

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

Writ Petition (Civil) No.793 of 2017

IN THE MATTER OF:

MOHAMMAD SALIMULLAH & Anr PETITIONERS

VERSUS

UNION OF INDIA & Ors RESPONDENTS

PAPER-BOOK

(FOR INDEX, PLEASE SEE INSIDE)

**REJOINDER AFFIDAVIT ON BEHALF OF THE PETITIONER
TO THE COUNTER AFFIDAVIT FILED BY RESPONDENT NO.
1/UNION OF INDIA**

COUNSEL FOR THE PETITIONER: PRASHANT BHUSHAN

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**REJOINDER AFFIDAVIT ON BEHALF OF THE PETITIONER TO THE
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INDIA**

I, Mohammad Salimullah, S/o Amanullah, R/o Anagaung, Buthidaung, Rakhine, Myanmar, (presently residing at, Plot No. G-15, Gali no. 2, Kanchan Kunj, near Kalandikunj, Madnapur Khadar, Delhi - 110025), do hereby solemnly affirm and state on oath as under:

1. That I am the Petitioner No. 1 in the aforementioned writ petition and being familiar with the facts and circumstances of the case, I am competent and authorized to swear this Affidavit. I have also been authorised to file this affidavit on behalf of Petitioner No. 2.

Preliminary submissions on behalf of the Petitioner

2. That the Petitioner is filing the rejoinder affidavit to the counter affidavit filed by Respondent No. 1 (Union of India), wherein it has been expressly stated that the respondent has gone through, perused and understood the relevant records and material with respect to the subject matter of the petition, which includes not only the Writ Petition dated 29th August 2017 but also the additional affidavit on behalf of the Petitioner No.1 dated 8th September 2017. It may be stated that none of the paragraphs in the petitioners writ petition or in the additional affidavit have been specifically dealt with because of the following stated in the affidavit on behalf of Respondent no. 1 viz.

"2. ...I am filing this Affidavit in reply only for the limited purpose of satisfying the conscience of this Hon'ble Court that this is not a case where the constitutional court of the country which is essentially the custodiān of Fundamental Rights of Indian citizens may consider intervening. I am therefore, placing only limited facts before this Hon'ble Court by way of the present Affidavit. I, however, reserve my rights to file a further and a detailed Affidavit on behalf of the Central Government as and when so required/advised. At this stage, therefore, I am not dealing with the petition parawise. My not dealing with the petition parawise may not be treated as my having admitted the correctness or otherwise of any of the contents thereof."

3. The Petitioner is giving a para-wise reply whereby all the averments mentioned in the said counter are deemed to be denied unless specifically admitted.

4. The petitioner humbly submits that there are a number of Rohingya Muslims (as they have been called) – like the Petitioners – who are peace-loving having no connection whatever with any criminal activity – much less “terrorist” activity – who only because of the Minister of State’s totally arbitrary and discriminatory circular dated 8th August, 2017 addressed to all States (Annexure P 13 at page 109 of the Petitioners additional affidavit) are in grave danger and in jeopardy of their life and liberty; “life” because if summarily deported to Myanmar they will be subjected to torture and even death. The Petitioners will rely on a statement very recently made by the Chief Minister of the PDP-BJP Government of Jammu & Kashmir in answer to a question about Rohingya Muslims in that State in and J & K State Assembly which ~~believes what has been stated in the counter-affidavit filed on behalf of the~~ Union of India in these proceedings.

5. Unlike the people of India who have been treating the Rohingya Muslim community and its members with compassion and consideration, (wherever they are in India), the Burmese Army (all Buddhist) have been totally inimical to the Rohingya Muslims having a long history of killing and torturing the members of the Rohingya Muslim community and of setting aflame their homes in the towns and villages in the Rakhine State in Myanmar.

6. As already stated in the petitioners supplementary affidavit dated 8th September 2017, that on 8th August 2017, the Government of India by Notification in the Gazette dated 07.09.2015 passed the following order:

“G.S.R. 685(E) – In exercise of the powers conferred by Section 3 of the Passport (Entry into India) Act, 1920 (34 of 1920), the Central Government hereby makes the following rules further to amend the Passport (Entry into India) Rules, 1950, namely:-

1. (1) These rules may be called the Passport (Entry into India) Amendment Rules, 2015.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Passport (Entry into India) Rules, 1950, in Rule 4, in Sub-Rule (I), after Clause (h), the following clause shall be inserted, namely:-

“(ha) persons belonging to minority communities in Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered into India on or before the 31st December, 2014 –

(i) without valid documents including passport or other travel documents; or

(ii) with valid documents including passport or other travel document and the validity of any of such documents has expired

Provided that provision of this clause shall take effect from the date of publication of this notification in the Official Gazette.”

(F. No. 25022/50/2015-F.1)

G.K. Dwivedi, Jt. Secy.

On the same day in exercise of powers under Section 3 of the Foreigner's Act, the Foreigner's order of 1948 was amended to provide for certain exemptions of certain class of foreigners. The said Notification is set out below:

“Order

New Delhi, the 7th September, 2015

G.S.R. 686 (E) - In exercise of the powers conferred by Section 3 of the Foreigners Act, 1946 (31 of 1946), the Central Government hereby makes the following order further to amend the Foreigners Order, 1948, namely:

1. (1) *THIS Order may be called the Foreigners (Amendment) Order, 2015.*

(2) *It shall come into force on the date of its publication in the Official Gazette.*

2. *In the Foreigners Order, 1948, after paragraph 3, the following paragraph shall be inserted, namely:*

*“3A. **Exemption of certain class of foreigners** - (1) Persons belonging to minority communities in Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered into India on or before the 31st December, 2014 -*

(a) *without valid documents including passport or other travel documents and who have been exempted under Rule 4 from the provisions of rule 3 of the Passport (Entry into India) Rules, 1950, made under Section 3 of the Passport (Entry into India) Act, 1920 (34 of 1920); or*

(b) *with valid documents including passport or other travel document and the validity of any of such documents has expired,*
are hereby granted exemption from the application of provisions of the Foreigners Act, 1946 and the orders made there under in respect of their stay in India without such documents or after the expiry of those documents, as the case may be, from the date of publication of this Order in the Official Gazette."

(F No. 25022/50/2015- F-1)

G.K. Dwivedi, Jt. Secy."

7. The petitioners herein have also been compelled to seek shelter in India due to religious persecution and as a matter of fact the petitioners had entered into India in 2012 (Petitioner 1) and 2011 (Petitioner 2) respectively.

