection of the State of his nationality**" at the end of para 6 (ii) for it is difficult to make sure that the refugee will succeed in regaining the protection of his country unless he returns to it for a second time.

9. (a) The Government of **Arab Republic of Egypt** has reiterated its view that the crime of terrorism should have been included in the text of Article 1(7) of the Principles, as a ground for refusal to grant the status of refugee due to the seriousness of such crimes as recognized by United Nations Resolutions and Declarations, particularly, General Assembly Resolution A/Res./49/60 of 1994 and the Declaration on Measures to Eliminate International Terrorism annexed thereto. Furthermore, in the view of the Government of Egypt, the failure to recognize crimes of terrorism as grounds for refusal of refugee status could subject the entire refugee regime to exploitation and misuse, and consequently have a negative impact on legitimate asylum seekers". The Government of Turkey also supports this view.

   (b) The Government of **Bahrain** proposes to include the "**crime of terrorism**" to para 7 Article 1 according to the definition approved by the "**Arab Convention to Combat Terrorism**". (c) The Government of **Republic of Korea** expressed its reservation to the

inclusion of the "**crime of terrorism**", given the lack of concensus on the definition of terrorism, it is of the view that any reference to terrorism could be used as a pretext by states to refuse asylum to genuine refugees.

Article II

1. The Government of **Pakistan** proposes to substitute the word "**everyone**" with "**every refugee**" in para 1 of Article II.

2. The Government of **India** considers that the inclusion of the expression "**in accordance with its international obligations and national legislation**" in para 2 of Article II restricts the sovereign rights of states to grant or refuse asylum to a refugee.

3. The Government of **UAE** proposes the addition of "**or its habitual residence**" at the end of para 4 in order to be consistent with the entire text.

4. The Government of **Bahrain** proposes to delete the entire para 4 of Article II as it does not agree that a refugee should remain in the country of refuge because he is unable or unwilling to return to his country of origin or nationality after the circumstances of his refuge have ceased to exist.

Article III

1. (a) The Government of **Thailand** proposes deletion of the worlds "**seeking asylum**" and substitution with words "**after asylum is granted**" in para 1 of Article III.

   (b) The Government of **Oman** proposes to add the words "**after granting asylum**" after the words "**seeking asylum**" in para 1 Article III.

2. The Government of **Kuwait** proposes to redraft para 2 of Article III as follows "**A State may grant to a person seeking asylum provisional asylum, under conditions fixed by the granting State**".

Article IV

1. (a) The Government of **Pakistan** suggests deletion of the phrase "**aliens in similar circumstances**" in para 1 of Article IV as it is confusing and does not fit well with reference to the word "refugees".

   (b) The Government of **Kuwait** proposes the deletion of the last sentence of para 1 of Article IV "**with due regard to basic human rights as recognized in generally accepted international instruments**" as it is an unnecessary addition keeping in view that the first part gives to the refugee same treatment as any foreigner.

   (c) The Government of **Oman** proposes the addition of "**in accordance with national legislation**" at the end of the present para 1 of Article IV, as it feels that the concept of basic human rights varies from one country to another.

2. In Article IV para 2 please refer to the Final Report of the Organization adopted at the AALCC's Fourth Session held in Tokyo in 1961.

3. The Government of **Oman** is of the view that the word "**requirements**" in para 3 of Article IV should be further clarified and illustrated, for without specific clarification the term as it stands is very vague.

4. The Government of **Kuwait proposes the redrafting** of para 7 of Article IV for the sake of clarity and easier implementation to read as follows "**States shall take appropriate measures to ensure**

that a child who is seeking refugee status or who is considered a refugee, shall receive appropriate protection and humanitarian assistance in accordance with international and national law".

5. The Government of **UAE** proposes the addition of "**religious needs**" to the other needs of elderly refugees stipulated in para 8 of Article IV.

Article V

1. The Government of **Bahrain** proposes to use the word "**should**" instead of the word "**shall**" in para 1 of Article V.

2. In view of the Government of **UAE** the implementation of para 1 of Article V will not have a real effect because it relates the reason to expel a refugee to "**national interests or public interest or to protect people**" and all of these reasons have no precise definition or clear limits.

