

INTRODUCTION

1. This submission consists of two parts: Part 1 relates to issues faced by refugees and asylum seekers returning to Sri Lanka, and Part 2 relates to issues faced by persons who enter Sri Lanka seeking refuge as refugees and asylum seekers.

PART 1 – RETURNEES

CONTEXT

2. The three decades long armed conflict and civil war forced vast numbers of Sri Lankans, mostly Tamils from the Northern and Eastern parts of Sri Lanka, to leave the country and seek refuge in India, and other countries. Since 1983, Sri Lankan Tamil refugees have lived in and outside refugee camps in Tamil Nadu and other parts of the world.
3. Part 1 of this submission will focus specifically on the challenges faced by those returning to Sri Lanka from India, while recognising that these challenges are common to returnees from other countries as well. With the ebb and flow of the conflict and related human rights abuses, people have moved back and forth between Sri Lanka and Tamil Nadu. Refugees in camps in Tamil Nadu received support to meet their basic needs from the government of India and were included within the Tamil Nadu state government's social welfare programs.
4. Even with the end of war, the majority of refugees remain in camps in India, uncertain of their future. Since 2009, more than 11,000¹ refugees have returned to Sri Lanka. Those who fled human rights abuses, persecution, war, and violence face multiple challenges upon their return to their homeland.
5. The support currently extended by the government for the reintegration of returnees is acknowledged, including developments in including them in the rehabilitation schemes, such as housing scheme, livelihood, and dry rations.

ESSENTIAL DOCUMENTATION

6. Many returnees no longer possess essential legal documents, such as birth, marriage, and death certificates, National Identity Cards (“NIC”), and land documents, having lost them through displacement under emergency circumstances.
7. The loss of documents has a particularly negative impact for children born in the refugee camps in India. The lack of supportive documents² of parents has been a major hurdle for children to obtain consular birth certificates and subsequently Sri Lankan citizenship.
8. Although Sri Lanka recognises the right to citizenship of persons born outside of Sri Lanka to parents who are Sri Lankan citizens, many returnees face extreme difficulties in obtaining their citizenship, including heavy penalties. At the time of application, those above 21 years face a penalty of Rs 25,000. For those under 21, the penalty fee is Rs 5,000 and a further Rs 500 for every year of delay since birth. Currently, a waiver applies only

to those who possess a return letter from UNHCR. Those who return spontaneously of their own accord will not have the UNHCR letter and cannot obtain the waiver.

9. In the case of refugees in camps in India, the waiver of consular fees is acknowledged. However, a progressive increase in the documentation requirements for obtaining consular birth certificates and citizenship causes unnecessary delays and makes it significantly harder to obtain the documents to claim their rights. Further, it adds financial burdens as it requires refugees having to travel numerous times to obtain consular services. The inability to obtain consular documents increases the risk of refugees falling into the category of stateless persons without proper documentation.
10. The inability of refugees born in camps to obtain citizenship (through the Sri Lankan consular process) before return causes delays in their ability to obtain other documents in Sri Lanka after return, such as the NIC, passports, and driving licences. This results in further delays in returnees being processed for reintegration benefits, accessing rights and entitlements, including social welfare schemes, opening bank accounts, finding employment, and enrolling in educational institutions. The consequence is that returnees are effectively left unable to work and generate income.

LAND AND HOUSING

11. During the period of displacement, the absence of refugees physically being present to claim their properties has resulted in their properties and lands being occupied. In Sri Lanka, the Government is entitled to redistribute lands that are not physically occupied by the owners after a certain number of years. This has resulted in many returnees who have been refugees for long periods of time losing their properties and being forced to live with friends and relatives or in welfare centres. Other issues relating to land include the loss of land documents, land disputes over boundaries, and the inability to locate and demarcate land.
12. Even returnees who are able to recover their land are unable to use it for resettlement due to the land being overgrown by jungle growth and having the threat of animal invasion.
13. The vast majority of the returnees have no shelter at the point of return to Sri Lanka. They have to depend on friends and relatives, or they are forced to rent out properties, which further drains their already limited resources. There is neither governmental nor non-governmental programmes to provide temporary or transitional shelter. While returnees are no longer discriminated for permanent housing, many returnees remain homeless for extended periods of time. Further, the allocation of state housing is limited, given the already existing high demands among IDPs, which forces returnees to continue living in temporary circumstances.

