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Refugee Protection in South Asia

Ravi Nair¹

Historically, South Asia has witnessed substantial intra-regional movement and dislocation of regional groups fleeing ethnic or religious persecution and political instability. India's multiethnic, multilingual and relatively stable society has often made it an attractive destination for these groups. This phenomenon continues today. Tamil refugees from Sri Lanka, Jumma peoples from Bangladesh and Chin and other tribal refugees from Burma, Afghanistan, Iran and even Sudan today comprise the bulk of India's refugee population.

The [refugee] camps closest to Chennai (Madras) are, for the most part, well-maintained, while in Pooluvapatti Camp near Coimbatore, 4,700 refugees use eight latrines. Accumulated waste, cramped quarters, lack of electricity and poor sanitation all contribute to the miserable state of the camps.

The Indian government has been inconsistent in dealing with refugees, changing its official policy on the number and origin of refugees to be allowed. Despite the fact that India has a large refugee population, international scrutiny is seldom given to the conditions in which these refugees live. Often, these conditions are extremely harsh, falling short of international standards and forcing refugee communities to struggle to fill even their most basic human needs.

The Indian government compounds the problem by failing to provide access to local and international non-governmental organizations (NGOs) that wish to address refugee needs. The United Nations High Commissioner for Refugees (UNHCR) has

¹ This article would not have been possible without the generous assistance of Neha Jani, Derek Jinks, Ryan Goodman, Ayesha Mago, H.K. Park and Elisabeth Van-Schaack.

been particularly disappointing in this regard, tending to under-interpret its mandate for refugee protection in South Asia.

Little if any information is available to the international community or to the Indian people about the plight of these refugees once they reach India. This article will describe the condition of South Asian refugees in India and draw the Indian government's attention to the need for legislation to protect refugees and asylum seekers. Moreover, this article will examine the role of international organizations such as the UNHCR and domestic NGOs such as the South Asia Human Rights Documentation Centre (SAHRDC) in New Delhi.

Who is a Refugee?

According to UNHCR mandate and the 1951 Convention Relating to the Status of Refugees, the term refugee applies to those people who: (a) have fled their countries because of a well-founded fear of persecution for reasons of their race, religion, nationality, political opinion or membership in a particular social group; and (b) cannot or do not want to return due to fear. The 1967 Protocol to the Convention altered this definition only insofar as it removed the time limit of the former, which only covered refugees who had been displaced as a result of events occurring before 1951.

Applicable Laws

The refugee problem was acknowledged as having international dimensions and requiring global cooperation from 1921 to 1922 in the aftermath of the First World War, the breakup of the Austro-Hungarian empire and the Russian revolution. However, real movement to protect refugees began only with the 1948 Universal Declaration of Human Rights, which proclaimed basic rights for all human beings irrespective of their nationality or citizenship. This declaration was an important first step for refugees, who are particularly vulnerable in foreign countries. It is therefore incumbent upon the international community to protect their rights both in countries of origin and asylum.

A myriad of specialized and regional human rights instruments have sprung from the foundation of the International Bill of Human Rights. The inalienable rights enshrined in the cov-

enants such as Article 6 of the International Covenant on Civil and Political Rights (ICCPR), are also applicable to the refugees. India has undertaken an obligation by ratifying the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights to accord treatment to all non-citizens that is equal to that of its citizens. India is presently a member of the Executive Committee of the UNHCR, which entails the responsibility to abide by international standards on the treatment of refugees.

The most important refugee law, the 1951 Convention relating to the Status of Refugees, known simply as the Refugee Convention, codified a very precise definition of "refugee."² According to Article 1, a refugee is someone who, "owing to a 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 [sic] nationality."³ More contemporary instruments have advanced beyond this limited and legalistic definition by acknowledging civil disturbances and human rights abuses as valid claims for refugee status. The Refugee Convention is a part of international customary law and it should be the moral responsibility of any member state of the United Nations to respect the Refugee Convention.

None of the South Asian countries are party to the 1951 Convention, which has been ratified by 134 nations. This may reflect the unwillingness of South Asian governments to submit to international scrutiny. Though India is not a party to the Refugee Convention, the general principle of *non-refoulement* prohibits forced repatriation and has risen to the level of customary law, such that it binds even non-signatories. The principle of *non-refoulement* was applied where there was fear of torture or violation

² Originally a backward-looking instrument, this Convention was adopted in order to address the unresolved refugee crisis that emerged from the Second World War. As such, it applied only to persons who became refugees as a result of events occurring prior to the Refugee convention's adoption. This temporal limitation was removed by the Protocol Relating to the Status of Refugees of 31 January 1967, whose Preamble recognized that "new refugee situations have arisen since the convention was adopted." The pre-Convention definition did not take into account the reasons for the refugee's departure from his/her home nation. Gradually, however, states became concerned, culminating in the definition of "refugee."