8. The governments 2015 notification quoted above is conspicuous by the absence of Muslims in the list of those being granted exemption. To exclude Muslim refugees, from the Rohingya Community in Myanmar that fled persecution, from the class of foreigners who are granted exemption from the application of provisions of the Foreigners Act, 1946 and the Passport (Entry into India Rules), 1950, is clearly discriminatory. Article 14, unlike Article 19, is not confined only to citizens ("any person"). It is submitted that, the non-inclusion of Muslims in the exemption under the 2015 notification and order quoted above, would exclude the Rohingya refugees from the benefit of the provision and is hence discriminatory.

9. There have been periodic attacks and State orchestrated violence on the Rohingyas in Myanmar, mainly Muslims, but not restricted to the Muslim Rohingyas. Several Hindus who left due to this ethnic persecutions are also part of the ethnic Rohingya population that has fled Myanmar. A copy of the India Today story on Hindu Rohingya fleeing

Myanmar into Bangladesh, dated 4th September 2017, is annexed as **Annexure A** (Page 37 to)

10. On 4th May 2016, a Ministry of External Affairs statement with the remarks by Secretary (West) at the Symposium on World Humanitarian Summit, commented on the narrowing down of the distinction between refugees and migrants. It was stated as follows:

“As per the 1951 Refugee Convention and Protocol, Refugees are those who move out of their countries of origin because of threat to their lives and are in need of protection. Migration, on the other hand, is a voluntary process by which an individual chooses to move out of the country seeking employment opportunities, subject to the receiving relevant travel documents from the destination country. As a result, the destination country has the right to admit or deny entry of such migrants. Moreover, international migration should be seen in the context of demand and supply of workforce. Hence, the emphasis in such cases should be on the developmental dimension of migration.

The blurring of the distinction between migrants and refugees is therefore a worrisome trend.”

A copy of the remarks by Secretary (West) at Symposium on World Humanitarian Summit on 4th May 2016, is annexed as **Annexure B** (Page 38 to 42)

11. It is submitted that, on September 19, 2016, India participated in the high level plenary discussions that led to the adoption of the “New York Declaration for Refugees and Migrants” by the U.N. General Assembly. The New York Declaration reaffirms the importance of the international refugee regime and represents a commitment by Member States to strengthen and enhance mechanisms to protect people on the move. It is noteworthy that all the Member States reached agreement by consensus on the Declaration that ~~strived to address a solution~~ for large movements

of refugees and migrants in the recent times. The States endorsed various commitments towards the refugees and migrants by way of this Declaration, that *inter alia* includes following due process in assessment of their legal status; compliance with the Convention on the Rights of the Child to protect the human rights of *all* refugee and migrant children; and combating xenophobia and stereotypes applied on basis of religion. It is thus, humbly submitted that India's participation in this Declaration contradicts the government's current stand on extending protection to persecuted communities. Relevant portions from the Declaration are quoted below:

"We the head of States and governments and high representatives meeting at the United Nations' Headquarters at New York on 19th September, 2016, to address the question of large movements of refugees and migrants have adopted the following political declaration: paragraph 67 it was reaffirmed as follows:

"67. We reaffirm respect for the institution of asylum and the right to seek asylum. We reaffirm also respect for and adherence to the fundamental principle of non-refoulement in accordance with international refugee law.

68. We underline the centrality of international cooperation to the refugee protection regime. We recognize the burdens that large movements of refugees place on national resources, especially in the case of developing countries. To address the needs of refugees and receiving States, we commit to a more equitable sharing of the burden and responsibility for hosting and supporting the world's refugees, while taking account of existing contributions and the differing capacities and resources among States.

69. We believe that a comprehensive refugee response should be developed and initiated by the Office of the

United Nations High Commissioner for Refugees, in close coordination with relevant States, including host countries, and involving other relevant United Nations entities, for each situation involving large movements of refugees. This should involve a multi-stakeholder approach that includes national and local authorities, international organizations, international financial institutions, civil society partners (including faith-based organizations, diaspora organizations and academia), the private sector, the media and refugees themselves. A comprehensive framework of this kind is annexed to the present declaration.

70. We will ensure that refugee admission policies or arrangements are in line with our obligations under international law. We wish to see administrative barriers eased, with a view to accelerating refugee admission procedures to the extent possible. We will, where appropriate, assist States to conduct early and effective registration and documentation of refugees. We will also promote access for children to child-appropriate procedures. At the same time, we recognize that the ability of refugees to lodge asylum claims in the country of their choice may be regulated, subject to the safeguard that they will have access to, and enjoyment of, protection elsewhere.”

A copy of the General Assembly Resolution dated 3rd October 2016 is annexed as **Annexure C** (Page 43 to 66)

12. Contrary to Respondent No. 1s stand that India is not bound by the principle of non-refoulement, India has demonstrated and reiterated its commitment to refugees/ asylum seekers and the principle of *non-refoulement* in various international fora. In a recent 1st Thematic Discussion towards a Global Compact on Refugees in Geneva on 10 July

2017, statement by Mr. Anil Kumar Rai, Counsellor Humanitarian Affairs), solemnly stated:

"we support the concept of Burden Sharing, including relocation of refugees on case to case basis, that too with the consent of the refugees. While doing so, we need to be cautious not to open the path for re-defining the Refugee Convention and its protocol, and in no case diluting the principle of 'non-refoulment'. Finally, we may like to point out towards growing trend of increasing the qualification bar for granting of refugee status by adopting of opaque mechanisms. This has led to disqualification of large number of applicants, making them irregular and unknowingly pushing them to greater degree of vulnerability. This approach needs a serious introspection."

A copy of the Statement by Mr. Anil Kumar Rai, Counsellor Humanitarian Affairs) on 1st Thematic Discussion towards a Global Compact on Refugees delivered on 10 July 2017 is annexed as **Annexure D** (Page 67 to —)

13. The International community and the United Nations have strongly condemned the violence against the Rohingya in Myanmar. Some important recent statements on the intensity of the violence are given below.

14. On September 11, 2017, the High Commissioner of the office of United Nations High Commissioner for Human Rights, Zeid Ra'ad al-Husseini, talking about the treatment of the Rohingya in Myanmar, stated the following, as communicated by the UN News Center stated that *"The situation seems a textbook example of ethnic cleansing,"*

(A copy of the aforesaid newsreport by the UN News Center dated September 11, 2017 is annexed herewith as **Annexure E** (Page 68 to 69)

15. The UN Secretary General, Antonio Guterres, made a statement on the Rakhine violence on September 1, 2017 in which he stated that:

“The Secretary-General is deeply concerned by the reports of excesses during the security operations conducted by Myanmar's security forces in Rakhine State and urges restraint and calm to avoid a humanitarian catastrophe.. The Secretary-General appreciates the efforts of the Bangladesh authorities and communities to meet the dire needs of recent arrivals. He encourages the Government to ensure refugees are able to avail themselves of the support the United Nations and partners are mobilised to provide.”

