

## **INTRODUCTION**

1. Sri Lanka is not a signatory to the UNHCR convention. However Sri Lanka has seen over a million refugees leave its shores due the three decade conflict in the Island. Approximately one hundred thousand refugees live across the palk straight in the state of Tamil Nadu in India in what is now a protracted displacement seeking a durable solution. At the same time Sri Lanka has become host to several individuals who are fleeing persecution in their own countries and seeking asylum. 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 living in the North and East 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, 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 between Sri Lanka and Tamil Nadu. Refugees in Tamil Nadu camps received support to meet their basic needs from the Government of India and were included within the Tamil Nadu State Government's social welfare programmes.
4. After the war's end in 2009, over 15,952 refugees from 6,103 families have returned from camps in Tamil Nadu. The majority of these refugees who fled human rights abuses, persecution, war, and violence face multiple challenges upon return causing others to await a more conducive environment.
5. With Sri Lanka facing its worst ever economic crisis including shortages of food and fuel caused by massive external and internal debt and a lack of foreign reserves, the voluntary repatriation programme facilitated by UNHCR has come to a standstill.
6. The support programmes extended by the Sri Lankan Government to returnees prior to 2020 providing food relief, housing and livelihoods grants has also fizzled out.
7. This submission outlines seven areas together with recommendations for action: a policy framework for refugee returnees'; essential documentation; land; housing and basic subsistence needs; recognition of educational qualifications ; livelihoods and employment protection and durable solutions.

### **Policy Framework**

8. The return of Sri Lankan refugees had gained momentum since the end of the war in 2009. However 13 years into the voluntary repatriation process, there is no policy framework to direct the return and reintegration of refugee returnees in Sri Lanka. Though the National Policy for Durable Solutions for Conflict Affected Persons, developed for Internally Displaced Persons (IDP) resettlement, has been used to deliver reintegration support for refugee returnees many hurdles prevent those wishing to return from enjoying their inalienable right to return and having returned to be enjoy rights as equal citizens in Sri Lanka. Lack of essential documentation, recognition of educational qualifications received abroad, registration of births and citizenship of those born outside Sri Lanka, restitution of their lands and allocation of land for the landless, administrative hurdles the lack of a single accountable authority continue to be hurdles.

### **Essential Documentation**

Civil and legal documents are inevitably lost or inaccessible during displacement. Not being able to provide these have created barriers to the return process:

9. Being unable to provide proof of identity is the most crucial factor delaying Sri Lankan citizenship approval and obtaining a National Identity Card (NIC) essential to access multiple state services including: bank account opening, educational opportunities, driving licenses, passport, employment, reintegration benefits, social welfare schemes, etc; and inability to work and earn incomes.
10. Many experience difficulties in obtaining essential documents such as their birth certificate, marriage certificate, death certificates because of unregistered or unavailable birth/marriage certificates of parents or grandparents, unaccepted customary marriage certificates where legal ones are unavailable, unobtained consular birth certificates and mistakes in certificates.
11. The birth of those born in the Central Province estates (1966-1983) are unrecorded with the concerned departments. Though parents may have Sri Lankan birth certificates, claiming citizenship for their children is challenging because of missing birth certificates or even a 'Nil report' for their grandparents.
12. Though Sri Lanka recognises the right to citizenship, many returnees face long delays in obtaining it, making them liable for a penalty (Rs.28,750 for registration of citizenship above 21 years). For under 21's, late registration penalty (LKR 5,750 + Rs.500 per annum of delay) is levied even if they possess the Indian Government issued Refugee Family identity card.
13. Those who apply for consular birth certificates and citizenship with the Sri Lankan High Commission, Chennai at the time of return are unable to obtain these from the consular services in Sri Lanka due to lack of co-ordination between the two consular services, lengthening waits and creating unnecessary frustration.