³ *Human Rights: A Compilation of International Instruments* (United Nations, New York, 1988).

of the refugees right to life.⁴

India lacks a cohesive national policy for handling refugee inflows. Since the entry and regulation of aliens falls under the Union List, the Central Government is empowered to deal with refugee regulation.⁵ Traditionally, the Union Cabinet has made reactive decisions with each particular influx of refugees, often taking action only when the particular refugee influx went beyond the control of the Border Security Force, and the matter became political. The lack of a national Indian policy limits the ability of the state governments and Border Security Force to deal with refugees instantly. This results in mass rejections at the frontier while policy directions are awaited, or non-recognition of refugees sneaking into Indian territory. Under the constitution of India, state governments are not empowered to deal with refugees without the express concurrence of the central government. A national policy with clear guidelines coupled with the empowerment of state governments to handle local cases would allow India to more effectively name its refugee problems.

India's Refugee Policy

Before India became independent in 1947, the Indian courts under British rule administered English common law. They accepted the basic principles governing the relationship between international law and municipal law. Under the English common law doctrine, international laws in general were not accepted as part of municipal law. If, however, there was no conflict between these rules and the rules of municipal law, international law was accepted in municipal law without incorporation. Indeed, the doctrine of common law is specific about certain international treaties affecting private rights of individuals. To implement such treaties, the doctrine requires modification of statutory law and the adoption of the enabling legislation in the form of an Act of Parliament.

⁴ *Non-refoulement* is an important principle to international refugee law, which acts as a complete prohibition against the forcible return of people to a place where they will be subject to grave human rights violations or where their life or personal security will be seriously endangered. The principle of *non-refoulement* applies equally to refugees at the border of a state and to those already admitted, and it remains in force until the adverse conditions which prompted people to flee in the first place are alleviated.

⁵ Under the Constitution of India, powers and functions are divided into Union List (Federal Government) and State List (Provincial Government or State Government).

These English common law principles are still applicable to India even after its independence, by virtue of Article 372 of its constitution, which says that “all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority.”⁶

Confirming the common law principle relating to the specific incorporation of certain treaties, Article 253 provides that “Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.” This article implies that whenever there is a need to incorporate international obligations undertaken at the international level or under international instruments into municipal law, the Parliament is empowered to do so.

Against this backdrop, when one examines the binding force of international refugee law on India and its relations with Indian municipal law, one can conclude that, as long as international refugee law is not in conflict with municipal Indian legislation or policies on the protection of refugees, international refugee law is a part of municipal law.

The juridical basis of the international obligations to protect refugees, namely, *non-refoulement*, including non-rejection at the frontier, non-return, non-expulsion or non-extradition and the minimum standard of treatment, are traced in international conventions and customary law. The only treaty regime having universal effect pertaining to refugees is the 1951 Refugee Convention and its 1967 Protocol on the Status of Refugees, which is the *magna carta* of refugee law. Since India has not yet ratified or acceded to this regime, its legal obligation to protect refugees is traced mainly in customary international law. An examination of this aspect raises the basic question of the relation of international law with Indian municipal law.

The constitution of India contains a few provisions on the status of international law in India. Article 51 (c) says that “the

⁶ The expression in this Article includes not only enactments of Indian legislature but also common law of the land as administered by courts in India before its independence. Gurdeep Singh, “Status of Human Rights Covenants in India”, *Indian Journal of International Law*, 28 (1988), p. 218.

State [India] shall endeavor to foster respect for international law and treaty obligations in the dealings of organized peoples with one another." Although ambiguous, this provision differentiates between international law and treaty obligations. It is, however, interpreted and understood that "international law" represents international customary law and "treaty obligations" represent international conventional law.⁷ Otherwise the article is lucid and directs India to foster respect for its international obligations arising under international law for its economic and social progress.

Article 51 (c) is placed under the Directive Principles of State Policy in Part IV of the Indian constitution, which means it is not an enforceable provision. Since the principle laid down in Article 51 is not enforceable, and India has merely to endeavor to foster respect for international law, this article would mean *prima facie* that international law is not incorporated into the Indian municipal law that is binding and enforceable. However, when Article 51(c) is read in light of other articles, judicial opinion and foreign policy statements, it suggests otherwise.

On the question of admission and *non-refoulement*, however, the Indian attitude is rather bleak. Even though India accepted the principle of *non-refoulement* as including non-rejection at the frontier under the Bangkok Principles 1966, it did not observe that principle in its practice. Ignoring the fact that refugees must leave their homes suddenly due to threats to their life and liberty, and by the nature of their flight they are unable to get the necessary travel documents from their home states, India treats refugees as foreigners, under legislation which deals with foreigners who voluntarily leave their homes in normal circumstances, until they are officially accorded refugee status.

