

**Abandoned and Betrayed:
Afghan Refugees under
UNHCR Protection in New Delhi¹**

Background

Locked in conflict for more than 20 years, Afghanistan has sent over one million refugees fleeing to neighbouring countries and further abroad. *South Asian Human Rights Documentation Centre* (SAHRDC) estimates that approximately 60,000 Afghans live in India, of whom over 16,000 possess certificates issued by the United Nations High Commissioner on Refugees (UNHCR).² They are not recognised as refugees by the Indian Government. Despite the fact that India is not a signatory to the 1951 Convention relating to the Status of Refugees, it allows UNHCR to operate a programme for the refugees in New Delhi, most of whom are Afghans. Relations between the local UNHCR mission and the Afghan refugees have turned very sour in the 1990s.

These tensions burst into the open most recently on 29 July 1999 when a group of more than 100 Afghan refugees staged a sit-in protest outside the UNHCR mission in New Delhi at 14 Jor Bagh, effectively hijacking a smaller demonstration by Somali refugees that had been going on for the previous week. Worried by the mass denial of residence permits by the Indian Government and angered by UNHCR's lack of assistance for refugees seeking resettlement abroad, the Afghans were demanding a substantive answer to a letter they had sent to UNHCR on 11 July expressing these concerns.

According to the Afghan refugees who met with him during the protest, UNHCR Chief of Mission Augustine Mahiga pledged to intensify lobbying efforts with foreign missions to accept more Afghan refugees; he also allegedly promised to re-open the file of every Afghan refugee to address any specific grievances. Mr Mahiga reportedly set a deadline of 20 August to report back to the refugees. At the time of this writing, SAHRDC is unaware of any significant

action being taken by UNHCR in response to the refugees' demands.

The protest was one of the most dramatic demonstrations of refugee frustration and despair since July 1994, when Ms Ajalal, a 27-year-old Afghan woman, burned herself to death at the back gate of the UNHCR mission. Members of the Afghan community claimed that she was driven to the act by desperation over her living conditions, which had deteriorated considerably after the cancellation of her subsistence allowance (SA) by UNHCR. UNHCR, however, maintained that harassment by a group of four Afghan men was the primary cause of her self-immolation. A SAHRDC investigation was unable to reach definite conclusions about the contending claims over the reasons for Ms Ajalal's suicide.³ What is clear, however, is that the resulting wave of anger and bitterness of the Afghan refugee community towards UNHCR officials in New Delhi was indicative of the tensions that have been rife between the two sides for some time. The negative responses of Afghan refugees to UNHCR's policies in the 1990s have even been brought to the attention of the UN General Assembly:

The reorientation of the assistance policy [i.e., mass termination of subsistence allowance] has led to a number of threats against UNHCR staff and violence from refugees directed at UNHCR. These developments have forced the closure of three community centres operating in Delhi and the suspension of counselling, primary health care services and English language training at these centres since March 1995. ... Negotiation with local NGOs to take over social counselling, health and education are currently underway.⁴

Several months before these tensions were reported to the General Assembly in 1995, SAHRDC expressed its fear 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.⁵

Since then, UNHCR has done little to improve the situation, treating outbursts of protest or violence from refugees as the actions of irrational children rather than those of individuals with legitimate rights and grievances. It has further evaded refugees' grievances by delegating many of its core tasks to local NGOs, namely the National Council of YMCAs of India and the Voluntary Health Association of Delhi (VHAD).

In 1997 and 1998, SAHRDC revised and updated its findings in an unpublished report, *The Status of Afghan Refugees in New Delhi: The Twilight Zone*. Portions of that report were shown at the UNHCR Executive Committee conference in the fall of 1998, as well as at the United Nations Human Rights Commission meeting several months later. In the years that SAHRDC has been actively involved in researching the plight of Afghan refugees in New Delhi, it is dismayed to learn that relations between the refugees and UNHCR have deteriorated far beyond the "all-time low" reached in 1995.

The Mandate of UNHCR

The General Assembly of the United Nations established the Office of the High Commissioner for Refugees in December 1950 to protect refugees and advance durable solutions to their plight.⁶ UNHCR was created by the UN General Assembly to assume direct responsibility for international action on behalf of refugees, and to supervise the implementation of provisions relating to refugees in other international conventions.⁷ In the 1990s, mass refugee crises in the Balkans and the Great Lakes have made emergency

relief for refugees a “growth industry”⁸ and UNHCR has accordingly shifted its resources and focus in that direction. As of 1998, there were 295 UNHCR offices in 121 countries with annual operations amounting to over one billion (100 crore) US dollars.⁹

The legal basis for international refugee protection is enshrined in the 1951 United Nations Convention relating to the Status of Refugees and its 1967 Protocol. The 1951 Convention provides refugees with an internationally recognised legal status, and contains provisions dealing with various refugee rights, including rights to education, housing, and access to courts.

Other international instruments also substantiate the legal basis for UNHCR’s work. Among these is the Universal Declaration of Human Rights (UDHR), which affirms civil, political, economic, and social rights for all persons. The UDHR outlines the right to seek and enjoy asylum¹⁰, the right to freedom of movement¹¹, and the right to a nationality¹². Additional instruments include the UN Convention on the Rights of the Child, as well as the Bangkok Principles on refugees adopted in 1966.

The two main functions of UNHCR, as outlined in Chapter 1 of its statute, are to provide *protection* for refugees and to seek *permanent solutions* to their problems.¹³ The Statute of the Office identifies various tasks of the High Commissioner intended to fulfil his or her protection function.¹⁴

To establish an institutional arrangement for the protection of refugee rights, the promotion of a legal régime and its implementation are particularly important. The process of implementation requires work within the parameters set by the political attitudes of the governments involved.

One of UNHCR’s mandates is to find “permanent solutions” (more frequently referred to now as “durable solutions”) to the plight of refugees. These are more difficult to effect. Two such solutions enumerated in Chapter 1, Article 1 of the Statute are voluntary repatriation or assimilation into the country of asylum. Since then, resettlement to a safe third country has emerged as another

durable solution, though there is no explicit right to resettlement in the 1951 Convention and the feasibility of resettlement is subject to the ability and willingness of third countries to accept refugees.