(A copy of the aforesaid statement by UN Secretary General, Antonio Guterres dated September 1, 2017 is annexed herewith as **Annexure F** (Page 70 to -)

16. The UNICEF Executive Director, Anthony Lake issued a statement on children affected by the violence in Rakhine on September 5, 2017 in which he stated that:

“More than 125,000 Rohingya refugees have fled across the border from Rakhine State, Myanmar, into Bangladesh since 25 August, as many as 80 per cent of them are women and children. Many more children in need of support and protection remain in the areas of northern Rakhine State that have been wracked by violence.”

(A copy of the aforesaid statement by the UNICEF Executive Director, Anthony Lake dated September 5, 2017 is annexed herewith as **Annexure G** (Page 71 to 72)

17. The 15-member United Nations Security Council unanimously issued a statement about violence in Myanmar's Rakhine state, on September 14, 2017, whereby the Council:

“[E]xpressed concern about reports of excessive violence during the security operations and called for immediate steps to end the violence in Rakhine, de-escalate the situation, re-establish law and order, ensure the protection of civilians.”

(A copy of the aforesaid statement communicated by the UN Security Council dated September 14, 2017 is annexed herewith as **Annexure H** (Page 73 to -)

18. On September 8, 2017, the Human Rights Watch talking about the escalating mass atrocities being committed against the Rohingyas in Myanmar, stated that:

“Ethnic Rohingya Muslims fleeing Burmese security forces in Burma’s Rakhine State have described killings, shelling, and arson in their villages that have all the hallmarks of a campaign of “ethnic cleansing.”

(A copy of the aforesaid statement issued by Human Rights Watch, dated September 8, 2017, is annexed herewith **Annexure I** (Page 74 to 85)

19. On August 31, 2017, the UN Special Rapporteur on the human rights situation in Myanmar, Yanghee Lee, expressing alarm at the deteriorating situation in Rakhine and the poignant suffering of the Rohingyas, stated that:

“The humanitarian situation is deteriorating rapidly and I am concerned that many thousands of people are increasingly at risk of grave violations of their human rights. I am concerned that these events will derail efforts to address the root causes of the systematic discrimination and recurrent violence in Rakhine State...I am saddened to receive reports that, while the authorities are helping Rakhine and other communities living in affected townships evacuate to safer locations, this assistance is not being extended to the Rohingya Muslims”

A copy of the aforesaid statement issued by the UN Special Rapporteur on human rights situation in Myanmar, Yangh Lee, dated 31st August 2017, is annexed herewith as **Annexure J** (Page 86 to 87)

20. Thus the Rohingya Community have come to India are refugees and have fled Myanmar because of severe repression and genocide. Even

their houses have been burnt and therefore they are not mere illegal migrants. They are thus entitled to protection under various international Conventions which India has signed and ratified which mention the principle of non-refoulement and also various resolutions of the UN General Assembly, Statements of the Indian Government at the UN as well as the Notifications issued by the Government of India which are consistent with the principles which incorporate the principle of non-refoulement even though India has not signed the Refugee Convention of 1951. In view of this their proposed deportation to Myanmar, as threatened in the Home Minister's circular dated 8th August, 2017, addressed to all State Governments would violate fundamental rights of these refugees under Article 14 and 21 of the Constitution of India as well as international law which according to several judgements of this Hon'ble Court are to be read into domestic law.

21. India's apex human rights body, the National Human Rights Commission (NHRC), issued notice to the Ministry of Home Affairs on 18th August 2017, taking suo motu cognizance of media reports regarding plans of the government of India to deport about 40000 Rohingya refugees who are residing in different parts of India. The NHRC has issued a recent statement while speaking to the Times of India, that it will intervene in the matter on human grounds and oppose the governments deportation plan for Rohingyas, since it will be a grave violation of human rights if they are deported to Myanmar. A copy of the Times of India report dated 16th September, 2017 "NHRC to oppose governments deportation plan for Rohingyas" is annexed **Annexure K** (Page 88 to —)

Para-wise reply

22. The contents of Para 1 of the Respondents affidavit is a matter of record and needs no reply.

23. i) Para 2 of the Respondents affidavit is denied by the petitioner in as much as it is respectfully submitted that this Hon'ble court is the final arbiter of disputes and custodian of fundamental rights guaranteed

under the Constitution of India. Respondent no. 1 claims that the subject matter of the present petition and the prayers prayed for therein would fall within the exclusive domain of executive decision making and will not be justiciable. However it submitted by the petitioner herein, that it is settled law that the Apex Court is the guardian of fundamental rights of all persons, citizens and non citizens alike and article 14 and 21 apply to all persons including non citizens.

ii) In *National Human Rights Commission v State of Arunachal Pradesh* (1996) 1 SCC 742, the Hon'ble Court reiterated the fundamental right under Articles 21 was available to all persons, not just citizens and directed the State government to provide adequate protection to the Chakma refugees who had migrated from East Pakistan. The Court held:

"20. We are a country governed by the Rule of Law. Our Constitution confers contains rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus the State is bound to protect the life and liberty of every human-being, be he a citizen or otherwise, and it cannot permit any body or group of persons, e.g., the AAPSU, to threaten the Chakmas to leave the State, failing which they would be forced to do so. No State Government worth the name can tolerate such threats by one group of persons to another group of persons; it is duty bound to protect the threatened group from such assaults and if it fails to do so, it will fail to perform its Constitutional as well as statutory obligations. Those giving such threats would be liable to be dealt with in accordance with law. The State Government must act impartially and carry out its legal obligations to safeguard the life, health and well-being of Chakmas residing in the State without being inhibited by local politics"

iii) As a custodian of fundamental rights to citizens and non citizens (under Articles 14 and 21), this Hon'ble Court may consider any challenge to executive policy making, towards a full realisation of these Constitutional guarantees.

24. In Para 3 of the Respondents affidavit it is claimed that government seeks to place facts including inputs from security agencies concerning national security, in a sealed cover, to satisfy the court that such matters be left to executive decision making. The petitioners claim that the Government information of such nature which may have a bearing on national security, if it deals with specific allegations against individual members of the Rohingya community in India, needs to be dealt with on a case basis. Apart from the fact that there is no complaint against the Petitioners of any illegal activity, according to our information, there is not a single FIR registered against the members of the Rohingya community so far, in any matter that would jeopardise national security. If there is some credible evidence or information that any members of the Rohingya community/refugees are involved in any activity that would harm national security interests of India, those individuals may either be dealt with in accordance with Indian law or they can be refused refugee status under the exclusion clause of the 1951 Refugee Convention.