The chief legislation for the regulation of foreigners is the Foreigners Act of 1946 which deals with matters of "entry of foreigners in India, their presence therein and their departure therefrom." Paragraph 3(1) of the Foreigners Order of 1948 lays down the power to grant or refuse permission to a foreigner to enter India, in the following terms:⁸

⁷ C.H. Alexanderowcz, "International Law in India," *International and Comparative Law Quarterly*, vol. I (1952) p. 291.

⁸ *The Foreigners Order*, 1948 was drafted by the Central Government in the exercise of the powers conferred by section 3 of the Foreigners Act, 1946.

No foreigner shall enter India— (a) otherwise than at such port or other place of entry on the borders of India as a Registration Officer having Jurisdiction at that port or place may appoint in this behalf; either for foreigners generally or any specified class or description of foreigners, or (b) without leave of the civil authorities having jurisdiction at such port or place.⁹

This provision lays down the general obligation that no foreigner should enter India without authorization. It is mainly intended to deal with illegal entrants. In case of persons who do not fulfill certain conditions of entry, section 3(2) of the Order authorizes the civil authority to refuse entry into India. The main condition is that unless exempted, every foreigner should be in possession of a valid passport or visa to enter India.¹⁰

As observed earlier, if refugees do not possess a passport or visa, they are liable to prosecution and thereby to deportation proceedings. The practice shows that, when the courts were approached by Afghans, Iranians and Burmese, against whom the Government of India initiated deportation proceedings under Sections 3 and 14 of the 1946 Foreigners Act for their illegal entry into India, the courts responded positively by accepting their plea that, if they were returned they would face threats to their life and liberty. In light of such circumstances, the courts initially left the deportation proceedings in abeyance.¹¹

As early as 1953, then Prime Minister Jawaharlal Nehru informed Parliament that India would abide by international standards governing asylum by adopting similar, non-binding domestic policies.¹² Since then, the Indian government has consistently affirmed the right of the state to grant asylum on humanitarian grounds. Based on this policy, India has granted asylum and refu-

⁹ *The Foreigners Order*, 1948, Section 3(1).

¹⁰ Paragraph 3(2) (a) of the *Foreigners Order*, 1948, read with Rule 3 of the Passport (Entry into India) Rules, 1950.

¹¹ Writ Petitions nos. 450/83; 605-607/84; 169/87; 732/87; 747/87; 243/88; 336/88; and 274/88; SLP (Cr) nos. 3261/1987; 274/1988 and 338/1988.

¹² According to Article 51 of the non-binding Directive Principles of State Policy, India endeavors to "(a) promote international peace and security; (b) maintain just and honorable relations between nations; (c) foster respect for international law and treaty obligations....; and (d) encourage settlement of international disputes by arbitration."

gee status to Tibetans and Sri Lankan Tamils. The 1971 refugees from Bangladesh were officially called “evacuees,” but were treated as refugees requiring temporary asylum. No other community or group has been officially recognized as “refugees.”

However, involvement of a United Nations agency is not in tune with the Government of India’s policy to restrict the access of all U.N. agencies. India claims to observe the principles of *non-refoulement* and thus never to return or expel any refugee whose life or liberty is under threat in his/her country of origin or residence. If India ratifies the Refugee Convention, legally it would have to provide the UNHCR access to all refugee situations.

Refuting this claim, Indian human rights groups do point to specific cases of *refoulement*, where clear evidence and refugee testimony prove that forcible repatriation has taken place. A closer examination of India’s refugee policy reveals a number of intricate problems.

Refugee Categories

The plight of refugees in India generally depends upon the extent of protection they receive from either the Indian government or UNHCR. Below is a brief definition of the two primary refugee categories followed by a description of the living conditions faced by each category:

- I. Refugees who receive full protection according to standards set by the Government of India; and
- II. Refugees whose presence in Indian territory is acknowledged only by the UNHCR and who are protected under the principle of *non-refoulement*.

Category I Refugees

The Tamils

Tamil refugees fled to India in several waves. When the conflict in Sri Lanka between the Sinhalese majority community and the Tamil minority took a violent turn in 1983, the Tamils fled to India in tiny boats from the northern tip of Sri Lanka. During the first wave, from 1983 to 1987, 134,053 Tamil refu-

gees were reported to have come to India.¹³ Following Sri Lanka and India's 1987 Accord, which sought to create a power sharing agreement between the two warring communities, the Indian government repatriated 25,885 Tamil refugees from 1987 to 1989.¹⁴ India had to stop the repatriation program in 1989 when its shores were flooded once again with a refugee wave fleeing Sri Lankan violence.