It is vital that repatriation, if it is an option, be voluntary, as forced repatriation would violate the principle of *non-refoulement*, which is enshrined in conventions protecting refugees as well as international customary law. UNHCR is obliged to facilitate voluntary repatriation by attempting to organise tripartite agreements involving its own offices and the governments concerned to cover issues such as amnesty and rehabilitation for returnees. UNHCR is also obliged to bear the cost of a refugee's return, and to help refugees obtain any necessary documents.

Assimilation into the country of asylum, which is generally the alternative to voluntary repatriation, is a complex and arduous process of economic, cultural, and social adaptation and integration. During this process, it is incumbent upon UNHCR, as per its mandate, to provide material assistance to refugees until they are truly able to support themselves, *however long this may take*.

Who is a Refugee?

According to UNHCR's mandate and the 1951 Convention¹⁵, the term "refugee" applies to a person who has fled from his or her country because of a well-founded fear of *persecution* on account of his or her race, religion, nationality, political opinion, or membership of a particular social group; and who further cannot, or due to such fear does not, want to return. The 1967 Protocol to the Convention altered this definition only insofar as it removed language which limited it to refugees who had been displaced as a result of events occurring before 1951.¹⁶

This definition reflects the strict individualistic approach to rights discourse which prevailed at the time the Convention and the Statute of the Office were drafted, and as such it excludes from the UNHCR mandate those refugees who could not prove that they were specifically singled out for persecution. The limitations of the 1951 definition became evident during the mass refugee migrations that took place in

many regions of Africa and South East Asia in the 1950s and 1960s and it became clear that the scope of UNHCR's operations would have to expand.

In 1959, the UN General Assembly adopted Resolution 1388, in which "a distinction was drawn for the first time between refugees within the mandate and those who do not come within the competence of the United Nations."¹⁷ The High Commissioner was entitled to assist the latter using his "good offices," but as the need for this inexorably grew, the functions of UNHCR's "good offices" were put to greater and greater use. Finally, in 1965, General Assembly Resolution 2039 abandoned the distinction between mandate and non-mandate refugees. This resolution obligated the High Commissioner to carry out his/her duties with regard to "the various groups of refugees within (his) competence."¹⁸ It demonstrated a departure from the legalistic approach to refugee issues, to one that is more practical and humane. By eliminating the distinction, both categories of refugees, those under the 1951/1967 definitions and those cared for under the High Commissioner's "good offices," were entitled to UNHCR protection and assistance.

The Organisation of African Unity (OAU) Convention Governing the Specific Aspects of the Refugee Problem in Africa (1969)¹⁹ excluded from its definition of "refugee" any temporal or geographical limitations, and included categories of persons who are displaced by external domination or events seriously disturbing public order²⁰. The Organisation of American States' (OAS) Cartagena Declaration on Refugees (1984) followed this OAU precedent and added "massive violations of human rights" as a reason for obtaining refugee status.²¹

Despite the presence of a well-developed international legal framework, India has no laws for refugee status determination; most of the people in India assisted by UNHCR are recognised as refugees only by UNHCR, and not by the Indian Government. These include most of the Afghans in Delhi.

The Indian Government has in the past come into conflict with UNHCR over the latter's designation of refugees. In 1984 UNHCR, working under the auspices of the United Nations Development Programme (UNDP), granted

refugee status to three airline officials from Afghanistan, against the wishes of the Indian Government. The Ministry of External Affairs of the Government of India lodged a formal protest against UNHCR, charging that the agency had exceeded its area of discretion. The government took this opportunity to point out that UNHCR had not been given independent status in India precisely because Afghan and Iranian refugees in Delhi were not officially recognised by the Government. At this time over 6,000 Afghan refugees were on the UNHCR list, and the Indian Government was allowing them to stay in India because it recognised the human rights problems involved.²²

India's lack of a domestic legal framework for refugees leaves ample room for the determination of refugee status (by the Indian Government) to be politicised, with the labels "refugee" and "migrant" being interchangeable at the whim of the state. The Indian Government has only extended refugee status to Tibetan exiles, and virtually no other groups. In the absence of refugee status recognition from the Indian Government, UNHCR recognition is the only legal protection that a foreigner may have against deportation or arbitrary detention. Ahmad Shah Faizi, an Afghan living in Faridabad (outside Delhi) whose applications for refugee status have been twice rejected by UNHCR, told a SAHRDC researcher, "I don't have financial problems, I don't need [subsistence allowance]. I only want to be recognised as a refugee because ... I came to India without a visa."²³

UNHCR also uses its discretion without any accountability. Unlike other treaties of the United Nations like ICCPR, CAT, CERD, CEDAW etc where the members of the treaty bodies provide interpretation of various articles, there is no such recognised expert body to interpret the articles of the Refugee Convention and its Optional Protocol. There is no legally binding definition of "fear of persecution" as provided in the Article 1 of the 1951 Convention. The interpretation of "fear of persecution" which is crucial for determination of refugee status depends on the whims and fancies of the concerned legal officer. Consequently, hundreds if not thousands, have been denied refugee status in New Delhi, not on legal grounds but because of other considerations.

The UNHCR's Executive Committee could have been an appropriate body to deal with such issues. However, the UNHCR Excom is a political animal, where state party interests are paramount. Most NGOs invited to the UNHCR Pre-Excom or Ex-Com meetings are humanitarian organisations who do not necessarily have a rights approach. Democratic space for debate on issues of substance is not available. This lack of debate within the UNHCR, its dependence on an archaic convention that does not address the concerns in Asia or Africa and shifting priorities in tune with the political mood of the major donors has been responsible for UNHCR "growth industry". UNHCR has gradually turned itself into emergency service agency engaged in distribution of blankets and medicines. Protection is no longer on the agenda of the UNHCR in any meaningful manner. From being the focus of the cold war spotlight, Afghanistan has now become a forgotten backwater of Islamic fundamentalism demonised in the form of the Taliban and Osama bin Laden. The Afghan refugees, once the favourites of the UNHCR and other western institutions, have become dispensable, as they are uncomfortable reminders of a past that is best left behind.