25. Para 4 of the Respondents affidavit needs no reply.

26. Para 5 of the Respondents affidavit posing question whether a writ can be issued under Article 32 by this Hon'ble court having the effect of an illegal immigrant residing in India, is a misconceived understanding of the rights under Articles 14 and 21 of the Constitution of India, which are claimed by the petitioners in the present petition. The petitioner are not claiming the rights of an illegal immigrant to reside in India but the Article 14 and 21 rights guaranteed to all persons, including refugees such as the petitioners.

27. i) Para 6 of the Respondents affidavit is denied by the petitioners. The Constitution of India guarantees certain fundamental rights to citizens

and non citizens alike. In the present case, the Constitutional guarantee under Article 14 (Right to equality) and Article 21 (Right to life and personal liberty) are available to the petitioners who face an imminent threat of being deported out of India to their home country where members of their ethnic community are being persecuted and killed. This would be a complete violation of their rights to life and personal liberty and their right to live a life with human dignity. The Supreme Court has taken recourse to Article 21 of the Constitution in the absence of legislation to regulate and justify the stay of refugees in India. These rights have been guaranteed to the petitioner refugee and upheld by various decisions of this Hon'ble Court where the Court has held that the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise. In keeping with the Hon'ble Courts decisions, the petitioner has claimed the fundamental right to life and liberty and challenged Respondent No. 1 order dated 8th August 2017, to deport the petitioner, as an outright violation of this right to the petitioner refugee.

ii) Respondent no. 1 has claimed that the fundamental rights enjoyed by the refugees in India do not include the right to reside within the territory of India as under Article 19 of the Constitution. Admittedly, the right to reside under Article 19 extends to only the citizens of the country, however, the petitioners in the present matter are not inviting the Government's order of deportation of Rohingya refugees to be tested against Article 19 of the Constitution, but the challenge is limited to the non-compliance of the mandate under Article 14 and 21 as well as the requirements of international law and treaties which India has signed and which according to various judgements of this court, must be read into domestic law.

iii) It is submitted that the Petitioners in the present case are not indirectly claiming the right to reside or settle in any part of India or move freely throughout the territory of India by seeking to be protected against forcible return to their country of origin where they would face persecution. It is pertinent to note that the prayer to not be deported has not been equated to the claim to right under Article 19 of the Constitution.

iv) The right against forcible return in fact has been upheld by the Courts in the past as a part of Article 14 and 21 of the Constitution. The relevant case law is quoted below:

Dongh Lian Kham v Union of India 226 (2016) DLT 208

Burmese refugees, made a prayer to not be deported before the Delhi Court. The Court upheld the principle of *non-refoulement* as part of Article 21 and stayed his deportation. The Government was directed to assess on facts whether there was any actual threat posed due to the petitioner's presence. The court stated:

"32. Since the petitioners apprehend danger to their lives on return to their country, which fact finds support from the mere grant of refugee status to the petitioners by the UNHCR, it would only be in keeping with the golden traditions of this country in respecting international comity and according good treatment to refugees that the respondent FRRO hears the petitioners and consults UNHCR regarding the option of deportation to a third country, and then decide regarding the deportation of the petitioners and seek approval thereafter, of the MHA (Foreigners Division)."

In Ktaer Abbas Habib Al Qutaifi and Anr. vs. Union of India (UOI) and Ors. 1999 CriLJ 919:

In this case, two Iraqi refugees in India, recognized by UNHCR, sought for a direction not to be deported to Iraq. The Court upholding principle of *non-refoulement*, noted that the petitioners cannot be sent back to their native country without their consent as they may be harmed there. The government was directed to revisit its decision to deport.

"1. By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioners (1) Mr. Ktaer Abbas Habib Al Qutaifi and (2) Taer Al Mansoori, aged 16 and 17 years respectively (herein after referred to as 'the refugees') of Iraq Origin, seeks direction to release them from detention at the Joint Interrogation Centre, Bhuj, Dist. Kutch, State of Gujarat and instead of deporting them to Iraq, they may be

handed over to United Nations, High Commissioner for Refugees known as UNHCR on the basis of principle of 'non-refoulement'.

10. Constitution guarantees certain fundamental human rights to citizens as well as non-citizens. The preamble of the Constitution which declares the general purpose for which the several provisions of the Constitution have been made to, "assure the dignity of the individual "which is also the basic objective of the international humanitarian law. The Article 21 of the Constitution of India guarantees the right of life and the personal liberty. A person cannot be deprived of right of life and liberty, except according to the procedure established by law.

20. Thus, in absence of relevant material and consideration by the concerned authorities, the only direction which can be given in the present case is to ask the said authorities to consider the petitioners' case in right perspective from the humanitarian point of view.

21. Consequently, this Special Civil Application is allowed and the respondents are directed to consider the petitioner's prayer in accordance with law, keeping in view law laid down in this judgement and take a decision by 31st December 1998. Petitioners shall not be deported from India till then. If the decision is taken against the petitioners, they will not be deported for a further period of 15 days from the date of communication of such decision."

v) It is reiterated that the petitioner has not claimed any rights under article 19 (1) (d) and (e) as averred by Respondent no. 1 in its counter affidavit. Further the scheme of the Constitution does not differentiate between citizens and non citizens in conferring rights under Article 21. It cannot be claimed thus that these right are first reserved for citizens and may be exercised to the deprivation of non citizens. These rights are guaranteed under the Constitutional scheme to citizens and non citizens alike, to all "persons", without an order of preference in access to these rights. Thus under Article 21 of the Indian Constitution, State action

against a refugee's life and personal liberty without a procedure established by law, would fall foul and can be restrained. Such action would certainly include the refoulement of refugees such as the petitioners.

28. Para 7 of the Respondents affidavit states that it is imperative for the State to follow the Directive Principles of State Policy while discharging its executive functions of governance, has no bearing on the claims of the petitioners with regards to their rights as refugees.

29. Para 8 of the respondents affidavit is denied in as much as fundamental rights under articles 14 and 21 are available to all persons and not just citizens. This has also been dealt with by the petitioner in para 24(v) of the present rejoinder.

30. Para 9 of the Respondents affidavit is denied in as much as the scheme of the Constitution with regard to the guarantee of fundamental rights to refugees under articles 21, make these rights available to all persons, citizens and non citizens alike. The diversion of national resources towards the realisation of these rights of refugees, would not be a reason to deny them such rights under the Constitution. This has been reiterated by the Supreme Court in various judgements stated above.