During this second phase of Tamil flight in search of a safe haven, from 1989 to 1991, 122,037 Tamil refugees reportedly reached India but 113,298 of them are still currently held in 298 camps along the coastal Indian states of Tamilnadu and Orissa.¹⁵ Again in the second phase, the Indian government repatriated a large number of Tamil refugees with the cooperation of UNHCR. The other approximately 31,000 refugees were returned to Sri Lanka between 1992 and 1995. As a result of these repatriations, roughly half of the original 110,000 refugees remain in Tamilnadu, India.¹⁶ There have been no new returns to Sri Lanka from Tamilnadu since the breakdown of peace talks and resumption of hostilities between the Sri Lankan government and the Liberation Tigers of Tamil Eelam (LTTE) in 1996.

Although the refugees were originally welcomed to Tamilnadu, the assassination of then-Prime Minister Rajiv Gandhi in May 1991 by a suicide bomber and suspected member of the Liberation Tigers of Tamil Eelam turned public sentiment and government authorities against the Tamil refugees. Soon after Rajiv Gandhi's death, India began a program of what it calls voluntary repatriation, under which more than 23,000 refugees were repatriated without international supervision.¹⁷ It is now apparent that most of those refugees were coerced into leaving the refugee camps in Tamilnadu.¹⁸

Today, those remaining Tamils suffer from poor living conditions in India. Camp conditions vary from district to district, depending on the sympathies of local officials. The camps closest

¹³ South Asia Human Rights Documentation Centre, *Sri Lankan Tamil Refugees in Tamilnadu Camps-Voluntary Repatriation or Subtle Refoulement* (New Delhi: SAHRDC, 1996).

¹⁴ *ibid.*

¹⁵ *ibid.*

¹⁶ *ibid.*

¹⁷ *ibid.*

¹⁸ *ibid.*

to Chennai (Madras) are, for the most part, well-maintained, while in Pooluvapatti Camp near Coimbatore, 4,700 refugees use eight latrines. Accumulated waste, cramped quarters, lack of electricity and poor sanitation all contribute to the miserable state of the camps.¹⁹

Additionally, the health of the refugees has deteriorated significantly since the Indian government banned NGOs from entering the camps. Previously, NGOs had been allowed to provide primary health care and supplement the Tamilnadu government's meager monthly stipends and food rations with items such as rice, sugar and kerosene. Now, without supplements from NGOs, most refugees must spend the little money they have on expensive open market food because payment of the stipend rarely coincides with the arrival of subsidized rations. Also, camp officials are known to use the stipends and rations as bargaining chips, telling the refugees that they will only receive their stipends if they agree to leave the country.²⁰

Additionally, the Indian government restricts the movement of the Tamils in Tamilnadu. Members of the police and notorious "Q" branch of the state intelligence agency are stationed at the gates of many of the camps, including the camp in Coimbatore, Tamilnadu, and carefully monitor activities.²¹ One government official claimed that the police protect the refugees, but the Tamils themselves believe that the guards are more concerned with controlling their movements.²² Camp authorities employ indirect measures to restrain the Tamils. Refugees in the Pooluvapatti, Tamilnadu camp were told by the Village Administrative Official that they could leave the camp to visit other areas if they wanted to, but that their daily allowances would be cut if they did.²³ Obtaining permission to leave the camp often depends on the vagaries of the camp authorities. Moreover, travel restrictions make visits to the offices of the UNHCR or the Sri Lankan deputy high commissioner in Chennai virtually impossible for refu-

¹⁹ *ibid.*

²⁰ *ibid.*

²¹ The "Q" branch is the Special Branch of the Tamilnadu Police. It is known for illegal arrests, unacknowledged detention, torture, harassment and intimidation of Tamil refugees. It is also used against political opponents and trade union activists.

²² South Asia Human Rights Documentation Centre, *Sri Lankan Tamil Refugees in Tamilnadu Camps-Voluntary Repatriation or Subtle Refoulement*.

²³ *ibid.*

gees confined to outlying camps.

In addition to the regular camps, the state government has converted jails into so-called Special Camps to hold Tamils with suspected terrorist links. Since 1990, hundreds of refugees have been detained in these facilities. The South Asia Human Rights Documentation Centre (SAHRDC) and the National Human Rights Commission of India have compiled numerous reports of non-militant refugees, particularly young Tamil males, being arrested and detained under the Foreigners Act. Many of these individuals have been languishing in detention facilities for more than three years and still do not know why they were arrested. When pressed, the government justifies these Special Camps as necessary measures to deal with alleged Liberation Tigers of Tamil Eelam terrorists.