UNHCR and its Relation with the Government of India

India has been subject to periodic influxes of refugees over the last few decades, from countries as diverse as Afghanistan, Iran, Iraq, Burma, Bangladesh, Somalia, Sudan, Sri Lanka, and Tibet. India's geographical and political features work together as "pull factors": India has open borders with countries where undemocratic forms of government, arbitrarily placed colonial boundaries, and ethnic tensions have forced people into India. Ethnic and religious similarities between some refugee groups and segments of India's multi-cultural population provide incentives for refugees seeking asylum to choose this country as well.

As an independent sovereign nation, India has the right to refuse entry to any alien; but it is also obliged to respect international norms and standards. Although it is not a party to the 1951 Convention or the 1967 Protocol, India has practised a fairly liberal refugee policy in the past, and a large

number of refugees are currently sheltered in the country, whether officially recognised by the Government or by UNHCR. However, India has little in the way of concrete national legislation concerning refugee issues, and there is no defined procedure for the determination of refugee status. This difficulty is compounded by political indications that the old liberal attitude towards refugees is being jettisoned.

In addition to India's obligation under international law, the Indian Constitution declares that "the State (India) shall endeavour to foster respect for international law and treaty obligations, in the dealings of organised peoples with one another" [Article 51(c)].

Unfortunately, there is much to be desired in the implementation of protective mechanisms. Despite the fact that the principle of *non-refoulement* was accepted by India along with the Bangkok Principles in 1966, refugees at India's borders continue to be treated like ordinary fugitives.

According to the Indian Foreigners Act (1946) inherited from the British colonial government, the authorities have the power to refuse admission to foreigners at any point of entry if valid documents are not held. This requirement can function to exclude refugees who, fleeing war or persecution, are unlikely to have such documents. There have been many court proceedings in India against refugees who have entered "illegally." They are treated as "illegal entrants," and many are imprisoned until their official status is determined. Due to a lack of regular procedures, there is very often a long delay before such entrants can be officially declared refugees, after which they may be offered shelter, food, and protection by the Indian Government or the UNHCR mission in New Delhi.

Even after they have been granted refugee status, refugees tend to be barred from owning property or entering into employment, and they are not provided with any sort of travel documents. The reasons cited for this by the authorities are the economic constraints of a country that has difficulty meeting many of the basic material needs of its own people.

It is for these reasons that international assistance is required, and it is obvious that the material resources and protection provided by UNHCR in India are crucial for the refugees concerned. UNHCR is not constrained by any legalistic classification of refugees in their distribution of aid,

yet it actually does relatively little work in India. This is partly because of the constraints of working with the Indian Government - UNHCR requires a request from the host government before it can provide material assistance to refugees. As this report concerns the operation of UNHCR in Delhi, it is important to note the limits placed on its work by the Government of India.

The countries of South Asia are first asylum countries, i.e. they are adjacent to “countries of origin,” and are often burdened to provide asylum which they can ill afford. UNHCR assistance programmes, which channel international funds into these countries, are crucial as “a means of relieving some of the material, social and political burdens of providing asylum.”²⁴ Given this fact, one would expect support for these programmes from the governments involved, but in practice, UNHCR has faced numerous obstacles in South Asia. None of the countries in the region are parties to the 1951 Convention.

In India, refugees are typically denied any officially recognised status, they are subject to harassment by the police, and refugee women and children are not adequately protected. Additionally, the prohibition on alien employment in India makes it extremely difficult for UNHCR to ensure self-sufficiency for the refugees.

UNHCR is often denied access to refugee camps where normally they would provide or supervise international assistance. For instance, the agency was not allowed into camps in the North Eastern state of Tripura, where tribal refugees from Bangladesh had been kept in appalling conditions. UNHCR’s offers of assistance were rejected by the Government of India, and it was not allowed to supervise the involuntary repatriation which began in February 1994.²⁵

In Tamil Nadu, the state government temporarily withdrew facilities and rations from refugees in an effort to force them to return to Sri Lanka. This coercion was contrary to its stated policy of promoting voluntary repatriation.²⁶ In July 1992, UNHCR and the Government of India reached an agreement that allowed the former a token presence in Madras.

Several months elapsed before UNHCR was allowed to open its office in Madras, and the agency was only allowed

access to the refugees at their point of departure. UNHCR officials were only permitted to interview those refugees who had already signed an agreement to go back to Sri Lanka. Local refugee organisations such as OFERR, and international organisations such as Human Rights Watch/Asia and the US Committee for Refugees (USCR), received well-founded complaints that these repatriation documents were signed under coercion from officials of the Tamil Nadu Government. Since UNHCR officials were not allowed to visit the camps, they were unable to ensure that refugees received enough information about conditions in Sri Lanka upon which to base their decisions to return.²⁷ Logistical problems, such as the distance from the camps to Madras and the restrictions on refugees' movement, made it difficult for refugees to visit the UNHCR office to express their concerns or ask for help.

In this case, it was apparent that the Indian Government was not cooperating with UNHCR. Human Rights Watch/Asia expressed concern that UNHCR's acceptance of its limited mission in Tamil Nadu might have actually "lend[ded] legitimacy to the repatriations while allowing the Indian Government to bar the UNHCR from fulfilling its protection mandate."²⁸

The Indian Government has chosen not to cooperate with UNHCR in several areas that are of more relevance to the plight of Afghan refugees in Delhi.

SAHRDC was not able to find a single refugee who had been granted a work permit by the Indian Government. This prohibition on alien employment makes it almost impossible for UNHCR to ensure self-sufficiency for the refugees. Since UNHCR is unable to set up hostels and distribute rations in Delhi because the government will not provide the necessary land, most of the refugees were given a monthly subsistence allowance. In what can only be described as a zealous attempt to reduce its own subsistence allowance caseload, UNHCR has forced many refugees to accept lump sum grants. Although UNHCR has organised some vocational training courses, refugees are not legally permitted to work. While it is the perverse logic of UNHCR that has placed the Afghan refugees in this precarious situation, a large part of the blame falls on the Indian Government, which has effectively chosen a policy of non-cooperation with UNHCR's efforts.