3. The Government of **Thailand** suggests deletion of the phrase "**the expulsion of a refugee shall be only in pursuance of a decision reached in accordance with due process of law**" in para 4 of Article V. The Government of **Pakistan** sought some more clarification regarding the phrase "**due process of law**", in its view it is to be understood in light of the contents of para I of this article.

4. Regarding para 4 of Article V the Government of **Sudan** expressed a similar view as the Government of **Pakistan**, according to it "**competent authority**" should mean the relevant national bodies and not as a reference only to courts or judicial bodies.

Article VI

1. The Government of **Turkey** proposes the deletion of the words

"**foreign domination, external aggression or occupation**" in para 2 Article VI and replace them by the words "**international or internal armed conflict**". The Governments of **Pakistan** and **Kuwait** support the suggestion.

2. The Government of **Turkey** proposes the addition of the words "**taking into consideration the agreements reached with the Government or authorities of those persons and with a view to preventing further displacement of other already displaced persons as a result**" in para 2 of Article VI.

Article VII

1. Proposition of AALCO Secretariat and UNHCR to change earlier title "Other solutions" to "International Co-operation on Comprehensive Solutions".

2. The Government of **Pakistan** proposes the deletion of the word "**essentially**" in para 1 of Article VII as it seemed superfluous and could create problems. The Government of **Thailand** supports the suggestion.

3. The Government of **Kuwait** proposes the deletion of the entire paragraph 4 of Article VII as it tends to waive criminal responsibility of any person who committed criminal acts before seeking refuge in another country.

Article VIII

1. The Government of **India** expressed its reservation on including a separate Article VIII on

"**International co-operation and comprehensive solutions**". It wants the emphasis to remain on 'voluntary repatriation'. The other solutions like 'local settlement' or 'third country resettlement', according to it, would have to be considered carefully

in each case, given their political, economic or security implications, particularly in situations of mass-influx. In this connection, a distinction needs to be maintained between the 'individual refugees' and 'situations of mass-influx' as well as between 'convention refugees' and 'economic migrants'. Further, the implementation of these solutions and treatment of refugees is linked to the available resources and capacity of each State."

2. The Government of **Bahrain** proposes the deletion of the entire Article VIII.

3. In view of the Government of **Oman** the solutions contained in para 1 of this article are of a nonobligatory nature and do not bind the country of asylum. Nevertheless the country of asylum may fulfill these requirements in accordance with its national interests.

Article IX

1. In view of the financial and economic implications, reservations to paragraph 1 of Article IX were expressed by the Governments of **Sudan**, **Pakistan**, **Turkey**, **Jordan, Tanzania** and **Kuwait**.

2. (a) The Government of **Singapore** understands the phrase "**such place of habitual residence**" in para 3 Article IX as referring to the State or country which the refugee left or to which he is unable to return.

   (b) The Government of **Pakistan** felt that para 3 of this article should be in conformity with para 1 and suggested that "**such place of habitual residence**" should be replaced with **"State or country which he left**".

3. Regarding para 3 of this article, the Government of **Oman** wants to make sure that if the refugee is unwilling to return to his country of origin, it does not mean that the country of asylum is compelled to maintain his refugee status forever.

4. The Government of **Bahrain** proposes the deletion of the entire article IX as in their view, most of the refugee cases happen due to unforeseen circumstances. The Government of **UAE** also has reservations on the entire Article IX.

Article X

1. The Government of **Singapore** maintains that the responsibility of refugees rests ultimately on the countries which caused the refugees to flee and/or remain abroad. Assistance to refugees by other countries, international organizations and donors should not relieve such countries of their basic responsibility, including that of paying adequate compensation.
2. The Government of **UAE** has a reservation to para 2 of Article X as it refers to the possibility of a refugee residing in another country than the country of asylum.

Article XI

1. The addition of words "or any other country" after "country of refugee".

COMMENTS AND RESERVATIONS BY THE MEMBER GOVERNMENTS

1. The words "he" or "his" wherever used in the text should read to include "she" or "her", as suggested by the delegate of Pakistan.