31. Para 10 of the Respondents affidavit is denied. The petitioners have responded to this in para 20 of the present rejoinder.

32. Para 11 of the Respondents affidavit is denied since it refers to the an incorrect understanding of the Constitutional scheme as referred to by the respondent in Para 9 and 10 of their affidavit.

33. i) Para 12 and 13 of the respondents affidavit are denied and since they are raising a related concern are being dealt with together in this para. Respondent No. 1 has argued that India is not bound by the Convention relating to status of Refugees, 1951 and Protocol Relating to the Status of Refugees, 1967, since India is not a signatory to either of

them. It is humbly submitted that even though India is not a signatory to 1951 Conventions and its protocols, it has been a member of several international instruments / declarations which provide for right to asylum and against forcible repatriation. As a party to these treaties India is under a legal obligation to protect the human rights of refugees by taking appropriate measures under Article 51(c) which mandates India to foster respect for International treaties and obligations. In keeping with this, India is bound to recognise under the same international laws that it is under the obligation to uphold the principle of non-refoulement which is now an established principle of customary international law based on a consistent practice combined with a recognition on the part of States that the principle has a normative character. This conclusion is supported by the fact that the principle has been incorporated in international treaties adopted at the universal and regional levels to which a very large number of States have now become parties. India is a member of the Executive Committee of the office of United Nations High Commissioner for Refugees since 1995 which puts a moral, if not legal obligation, on it to build a constructive partnership with UNHCR by following the provisions of the 1951 Refugee Convention. A copy of the official document indicating India's membership of the Executive Committee of the office of UNHCR in 1995 is annexed as **Annexure L (Page 89 to -)**

ii) The Hon'ble Supreme Court has in many cases directed that action of the States must be in conformity with international law and conventions.

iii) In *Gramophone Company Of India Ltd vs Birendra Bahadur Pandey & Ors*, (1984 SCC (2) 534), the Apex Court had held that the comity of Nations requires that Rules of International law may be accommodated in the Municipal Law even without express legislative sanction provided they do not run into conflict with Acts of Parliament. It is respectfully submitted that as per the doctrine of incorporation laid down in the mentioned case, the principle of non-refoulement, a recognized principle of international law, must be incorporated in the law of land since there is no municipal law in India which is in conflict with such principle. Inasmuch even without any express legislative sanction, such principle

of non-refoulment shall be applicable to India with reference to the Rohingya refugees. The relevant paragraph of the judgement is produced below for perusal.

'5. There can be no question that nations must march with the international community and the Municipal law must respect rules of International law even as nations respect international opinion. The comity of Nations requires that Rules of International law may be accommodated in the Municipal Law even without express legislative sanction provided they do not run into conflict with Acts of Parliament...The doctrine of incorporation also recognises the position that the rules of international law are incorporated into national law and considered to be part of the national law, unless they are in conflict with Act of Parliament.'

iv) In *Vishaka & Ors vs State Of Rajasthan (1997) 6 SCC 241*, the Apex Court has held that international conventions and norms can be used for construing the fundamental rights expressly guaranteed in the Constitution of India. The relevant paragraphs of the judgement are produced below for perusal.

'6. Before we refer to the international conventions and norms having relevance in this field and the manner in which they assume significance in application and judicial interpretation, we may advert to some other provisions in the Constitution which permit such use. These provisions are:

Article 51 :

"51. Promotion of international peace and security - The State shall endeavour to -

(c) foster respect for international law and treaty obligations in the dealings of organised people with one another;

Article 253 :

"253. Legislation for giving effect to international agreements - Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has

power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."

Seventh Schedule :

"List I - Union List:

14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.

7. In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51(c) and enabling power of the Parliament to enact laws for implementing the International Conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution.

14. The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to compass all the facets of gender equality including prevention of sexual harassment or abuse. Independence of Judiciary forms a part of our constitutional scheme. The international conventions and norms are to be read into them in the absence of enacted

domestic law occupying the fields when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law. The High Court of Australia in *Minister for Immigration and Ethnic Affairs vs. Tech.* 128 ALR 535, has recognised the concept of legitimate expectation of its observance in the absence of contrary legislative provision, even in the absence of a Bill of Rights in the Constitution of Australia. 15. *In Nilabati Behera vs. State of Orissa* 1993(2) SCC 746, a provision in the ICCPR was referred to support the view taken that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right', as a public law remedy under Article 32, distinct from the private law remedy in torts. There is no reason why these international conventions and norms cannot, therefore, be used for construing the fundamental rights expressly guaranteed in the Constitution of India which embody the basic concept of gender equality in all spheres of human activity."

34 .i) Para 14 of the respondents affidavit is denied. The principle of non-refoulement which is an established principle of customary international law, is defined in Article 33(1) of the Convention on Status of Refugees, 1951, is specifically contained under two other international conventions signed by India. These are under Article 16 of the **International Convention on Protection of All Persons against enforced Disappearances** and Article 3 of the **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** as stated by the Petitioner in the writ petition. A copy of the International Convention on Protection of All Persons against Enforced Disappearances, is annexed herewith and marked as **Annexure M** (Pages 90 to 106). A copy of the 1984 Convention against Torture

and Other Cruel, Inhuman or Degrading Treatment or Punishment, is annexed herewith and marked as **Annexure N** (Page 102 to 119)

ii) It is important to note that the general principle of right to asylum and right not to be deported is contained in the *International Covenant on Civil and Political Rights (ICCPR)*, (Articles 6 and 7) and under the Universal Declaration of Human Rights (Article 14). These are binding since India has both signed and ratified these conventions and India is bound by its obligations under these two conventions.

International Covenant on Civil and Political Rights

Article 6

"1. Every human being has the inherent right to life. The right shall be protected by law. No one shall be arbitrarily deprived of his life."

Article 7

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation"

A copy of the Universal Declaration of Human Rights, is annexed herewith as **Annexure O** (Page 120 to 127)

A copy of the relevant pages of the International Covenant on Civil and Political Rights, 1966, is annexed herewith and marked as **Annexure P** (Page 128 to 133)

iii) The UNHCR in its *"Advisory Opinion on the extraterritorial Application of non-refoulment Obligations under the 1951 Convention relating to Status of Refugees and its 1961 Protocol"* states, that the ICCPR also encompass the obligations not to extradite, deport, expel or otherwise remove a person from its territory, where there is a real risk of irreparable harm, such as that contemplated by Articles 6 (Right to life) and 7 (Right to be free from torture or other cruel, inhuman or degrading treatment or punishment) of the covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed." A copy of the relevant pages of the *"Advisory Opinion on the extraterritorial Application of non-refoulment Obligations under the 1951*

Convention relating to Status of Refugees and its 1961 Protocol" issued by the UNHCR is annexed herewith and marked as **Annexure Q** (Page 134 to 135)

iv) The General Comment to Art 7 of the ICCPR specially mentions that States must respect the principle of *non-refoulement*. A copy of the General Comment to Article 7 of the ICCPR is annexed herewith and marked as **Annexure R** (Page 136 to 138)

v) Further the principle of *non-refoulement* has been specifically recognized in the **Declaration on Territorial Asylum, 1967**. Since India is a party to this Declaration, it points to a moral obligation on India that the States conduct must be in conformity with the established principle of non-refoulement.