EDUCATION

14. Upon return, those who have earned academic degrees and diplomas from institutions outside of Sri Lanka face the risk of their qualifications being unrecognised.³ Obtaining equivalent certificates (to recognise certificates from foreign institutions) places an additional burden on people who are already struggling with very limited resources. The expenses include travelling to and from Colombo and the fees for conversions (Rs 35,000 for National Apprentice and Industrial Training certificates and Rs 2,500 for university degrees).
15. Students who completed high school/secondary studies, particularly in India, have no system to have their marks recognised and to be considered for university admissions in Sri Lanka.

LIVELIHOOD AND EMPLOYMENT

16. Returnees are faced with an already economically challenging environment. There is an absence of support to engage in traditional livelihoods, deprivation of agricultural land, an inability to get fishing licences, and a requirement of compulsory guarantors for livelihood loans.
17. Returnees face difficulties in finding employment opportunities in both the private and public sector. There are limited support schemes available and relate only to livestock management, agriculture, and fisheries.
18. Since 1990, there are approximately 4,000 persons who have completed their tertiary education in India and elsewhere. Implement the recommendations of the Parliamentary Select Committee⁴ to provide refugee graduates with employment through special graduate programmes.

PROTECTION ISSUES

19. Returnees, from India and other places, undergo security screening upon arrival. While its intensity has been reduced since the change of government, returnees feel threatened and are extremely inconvenienced by varying degrees of investigation. In particular, returnees who have been refused asylum in other countries or return on the basis of bilateral agreements face increased security surveillance, harassment, and detention.

PART 2 – REFUGEES AND ASYLUM SEEKERS

CONTEXT

20. As at 31 December 2016, there are 576 asylum seekers,⁵ comprising 298 cases registered with UNHCR in Sri Lanka, and 604 recognised refugees,⁶ comprising 276 cases. As at November 2016, 408 refugees had been resettled to a third country.

Country of origin	Refugees		Asylum seekers	
	No. of cases	No. of persons	No. of cases	No. of persons
Afghanistan	37	75	55	111
Bangladesh	4	10	0	0
Iran	5	7	5	5
Maldives	4	8	1	1
Myanmar	4	4	1	1
Pakistan	212	479	229	438
Palestine	5	10	1	1
Somalia	1	1	0	0
Sudan	0	0	1	1
Syria	3	8	1	6
Tunisia	0	1	0	0
Ukrain	0	0	1	1
Yemen	1	1	3	11
TOTAL	276	604	298	576

21. Sri Lanka is not a signatory to the 1951 Refugee Convention nor its 1967 Protocol, and there are no national procedures for the granting of refugee status. Refugees are left to the care and protection of UNHCR, which, in agreement with the Government of Sri Lanka, registers asylum seekers and carries out refugee status determination.
22. UNHCR status does not provide the right to work or obtain any sort of income in Sri Lanka. While awaiting voluntary repatriation or resettlement to a third country, refugees are left fully reliant on a monthly allowance provided by UNHCR to meet their food, shelter, clothing, and other basic needs. Asylum seekers are in an even more vulnerable situation, as they are not even eligible for the UNHCR allowance and as such receive no financial aid.
23. In violation of the Sri Lanka’s own customs and good practices, 2014 saw the detention and deportation of 385 asylum seekers, which continued unabated despite numerous efforts at different levels to advocate on the issue. However, the change of government in January 2015 was welcomed as a positive development, with its avowed emphasis on good governance and equal treatment for all. Under the new government, there has been improved coordination on detention issues and, most importantly, UNHCR’s primary counterpart, the Department of Immigration and Emigration, has now been moved under the Ministry of Public Order and Christian Religious Affairs (after previously being under the Ministry of Defence). Visa restrictions for Pakistani and Afghan nationals to enter Sri Lanka are, however, still in place. Moreover, while there have been no mass deportations under this government, many asylum seekers are turned away at the airport with no hearing, sent back to the conditions they sought to flee, with no recourse to the law and without an opportunity to present their case.
24. Sri Lanka is bound by a number of international conventions, which contain protections relating to refugees and asylum seekers. These include the International Covenant on

Civil and Political Rights, the International Convention on Economic Social and Cultural Rights, the Convention against Torture, the Convention on the Rights of the Child, Convention on the Rights of Persons with Disabilities, the Convention Concerning Discrimination in Respect of Employment and Occupation, Convention against Discrimination in Education, the International Convention on the Elimination of all Forms of Racial Discrimination, and the Convention on the Elimination of all Forms of Discrimination against Women.