ARTICLE I

2. "The Government of India is not in favour of the expanded definition of refugees. This definition drawn from Human Rights and humanitarian law instruments is too broad in its scope. The

universally accepted criteria of "well-founded fear of persecution" should remain the core of the definition. Any expansion of the definition of refugees will have an adverse effect on promoting the concept of 'durable solutions' and may result in the weakening of protection afforded to genuine refugees".

3. The Government of Egypt has reiterated its view that the crime of terrorism should have been included in the text of Article 1(7) of the Principles, as a ground for refusal to grant the status of refugee due to the seriousness of such crimes as recognized by United Nations Resolutions and Declarations, particularly, General Assembly Resolution A/Res./49/60 of 1994 and the Declaration on Measures to Eliminate International Terrorism annexed thereto. Furthermore, in the view of the Government of Egypt, the failure to recognize crimes of terrorism as grounds for refusal of refugee status could subject the entire refugee regime to exploitation and misuse, and consequently have a negative impact on legitimate asylum seekers**".** The Government of Turkey also supports this view.

4. The Government of India considers that the inclusion of the expression "in accordance with its international obligations and national legislation" restricts the sovereign rights of states to grant or refuse asylum to a refugee.

5. The Government of Thailand proposed deletion of the words "seeking asylum" and substitution with words "after asylum is granted".

6. Admission and Treatment of Aliens adopted at the AALCC's fourth Session held in Tokyo (1961)

7. The Government of Thailand suggested deletion of the phrase "The expulsion of a refugee shall be only in pursuance of a decision reached in accordance with due process of law".

8. The Government of Turkey proposed substituting the words "international or internal armed conflict" for the words "foreign domination, external aggression or occupation".

9. The Government of Turkey proposed the addition of the words "taking into consideration the agreements reached with the Government or authorities of those persons and with a view to preventing further displacement of other already displaced persons as a result."

10. The Government of India expressed its reservation on including a separate Article VIII on "International co-operation and comprehensive solutions". It wants the emphasis to remain on 'voluntary repatriation'. The other solutions like 'local settlement' or 'third country resettlement', according to it, would have to be considered carefully in each case, given their political, economic or security implications, particularly in situations of mass influx. In this connection, a distinction needs to be maintained between the 'individual refugees' and 'situations of mass-influx' as well as between 'convention refugees' and 'economic migrants'. Further, the implementation of these solutions and treatment of refugees is linked to the available resources and capacity of each State."

11. In view of the financial and economic reservations to paragraph 1 were expressed by the Governments of Sudan, Pakistan, Turkey, Jordan and Tanzania.

Annexure C

MODEL NATIONAL LAW ON REFUGEES

By Justice P. N. Bhagwati

Preamble:

Acknowledging the fact that India has a long tradition and experience in accommodating inflows of refugees, and demonstrating its faith in the principle of *non-refoulement;*

Affirming its commitment to uphold international human rights principles through accession to all major human rights treaties, and adoption of appropriate legislative steps to implement them;

Considering the pronouncements of the Supreme Court and High Courts extending the protection of fundamental rights to refugees and asylum seekers;

Reaffirming the initiatives taken by Parliament under Article 37 and 253 of the Constitution of India to provide an administrative system free from arbitrariness and guarantee equality, fairness and due process of law;

Recognising the need for an appropriate legal framework to process matters relating to forced migration in respect of determination of refugee status, protection from *refoulement* and treatment during stay;

The following Act is enacted to consolidate, streamline, and harmonise the norms and standards applicable to refugees and asylum seekers in India; to establish a procedure and the requisite machinery for granting refugee status; to guarantee them fair treatment, provide for their rights and obligations and regulate matters connected therewith. For the purposes of this Act, the grant of refugee status shall be considered a peaceful and humanitarian act and does not imply any judgement on the country of origin of the refugee.

1. Short title, Extent and Commencement

a. This Act may be called the Refugees and Asylum Seekers Protection Act, 2000.

b. It extends to the whole of India.

c. It shall come into force on the day specified by the Union Government by notification in the Gazette of India.

