

**Submission by the United Nations High Commissioner for Refugees
for the Office of the High Commissioner for Human Rights' Compilation Report -
Universal Periodic Review:**

INDIA

1. Background Information

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

- a) Approximately 100,000 Tibetan and 68,000 Sri Lankan refugees are directly protected and assisted by the Indian Government.
- b) Approximately 21,000 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 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. However, the Government largely respects the principle of *non-refoulement* for holders of UNHCR documentation. In addition, the State is not party to the *1954 Convention on the Status of Stateless Persons* or the *1961 Convention on the Reduction of Statelessness*.

2. The protection of persons of concern to UNHCR - challenges and constraints

Although not party to the 1951 Refugee Convention or its 1967 Protocol, India has signed and ratified other major international human rights instruments, such as 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) and the Convention on the Rights of the Child (CRC).

The 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 has decided to grant refugee status to Tibetans and Sri Lankans, UNHCR registers asylum-seekers and determines refugee status for nationals of non-neighbouring countries and Myanmar.

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 are permitted to integrate locally, while other refugees from Afghanistan and Myanmar can obtain residence permits. Other refugees are allowed to remain in India on the basis of valid UNHCR documentation. However, inter-state travel within India can be problematic due to security concerns and the general lack of awareness among authorities outside the Delhi region.

Despite increasing security concerns, refugees and asylum-seekers continue to have access to the territory of India and asylum procedures. The Government allows all refugees and 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 barriers to effective access. Refugees and asylum-seekers are able to access employment in the large informal Indian economy, but the lack of residence permits for most refugee groups, with the exception of Afghans and Myanmarese, and the absence of work permits for refugees may lead to exploitation and poverty.

Refugees and asylum-seekers are subjected to exploitation by employers and competition for scarce resources leads to disputes with the host community. Many of them find themselves living in conditions of poverty, while trying to make a living in the harsh and complex urban environment of a large city, such as New Delhi. Instances of gender-based violence and child labour are common.

Refugees have access to durable solutions, namely voluntary repatriation for Sri Lankan refugees and local integration for Hindu and Sikh refugees from Afghanistan. Resettlement remains a limited solution and is used as a protection tool for those with unmet protection needs in India. However, complex bureaucratic procedures have significantly slowed down the process of local integration. The continuing political instability in most countries of origin does not allow refugees to return to their home countries and it is likely that a majority of them will remain in India for extended periods of time

UNHCR agrees with the Government's view that, "there are instances where India has adhered to the basic norms of an international instrument without becoming a party to it, such as the 1951 Convention on the Status of Refugees."¹ However, non-ratification of

¹ Report of the Working Group on the Universal Periodic Review, India, A/HRC/8/26, at p. 16, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/136/54/PDF/G0813654.pdf?OpenElement>

the Convention and the absence of a national refugee protection framework serve as a practical barrier in the delivery of refugee protection in India.

UNHCR endorses the recommendation of the Committee on the Elimination of Racial Discrimination (CERD) that India should ‘consider acceding to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and enact a comprehensive legal framework governing the treatment of refugees.’²

India is neither a party to the *1954 Convention relating to the Status of Stateless Persons*, nor to the *1961 Convention on the Reduction of Statelessness*. As set out below, accession to these Conventions is recommended as a general step to strengthen the international legal framework applicable to India.

Accession to the *1954 Convention relating to the Status of Stateless Persons* would establish a framework to protect such individuals and would work to avoid the detrimental effects of statelessness on individuals and society by ensuring minimum standards of treatment of stateless persons, providing such persons with stability and security, and ensuring that certain basic rights and needs are met.

Furthermore, the *1961 Convention on the Reduction of Statelessness* establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life. This treaty is therefore complementary to standards contained in other human rights treaties. An increase in the number of States parties is essential to strengthening international efforts to prevent and reduce statelessness.

3. Recommendations

Issue 1: India should formalise its traditional hospitality towards refugees and asylum-seekers by acceding to the *1951 Refugee Convention relating to the Status of Refugees* and its *1967 Protocol*.

Issue 2: The Government should adopt national refugee legislation to solidify and strengthen its commitment and cooperation with UNHCR and the international community to address the protection needs of refugees and asylum-seekers.

Issue 3: India should consider acceding to the *1954 Convention on the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*.

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² CERD/C/IND/CO/19, 70th session, 5 May 2007