On the issue of repatriation to Sri Lanka, UNHCR states that:

Between 1992 and 1 January 1996, 54,059 persons returned from India and benefited from UNHCR's Special Program in Sri Lanka. Of this number, 7,464 persons were staying in government centers as of 30 April 1996, while the remainder had returned to their home areas. A total of 10,013 persons returned in the first quarter of 1995.²⁴

However, UNHCR statistics on the voluntary repatriation of refugees from India are not supported by hard evidence. The UNHCR has allegedly connived with the Government of India in hastily repatriating the Sri Lankan Tamil refugees.²⁵ Many of these refugees could not reach their native places but live in the refugee camps in Sri Lanka and are fleeing back to India. By October 1996, an estimated 2,000 reached the Indian state of Tamilnadu to once again seek refuge.²⁶

As part of its protection mandate, UNHCR is expected to share information on the conflict situation in the country of origin but it has failed to do so for the last five years in the case of Tamil refugees. Rather, it has informed the refugees that "certain

²⁴ *ibid.*

²⁵ "Sri Lankan Tamil Refugees in India: Accords, People and the UNHCR," Paper presented by the Jesuit Refugee Service, South Asia in a seminar on "Refugees, migrants and displaced peoples in South Asia," organized by South Asia Forum for Human Rights (Katmandu, Nepal: October 1996).

²⁶ *ibid.*

liberated zones" were available where the refugees could return. Refugees shifted from India to the Pesalai camps in Sri Lanka in 1994 were not able to reach these zones and languished in UNHCR transit camps until 1996, when conflict broke out. Many of them returned to India.²⁷

There are now approximately 56,000 Sri Lankan Tamil refugees accommodated in Indian camps and another further 45,000 reportedly living outside the camps. A court order forced the government to halt the repatriation program and gave the UNHCR the right to interview the returnees.²⁸ However, the UNHCR does not have access to the camps and cannot speak to the refugees until they have already consented to leave India. It is clear that the token presence of UNHCR in Chennai only provides respectability to what is essentially a program of involuntary repatriation. Essentially, UNHCR violates its own mandate of providing accurate information to refugees.

Following up on rumors of forced repatriation and deplorable conditions in the Tamil refugee camps in Tamilnadu, a SAHRDC researcher visited the camps in July 1996 and published a report detailing the systematic violations of Tamil refugee rights and the implicit involvement of the Government of India. The Indian government appears determined to allow conditions to deteriorate to the point where refugees would rather return to the violence of Sri Lanka than stay in the camps.

The fact that the Indian government has not acceded to the international Refugee Convention has adverse effects upon the Tamil refugees. The Convention establishes basic rights such as the right to food, water and shelter that the host country should provide its refugees. Because India is not a signatory, Tamil refugees are subject to the whims of the political party in power. The state government in Tamilnadu, although originally sympathetic to the refugees' cause, consistently failed to maintain the refugee camps in accordance with well-recognized international standards. Thus, the policies of India and the state of Tamilnadu directly contravene conventional human rights laws as well as customary international law regarding *non-refoulement*. The SAHRDC recommends that, if the Indian government is serious about maintaining the camps, it should allow NGOs to resume their former duties. Furthermore, UNHCR, accustomed to treading lightly in

²⁷ *ibid.*

²⁸ SAHRDC *News*, 1, no. 2 (July-August 1995).

India—where it is not an officially recognized UN agency—should arm itself with the international conventions to which it owes its creation and take a more pro-active role in the protection of the Sri Lankan Tamil refugees.²⁹

The Jumma

The Jumma peoples from the Chittagong Hill Tracts of Bangladesh are another example of Category I refugees. The Buddhist Jumma have been fleeing religious harassment from the Muslim government of Bangladesh. In a country with scarce arable land, the Bangladesh government has been expelling them to settle the fertile Chittagong Hill Tracts. Since 1978, the Indian government has provided temporary shelter for these people in the neighboring Indian states of Mizoram and Tripura. Following a series of massacres by Bangladesh security forces in 1986, nearly 70,000 Jumma refugees sought shelter in six camps established by the Indian government in Tripura.³⁰ Their presence in India has been a source of embarrassment for the Bangladesh government, since it is a reflection of the deteriorating human rights situation in Bangladesh.

As part of its effort to improve relations with its Muslim neighbor, Bangladesh, the Indian government began to pressure the Jumma to return to the original Chittagong Hill Tracts in 1992. It seems as if the status of the Jumma refugees shifted from Category I to Category II. In other words, a combination of geopolitical and economic concerns led the Indian government to change its policy towards the Jumma refugees, leaving them with less security in a foreign country than before.

India has been encouraging “voluntary” repatriation by making living conditions in the Tripura camps untenable. For example, the Government of India has denied food to the Jumma as a means of forcing them to return to their homeland. Ration supplies to the Jumma refugees sheltered in Tripura State have been suspended since mid-1992.³¹ SAHRDC received information that

²⁹ South Asia Human Rights Documentation Centre, *Sri Lankan Tamil Refugees in Tamilnadu Camps-Voluntary Repatriation or Subtle Refoulement*.