Article 3

"No person referred to in article 1, paragraph 1, shall be subjected to measures such as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any State where he may be subjected to persecution."

A copy of the Declaration on Territorial Asylum, 1967 is annexed herewith and marked as **Annexure S** (Page 139 to 140)

vi) Similarly India is a member of a forum called the **Bali Process**, and was also part of the Sixth Ministerial Conference on 23 March 2016 wherein *Bali Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime* was adopted. It is understood that the Bali Process focuses on People Smuggling and Trafficking, however, it also talks about irregular migration and the exploitation of refugees at the hands of traffickers. It states the following *"the need to grant protection for those entitled to it, consistent with relevant international legal instruments and in all cases, the principle of non-refoulement should be strictly respected."* A copy of the relevant portions of the Bali Declaration on People Smuggling, Trafficking in Persons and Related Transnational

Crime annexed herewith and marked as **Annexure T** (Page 141 to 157)

vii) India has also signed and ratified The Convention on the Rights of the Child (CRC) on 11 December 1992.

Article 22 states

"States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties."

Further, the General Comment No. 6 (2005) to CRC specially mentions that States must fully respect non-refoulement obligations deriving from international human rights, humanitarian and refugee law, and in particular, must respect obligations codified in Article 33 of the 1951 Refugee Convention and in Article 3 of CAT. A copy of the CRC and the General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005 is annexed as **Annexure U** (Page 152 to 171)

35. Para 15 of the Respondents affidavit states that the in matter of deportation, diplomatic relations, citizenship, extradition, etc. the Parliament makes laws and the Central government takes executive decisions with regards to the stated subjects. However the petitioner claims that unconstitutional/excessive exercise of powers by the Parliament and executive may be safeguarded by the Judiciary. Hence the jurisdiction of this Hon'ble court is maintained, in a challenge to the governments order dated 8th August 2017, that threatens to identify and deport Rohingya refugees. This act of the government would clearly be in

violation of the rights of the petitioners under the Constitution as well as under India's obligations to the principle of non-refoulement under the International treaty obligations.

36. Para 16 of the Respondents affidavit is a matter of record and needs no reply.

37. In Para 17 Respondent No. 1 has stated that executive discretion lies with the Central Government to take steps with regards to all foreigners or with respect to a class of foreigners. The petitioner however contends that refugees are a distinct category of foreigners. It may be noted that while the Indian statutory law does not recognize the term "refugee", the government has through practice, treated them as a separate class deserving of protection as in the case of the Tibetan and SriLankan Tamil refugees who were granted peaceful asylum in India. Hence the executive policy with regard to refugees will be distinct from the policy of the government with regard to other illegal migrants or foreigners. In order to determine the status of Rohingyas under law, the Court needs to give due consideration to the reason for their flight from Myanmar. There is an abundance of material making it clear that Rohingyas are being forced to flee Myanmar due to the atrocities systematically carried out against them on account of their religious and ethnic identity. Therefore, under international law, they are "refugees" who are fleeing persecution and cannot return to their home country. In these circumstance it is submitted that the government cannot deal with them as illegal immigrants.

38. Para 18 is a matter of record and needs no reply.

39. i) In Para 19 of the Respondents affidavit, Respondent No. 1 has submitted that the provisions of the Foreigners Act 1946 in general and that of Section 3 (2) (c) in particular not only statutorily empowers but casts an obligation on the Central Government to deport a person who is an illegal immigrant. By this Respondent No. 1 has clubbed Rohingya refugees with the class of illegal immigrants who may be deported by the government. It is submitted that a refugee is a special category of

immigrant and cannot be clubbed with an illegal immigrant to whom the provisions of the Foreigners Act, 1946 and the Foreigners Order 1948 would apply.

ii) It is submitted that an illegal immigrant is someone who is moving from one country to another without valid documentation. However, as in the case of the petitioners who are Rohingya refugees who are crossing international borders to escape war or persecution on account of race, religion, nationality, social group or political opinion, he/she is automatically protected under international law as a "refugee". In fact, most refugees arrive in their host country illegally due to lack of safe legal routes. However, under international law, this does not have a bearing on their status as refugees.

iii) It may be noted that while the Indian statutory law does not recognize the term "refugee", the government has through practice, treated them as a separate class deserving of protection. This is reflected in a number of executive policies issued by the government.

iv) The government issued special documentation to Tibetans and Sri Lankans, recognizing their status as refugees, and allowing them to access basic socio-economic rights. A copy of the report titled "Refugee Protection in India: Access to economic and social rights" prepared by The Ara Trust, supported by UNHCR, documenting the recognition of Tibetans and Sri Lankans as refugees is annexed herewith and marked as **Annexure V (Page 172 to 173)**

v) UNHCR has been mandated to assess individual claims for asylum and grant refugee cards. Further, Rohingyas are within UNHCR's mandate and therefore, this is indicative of the government treating them as asylum-seekers and not as illegal immigrants.

vi) In 2011 the government introduced a policy for issuing Long Term Visas (LTVs) to those who had been recognized as "refugees" by the government or the UNHCR. The MHA's policy clearly incorporates the Refugee Convention's definition of a "refugee" and differentiates them

from economic migrants. Subsequently, Rohingyas were also covered under this policy as refugees and many were issued LTV. The guidelines clearly mentions the standard operating procedure to be followed whenever an FRRO/FRO comes across foreign nationals who claims to be refugees, "In case it is found that prima facie the claim is justified (on account of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion), the matter will be recommended to MHA for grant of Long Term Visa within thirty days from the date of claim by the foreigner. One of the factors to be seen is the general perceived condition of the foreigner in question." Based on this operating procedure, the MHA started issuing Long Term Visas (LTVs) to those who had been recognized as "refugees" by the government or the UNHCR. These included Rohingyas. A copy of the Standard Operating Procedure dated 29th December, 2011 which provides issuance of LTV by the Government is annexed herewith and marked as **Annexure W (Page 174 to 179)**

vii) When extending the right to apply for LTVs for refugees, Minister of State for Home Affairs, Mr. Kiren Rijiju stated :