### **Land, Housing and Basic Subsistence**

14. War displacement has led to land occupation by strangers and security forces, loss of land permits, land disputes etc. The vast majority of returnees do not have documents to prove ownership nor were they physically present to make claims during the IDP resettlement process when opportunities arose. Lacking options, refugee returnees tend to live with relatives or in the land of friends/relatives. Where land ownership is available, the areas are often uninhabitable being surrounded by jungle with risk of animal attack and no access to basic utilities; lands may have been since demarcated for forest preservation by national authorities; and others face insurmountable challenges from powerful state and private sector occupiers.

15. Refugee returnees more often than not have no access to shelter upon return. Individuals or families live in rented accommodation or with relatives. Until 2018, an allocation was provided for returnees within a housing program IDP's. In 2020, the National Housing Development Authority (NHDA) allocated a grant of LKR Rs.600,000/- however the programme has been interrupted after disbursing the first tranche of LKR.100,000/-.

### **Recognition of Qualifications Obtained outside Sri Lanka**

16. Upon return, returnees who have obtained academic degrees and diplomas face the risk of their qualifications being unrecognized as many graduate from universities / deemed universities and poly-technical universities especially in India are not listed in the Commonwealth Book of Universities nor the World Book of Universities. With no or minimal resources, travel costs to Colombo put a huge burden on returnees needing to obtain equivalency certificates or converting diploma certificates into National Apprentice and Industrial Training (NAITA LKR. 35,000/- per certificate) or pay Rs.2,500 to obtain an equivalent university degree certificate.
17. Foreign degrees are treated as external degrees, so currently degree holders from India are not absorbed into the public employment system. The example is holding of provision of employment for foreign graduates including returnees from India in 2020.
18. Though equivalent certificates for high school and higher secondary education are provided, they are issued without the candidate's name and therefore further processes for verification are required. Refugee returnees with equivalent certificates are ineligible to seek tertiary education at Sri Lankan universities and unable to apply for employment in par with Sri Lankan G.C.E (A/L) and O/L holders as the certificates do not equalise the marks or grading system as required by the Department of Examinations in Sri Lanka.

19. In order to confirm state employment with the Government of Sri Lanka, refugee returnees are required to confirm their degree with the concerned universities which is often difficult to do within the stipulated time period, leading to the loss of a valuable job opportunity and income security.

### **Livelihoods and Employment**

20. Returnees face challenges in starting their life with limited or no resources. They face difficulties in finding employment in both the private and public sector. There are few vocational employment opportunities for youth and an absence of career guidance support. No support to engage in traditional occupations, deprivation of agricultural land and compulsory guarantor requirement for livelihood loans hinder the livelihood prospects of returnees.

### **Protection Issues**

21. Returnees from India and other countries undergo security screening upon arrival. While its intensity had been reduced, 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.

### **Durable Solutions**

22. Sri Lankan Refugees especially those in India have now been in protracted displacement for several decades and are at risk of being a forgotten population. The volatile political and now economic situation in Sri Lanka has made return an obstacle chase and reintegration an extremely difficult one. The present economic and political climate make return in the next 5 years even more unlikely and challenging. It is in this context that many refugees in India has demanded durable solutions by way of a facilitated return process to Sri Lanka with guarantees from the Governments of India and Sri Lanka to ensure the rights of returnees or for alternative solutions of integration within India or resettlement to third countries.