³⁰ South Asia Human Rights Documentation Centre, *No Secure Refuge* (New Delhi: 14 February 1994)

³¹ *ibid.*

rice and salt supplies were stopped on 21 November 1995 in a fresh attempt to force out the refugees.³² Food provisions are given in 10-day-cycles, but the quantity normally suffices for only eight days. Often, even those meager rations are delayed. A delay of two days means that indigent tribal refugee families must go hungry. Still, delays of over five days in the supply of rations are not uncommon. The Humanity Protection Forum, a Tripura-based civil liberties organization reported one week later that hunger had engulfed the Jumma refugee camps and many refugees were facing starvation.³³ Medical facilities and other basic amenities are non-existent.³⁴

The state government of Tripura, in concert with the central Government of India, also denies educational facilities to Jumma refugee students. This is one element of India's non-violent pressure policy, designed to encourage refugees who want their children to be educated, to return to the Chittagong Hill Tracts at their own risk. The SAHRDC conducted a study of camp conditions in 1993 and 1994, which revealed that the Jumma refugees have been systematically denied access to education.³⁶

In 1994, approximately 5,000 Jumma refugees returned "under duress" to the Chittagong Hill Tracts. This was facilitated by both bilateral discussions between India and Bangladesh and the responses of SAHRDC to the averments of the Ministry of External Affairs and Ministry of Home Affairs of the Government of India and Tripura State Government, which were submitted to the National Human Rights Commission (NHRC).³⁷ The NHRC has been inquiring into the alleged forcible repatriation on a complaint filed by SAHRDC.

Although the Bangladeshi government promised to return them to their lands, many Jumma are still dislocated. They have been living in the other tribal areas which have not been taken over by Bengali plainsmen settlers. Following the return of this first refugee group in February 1994, human rights groups in

³² Private communication from the CHTs Jumma Refugees Welfare Association to the SAHRDC in November 1995.

³³ *The Hindustan Times*, 28 November 1995.

³⁴ South Asia Human Rights Documentation Centre, *No Secure Refuge*.

³⁵ *ibid.*

³⁶ *ibid.*

³⁷ *ibid.*

Dhaka, Bangladesh conducted a survey indicating that 37 per cent of the 42 families interviewed had not reclaimed their original lands.³⁸ One month later, the Jumma Refugee Welfare Association, after visiting the Chittagong Hill Tracts, reported that more than 103 families had still not received the land they originally left.³⁹ The Returnee Jumma Refugees 16 Points Implementation Committee states that, of the 1,027 families, consisting of 5,186 individual refugees, 25 returnee Jumma refugees who had earlier been employed in various government jobs were not reinstated in their previous jobs, 134 returnee Jumma refugee families could not settle in their own lands due to the appropriation of their lands by the security forces and Bengali illegal settlers and 79 families were not given back their lands as it was being occupied by the illegal settlers from the plains. The Bangladesh government also registered false cases against 23 returning refugees.⁴⁰ Such cases allege that these refugees have been engaged in what is euphemistically called “anti-national activities.”

SAHRDC filed a complaint with the Indian National Human Rights Commission regarding the involuntary repatriation of the Jumma refugees in 1994. The NHRC asked the Ministry of Home Affairs, the Ministry of External Affairs, and the Tripura Government to reply to SAHRDC’s allegations of forced repatriation. SAHRDC challenged the statements of the Ministry of Foreign Affairs and the Tripura Government with factual information substantiating its allegations.

More than two years after filing the complaint, the NHRC sent an investigation team headed by A. Chakraborty, senior superintendent of police, to the Jumma refugee camps from 24 to 28 May 1996 to investigate the allegations of the SAHRDC. The team reported the shortage of water, inadequacy of accommodation, and woefully inadequate medical facilities. The report also pointed out that the scale of rations was meager, and its supply was often suspended. During the visit, the team found that many

³⁸ “Returnee Refugees: Frustrated for not getting promised help,” Report of Bangladesh Manab Adhikar Sammanay Parishad, National Committee for the Protection of Fundamental Rights in CHTs, Jatiyo Mahila Ainjibi Samiti, Ain-O-Salish Kendra and Human Rights Journalist Forum (Dhaka, Bangladesh: 27 May 1994).

³⁹ South Asia Human Rights Documentation Centre, *Report on the Visit of Jumma Refugee Team to the Chittagong Hill Tracts, Bangladesh on 14-15 March 1995, Takumbari, Tripura, India* (New Delhi: SAHRDC, 4 April 1995).