2. Terminology

In this Act, unless the context otherwise requires:

a. 'Asylum seeker' means a person who seeks recognition and protection as a refugee.

b. 'Refugee' means a 'refugee' defined in Article 3 and includes dependants of persons determined to be refugees.

c. '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.

d. 'Commissioner' means the 'Commissioner of refugees', defined under the provisions of Articles 7 and 8 of this Act.

e. 'Refugee Committee' means the 'Committee' established as an Appellate Board by the Government under Articles 7 and 8 of this Act.

f. Refugee Children' means children below the age of 18 years who are seeking refuge or where protection is extended by the state to children under Article 22 of the Convention on the Rights of the Child, 1989.

g. "Serious non-political offence" refers to any offence determined in accordance with Article 17 of this Act, and listed in schedule A of the Act.

h. "Government" shall mean Union Government

3. Definition of a Refugee

A refugee is defined as:

a. 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.

4. 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 is convicted for a crime against peace, a war crime or a crime against humanity, in accordance with the applicable principles and rules of International Law/ Conventions including the SAARC Regional Convention On Suppression of Terrorism, 1987;

b. He or she has committed a serious non-political crime as specified in the Schedule A, outside India prior to his or her admission into India as a refugee.

5. 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 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 Article 3;

b. Where an asylum seeker or refugee has been convicted by a final judgement of a crime against peace, a war crime or a crime against humanity and constitutes a danger to the community, or where a Minister has certified that there are reasonable grounds to believe that an asylum seeker or refugee is a threat to the sovereignty and integrity of India, such an asylum seeker or refugee may be asked to leave India. However, such an asylum seeker or refugee shall not be returned to a situation or to any country in which his or her life or liberty is threatened for reasons of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion.

6. Application

a. Where an application is made by, on behalf of, or in relation to an asylum seeker, for the recognition of the said asylum seeker as a refugee, either at the point of entry or subsequently, the applicant shall, in accordance with the principle laid down in Article 5 be directed and assisted to apply to the Commissioner of Refugees;

b. Where an application is made by, on behalf of, or in relation to an asylum seeker, for the determination of refugee status, pending determination of such status, no restrictions shall be imposed on the asylum seeker save and except those that are necessary in the interests of sovereignty and integrity or public order of India. Such application may be made within such reasonable time as may be prescribed in accordance with Article 17 of this Act;

c. Where an application for refugee status is made by, on behalf of, or in relation to a child, accompanied or unaccompanied; or where a refugee child is found within the territory of India; he or she shall receive immediate and appropriate protection and humanitarian assistance in accordance with the existing policy and legal framework of the state. The requirement of filing an

application form on their behalf may be entrusted to a local Legal Service Authority or their representatives or any other recognised NGO involved in the welfare of children in general.

7. Constitution of the Authorities

In order to implement the provisions of this Act:

a. The President shall appoint the Commissioner of Refugees, and Deputy Commissioners of Refugees as may be necessary on the basis of the eligibility requirements and procedure laid down in Articles 7 and 8 of this Act;

b. Other officers as may be necessary shall be appointed after consultation with the Commissioner of Refugees;

c. The President shall appoint the Chairperson and Members of the Refugee Committee

d. The Chairperson of the Refugee Committee shall appoint the staff of the Committee.

8. Appointment and Functions

a. The Commissioner of Refugees shall be a sitting or retired High Court Judge, and shall be appointed after consultation with the Chief Justice of India.

b. The Deputy commissioner should be qualified to be appointed as a High Court Judge; and shall be appointed after consultation with the Chief Justice of India.

c. The Chairperson of the Refugee Committee shall be a retired Supreme Court Judge.

d. The Refugee Committee shall consist of the following three members: a sitting or retired High Court Judge, appointed by the President in consultation with the Chief Justice of India, and two independent members with knowledge and experience of refugee issues and refugee law.

e. The Commissioner of Refugees may assign such of his functions as may be necessary to the Deputy Commissioner of Refugees appointed under this Act.

f. The decision of the Commissioner of Refugees shall be final. Any appeal against such decision shall lie only with the Refugee Committee, as the Appellate Board for reconsideration of the decision.