## **PART 2: REFUGEES AND ASYLUM SEEKERS**

### CONTEXT

23. As at March 2022, there are 882 refugees and 191 asylum seekers registered with the United Nations High Commissioner for Refugees (UNHCR) in Sri Lanka. Sri Lanka is not a signatory to the 1951 Refugee Convention and does not have legislation nor a mechanism to offer permanent resettlement to those deemed to be refugees by UNHCR. Sri Lanka temporarily hosts those seeking asylum, which could take several years, prior to them being UNHCR- assessed. Those recognised as refugees by UNHCR often have to wait a further number of years, prior to a third country accepting them for permanent resettlement.
24. The resettlement process is fully handled by UNHCR. Without the right to work or obtain income in Sri Lanka, refugees are fully reliant on a monthly allowance provided by UNHCR to meet their food, shelter, clothing and other basic needs, while they await voluntary repatriation or resettlement to a third country. Asylum seekers are made more vulnerable as they are ineligible for the UNHCR allowance, receiving no financial aid. The waiting time for assessment of asylum seekers is three or more years, with some waiting for periods of up to six years.
25. Asylum seeker claimants in Sri Lanka do not receive any support nor assistance from any level of government for food and other living essentials. The UNHCR does not provide any assistance to such claimants until and unless they are granted ‘refugee’ status. Thus, asylum seekers are totally dependent on their own meagre savings, support from relatives and friends or other well-wishers in the community to provide for their everyday living costs (food, rent, education, medical expenses).
26. The aftermath of the 2019 ‘Easter Sunday Bombings’ in Sri Lanka posed a major challenge for both asylum seekers and refugees, where around two-thirds were displaced yet again, being evicted from their homes as the local community viewed/considered them as would-be terrorists. The Negombo Ahmadi Mosque, the Pasyala Jumma Mosque, the Negombo Police Station and the government camp in Vavuniya hosted many of these ‘re-displaced’ persons, where they had to endure appalling living conditions. Additionally, having been labelled unfairly as ‘persons of concern’, some asylum seekers and refugees were arrested and detained.
27. Their already difficult lives were made even more difficult with the COVID-19 pandemic and political crisis. Some had tested positive for COVID-19 and given their very small dwellings maintaining ‘appropriate physical distance’ was impossible. It has also become more difficult to access free healthcare as well as support for pregnant and lactating mothers. The COVID-19 pandemic has exacerbated delays with permanent resettlement in third countries.
28. The economic crisis in Sri Lanka affects the refugee community drastically. Vulnerable groups among the refugee community, school children, asylum seekers, single youth and minors, lactating and pregnant mothers, chronic illness patients and a large number of

families are in need of physiological support services.

29. Sri Lankans are standing in long queues for several days to procure gas and kerosene to cook, and they vent their frustrations on by being unwelcome of the refugee population to join the queues. The panic and anxiety among the host population may create safety concerns for refugees.
30. Living costs have soared. Households consisting of 4 – 9 members are having difficulties to meet their everyday needs as the prices of dry ration items have risen exponentially. Rents have been raised and landlords now request a six months' advance. Meeting food and medical needs has become near impossible. Psychosocial officers report that some families eat only one or two meals a day now due to the price spikes. Parents lament their inability to provide adequate nutrition to children such as vitamins, proteins and minerals.
31. In refusing to take responsibility for refugees and asylum seekers, the Government of Sri Lanka is contravening many international obligations signed and ratified over the course of Sri Lanka's history. These include the International Covenant on Civil and Political Rights, the International Convention on Economic Social and Cultural Rights, 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 Refugees/ De-Facto Deportation**

32. The right to self-determination enshrined in numerous international conventions and treaties to which Sri Lanka is a party guarantees that the State recognizes the rights of all people and groups to their own self-determination. As such, the current practice of turning away asylum seekers at the port of entry without affording them an opportunity to present their case is a gross violation of this human right.
33. It is moreover inhumane, given that asylum seekers have, in many cases, taken huge risks and made enormous sacrifices to flee political, religious and cultural persecution they face in their countries of origin. This practice runs contrary to the respect for the principle of **non-refoulement**, a well observed principle of customary international law referenced in several international human rights and refugee law instruments. Not being a signatory to the Refugee Convention and protocols is no ground for violating the customary practice of non-refoulement without due process.

### **Permission to Work**

34. The Sri Lankan Constitution recognizes 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 income is another gross violation of their human rights and the rights enshrined under numerous international treaties to which Sri Lanka is party.

35. The Sri Lankan State has prioritized 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* (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 State, despite the existence of an infrastructural framework that could absorb them easily and at little extra cost.
36. 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 made to feel unwelcome in Sri Lanka. Landlords too have been known to take advantage of their vulnerability to charge unreasonable rents and advance payments. Moreover, due to their uncertain status in the country, asylum seekers and refugees live in fear of random, unannounced intrusion by the police and or immigration and the consequences that could arise 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.