⁴⁰ Memorandum of Returnee Jumma Refugees 16 Points Implementation Committee (Khagrachari, Bangladesh, 15 October 1996).

of the water tube wells were out of order and that the inmates of the camps were bringing water from far-off places. They said the camps were also unclean and bore signs of neglect. The report noted that refugee children were suffering from malnutrition, water-borne diseases and malaria, while there was no visible effort to improve their living conditions.⁴¹ The investigation team “attributed the problems faced by the refugees, to the callousness and hostility of the officials towards the refugees....”⁴²

Even though SAHRDC's complaint relating to the involuntary repatriation of the Jumma refugees in 1994 is still under the consideration of NHRC, the Government of India decided to repatriate 6,172 Jumma refugees without consulting the NHRC. In a complaint on 7 March 1997, SAHRDC drew the attention of the NHRC to the situation of duress brought upon the refugees. The NHRC failed to take any positive action to ensure voluntary repatriation, exposing once again its ineffectiveness on human rights issues that have geopolitical dimensions.⁴³ Clearly, geopolitical issues cloud the real issue of the inherent rights of refugees.

Category II Refugees

In addition to the refugees under the care of the Government of India, as of 1 January 1996 there were approximately 20,800 Category II refugees. This includes 19,900 Afghan refugees, 200 Iranian refugees, 300 Somali refugees, 300 Burmese refugees and 100 Sudanese refugees.⁴⁴ Their presence in India is acknowledged and protected under the principle of *non-refoulement* by the United Nations High Commissioner for Refugees. However, the condition of these refugees who receive protection and subsistence allowance from the UNHCR is no better than that of Category I refugees receiving protection from the Government of India.

There have been allegations that the UNHCR in Delhi

⁴¹ National Human Rights Commission, *Human Rights Newsletter* (New Delhi: July 1996).

⁴² Letter of the National Human Rights Commission on 13 August 1996.

⁴³ Complaint of the South Asia Human Rights Documentation Centre on 7 March 1997.

⁴⁴ Draft Report of the Forty-Seventh Session of the Executive Committee of the UNHCR (Geneva: 7-11 October 1996).

has been arbitrary in its cancellation of refugee status and allowances for certain individuals. After receiving numerous complaints to this effect, SAHRDC conducted a study of the conditions of refugees protected by the UNHCR in New Delhi.⁴⁵

The report called *The State of Refugees under the Protection of the UNHCR in New Delhi*, released on 1 May 1995, examined the relevance and accessibility of services offered by the UNHCR to refugees in New Delhi. These services include emergency aid, health care facilities, subsistence allowance, lump-sum amount or payments as a means to voluntarily surrender the subsistence allowance that accompanied refugee status, accommodation, employment, vocational training, education, legal aid, counseling, travel documents and resettlement. The SAHRDC also investigated the UNHCR's internal monitoring mechanism and scrutinized the accessibility of the UNHCR, paying particular attention to vulnerable groups such as women and children.

SAHRDC found that UNHCR's New Delhi office has become a fortress. The services offered by UNHCR were inadequate. The report stated that:

Communication between refugees and the UNHCR has reached an all time low. SAHRDC has conveyed its concerns over this deterioration of relations to UNHCR officials in New Delhi on more than one occasion. The refugees view the UNHCR officials with suspicion, and do not believe that they have refugee interests at heart. UNHCR officials claim that the global policies of its organization have led to a virtual freeze on the refugee subsistence allowance in India. This has exacerbated resentment and tension in the refugee community. SAHRDC feels that there is an urgent need for a more positive financial input from the UNHCR headquarters in Geneva.⁴⁶

⁴⁵ South Asia Human Rights Documentation Centre, *The State of Refugees under the Protection of UNHCR in New Delhi*, SAHRDC/0131/1/95 (New Delhi: SAHRDC, 1 May 1995). This report is available on the Internet at <http://hri.ca/partners/sahrdc/afghan.html>.

⁴⁶ *ibid.*

SAHRDC made recommendations to improve the conditions of the refugees and the report was forwarded to both the New Delhi Office of UNHCR and its headquarters in Geneva. SAHRDC has not received any comments yet and has good reason to believe that the situation has not improved. Meanwhile, in a callous attempt to reduce the case load, UNHCR arbitrarily terminated the subsistence allowance of more than 2,000 refugees. Alleged destitution has led to two suicides in the refugee community. SAHRDC is aware of specific cases of human rights abuses on the asylum seekers, ranging from arbitrariness in determination of refugee status and suspension of subsistence allowance to the beating by UNHCR security guards of asylum seekers.⁴⁷

Although the UNHCR is only as effective as the Indian government permits, these actions indicate a general disregard for the plight of the refugees. The fact that India has not acceded to the refugee conventions, and has no specific national legislation to protect refugees or procedures to determine their status is precisely the reason why UNHCR's presence and work is of extreme importance in India.