"There is no national law on Refugee at present. Government has circulated a Standard Operating Procedure for dealing with foreign nationals who claim to be refugees to all State Governments/ Union Territories on December 29, 2011. This Standing Operating Procedure stipulate that cases, which are prima facie justified on the grounds of a well founded fear of persecution on account of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion, can be recommended by the State Government/Union Territory Administration to the Ministry of Home Affairs for grant of Long Term Visa (LTV) after due security verification. A foreigner to whom LTV is permitted by the Ministry of Home Affairs will be allowed to take up any employment in the private sector or to undertake studies in any academic institution." A copy of the statement issued by Minister of State for Home Affairs, Mr. Kiren Rijiju with reference to the Standard Operating Procedure is annexed herewith and marked as **Annexure X (Page**

180 to _____

This indicates MHA's acceptance of refugees as a separate class distinct from "illegal immigrants"

vii) The MHA's own visa policies dated 16th September 2014 recognize refugees as a separate category and allows them to register and apply for the long term visa using the UNHCR ID card. A copy of the MHA's visa policy on Refugees is annexed herewith and marked as **Annexure Y** (Page 181 to 187)

ix) Further in the Ministry of Home Affairs Advisory on Trafficking Victims, the government recognized trafficking victims as a separate class from illegal immigrants, on humanitarian grounds. Further, the MHA accorded exemption to trafficking victims from prosecution under the Foreigners Act. Where victims of human trafficking if found without legal documents and if after investigation it is revealed that the victim was forced to indulge in illegal movement by traffickers, a charge sheet for illegal entry will not be filed. Many Rohingya refugees are vulnerable to trafficking and enter their host countries through traffickers, the government under the MHA advisory has an obligation to access each individual case and exempt them from the application of the Foreigners Act if they are found to be survivors of trafficking. A copy of the Aljazeera Report on the vulnerability of refugees to trafficking is annexed herewith and is marked as **Annexure Z** (Page 188 to 192)

A copy of the MHA Advisory on Trafficking Victims is annexed herewith and marked as **Annexure ZA** (Page 193 to 203)

x) It is thus submitted that India accords special status to refugees, as being distinct from illegal immigrants, which is well established through practice.

40. Para 20 of the respondents affidavit is denied. Respondent No. 1 has further relied upon the 1955 Supreme Court judgement in **Hans Muller of Nurenborg vs Superintendent, Presidency Jail, Calcutta & ors.** Reported in AIR 1955 SC 367, where the government's absolute and unfettered power to expel foreigners was upheld. It is the submission of the petitioner that this case cannot be relied on in the current case

pertaining to Rohingya refugees. The petitioner in the case was a foreigner who was arrested in Calcutta in 1954 under the Preventive Detention Act 1950 for the purposes of expulsion under Section 3(2) (c) of the Foreigners Act, 1946. Further, it was revealed that the petitioner had warrants issued in his name in West Germany in connection with a number of frauds for which legal proceedings against him were pending. Thus, the West German Consulate had approached the Government of West Bengal to seek his repatriation to Federal Republic of Germany. The petitioner in this case primarily challenged his detention under the Preventive Detention Act, 1950 on the grounds that it was ultra vires the Constitution as it contravenes Article 21, 22 and 14. Thus, the decision in Hans Muller is clearly distinguishable as the petitioner was fleeing prosecution (as opposed to persecution) in his home country and was therefore not a "refugee" under the principle of international law. Therefore, the government had no obligation in this case to extend humanitarian protection to him or adhere to the principle of *non-refoulement*. It is submitted that even if the decision of Han Muller were to be extended to cases involving refugees, that decision was issued in 1955 when principles of refugee law and protection were at a very nascent stage. It is humbly requested that the Court take into consideration the evolution of refugee law principles, particularly the principle of *non-refoulement*, since 1955, given that the current case involves the proposed deportation of refugees and not illegal immigrants.

41. In Para 21 of the Respondents affidavit, reliance on the case of Mr. Louis De Raedt & Ors v. UOI & Ors. Is misplaced in as much as the petitioners do not claim any rights under Article 19 (1) (e) but confine their claims to the fundamental rights under Articles 14 and 21 which are available to all persons whether citizens or not.

42. Para 22 is a matter of record and needs no reply

43. Paras 23 and 24 of the Respondents affidavit in as much as they deal with the issue of national security concerns vis-a-vis illegal immigrants, would not apply to the case of the petitioners who are refugees and hence by the nature of the persecution they have fled, cannot be clubbed with

the general meaning of illegal immigrants and hence would need special consideration. This will only be in keeping with India's commitments to refugee protection under International law and treaties.

44. Para 25 of the respondents affidavit is denied. It may be stated that even in the absence of a specific law, India has addressed the needs of refugees who have fled from their home country into its territory. India has hosted refugees from Tibet who fled since China's 1951 annexation and Tamil Sri Lankans, who escaped fighting between the Liberation Tigers of Tamil Eelam and the Sri Lankan armed forces. Besides ethnic Chakmas and Hajongs from present-day Bangladesh who fled to Arunachal Pradesh after the inundation of their land by the building of the Kaptai dam. India has a strong track-record of hosting refugees of different profiles and has the experience in extending humanitarian protection while balancing national security interests and the concerns of its citizens.

45. Para 26 of the Respondents affidavit is denied to the extent that it terms Rohingya as illegal immigrants. Rohingya are known as the world's most persecuted ethnic minority. There has been a mass exodus of the Rohingyas from Rakhine province in Myanmar ever since the ethnic conflict escalated. Most of them have fled from what has been described as a genocide, leaving behind burning homes and all their belongings. By nature, such a helpless community cannot be termed an illegal immigrant but they would fall well within the definition of refugee under the 1951 Convention on the Status of refugees.

46. The contents of para 27 of the Respondents affidavit are denied. The argument that the Rohingya pose a threat to national security is not substantiated with any evidence. To the contrary it may be noted that the Reply of the Minister in Charge (Home) in the Jammu and Kashmir legislative assembly budget session 2017, on whether Rohingya have been involved in militancy and other crimes, stated

"No Rohingya (Burmese) has been found involved in militancy related incidents. 17 FIRs have been registered against 38 Rohingya for various offences relating to illegal border crossing".

A copy of Jammu and Kashmir legislative assembly budget session 2017, reply by the government is annexed as **Annexure ZB (Page 204 to 208)**

47. i) Para 28 of the Respondents affidavit is denied. The 1951 Convention on status of Refugees contains an exclusion clause with respect to those refugees who may be considered a security threat.