### **Healthcare Access**

37. Sri Lanka has a long-standing reputation for maintaining a reasonably high standard of health facilities through the provision of free medical and hospital care and clinical facilities. Moreover, the Sri Lankan State 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.
38. Government of Sri Lanka 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 realize that asylum seekers and refugees have significant psychiatric and psychosocial care needs. 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 fears they face regarding Sri Lankan authorities as well as anxiety over the well-being of their family and friends left behind.

## **Education**

39. Sri Lanka is a signatory to several international conventions that guarantee the right to education of all children. Its Constitution further enshrines the assurance of universal and equal access to education at all levels to all persons, and the law mandates the compulsory attendance at school for children between five to 14 years of age. One significant and long-standing step in this regard adopted by the State is the provision of free education services from kindergarten to university. As in other areas, the State's commitments, both internationally and domestically, do not apply to asylum seekers and refugees. The State also has many technical education and vocational training systems and institutions in place of particular value to refugees and asylum seekers who need to learn and develop vocational skills to seek employment and live independently in their resettlement countries. However, this option too is not made available to them.

## **Resettlement Country Allocation**

40. Some refugee families have not received opportunities for resettlement even though they have received refugee status. UNHCR has informed one of these families to return to their country or find other alternative ways. Due to the announcement, the mental status of all the family has fallen down. Since Sri Lanka is not a signatory to the 1951 Refugee Convention, they fear what will happen to their family and about the future of their children when the UNHCR operation closes in 2024 in Sri Lanka

## **Quick Release of UNHCR Results**

37. There are a sizeable number of asylum seekers who have not received the results of their UNHCR interviews even after 20-35 months. These delays have caused their mental and physical health to deteriorate, in addition to the current economic context.

## **UNHCR Sri Lanka Exit**

38. It has been announced that the physical operation of UNHCR in Sri Lanka will end by 2024. The announcement has already brought a lot of issues to asylum seekers who have been waiting for more than three years. After that period, their attention is focused on an institution that facilitates and looks after them.

## **RECOMMENDATIONS**

### **PART 1: RETURNEES**

#### **Policy Framework**



1. We strongly recommend development of a policy framework for refugee returnees that addresses the major concerns and specific issues connected with their sustainable reintegration. This should be preceded from the signing of a Memorandum of Understanding between the Governments of India and Sri Lanka to create a structured return programme associated with economic welfare measures to facilitate the return of refugees from India.

### **Essential Documentation**

2. Documents issued by the Government of Indian should be accepted by the Government of Sri Lanka until replacement documents are issued. Returnees should be issued Sri Lankan NICs on arrival by recognizing the Refugee Family identity card issued by the Government of India to ensure that they are recognized as Sri Lankan citizens, in order to access rights and entitlements, and corresponding support and services.
3. The Government of Sri Lanka should issue essential documents to refugees with available documentary evidence. This includes the acceptance of affidavits to claim their birth, marriages and deaths by accepting minimum documents such as Refugee Family identity card issued by the Government of India.
4. The Government of Sri Lanka should make necessary arrangements to expedite the process of issuing Sri Lankan Citizenship. Refugee Family identity cards should be accepted as documentary evidence for the penalty waiver for applicants under 21 years, while waiving off the penalty for registration of citizenship for those above 21 years.
5. The Government of Sri Lanka clear the citizenship backlog for refugees born outside the country.
6. The Government of Sri Lanka should strengthen co-ordination between the consular services in the country and the Sri Lankan consular missions outside the country, to fasten the process of issuing consular birth certificates and citizenship documents for those registered in both the countries.
7. 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.

### **Land and Housing**

8. Returnees should be granted access to essential services including land and housing with a minimal period of six months to ensure proper reintegration. During the time of resettlement, refugee returnees should be assured with systems to reclaim land ownership with evidence of substantial alternative documents or process of verification through a

timely and fair process. If landless, a piece of land should be granted or an equal compensation to be offered. Food aid along with essential needs for children and feeding mothers should be provided to the refugee returnee families.