9. Determination of Refugee Status

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

b. During the refugee determination interview, the asylum seeker shall be provided necessary facilities including the services of a competent interpreter where required, and a reasonable opportunity to present evidence in support of his or her case;

c. The asylum seeker, if he or she wishes, shall be given an opportunity, of which he or she should be duly informed, to 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. A list of competent legal practitioners, who are conversant with refugee law, shall be provided by the Government to the asylum seeker;

e. If the asylum seeker is not recognised as a refugee, he or she could be given a reasonable time as provided in the rules, to appeal to the Refugee Committee;

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

g. If the asylum seeker is recognised as a refugee, he or she shall be informed accordingly and issued with documentation certifying his or her refugee status.

10. Publication of Findings and Decisions

a. The findings, as well as the orders of the Commissioner of Refugees, the Refugee Committee and other authorities established under this Act shall be published by them periodically.

b. The Commissioner of Refugees and the Refugee Committee shall publish an annual report. The annual report and any other periodic or special reports related to their work shall be made public.

11. Appellate Procedure

The Refugee Committee shall receive and consider appeals made by asylum seekers against the decision of the Commissioner of Refugees. The Committee may also consider applications for refugee status *suo moto.*

12. 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 the country of his or her origin; or

b. he or she has become a citizen of India; 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 recognised 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.

13. Rights and Duties of Refugees

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

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

2. receive the same treatment as is generally accorded under the Constitution or any other laws and privileges as may be granted;

3. be provided a means to seek a livelihood for himself or herself, and for those dependent on them;

4. be given special consideration to ensure their protection and material well being in the case of refugee women and children;

5. choose his or her place of residence and move freely within the territory of India, subject to any regulations applicable to refugees generally in the same circumstances;

6. be issued identity documents;

7. be issued travel documents for the purpose of travel outside and back to the territory of India unless compelling reasons of national security or public order otherwise require;

8. be given the right of access to education, health and other related services.

b. Every refugee shall be bound by the laws and regulations of India.

14. 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 India without requiring their individual status to be determined under Section 11 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 should be determined on an individual basis under this Act;

b. Asylum seekers who have been permitted to reside in India under this provision, may be subject to reasonable restrictions with respect to their location and movement but will otherwise be granted normally the same rights as refugees under this Act;

c. Women and children asylum seekers in mass influx shall have the right to be given special consideration as to their protection and material well being.

15. Refugees Unlawfully in India

The Government shall not impose penalties on refugees on account of their illegal entry, or presence who, coming directly from a place where their life or freedom was threatened in the sense provided in Article 3, enter or are present in India without authorisation. Provided they present themselves with immediate effect to the authorities and are able to show good cause for their illegal entry or presence.

16. Voluntary Repatriation

The repatriation of refugees shall take place at their free volition expressed in writing or other appropriate means, before the Commissioner of Refugees. The voluntary and individual character of repatriation of refugees and the need for it to be carried out under conditions of transparency and safety to the country of origin shall be respected.

17. Rules and regulations

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

18. Non-Obstante Clause

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

Annexure D

WELFARE OF SRI LANKAN TAMILS

- Extension of all welfare schemes to Sri Lankan Tamils residing in Camps.
- Extension of free supply of rice, essential food commodities through PDS to 19,750 families.
- All refugee families living in the designated camps have been given permission to purchase all other ration commodities including kerosene from the PDS shops as per the norms applicable for Indian citizens.
- Chief Minister's Medical Insurance Scheme meant for Indian Citizens residing in Tamil Nadu has been extended to all registered Sri Lankan Tamil Refugees staying in Tamil Nadu.
- Investment of Rs.50,000 for a family with one female child and Rs.25,000/- for a family with two female children for 20 years under Girl Child Protection Scheme. Deposit in the name of 31 female children under "Female Children Protection Scheme" to the families without male children.
- Social Security Scheme has been extended to refugees in camps. Under this scheme, Monthly pension at the rate of Rs.1000/- has been paid to 4,416 destitute widows, deserted wives and the aged, the differently abled and unmarried women.
- Sewing machines to 2,123 Sri Lankan Tamil Women in camps at no cost.
- Laptops at no cost for 226 students studying in +2.
- Laptop, special cash incentive, footwear, bag and Geometric box at no cost for Sri Lankan Tamil students studying in Government/ Government aided schools.