Of late, it is apparent that UNHCR is going beyond the call of duty and diplomatic requirements to accommodate the sensibilities of the Indian Government. This is most clear in the case of the Afghan refugees. To the Indian policeman who mans the Foreigners Regional Registration Office (FRRO), as well as to the civil servants in the Indian Ministries of External Affairs and Home Affairs, every Afghan is the Islamic fundamentalist bogeyman. UNHCR is not unaware of this but chooses not to challenge New Delhi's conjuring of the Islamic Fu Manchu, notwithstanding the fact that a sizeable majority of the Afghan refugees were fleeing from and are opposed to the many Islamic fundamentalist armed groups fighting for control of Afghanistan.

This paranoia on the part of the Indian Government has manifested itself in the recent wholesale denial of residence permits to Afghan refugees, per instructions of the Indian Ministry of Home Affairs.²⁹ This decision has effectively turned 60,000 Afghan refugees into illegal migrants, subject to deportation at any time. FRRO Chief Dharmendra Kumar was recently quoted in the press as proclaiming that "most Afghans living here are not refugees" and that many Afghans under UNHCR protection use their status to travel to Pakistan, Afghanistan, and the former Soviet Union in order to indulge in "illegal business activities and sometimes even anti-national acts."³⁰

Now living illegally in India, most of these refugees are wary about travelling outside their own neighbourhoods or continuing outdoor jobs (such as street peddling, the most common profession of Afghan refugees) for fear of extortion, or even worse, deportation at the hands of the Indian police. UNHCR has failed to take any public action on this issue.

This policy of non-renewal must be considered in the context of increasing hostility against Afghans, brought to a fever pitch by the recent Kargil crisis, in which Afghan fighters were allegedly part of the forces infiltrating Kashmir. Newspaper reports have warned ominously of the possible "Talebanisation" of parts of South Asia.³¹ The rumoured participation of some Afghans in street crime and the drug trade in New Delhi has further damaged their public image. These messages have reinforced a popular stereotype of the Afghan as fanatic or criminal, despite the fact that a large number, perhaps a majority, of the Afghans in Delhi are ex-

communists and decidedly anti-fundamentalist. All Afghan refugees, be they Islamists or staunch secularists, are swept along by the brushstrokes of demonisation. As Shafiqia Sameem (AF 016383/02), a refugee who used to study English at the American Embassy Cultural Centre in Kabul, observed, “Indian public opinion is turning against Afghans on account of the Kargil situation. They think we are all Taleban supporters. In the last month, our own landlord asked us to pay an additional Rs. 700 in rent or leave.”³² “During India’s war with Pakistan, our landlord’s attitude towards us has changed,” noted Nasir Ahmad (AF 016288). “Now he behaves angrily towards us. You take part in a war against India, he screams.”³³ This atmosphere has contributed to several violent incidents against Afghan refugees in Delhi. As the public mood has grown increasingly hostile to Afghans, the refugees are especially susceptible to extortion and other sorts of threats.

The limited social spaces in which Afghan refugees are allowed to operate in India are being further eroded by public opinion. Even more disturbing is the complicity of the Indian state in its *de facto* confinement of the Afghan community. SAHRDC feels that UNHCR has fallen far short in its duty to act as a forceful advocate for Afghan refugees in India. UNHCR must rise to the calling of its mandate and assume a proactive role in defending refugees from the effects of vilification at the hands of the state and the media.

The policies of the Government of India have a number of serious ramifications for refugees:

- The Afghan embassy in New Delhi is controlled by the erstwhile Rabbani Government, which currently controls less than 15% of Afghanistan’s territory. The intense fighting between the Taleban and Rabbani’s forces in these areas makes it impossible for any refugee to contemplate a safe return to them.
- It is a widely believed, both internationally and in the region, that the Taleban has consolidated its hold over Afghanistan and its *de facto* government will eventually become a *de jure* one as soon as it conforms to the democratic niceties of diplomatic discourse. For a refugee to identify with an embassy that is antagonistic to the

Taleban prevents him or her from attempting any future return to Afghanistan.

- Refugees interviewed by SAHRDC quote a fee for a new Afghan passport at approximately \$US 100³⁴, which is clearly far beyond the means of most Afghan refugees, regardless of whether or not they are receiving a UNHCR subsistence allowance.
- Many of the Afghan refugees in New Delhi are anti-Taleban, but were also associated with communist or monarchist factions that were just as strongly anti-Rabbani. Most of those who fled between 1991 and 1996 were attempting to escape from the Rabbani régime. For many of these refugees, there is no meaningful distinction between Rabbani and the Taleban, both of which are decidedly fundamentalist in their religious orientation. To ask someone who fled from the Rabbani government to now seek a passport from one of its embassies is to effectively negate that person's status as a refugee by casting doubt on the individual's original claim of persecution at the hands of that régime. It is also tantamount to sacrificing the refugees' future by placing them at the hands of a government that is hostile to them. As Zabihullah Wahaj (AF 011847) aptly put it, "I am a refugee. Why do I need a new passport? If I do, then there's no point in me being called a refugee."³⁵

On 3 June 1999 UNHCR officers held a meeting with leaders of various Afghan refugee communities to inform them of the change in residence permit renewal policy.³⁶ UNHCR pledged to raise the issue with the Indian government and bring pressure to bear on the Indian government from UNHCR's Geneva headquarters. Despite a promise to update the refugee leaders after two weeks, no such follow-up meeting was held. An informal group of 40 to 45 refugees at a masjid in the Panch Piran district of Delhi sent a letter to UNHCR on 11 July 1999 expressing concern over this issue and others. It remained similarly unanswered until over 100 refugees staged a sit-in protest outside UNHCR on 29 July, demanding action from the agency. After the incident, UNHCR promised to intensify lobbying efforts with eight foreign missions in New Delhi to accept more refugees for resettlement and report back by 20 August.

At the time of this writing, 20 August has passed without any significant action from UNHCR.