TURNING AWAY ASYLUM SEEKERS

25. The current practice of turning away asylum seekers at the port of entry, without affording them an opportunity to present their case violates the customary law principle of *non-refoulement*, referenced in a number of international human rights and refugee law instruments. It is, moreover, inhumane, given that asylum seekers have, in many cases, taken huge risks and made enormous sacrifices in order to flee the political, religious, and cultural persecution they face in their countries of origin. Given the customary international law status of the principle of *non-refoulement*, the fact that Sri Lanka is not a state party to the Refugee Convention does obviate its need to abide by this obligation.

DENIAL OF PERMISSION TO WORK

26. The Sri Lankan Constitution recognises the freedom to engage in any lawful occupation, profession, trade, business, or enterprise. However, asylum seekers and refugees are not permitted to seek or engage in any form of employment in Sri Lanka. As a result, they are unable to generate an income. Depriving asylum seekers and refugees of their right to work and secure an income is a gross violation of their human rights and the rights enshrined under numerous international treaties to which Sri Lanka is party.
27. The Sri Lankan government has prioritised enhancing the food and nutrition security of the country. However, the benefit of this will not extend to asylum seekers or refugees. Moreover, one of Sri Lanka's primary targets towards achieving the status of a developed country is to eradicate malnutrition and enhance access to quality nutrition and food. To this end, *Samurdhi*⁷ (social security program) initiatives are in place to assist families in need. However, this too is not accessible to asylum seekers and refugees, whose nutritional needs are of no concern to the Sri Lankan government, despite the existence of an infrastructural framework that could potentially absorb them easily and at little extra cost.
28. A particular challenge for asylum seekers and refugees is shelter. Due to hostility, mistrust, and negative stereotyping from the local community, asylum seekers and refugees are often not made to feel welcome in Sri Lanka. Landlords too have been known to take advantage of their vulnerable situation and charge unreasonable rental rates and advance payments. Moreover, due to their uncertain status in the country, asylum seekers and refugees live in fear of random and unannounced intrusion into their lives by the police and immigration authorities, and the potential consequences that could arise there from, including the threat of deportation. The police and immigration officers have also been known to threaten landlords and warn them against providing housing to asylum seekers and refugees.
29. The government should facilitate accommodation in local host communities, instead of the current practice of intimidating home owners willing to rent out their properties to refugees and asylum seekers. The government should also make available, through civil

society organisations, basic transitional shelter, in accordance with local and international standards and best practices.

ACCESS TO HEALTH CARE

30. Sri Lanka has a longstanding reputation for maintaining a reasonably high standard of health facilities through the provision of free medical care, hospital care and clinical facilities. Moreover, the Sri Lankan government has committed to ensuring that preventive, curative, and rehabilitative health facilities, goods and services are within safe reach and physically accessible to everyone free of charge, irrespective of their income status. The treatment and services available to asylum seekers and refugees at public hospitals and clinics is often lacking in terms of care and compassion. Worse still, in some cases the provision of treatment is at the discretion of authorities; asylum seekers and refugees who seek medical care are made to feel like they are seeking a privilege, rather than exercising a basic right.
31. The Sri Lankan government also guarantees psychiatric facilities for mental health patients, equipping hospitals with psychiatric wards, implementing community psychiatric programmes across the country, and mandating the National Institute of Mental Health to conduct periodic review and effective judicial control. However, the State has failed to realise that asylum seekers and refugees are among those who need the most support in terms of psychiatric and psychosocial care. Asylum seekers and refugees have fled their countries, often after experiencing and witnessing mass atrocities and violence. They then find themselves in an unfamiliar and unwelcoming environment in Sri Lanka. Their mental well-being, which is already prone to instability given their vulnerable status, is likely to exacerbate due to the fears they face regarding authorities in Sri Lanka as well as anxiety over the well-being of their family and friends in their home countries.

EDUCATION

32. The Constitution enshrines the right to education: the assurance to all persons of the right to universal and equal access to education at all levels.⁸ The law mandates the compulsory attendance at school for children between five to 14 years of age. Sri Lanka is also a signatory to a number of international conventions that guarantees the right to education of all children.
33. One significant and long-standing step in this regard adopted by the government is the provision of free education services from kindergarten to university. As in other areas, the government's commitments do not apply to asylum seekers and refugees. There are currently 106 children of primary school age, of whom 46 are asylum-seekers and 60 are refugees. The refugee children have access to schooling through UNHCR's support, while the asylum-seeker children are receiving limited education through a recently programme funded by ZOA. A further 167 children of secondary school age, of whom 71 are asylum-seekers and 96 are refugees, do not have any access to formal schooling. However, they do receive English classes through the British Council and other language programmes, and some are enrolled in ICT courses. The government also has many technical education and vocational training systems and institutions in place; this would be of particular value to refugees and asylum seekers who need to learn and develop vocational skills that they could utilise in seeking employment and living independently in their countries of resettlement. However, this option too is not made available to them.