- Extension of free supply of Electric mixie, Fan and Grinder to Sri Lankan Tamil families in camps.
- Waiver of tuition fees for 18 first generation students from Sri Lankan Tamil families, admitted through single window system to professional courses.
- Extension of merit based admission for refugee students in UG/ PG courses in Arts and Science colleges based on open quota.
- Extension of merit based admission in professional courses under lateral entry system. Under this scheme refugee students are admitted in BE/BTech/MBA/ MCA/ MTech / MArch courses on open quota based on their merit.
- 5 seats are created and reserved in each of the hostels meant for SC, ST, BC, MBC and Minority students in 2,532 hostels.
- The maternity assistance for mothers has been enhanced from the existing Rs.6,000/- to Rs.12,000/- under the Dr.Muthulakshmi Reddy Maternity Financial Assistance Scheme.
- Under Moovalur Ramamirtham Ammaiyar Memorial Women Marriage Assistance Scheme, eligible Sri Lankan refugee women with graduate/diploma qualification will get Rs.50,000/- + 4g gold and other women will get Rs.25,000/-+4g gold.
- Enhanced monthly cash dole of Rs.1,000 to the head of families, Rs.750 to other members and Rs.400 for Children below 12 years. 66,918 persons are benefited.
- Enhancement of funeral rites expenses from Rs.2,500/- to Rs.5,000/-
- Enhancement of Accidental death relief from Rs.15,000/- to Rs.25,000/- from the Chief Minister's Sri Lankan Refugees Relief Fund.

- Revolving Fund of Rs.41.60 lakhs for 416 women self-help groups each at a rate of Rs.10,000/-.
- Allotment of Rs.29.33 crores for improvement of Basic Amenities including Drinking water supply. Construction of 2,500 new durable houses at a cost of Rs.25 crores commenced.
- 183 girls benefited from the Financial Assistance under Moovalur Ramamirtham Ammaiyar Memorial Women Marriage Assistance Scheme.
- Exemption of Income certificate and Age limit for Sri Lankan Tamils in camps to get sewing machines and assistance under "Moovalur Ramamirtham Ammaiyar Marriage Scheme".
- Under this scheme, the scholarship amount for the refugee students pursuing higher education ranges from Rs.850/- to Rs.4,700/- per annum, depending on the course of study.

Annexure E

Guidelines for National Refugee Legislation, with Commentary

9 December 1980

(The Guidelines, adopted by OAU/UNHCR Working Group on Arusha Follow-up, Second Meeting, Geneva, 4-5 December 1980, were dated 9 December 1980. The Commentary was dated 19 December 1980.)

Introduction

The following draft provisions are intended as guidelines for national refugee legislation to provide for the entry, recognition and status of refugees in order to define their rights and duties.

Part I: Definition of "refugee" and "competent authority"

Section 1

1. The term "refugee" and "competent authority"

> Any person who, owing to well-founded fear of being persecuted 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 residence, is unable or, owing to such fear, is unwilling to return to it; or,
>
> Any person who, owing to external aggression, occupation, foreign domination or evens seriously disturbing public order in either part or the whole or his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek

refuge in another place outside his country of origin or nationality; or,

Any person belonging to a group of persons declared by the Government authority responsible for refugee affairs to be refugees.

2. For the purpose of these legislative provisions, the term "competent authority" shall mean any official or group of officials entrusted with the power to recognize a person as a refugee.

Section 2

1. A person shall not be considered a refugee for the purposes of these legislative provisions if he is excluded under Article 1(F) of the United Nations Convention

   Relating to the Status of Refugees 1951 and Article I, paragraph 5, of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa 1969.

2. A person shall cease to be a refugee under these legislative provisions if he falls under Article 1(c) of the United Nation Convention Relating to the Status of Refugees 1951 and Article I, paragraph 4, of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa 1969.