UNHCR has attempted to assist several individual cases of refugees denied permits, but apparently with little effect. A UNHCR legal officer addressed a letter to the FRRO on 8 April 1999 on behalf of Mohammed Rafi (AF 016313), a 21-year-old refugee who came to India without family, “kindly request[ing] that [FRRO] consider this case exceptionally on humanitarian grounds and renew the residential permit of Mr. [Rafi] so that he resides in India legally.”³⁷ The Indian Government has taken no action on this issue. For others, even this meagre assistance has not been forthcoming. Abdul Rahman Naibkhil (AF 010063/09), when complaining about his situation to a UNHCR official, said that the only advice he received was to stay indoors as much as possible in order to avoid the police.³⁸

The utterly opaque nature of this putative process of advocacy has left many refugees without any idea as to whether or not they could be deported in the near future. While UNHCR has informed some refugees of the situation, it has not consulted them on further actions, nor did it keep them apprised of the situation until a 100-man sit-in forced the agency’s hand. One can only hope that there is some spectacularly successful yet low-profile work being done by the UNHCR New Delhi mission to prevent deportations and to obtain some peace of mind for Afghans through a commitment from the Indian government to continue the practice of sheltering refugees. Such a scenario, however, is highly unlikely. It is much more probable that UNHCR’s half-hearted attempts to advocate for the refugees have been dismissed by the Indian Government and that the agency has decided not to take a more confrontational stance on this vital issue.

Evaluation of the Services Offered to Refugees by UNHCR in Delhi

A three-month investigation by SAHRDC researchers into the conditions of Afghan refugees in Delhi and its environs, focusing on the services provided to the refugees by UNHCR as well as relevant policies of the Indian Government, yielded the following salient points:

- After years of providing monetary subsistence allowance (SA) to Afghan refugees in India, UNHCR, for a variety of reasons, shifted its emphasis in mid-1993 from providing direct aid to an emphasis on assisting refugees in attaining financial self-sufficiency.³⁹ Financial self-sufficiency, however, is almost impossible to achieve for Afghan refugees, who have never been allowed by the Indian Government to pursue any kind of gainful employment.
- UNHCR's "needs assessment" home visits have been used in this strategy to arbitrarily and unfairly declare Afghan refugees to be "financially self-sufficient," and thus ineligible to receive subsistence allowance. This policy appears to have remained relatively unchanged both before and after the start of an "implementation partnership" between UNHCR and the YMCA in 1996.
- In the past several years, UNHCR has slashed its subsistence allowance rolls, from 12,000 families at the end of 1994⁴⁰ to 1,500 families in 1998⁴¹. The wholesale cancellation of many of these allowances was conducted in an arbitrary and insensitive fashion, and impoverished thousands of Afghan refugee families, adversely affecting their standard of living and driving many of them into debt.
- According to the literature it disseminates to refugees, UNHCR distributes "lump sum grants" (equivalent to one year of subsistence allowance) to those "who wish to establish a home-based activity."⁴² UNHCR's annual compendium, *The State of the World's Refugees: A Humanitarian Agenda* (1997) mentions that Afghan refugees have been "encouraged to take a lump sum payment, to set up small-scale businesses, and to gain new skills," while omitting any clear explanation as to the purpose of the lump sum.⁴³ Due to the lack of work permits (or residence permits issued by the Indian Government clearly stating that they are entitled to take up employment) for Afghan refugees, however, it has been almost impossible for refugees to use lump sum grants to start self-sufficient economic activities, whether in the organised or unorganised labour sectors. Nearly every Afghan refugee who has accepted a lump sum grant did so only after termination of SA.
- The vocational training courses for refugees sponsored by UNHCR and the YMCA, as well as the YMCA's job

placement services, have proven woefully ineffective, mainly because of the Indian Government's refusal to grant work permits for Afghan refugees. Despite this, the focus of UNHCR's strategy remains on helping Afghan refugees achieve "self-sufficiency."

- While UNHCR blithely claims that it found that "many of the Afghans actually had substantial resources of their own and had found some kind of gainful employment,"⁴⁴ the majority are still unemployed. Of those who are not, the most common occupation of Afghan refugees interviewed by SAHRDC was working as a street vendor for between Rs. 1,500 and Rs. 2,000 per month to support relatively large families.⁴⁵

After the denial of residence permit renewals en masse by the Indian Government and the heightened anti-Afghan feeling in India over alleged Taliban involvement in the Kargil conflict, many of these refugees have not gone to work, fearing harassment or deportation. SAHRDC is curious as to what constitutes "gainful employment" in UNHCR's lexicon.

- UNHCR has, to its credit, continued its policy of reimbursing refugee families for the school fees of their children. Despite this, many Afghan refugee children have been forced to discontinue schooling for financial reasons due to the cancellation of SA.
- UNHCR also has continued a policy of reimbursing refugees for their medical expenses if they are incurred at a government hospital and for serious medical problems. The ineffectiveness of this policy is clearly demonstrated by the number of refugees whose chronic health problems are not being adequately addressed. In addition, the medical reimbursement scheme is deeply flawed. A medical social worker working for the Voluntary Health Association of Delhi (VHAD), UNHCR's NGO implementing partner for health services since 1995, insisted that treatments at private hospitals are also reimbursed in emergency cases.⁴⁶ Contrary to this, however, SAHRDC interviewed several refugees who were refused reimbursement for emergency treatments because they were incurred at private hospitals. In addition, SAHRDC also spoke to refugees who were denied reimbursement for major operations conducted at

government hospitals, in clear violation of UNHCR's own stated policies.⁴⁷

- Since the beginning of 1999, the Foreigners Regional Registration Office (FRRO) of the Indian Government has denied residence permit renewals to Afghan refugees by requiring that refugees hold valid passports. As a result, nearly all of the Afghan refugees in Delhi are now living illegally in India. The possession of a valid visa was never before a concern of the FRRO, and many of the refugees' passports expired years ago.

This policy has made it possible to deport refugees at will, potentially back to Afghanistan. It is believed that the Indian Government has already done this in several cases⁴⁸, effectively violating the internationally accepted principle *non-refoulement*, which stipulates that refugees cannot be involuntarily returned to a place where their lives or personal security will be endangered or where they will be subject to serious human rights violations. This problem has only heightened the anxieties of Afghan refugees and intensified the demand for assistance from UNHCR with resettlement abroad.

