

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: 4th Cycle, 41st Session

INDIA

I. BACKGROUND INFORMATION

India has a long-standing tradition of hosting refugees. At present, there are two broad categories of refugees in India:

- a) Approximately 169,233 Tibetans and Sri Lankan refugees are directly assisted by the Indian Government; and,
- b) Approximately 44,917 refugees and asylum-seekers from India's non neighbouring countries and Myanmar are registered and protected by UNHCR under its mandate.

UNHCR has been working in India since 1981. In New Delhi, UNHCR works with individual refugees and asylum-seekers, primarily from Afghanistan, Myanmar and Somalia. Since 1992, UNHCR has had a small office in Chennai to facilitate the voluntary return of Sri Lankan refugees. The Government has acceded to a large majority of international human rights instruments¹ but has not acceded to the 1951 Refugee Convention relating to the Status of Refugees and its 1967 Protocol and does not have any national refugee protection legislation in place. The State is also not party to the 1954 Convention on the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness.

India took an active role in contributing to the development of the Global Compact on Refugees (GCR) and affirmed it, along with the majority of Member States, on 17 December 2018. India also voted in favour of Global Compact for Safe, Orderly and Regular Migration (GCM).

The Indian Foreigners Act 1946 applies to all classes of foreigners, including refugees and asylum-seekers, and refugee policy is determined on an ad hoc basis. Thus, while the Government directly assists Tibetans and Sri Lankans, UNHCR registers asylum-seekers and determines refugee status for others.

Tibetan refugees have freedom of movement, access to residence and work permits, and for some, the possibility of acquiring Indian citizenship. Sri Lankan Tamil refugees are given shelter, food, and allowances in designated refugee camps and access to the informal labour market. Hindu and Sikh Afghan refugees can apply for naturalisation in India, should they meet the criteria laid down by the Citizenship Act 1955 and rules framed thereunder. The Government has reportedly issued directions to concerned officials in October 2021 to clear the backlog of naturalisation applications as soon as possible. Refugees, in principle, can obtain stay visa/ Long Term Visas (LTV) to regularise their stay in India. Refugees and asylum-seekers who have been issued LTV are less challenged by the administrative or practical barriers in accessing labour market and public services. However, LTV are only issued to persons who have entered India on valid travel documents, i.e., valid passports and valid visas.

Refugees and asylum-seekers continue to have access to the territory of India and approach UNHCR for registration and status determination. The Government allows refugees and

¹ Including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and ILO Conventions concerning the elimination of child labour, namely, the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182).

asylum-seekers to have access to public health, education services and the national legal system. However, a lack of awareness of these services and the local language, constitute practical and administrative barriers to effective access. Refugees and asylum-seekers are sometimes subjected to exploitation by employers and competition for scarce resources sometimes leads to disputes with the host community. Many find themselves living in conditions of poverty, while trying to make a living in the harsh and complex urban environment of a large country. Instances of gender-based violence affecting refugee and asylum-seeking women and girls have reduced, however, instances of child labour exist amongst some refugee communities.

Durable solutions are available to certain groups of refugees. While some Sri Lankan refugees opt for voluntary repatriation, most Hindu Sikh Afghan refugees have applied for naturalisation. In 2019, India enacted the Citizenship Amendment Act, which reduces the period of applying for citizenship by naturalisation from 11 years to five years for people belonging to Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, who arrived in India on or before December 31, 2014. However, rules for the implementation of the Act are still being framed.

Resettlement remains a limited solution and is used as a protection tool for those with unmet protection needs in India.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Positive developments linked to 3rd cycle UPR recommendations

Linked to 3rd Cycle UPR recommendation no. 161.121: “Strengthen the national mechanisms to combat human trafficking and support victims and their rehabilitation (Lebanon).”

The Ministry of Women and Child Development published the draft Trafficking in Persons (Prevention, Care and Rehabilitation) Bill 2021. The draft Bill is being touted as one of the most comprehensive documents on prevention of trafficking and it builds on previous draft legislation. The Bill’s stated objective are: preventing and countering trafficking in persons, especially of women and children; providing care, protection, and rehabilitation to the victims, while respecting their rights, and creating a supportive legal, economic and social environment for them; and, ensuring prosecution of offenders,. Once enacted, the Bill will apply to every offence of trafficking in persons, with cross-border implications.

The Bill has prompted a robust public discourse on the prevention, care, and rehabilitation of victims of trafficking with a focus on their agency and consent. Many civil society organisations and experts working with victims of trafficking have called for further strengthening of the provisions of the Bill such as promoting a community-based rehabilitation model that provides health services, legal aid, access to welfare schemes and income opportunities crucial for ensuring reintegration of victims back into their community and family.

Linked to 3rd UPR recommendation no. 161.160: “Continue efforts and measures aimed at enhancing social security and labour policies, and expand the development model in rural areas (Egypt).”

The Indian Parliament amalgamated 29 existing central labour laws and enacted four labour codes namely, the Code on Wages, 2019, the Industrial Relations Code Bill, 2020, the Code on Social Security Bill, 2020 and Occupational Safety, Health and Working Conditions Code Bill, 2020. According to the Government, these laws aim to ensure that workers in both formal and informal sectors of the economy are able to access statutory protection including

minimum wages, non-hazardous working conditions, social security and other welfare measures with ease.