Part II: Determination of refugee status

Section 3

For the purpose of this section, unless the context otherwise requires, the term "standing refugee body" shall mean any official or group of officials entrusted with the power to examine and to decide upon applications for recognition as a refugee, and the term "standing refugee appeal body" shall mean any official or group of officials with powers to hear and to decide upon appeals against refusal by the standing refugee body to recognise the applicant as a refugee.

Application for refugee status shall be filed in the manner prescribed by law. The applicant shall be entitled to appear, with or without counsel, before the standing refugee body to present his case.

The views of the Representative of the United Nations High Commissioner for Refugees may be sought by the standing refugee body and taken into account before a decision is reached if there is a doubt or if a negative decision is intended.

Where the standing refugee body rejects an application for recognition of refugee status, it shall so notify the applicant and, where appropriate, shall inform him of the grounds for rejection. In such a case, the applicant shall be entitled too appeal to the standing refugee appeal body.

The authority to which the applicant first addresses himself shall ensure that the application is forwarded directly and without delay to the standing refugee body.

Section 4

8. For the purpose of this section, the term "members of the family of the applicant" shall mean the refugee's spouse or spouses, unmarried children under the age of majority, and any other relative of the refugee who is dependent on him.

9. Where the applicant is recognised as a refugee, the members of his family who accompany or subsequently join him shall be recognised as refugees, unless they possess a nationality other than that of the refugee and enjoy the protection of the country of their nationality.

10. If, subsequent to the recognition of the head of the family as a refugee , his family is broken up as a result of divorce, separation or death, the members of his family who have been accorded refugee status by virtue of paragraph 2 shall continue to be

regarded as refugees, unless there are strong reasons why refugee status should not be retained.

Section 5

Where members of a group are expressly excluded from a declaration of refugee status made by the government authority in pursuance of Section 1(1)(c), those members shall be given an opportunity to apply for recognition of refugee status in accordance with the provisions of Section 3.

Part III: Non-refoulement

Section 6

13. For the purpose of these legislative provisions, the term "frontier" shall mean the land-frontier, a part or airport of entry, or the limits of territorial waters.

14. No person shall be rejected at the frontier, returned or expelled, or subjected to any other measures that would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons mentioned in paragraph 1(a) and (b) of Section 1.

Part IV: Prohibition of declaration of prohibited immigrant

Section 7

18. No person who has illegally entered or is illegally present in the country in which he seeks asylum as a refugee shall be declared a prohibited immigrant, detained, imprisoned or penalized in any other way merely by reason of his illegal entry or presence, pending an examination of his application for refugee status.

19. A person who has illegally entered or is illegally present in the country in which he seeks asylum as a refugee shall present himself to the competent authorities without undue delay.

Part V: Entry, residence and sojourn

Section 8

(1) A person claiming to be a refugee shall be permitted to entered and remain in the country in which he seeks asylum pending a decision on his application. He shall be given appropriate documentation attesting to his lawful presence in the country.

(2) Where, as provided for in paragraph 4 of Section 3, an applicant has appealed against a negative decision on his application for recognition as a refugee, the applicant shall be permitted to remain in the country while his appeal is pending.

(3) A recognised refugee shall be issued with an identity card attesting to his refugee status.

Residence

Section 9

1 A person recognised as a refugee shall be issued with an indefinite or a temporary residence permit in accordance with national legislation.

2 A recognised refugee who has maintained residence for an extended period of time and has not yet been granted permanent residence shall be given the opportunity of applying for such status and his application should be given favourable consideration having regard to the circumstances of his particular case.

Temporary Sojourn and Transit

Section 10

1. Where an application for refugee status has been finally rejected, the person concerned may, for humanitarian reasons, be permitted

to remain in the country for a reasonable period of not less than six months, to enable him to seek admission to another country.

2. A person who presents himself at the frontier and applies for admission for the purpose of proceeding to another country in order to seek asylum as a refugee shall be permitted to enter under such conditions as the authorities may determine. Such a person shall be given the necessary facilities to enable him to proceed on his journey.

3. A person who has already entered the country with the intention of proceeding to another country in order to seek asylum as a refugee shall similarly be given the necessary facilities to enable him to proceed on his journey. If such a person has illegally entered or is illegally present in the country, he shall not be penalized for his illegal entry or presence, provided he addresses himself to the authorities without delay.