- While the decisions to withhold work and now residence permits from Afghan refugees are the responsibility of the Indian Government, UNHCR has failed to act as a vociferous advocate of refugee interests with the Indian Government. This is mainly because India is not a signatory to the 1951 Convention relating to the Status of Refugees, and therefore UNHCR operates in New Delhi only at the whim of the Indian Government. Overly mindful of its precarious position, the UNHCR mission in New Delhi has failed to act as a strong advocate for the refugees under its care.

The study shows how in the past several years a constellation of parties, including UNHCR, the Indian Government, the YMCA, and VHAD, have formed a web of bureaucratic insensitivity, indifference, and ineffectiveness in which many Afghan refugees find themselves trapped without meaningful assistance. The inhospitability of the Indian Government has only been exacerbated by the fact that the organisation that is supposed to be the most vocal and

active champion of the refugees, namely UNHCR, has not lived up to its task. The refugee agency's policy of ending direct assistance to refugees in favour of encouraging self-sufficiency has been undertaken in blatant disregard of the reality that gainful employment and financial self-sufficiency are impossible for the overwhelming majority of Afghan refugees in India. It has maintained opaque operational processes, used NGO "implementation partnerships" to insulate itself from refugees and redirect their grievances *ad infinitum*, and shamefully cloaked its practices in the vocabulary of empowerment. In addition to all of these efforts to evade or ignore its responsibilities, UNHCR has never adequately explained the rationale of a policy which claims to help refugees stand on their own two feet while ignoring the fact that they are standing in quicksand.

Recommendations

There are a number of immediate steps that need to be taken by various bodies to ameliorate the immediate situation of Afghan refugees in Delhi and to further a genuine search for durable solutions. Below are SAHRDC's recommendations in this regard:

I. To the United Nations High Commissioner for Refugees:

End the charade of self-reliance. UNHCR must realise that the Indian Government's prohibition on employment for Afghan refugees, coupled with the threat of their expulsion, makes any talk of financial self-reliance sound disturbingly hollow. UNHCR is mandated to help refugees find "durable solutions." Both UNHCR headquarters in Geneva and personnel in the New Delhi mission must immediately change the agency's strategy and shift its resources to reflect the reality that Afghan refugees in India are in need of direct financial assistance, at least until true assimilation into Indian society is possible. This includes the ability to enjoy political and socio-economic rights, including the right to reside in India without fear of arbitrary deportation and the right to gainful employment. Until this is possible (or until all of the refugees can be resettled to safe third countries), UNHCR is

obligated to continue direct financial assistance *for as long as it takes*.

Engage in Active Advocacy. UNHCR must be a visible and active advocate for refugees before the Indian Government, as well as in the Indian media. The immediate goal of such advocacy should be the renewal of residence permits for Afghan refugees in order to free them from the fear of immediate deportation. UNHCR must also vigorously lobby the Indian Government to grant refugees the right to pursue gainful employment. These goals are crucial and failure to accomplish them will make local integration an untenable option for Afghan refugees.

Improve Information & Transparency. Refugees have the right to accurate and relevant information about their rights and responsibilities, as well as the prospects of voluntary repatriation, resettlement, or local integration. UNHCR must also undertake to inform refugees in advance as to policies that directly impact on them, such as subsistence allowance termination or the non-renewal of residence permits. UNHCR must not only make this information available, but it must ensure that the information actually reaches the refugees in a clear and comprehensible form.

It is a disturbing fact that many of the refugees interviewed by SAHRDC displayed little knowledge of the exact nature of UNHCR's policies and relationships with NGO implementation partners such as YMCA and VHAD, often considering them all to be part of the same organisation. Refugees should not only be informed of their rights and responsibilities, but of the entirety of UNHCR's mandate and of how the New Delhi mission conducts its policies.

Encourage Refugee Participation. According to UNHCR's "people-oriented" planning doctrines outlined in *A Framework for People-Oriented Planning in Refugee Situations Taking Account of Women, Men and Children*, "refugee participation is a major factor in determining whether or not a project will be successful. Failure to involve refugees will ultimately lead to several consequences: increasing lethargy on the part of refugees; cost increases; decreases in communication."⁴⁹ UNHCR's *Sourcebook* discusses how a lack of outreach results in low participation because refugees are not informed of opportunities for

training.⁵⁰ Unfortunately, the UNHCR New Delhi mission has not followed these directives. UNHCR must respect its own guidelines.

Respond to Grievances. The refugees have many complaints including failure to reimburse for medical treatment for serious illnesses at public hospitals, termination of subsistence allowance for refugees in “vulnerable categories,” and unwarranted cessation of financial assistance for education. In addition, most refugees have addressed UNHCR officials with their problems, either in writing or in person, and have seldom received any helpful response. It is imperative that UNHCR develop a mechanism whereby refugees’ grievances can be investigated and addressed in a timely manner.

Expand Access to Health & Education. Another goal should be improvement of refugees’ welfare, through expanded access to health and education services.

First, UNHCR must immediately act in accordance with its own stated policies. This means that families who seek medical care for serious illnesses at government-sponsored hospitals should receive prompt and complete reimbursement, and that refugee children should receive educational assistance grants up to the 10th standard, regardless of age.

Second, UNHCR must broaden the scope of its health care policies to serve the needs of chronically ill patients. AIIMS is a large and overcrowded hospital that is not appropriate for long-term treatment. UNHCR should make arrangements with duly identified chronically ill patients to be cared for, if necessary, in private clinics which are closer to their homes and where medical attention may be more focused.

Third, UNHCR must introduce some flexibility in its medical reimbursement scheme to cover emergency procedures carried out at private hospitals. While concerns of fraud are understandable, UNHCR should develop a mechanism by which refugees who seek legitimate emergency treatment at private hospitals are reimbursed. There are numerous ways in which care can be made available to those who truly need it while fraudulent claims are screened out.