RECOMMENDATIONS – PART 1 – RETURNEES

Essential documentation

34. Legal documents, including refugee identity cards issued by the Indian government, should be accepted by the Sri Lankan authorities until essential identity documents are issued after return.
35. Those wanting to return should be provided appropriate and adequate support with consular services through the Sri Lankan Deputy High Commission in Chennai, and embassies, high commissions, and consulates in other countries to obtain consular birth certificates and citizenship before return. The Sri Lankan government should issue government circulars and other policy documents to the consular services, instructing them to clear the citizenship backlog for refugees born outside Sri Lanka, especially those living in refugee camps in Tamil Nadu, India.
36. Where refugees are unable to provide documents, the government should accept affidavits explaining the reasons for the absence of documents and by accepting minimum documentation, such as the refugee family identity card issued by the Indian government.
37. The government should make necessary arrangements to expedite the process of issuing Sri Lankan citizenship after return. The refugee family identity card issued by the Indian government should be considered as sufficient documentary evidence to waive any applicable penalties.

Land and housing

38. The government should set up a special programme inclusive of all returnees to facilitate quick access to essential welfare services, including land and housing within a specific period to ensure durable solutions. There should be an exclusive system that allows returnees to reclaim their property upon the issuance of documentation.
39. All returnees should be ensured access to appropriate systems/schemes for support with obtaining shelter. There should be a provision of capital for transitional shelter until they find a permanent house with basic facilities.
40. Extremely vulnerable individuals should be given the utmost priority and it should be ensured that all are included in all welfare systems and schemes. Services appropriate to their needs should be provided, such as one-time cash support to reduce their vulnerability and help them to restart their lives.

Education

41. The government should recognise Indian educational certificates to ensure refugee returnees can continue their secondary and tertiary education in Sri Lanka without any difficulties. The government should amend the university admission policy and system to consider the inclusion of returnees with O/L and A/L equivalent certificates (secondary school qualifications), to enable them to pursue university education.

42. All foreign courses, including certificates, diplomas, vocational and other courses, should be recognised and equivalent certificates should be provided, without delay. Fees in obtaining equivalent certificates should be waived.

Livelihood and employment

43. Qualified individuals should be given opportunities in both the public and private sectors. In particular, graduates from India and other countries should be facilitated in obtaining employment on par with their educational qualifications.
44. Returnees should be included in livelihood schemes to start up their life.

RECOMMENDATIONS – PART 2 – ASYLUM SEEKERS AND REFUGEES

45. The Sri Lankan government should abide by the obligation of *non-refoulement* and allow asylum seekers to enter the country, so that a proper determination can be made with regard to the validity of their claim for asylum. Furthermore, the government should carry out its own refugee status determination, alongside and in partnership with UNHCR.
46. The Sri Lankan government should permit asylum seekers and refugees to engage in employment of the following nature: all forms of work that would contribute to the welfare of the refugee community; work involving skills and services that would be of benefit to the local economy, especially in areas where there is a scarcity of skills among the local population; and paid apprenticeships.
47. The Sri Lankan government should direct its medical health service professionals to be inclusive and cater to the needs of refugees and asylum seekers, alongside the local population. Appreciating that the government is already extending health service to refugees and asylum seekers, it is recommended that an official position be adopted on this so that all healthcare professionals are mandated to provide quality and courteous services to refugees and asylum seekers.
48. The Sri Lankan government should extend the education system to ensure compulsory enrolment of refugees and asylum seekers until at least the age of 16, in accordance with national standards.
49. Where UNHCR makes a refugee status determination in the negative, a person should not automatically be placed before immigration authorities for deportation.

¹ Information provided by UNHCR.

² Birth certificates of parents, marriage certificates, grandparents' birth certificates, parents' consular birth certificates. In addition, circumstances where there are concerns relating to documents, such as errors and mistakes.

³ Recognition is based on listing in Commonwealth Universities Yearbook or the International Handbook of Universities.

⁴ <http://www.asiantribune.com/index.php?q=node/8941>.

⁵ An *asylum-seeker* is someone whose request for sanctuary has yet to be processed (www.unhcr.org).

⁶ *Refugees* are people fleeing conflict or persecution. They are defined and protected in international law, and must not be expelled or returned to situations where their life and freedom are at risk (www.unhcr.org).

⁷ <http://samurdhidept.gov.lk>.

⁸ The Constitution of the Republic of Sri Lanka, article 27 (2)(h).