Part VI: Rights and duties

Section 11

Persons recognised as refugees shall be entitled to the rights and subject to the duties defined in Articles 2 to 34 of the United Nations Convention Relating to the Status of Refugees 1951 and in Article III to VI of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa 1969, as set out in the Schedule to these legislative provisions.

Part VII: Expulsion

Section 12

1. A refugee who is lawfully resident in the country shall not be expelled, except on the grounds of national security or public order.

2. The expulsion of such a refugee shall be made only in pursuance of a decision reached in accordance with due process of law.

3. An expulsion order shall not be executed by return to a country to which the return of the refugee is excluded by Section 6.

4. Where an order has been made for the expulsion of a refugee, the authority making the order shall inform the refugee that he may make representations against his expulsion on the grounds that he has not acted against national security or public order, or if the expulsion order requires his return to a specific country, that it is contrary to the provisions of Section 6. Pending a decision on such representations, the execution of the execution of the expulsion order shall be suspended.

Part VIII: Miscellaneous

Section 13

1. Immigration officials, border police officers, and any other officials or officers as appropriate, shall be issued with instructions with a view to ensuring that persons claiming to be refugees are enable to present their application to the competent authority and receive the protection provided for in Sections 6 and 7, pending a decision on their application.

   The appropriate authority may make any other regulations or orders in conformity with the present legislative provisions to govern and control the entry and residence or refugees.

Annexure F

Indian Citizenship Act 2011

Citizenship should be acquired by Sri Lankan refugees under the Indian Citizenship Act 2011 which stipulates that:

- Persons domiciled in the territory of India as on 26 November 1949 automatically became Indian citizens by virtue of operation of the relevant provisions of the Indian Constitution coming into force, and most of these constitutional provisions came into force on 26 January 1950. The Constitution of India also made provision regarding citizenship for migrants from the territories of Pakistan which had been part of India before partition.
- Any person born in India on or after 26 January 1950, but prior to the commencement of the 1986 Act on 1 July 1987, is a citizen of India by birth. A person born in India on or after 1 July 1987 is a citizen of India if either parent was a citizen of India at the time of the birth. Those born in India on or after 3 December 2004 are considered citizens of India only if both of their parents are citizens of India or if one parent is a citizen of India and the other is not an illegal migrant at the time of their birth.
- Persons born outside India on or after 26 January 1950 but before 10 December 1992 are citizens of India by descent if their father was a citizen of India at the time of their birth.
- Persons born outside India on or after 10 December 1992 are considered citizens of India if either of their parents is a citizen of India at the time of their birth.
- From 3 December 2004 onwards, persons born outside of India shall not be considered citizens of India unless their birth is

registered at an Indian consulate within one year of the date of birth. In certain circumstances it is possible to register after 1 year with the permission of the Central Government. The application for registration of the birth of a minor child must be made to an Indian consulate and must be accompanied by an undertaking in writing from the parents of such minor child that he or she does not hold the passport of another country.

- The Central Government may, on an application, register as a citizen of India under section 5 of the Citizenship Act 1955 any person (not being an illegal migrant) if he belongs to any of the following categories:
- a person of Indian origin who is ordinarily resident in India for seven years before making application under section 5(1)(a) (throughout the period of twelve months immediately before making application and for six years in the aggregate in the eight years preceding the twelve months).
- a person of Indian origin who is ordinarily resident in any country or place outside undivided India;
- a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;
- minor children of persons who are citizens of India;
- a person of full age and capacity whose parents are registered as citizens of India.
- a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and has been residing in India for one year immediately before making an application for registration;

- a person of full age and capacity who has been registered as an overseas citizen of India for five years, and who has been residing in India for one year before making an application for registration.
- Citizenship of India by naturalization can be acquired by a foreigner (not illegal migrant) who is ordinarily resident in India for twelve years (throughout the period of twelve months immediately preceding the date of application and for eleven years in the aggregate in the fourteen years preceding the twelve months) and other qualifications as specified in Third Schedule to the Citizen Act.

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