Fourth, UNHCR must reevaluate its policies, assessing not only the relevance, effectiveness and availability of services, but also bearing in mind the freedom of a refugee to take advantage of a particular service. This is of special significance in policies that force refugees to pay for health or education by themselves before receiving reimbursement. A cost/benefit analysis of such a policy deems it acceptable because the refugee in theory is fully compensated and UNHCR minimises its costs by spending money only on bill collection and cash disbursement. Clearly, this line of thinking is unsuitable for the realities faced by refugees. Yet, to expect a refugee to be able to pay for three months of schooling or an expensive medical procedure when neither financial assistance nor gainful employment are available is absurd. It is imperative that policies designed to ensure the welfare of refugees take a more holistic view of refugees' needs and problems.

II: To the Government of India:

Respect & Safeguard the Rights of Refugees. The Government of India, as a member of the Executive Committee of UNHCR must respect the international prohibition on *non-refoulement*.

Create a Domestic Legal Régime for Refugees. In the final analysis, the efficacy of international refugee protection instruments depends on the ability and willingness of states to create domestic legislation and formulate policies to transform the declarations of faraway international conferences into hard and fast realities on the ground.

SAHRDC is aware of the Indian Government's concerns relating to the ratification of the 1951 Convention, which itself fails to take into account many of the concerns of developing countries, most importantly the issue of burden-sharing. Developing countries harbour a disproportionate number of refugees with regard to their economic and political capability to support and absorb these refugees. The Government of India cannot, however, use this concern to evade the key issues addressed by the 1951 Convention. Thus, provisions for refugee protection, and humanitarian relief and assistance must find a place in any domestic legal régime established. The Indian Government must create a

statutory mechanism for dealing with refugees that is accountable to state organs such as the National Human Rights Commission (NHRC) and the judiciary, as well as to civil society. A legal régime for refugees must meet basic standards of international law and address at least the following issues:

- The Definition of a Refugee;
- A Procedure for the Determination of Refugee Status;
- The Rights and Duties of Refugees;
- Situations of Mass Influxes of Refugees;
- The Cessation of Refugee Status;
- Cooperation with UNHCR and other international agencies.

Explore the Possibility of Temporary Asylum. SAHRDC recognises that certain cultural and linguistic affinities may make permanent integration in India more feasible for certain refugee groups rather than others. While Afghan or Burmese refugees can develop certain cultural, linguistic, or religious links to segments of India's multi-cultural population, other refugee groups (Somalis, Iraqis, Sudanese, etc.) would have much greater difficulty in this regard. Therefore, the Indian Government should explore the possibility of granting temporary asylum to these refugees whose integration would be more difficult. This temporary asylum would be subject to periodic review, perhaps every 5 or 10 years. Such a mechanism would discourage economic migrants from claiming refugee status, knowing that their prospects for permanent settlement in India would not be ensured. This idea is in need of much greater development and debate before it can be implemented, but what is clear is that any asylum review process must be subject to scrutiny by the judiciary, NHRC, and civil society and safeguards must be built in to ensure that refugees are not sent to areas where they could face persecution.

III: To the International Community:

Pressure the Indian Government to Respect and Safeguard the Rights of Refugees. Like UNHCR, the international community must exert pressure on the Indian Government to respect and safeguard the rights of refugees. The immediate task is to urge the Indian Government to grant a status to

refugees that protect them from arbitrary expulsion, either to their country of origin or anywhere else. It is equally important that states urge the Indian Government to grant refugees work permits so that they can pursue gainful employment.

In addition, it is imperative that states encourage the Indian Government to create a just, transparent, and effective legal régime and policy mechanism for dealing with refugees. They should also lend any expertise or resources necessary to assist the Indian Government in this task.

States should also recognise that both third country resettlement applications and irregular refugee movements from South Asia derive in large part from poor living conditions and protection problems in asylum countries such as India. Substantive improvements in the lifestyles and protection situations of refugees will reduce the number of third country resettlement applications, as well as help regulate the movement of refugees.

Accept More Refugees for Resettlement. Due to the immediate danger of Afghan refugees being expelled from India and the long-term difficulties of establishing self-sufficiency in India, governments should give sympathetic consideration to accepting more refugees for resettlement from India. In addition, while SAHRDC appreciates the efforts of governments to target certain vulnerable refugee groups for resettlement (female heads of household, the elderly, etc.), it urges governments to consider refugees and refugee families that do not necessarily fall into special categories. SAHRDC also hopes that states place less emphasis on the presence of a relative or sponsor abroad in considering cases for resettlement.

Integrate Refugee Protection into Existing International Human Rights Mechanisms. Refugee protection has traditionally existed outside the purview of typical human rights mechanisms, partially because of the existence of a UN specialised agency, namely UNHCR, exclusively dedicated to refugee protection and assistance. It is obvious, however, that UNHCR is neglecting its protection mandate and has instead focused on providing humanitarian relief and assistance. Thus, existing international human rights instruments, such as the United Nations Human Rights Commission and the

Office of the United Nations High Commissioner for Human Rights, should instead be responsible for protection of refugees' rights.

As they are stateless persons, refugees lack any voice in an international system dominated by nation-states; thus, they have no platform from which they can interact with UNHCR in an organised and forceful manner. The integration of refugee protection into existing international human rights mechanisms would serve the dual purpose of legitimising international scrutiny of states' actions towards refugees, as well as acting as a mechanism of transparency and accountability vis-à-vis UNHCR. While it may not give refugees a voice in the international arena, it may at least serve as a more sympathetic listener.

There is ample legal precedent for such action. The Universal Declaration of Human Rights, the Convention on Elimination of all forms of Discrimination Against Women, the Convention on the Rights of the Child, and the Convention Against Torture contain provisions which can be applied to protect refugees from persecution in asylum countries, as well as expulsion, *refoulement*, and failures of UNHCR to carry out its own mandate.

Conclusion

SAHRDC is aware that UNHCR may consider the urban refugee population in Delhi to be well off, relative to refugees in camps in other parts of the world. Overcrowded, dirty, and cramped urban conditions are not necessarily any better than rural camps, however, and in many cases the quality of life in Delhi is worse. As this and previous investigations reveal, the standard of living for refugees in Delhi leaves much to be desired.