Role of NGOs

In a situation where the Government of India denies access to the UNHCR and other international humanitarian agencies, domestic NGOs play the most crucial role in providing protection to the refugees. However, the role of domestic NGOs as well as international NGOs and the UNHCR complement one another.

For example, a report by Human Rights Watch Asia on the involuntary repatriation of the Sri Lankan Tamil refugees, in addition to SAHRDC's report on the treatment of urban refugees under UNHCR's care, reveal that UNHCR's role in South Asia has been far from satisfactory. Moreover, SAHRDC has yet to receive a reply from UNHCR's office in New Delhi or Geneva for its report on *The State of Refugees under the Protection of UNHCR in New Delhi*.

⁴⁷ Oral statement of the representative of the Asian Cultural Forum on Development under Agenda Item 9 of the 53rd Session of the United Nations Commission on Human Rights (New York: 10 March-18 April 1997).

UNHCR's report to the 47th Session of its Executive Committee is oblivious to the plight of the refugees looked after by the Government of India. UNHCR's objective in India is to create "public awareness of refugee situations and issues in India and promote a legal framework for the protection of refugees."⁴⁸ Consequently, UNHCR's current employees neither have any track record of working with refugees nor anything to do with their protection. Refugees face numerous difficulties, from denial of food to restriction on freedom of movement. The creation of awareness and promotion of a legal framework as envisaged by the UNHCR is important in order to create an institutional framework to protect refugee rights. However, it should not be an excuse for the UNHCR to shirk its responsibility to provide protection to the refugees. Neither can the denial of access by the Government of India be an excuse when the Government of India allows the UNHCR to work with its various partners.

The fundamental issue is that a legal framework has little meaning when the Government of India gradually repatriates all the refugees under duress, as shown in this article, and the UNHCR makes living conditions untenable for the urban refugees it looks after in the name of rationalization of care and maintenance.

Finally, the Oslo Declaration on Partnership-in-Action (PARinAC) between NGOs and the UNHCR provides a basis for cooperation on human rights issues. Attempts to follow up and put PARinAC into practice have failed because the UNHCR has not cooperated in protecting and promoting the rights of the refugees.⁴⁹

Conclusion

The plight of refugees in India, irrespective of whether they are looked after either by the UNHCR or the government, is abominable. A lack of legal mechanisms and policies on refugees is one of the fundamental flaws of refugee protection in India.

It is commendable that despite the fact that India is not a signatory to the 1951 Convention and 1967 Protocol, UNHCR

⁴⁸ Draft Report of the 47th Session of the Executive Committee of the UNHCR (Geneva: UNHCR, 8-11 October 1996).

⁴⁹ This is based on evidence in SAHRDC files while dealing with UNHCR's New Delhi Office on numerous asylum cases. For example, the case of Abbas Joneidi in 1995-1996.

has been able to function thus far. However, it is important to realize that the local office of UNHCR is at the moment unable to adequately meet the needs of refugees in New Delhi. In New Delhi, the guidelines for treatment of refugees have been flagrantly ignored and if assistance from the international community is insufficient to meet the funding needs of the organization, then perhaps an active networking with NGOs would enhance the quantity as well as quality of services offered to the refugees.

SAHRDC is aware that in comparison to the refugees in camps in other parts of the world, the local office of UNHCR may feel that those in Delhi are well off. However, since they have not allowed the refugees to settle in other areas of India, where less money would be required to survive, they do have the responsibility to ensure that the refugees can fulfill their basic needs in Delhi. The urban, overcrowded, dirty and cramped conditions in which most of the refugees live are not necessarily any better than rural camps and in many cases the quality of life is infinitely worse.

However, the cardinal problem arises when both the UNHCR and the Government of India violate their own standards and principles. While it is possible to bring the Government of India under the scrutiny of quasi-judicial bodies like the National Human Rights Commission and judiciary, there is no such mechanism to scrutinize the United Nations High Commissioner for Refugees in New Delhi. Official rules and procedures have become an excuse to raise the veil of secrecy and to resort to arbitrariness at the expense of the refugees. It has come to the point where UNHCR's New Delhi Office requires security protection—fearing attacks from the refugees it claims to assist.

Since the Government of India is not even considering the ratification of the 1951 Refugee Convention, its enforcement in domestic legislation does not seem imminent. A consistent legal framework is vital to the prevention of political swings, which often translate into forcible repatriation for refugees. The issue is not only the development of domestic legislation but also ensuring that both the UNHCR and the Government of India strictly abide by their own standards and principles. For refugees, the latter remains the immediate concern and the UNHCR has manifestly failed to address the issue of protection. ❖