9. The Government of Sri Lanka should take immediate steps to purchase private land or redistribute state land to refugee returnees in need of land. Provision of land for refugee returnees should be in habitable areas.
10. In the overall budget allocation for district development, specific allocations should be made compulsory to support the construction of housing for refugee returnees. All refugee returnees should be provided support for construction of transitional shelters within six months of their return. Extremely vulnerable individuals should be considered with utmost priority and ensured that they are included in all the welfare systems and schemes.

### **Education**

11. The Government of Sri Lanka should set up a process to recognize foreign educational attainments and ensure refugee returnees and those who wish to continue studies/higher studies to continue in Sri Lanka without any difficulties. All the courses including certificate, diploma, vocational and other courses should be recognized and equivalent certificates to be provided, without delay.
12. Develop new regulations on waiving fees incurred for equivalent certificates' provision for graduate refugees and those who have completed other courses in India. In case of mistakes in educational transcripts, affidavits should be prepared with the facilitation of the Indian High commission, and accepted by the Government of Sri Lanka. T
13. The Government through the University Grants Council (UGC) should have systems to verify degree qualifications from India and accordingly, issue a special document to confirm the 'internal degree' status of qualifications to ensure returnees' qualify for the public sector employment.
14. The UGC should ensure refugee returnees are exempt from charges for equivalency degree certificates. The waiver could be facilitated by requiring the submission of the refugee identity card issued by the Government of India.
15. Confirmation of certificates should be coordinated through consular services and with the Sri Lankan Deputy High Commission, Chennai, to expedite the issue of confirmation certificates by the concerned universities.
16. While issuing the equivalent certificates of 10<sup>th</sup> and 12<sup>th</sup> standards in par with G.C.E (O/L) and (A/L) respectively, effort should be made to quantify the marks and include in the equivalent certificates to enable application for public sector employment schemes.

## **Livelihoods and Employment**

17. To ensure access to livelihood and employment opportunities for refugee returnees, the Sri Lankan Government should set up employment linkage services with online portals. The qualified individuals should be given opportunities in the public sector.
18. Refugee returnees included in livelihood schemes should be provided maximum coverage to take up income generation programmes. They should also be considered for the provision of vocational and employability training.
19. Returnees should be exempted from customs and tax regulation to bring back their belongings to Sri Lanka through ferry services. The returnees should be permitted to transport livelihood assets including equipment and appliances from India, to enable them to set up their livelihood upon return.
20. 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.

## **PART 2: ASYLUM SEEKERS AND REFUGEES**

21. The Sri Lankan State should respect the principle of *non-refoulement* and allow asylum seekers to enter the country so that a proper determination can be made with regards to the validity of their claim for asylum. Furthermore, the State should carry out its own refugee status determination, alongside and in partnership with UNHCR.

**Question:** Why has Sri Lanka changed its historical and age old custom and customary good practice of permitting asylum seekers entry and refuge?

22. The Sri Lankan State 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; paid apprenticeships.
23. The *Samurdhi* programme should also be extended to refugees and asylum seekers to ensure basic food security. Furthermore, the State should facilitate accommodation in local host communities, instead of the current practice of intimidating homeowners willing to rent out their properties. The State should also make available through civil society organizations basic transitional shelter, in accordance with local and international standards and best practices.

**Question:** Why is the Sri Lankan State preventing refugees from working, while at the same time providing visas to external labour from countries such as China and India.

24. The Sri Lanka State 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 State 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.
25. The Sri Lankan State 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.
26. The Sri Lankan State should respect and support refugees and asylum seekers until they find a resettlement country. An implementation plan should be prepared to negotiate with the countries which are willing to offer resettlement opportunities.
27. UNHCR must announce an approximate time frame for the refugee status determination results to be provided to applicants.
28. The Sri Lanka State should create an overarching administrative mechanism which facilitates refugees and asylum seekers.