Significantly, the codes have universalized minimum wages in India. They also include provisions for workers in the informal sector to access social security, including so-called 'gig' or 'platform' workers. Further, they extend minimum standards of occupational safety, health and working conditions to the informal sector. However, labour unions and workers collectives have highlighted that labour laws further need to be strengthened to ensure proper implementation of the laws, especially with respect to informal workers, and to preserve and promote social dialogue and tripartism. It should be noted that most refugees have access to work in the informal sector but do not benefit from accessing social security or welfare schemes as they do not possess government recognized documentation such as Aadhaar cards and Pan cards. As a result, financial inclusion is a challenge.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: Ratification of the 1951 Refugee Convention and Statelessness Conventions

Linked to 3rd UPR cycle recommendations nos. 161.32² and 161.33³

India is not a party to the 1951 Convention relating to the Status of Refugees, the 1967 Protocol, the 1954 Convention relating to the Status of Stateless Persons, nor the 1961 Convention on the Reduction of Statelessness. Accession to these Conventions is recommended as an important step to strengthen the international legal framework applicable in India.

Accession to these Conventions would establish a stronger legal framework to protect refugees, asylum-seekers and stateless persons and to ensure their basic human rights and minimum standards of living.

Recommendations

UNHCR recommends that the Government of India:

- a) Formalise its traditional hospitality towards refugees and asylum-seekers and establish a strong legal framework for their protection by acceding to the 1951 Refugee Convention relating to the Status of Refugees and its 1967 Protocol; and,
- b) Consider acceding to the 1954 Convention on the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Issue 2: Lack of national legislation on the protection and assistance of refugees and asylum seekers and stateless persons

Although India has positive administrative frameworks to assist refugees and asylum-seekers, these procedures are ad hoc and do not comprehensively meet the internationally guaranteed refugee rights and standards to allow for consistency and coherence through a national asylum framework.

Recommendations

UNHCR recommends that the Government of India:

- a) Adopt national refugee legislation to formalise its long-standing commitment to refugee protection and to establish a consistent and coherent framework for carrying out protection and assistance to refugees and asylum-seekers in full compliance with

² 161.32 Accede to and implement the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness, the 1951 Convention relating to the Status of Refugees and article 7 of the Convention on the Rights of the Child to end statelessness and guarantee nationality for affected children (Kenya)

³ 161.33 Accede to and fully implement the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness and the 1951 Convention relating to the Status of Refugees (Slovakia)

- international human rights obligations; and,
- b) Put in place Statelessness Determination Procedures, in line with international principles and the Statelessness Conventions, so as to build a strong framework for the protection and assistance of Stateless persons.

Issue 3: Detention of asylum-seekers in border areas for irregular entry and stay

The Foreigners Act 1946 applies to all classes of foreigners, including refugees and asylum-seekers. It does not provide exceptions for asylum-seekers from penalties for entering the country without the required documentation, which is at variance with international standards. Although only a small percentage (about 1 percent) of asylum-seekers are reportedly in detention at border areas, some can be subjected to prolonged detention even after completion of their sentence. Advocacy efforts to seek their release so as to allow them access to asylum have not been very effective thus far.

Recommendations

UNHCR recommends that the Government of India:

- a) Review the Foreigners Act to classify refugees and asylum-seekers as a special category of foreigners who should not be penalised for irregular entry and stay and will have access to asylum procedures, in line with international standards;
- b) Ensure that detention of persons in need of international protection is only used as a measure of last resort and, where necessary and justified by law, and for as short a period as possible;
- c) Ensure that detention does not constitute an obstacle to pursuing an asylum application, and that alternatives to detention should be sought and given preference particularly while an asylum application is pending adjudication;
- d) Establish a regular information sharing and referral platform with UNHCR to enable early identification of asylum-seekers prior to and while in detention and establishment of appropriate response mechanisms; and
- e) Guarantee minimum procedural safeguards to detained asylum-seekers and refugees, including the possibility to contact and be contacted by UNHCR, as well as access to legal counsel and prompt judicial review of the appropriateness and legality of their confinement.

Issue 4: Access to birth registration, education, health, financial and other essential services for refugees and asylum-seekers

Refugee and asylum-seekers have access to national services in refugee hosting areas across India, including access to education, health, child protection systems and legal processes. However, this access is not consistent and equitable across all locations. The barriers to access are mostly administrative in nature as refugees and asylum-seekers are unable to provide requisite documentation like an Aadhaar card, which is increasingly being made mandatory to access services in certain areas.

Recommendations

UNHCR recommends that the Government of India:

- a) Remove administrative barriers to allow for unhindered and equitable access of refugees and asylum-seekers to essential services including birth registration, health and education facilities, and financial services; and,
- b) Ensure asylum-seekers and refugees can effectively access essential services by providing them with government issued documentation, such as a special category of Aadhar cards or an equivalent government issued document.