It is clear that in the case of the Afghan refugees in New Delhi, UNHCR has failed in its primary tasks, namely the protection of refugees' rights and the search for "durable solutions." Instead, it has used euphemisms such as "recategorisation" and "reorientation" to mask a systematic policy of terminating assistance to refugees and leaving them to fend for themselves in a country where they are unable to pursue any gainful employment. Furthermore, it has done

little to shield the refugees from abuses by the Indian Government and by society at large in an atmosphere of intense anti-Afghan sentiment. It is no surprise that many Afghan refugees long ago lost any faith they had in UNHCR.

The persistence of these problems and the fact that they have been repeatedly brought to the attention of UNHCR clearly demonstrate the agency's intransigence. Not only has UNHCR failed the Afghan refugees in New Delhi, it has shown little interest in ameliorating the situation over the past five years. SAHRDC firmly believes that it is therefore necessary to create permanent and effective accountability mechanisms to safeguard the dignity and rights of refugees against violations by both the Indian Government and UNHCR. It is a sad fact that the very agency originally established to protect and aid refugees can no longer be fully trusted to carry out its task.

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Notes & References:

- ¹ The full report was published on 16 November 1999.
- ² The figure of 16,000 recognised refugees does not include dependants.
- ³ SAHRDC, *The Status of Refugees Under the Protection of the UNHCR in New Delhi*, 1 May 1995, p. 5
- ⁴ UN General Assembly, Executive Committee of the High Commissioner's Programme, 46th Session, A/AC.96/846/Part II/9, 14 August 1995
- ⁵ SAHRDC, *The Status of Refugees Under the Protection of the UNHCR in New Delhi*, 1 May 1995, p. 6
- ⁶ UNHCR, *1998 Global Appeal Programme Overview*, p. 13
- ⁷ UN General Assembly Resolution 428 (V), The Statute of the UNHCR, 14 December 1950, Chapter 1, Article 1 and Chapter 2, Article 8
- ⁸ Merrill, Christopher. *The Old Bridge: The Third Balkan War and the Age of the Refugee*. Minneapolis, MN: Milkweed Editions, 1995, p. 8
- ⁹ UNHCR, *1998 Global Appeal Programme Overview*, p. 14
- ¹⁰ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, Article 14(1)
- ¹¹ *Ibid*, Article 13(1)
- ¹² *Ibid*, Article 15(1)
- ¹³ UN General Assembly Resolution 428 (V), The Statute of the UNHCR, 14 December 1950, Chapter 1, Article 1
- ¹⁴ *Ibid*, Chapter II, Article 7
- ¹⁵ Article 1, Paragraph 2, Section A.
- ¹⁶ Article I(1) and I(2)
- ¹⁷ Khan, Sadruddin Aga, "Lectures On Legal Problems Relating to Refugees and Displaced Persons," Hague Academy of International Law, 1976
- ¹⁸ *Ibid*.
- ¹⁹ The Convention was adopted by the Assembly of Heads of State and Government at its Sixth Ordinary Session, Addis Ababa, 10 September 1969.
- ²⁰ OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa, 1969, Article 1
- ²¹ Cartagena Declaration on Refugees, 1984, Conclusion 3
- ²² "No decision on Afghans yet," *Telegraph*, Calcutta, 27 October 1994
- ²³ Affidavit 48
- ²⁴ UNHCR, *Background Note on Protection in South Asia*

²⁵ For details see SAHRDC, *No Secure Refuge*, 7413/1/94 dated 14 February 1994 and an update, *The Jumma Refugees*, 7413/2/94 dated 1 June 1994.

²⁶ See SAHRDC, *Note on conditions of Sri Lankan Tamil refugees in camps in the Indian state of Tamil Nadu*, 1996.

²⁷ Asia Watch, *Halt Repatriation of the Sri Lankan Tamils*, New York, Volume 5, No. 11, August 1993.

²⁸ Ibid.

²⁹ For more details, please see the section on Recent Developments in Indian Residence Permit Policy Towards Afghan Refugees.

³⁰ “Afghans find no refuge in India,” *Times of India*, 20 July 1999

³¹ See, e.g., “Look behind Kargil to Taliban and Bin Laden,” *Times of India*, 9 July 1999 and “Real and Potential Foes,” *Hindustan Times*, 5 July 1999.

³² Affidavit 28

³³ Affidavit 57

³⁴ Affidavit 2

³⁵ Affidavit 51

³⁶ Affidavit 16

³⁷ UNHCR letter reference: HCR/LG/AF016313 (8.4.99)

³⁸ Affidavit 1

³⁹ UN General Assembly, Executive Committee of the High Commissioner’s Programme, 46th Session, A/AC.96/846/Part II/9, 14 August 1995

⁴⁰ UN General Assembly, Executive Committee of the High Commissioner’s Programme, 46th Session, A/AC.96/846/Part II/9, 14 August 1995

⁴¹ National Council of YMCAs of India, “Refugee Assistance Programme,” *News & Views*, Vol. IV, p. 4

⁴² UNHCR, *UNHCR Information for Refugees*, New Delhi, December 1998, p. 6

⁴³ UNHCR, *The State of the World’s Refugees: A Humanitarian Agenda*, 1997. See especially:

http://www.unhcr.ch/refworld/pub/state/97/box2_1.htm

⁴⁴ Ibid.

⁴⁵ During the summer of 1999, when the bulk of the research for this report was conducted, the approximate exchange rate was \$US 1=Rs. 42.

⁴⁶ SAHRDC interview with VHAD medical social worker, 9 July 1999

⁴⁷ UNHCR, *UNHCR Information for Refugees*, New Delhi, December 1998, p. 8

⁴⁸ Afghan protesters who met with UNHCR Chief of Mission Augustine Mahiga on 29 July 1999 alleged that Mr Mahiga told

them that UNHCR knew of at least two cases in which the Indian Government had deported refugees to Afghanistan against their will.

⁴⁹ UNHCR, *A Framework for People-Oriented Planning in Refugee Situations Taking Account of Women, Men and Children*, Geneva, December 1992, p. 4

⁵⁰ UNHCR, *Sourcebook for Refugee Skills Training: Towards Improving the Design of Skills Training Projects*, Geneva, May 1996, Section 2.4.3, p. 50