Article 33(2) of the Convention on Status of Refugees, 1951, states,

"The benefit of the present provision (non-refoulement) may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to that country."

ii) The government cannot make a blanket claim that all Rohingya refugees have terror links and there being a fear of them being radicalised by terror recruits operating in India. This ground is unsustainable against a whole class of largely destitute Rohingya who have fled their country over the last few years fearing for their lives as military operations against the Rohingyas in Myanmar have escalated by the day and there has been a mass exodus of about 400000 Rohingya from Rakhine province in Myanmar which is the epicentre of the ethnic conflict.

iii) It is in this context that it is humbly submitted that the Hon'ble Court may direct that the Government must conduct an individual refugee determination of all Rohingya in India with the assistance of the NHRC and the UNHRC along with regional offices of the FRRO, through refugee determination centres in States having a population of over 1000 Rohingyas. Rohingya residing in other parts of India may travel to the nearest refugee determination centre to be assessed and granted Refugee cards by UNHCR.

iv) The mere social, religious or political origin of the Rohingya refugees cannot amount to reasonable grounds under the "exclusion clause" for considering that they pose a danger to the security of India. Given the gravity of the consequences of returning Rohingya refugees to places where they may be subjected to persecution and/or torture, the exceptions are narrowly interpreted and cautiously applied against them.

48. The contents of para 29 of the governments affidavit are denied. The observations of the central government that some Rohingyas are involved in illegal/anti national activities is not substantiated with any evidence. The petitioners further submit that international refugee law makes it clear that refugees and asylum-seekers are bound to abide by the laws of their host country, and for this reason certain checks and balances have been included in the 1951 Convention on Status of Refugees. Refugees are not immune from prosecution for any crimes committed on the territory of their host country, and their status does not preclude appropriate measures where an individual is found to pose a security risk or indulge in illegal activities. The 1951 Convention includes express provisions which permit expulsion on grounds of national security or public order under certain circumstances. However, once again, it is to be noted that it has to be done on an individual basis and not on a class basis. Besides, other refugees coming from other countries like Afghanistan, Iraq etc. the government makes their visa conditional on registration with FRRO with relevant documentation (ID, lease agreement etc.) A copy of the list of relevant documentation required to be submitted by the refugees to the FRRO is herein annexed as **Annexure ZC (Page 209 to 211)**

49. The contents of para 30 of the respondents affidavit are denied. The central governments stand on the Rohingya being involved with ISI/ISIS groups is a mere assumption. It is pertinent to note in this context that UNHCR has expressed concern that States may be inclined to expel groups or individuals based on religious, ethnic or national origin or political affiliation, on the mere assumption that they may be involved in terrorism. International law, in particular article 33(2) of the 1951 Refugee Convention, does not prohibit the expulsion of recognized

refugees, provided however that it is established in the *individual case* that the person constitutes a danger to the security or the community of the country of refuge. Even so, expulsion decisions must be reached in accordance with due process of law which substantiates the security threat and allows the individual to provide any evidence which might counter the allegations.

A Copy of UNHCR's "Addressing Security Concerns without Undermining Refugee Protection, UNHCR (December 2015) annexed herewith and marked as **Annexure ZD (Page 212 to 120)**

50. The contents of para 31 are denied. The petitioners claim that Rohingya are not involved in any acts of militancy. They are a fleeing persecuted ethnic minority whose only claim is to peaceful asylum. Any individual cases of involvement in militancy may be dealt with by the government in accordance with the law of the land but by this there cannot be a general assumption that the entire Rohingya refugee community in India is involved in militancy related activities. In keeping with this, it is humbly submitted that appropriate action under the law may be taken only against those Rohingya individuals who have been identified by the authorities to have links with terror outfits and no blanket restriction or order of deportation be made against the entire Rohingya refugees population residing in India, since it is clear that these Rohingya are helpless and have fled persecution in their home country and cannot thus be sent back to the place they fear bodily harm or threat to their lives. This would be a complete violation of their human rights and India's commitment to International law of refugees.

51. The contents of para 32 of the Respondents affidavit are denied. However to the extent that cases where the government has identified any Rohingya individual refugees as militants, it may proceed with them in accordance with the law as well as exclude them from the status of refugees. Reliance for this may be place on India's own practice with regard to SriLankan Tamil and other refugees. Again, in the case of Sri Lankan refugees, the government had put in place a screening mechanism to identify those associated with LTTE (whom India had declared as a terrorist organisation) or having a criminal record and had

put them in special camps. The handbook of Department of Rehabilitation, Government of Tamil Nadu, on how Srilankan Tamils refugees were screened describes how officials of police and intelligence departments conduct enquiries at the Quarantine camp with newly arriving refugees. After ensuring that they do not belong to any militant groups/movement, they are permitted to stay in the regular camp at Mandapam. All the details of those who are cleared at the Quarantine camp for admission to regular camps are recorded in the computer and register at the Mandapam camp. The refugees are photographed and issued family identity card. Required clothing materials, mats, bed sheets and utensils with one month cash doles in advance are provided immediately to run a family along with a dwelling unit. If it is known that they are associates of militant movements, it is then recommended to lodge them in the special camps situated at Poonamallee in Thiruvallur district and Chengalpattu in Kancheepuram district. Two special camps in Poonamallee in Thiruvallur District and Chengalpattu in Kanchipuram District accomodated the Sri Lankan Tamils, who have come to the adverse notice of the Police. It is submitted that a similar process must be followed to isolate those among the Rohingya refugees in India who are being perceived by the government as a national security threat to the nation. A Copy of relevant pages of the handbook of Department of Rehabilitation, Government of Tamil Nadu is annexed herewith and marked as **Annexure ZE (Page 221 to 224)**

52. The contents of Para 33 in the Respondents affidavit are denied in as much as the Rohingya are not illegal immigrants but refugees who are in need of special assistance by their host countries. India is under International treaty obligations to respect the principle of non-refoulement of Rohingya refugees. This principle has been accepted to be a part of Article 21 rights of refugees and reiterated in various decisions of the courts.

53. Para 34 of the Respondents affidavit is a matter of record and needs no reply.

54. With respect to the content of para 35 of the Respondents affidavit, a copy of the procedure to be followed by the Central Government for deportation, repatriation, etc. of foreigner national/ illegal immigrants vide its order/ directive dated 19.04.2014 has not been annexed with the respondents affidavit and is unavailable to the petitioner to file a reply. It may further be stated that such a procedure that is applicable to illegal immigrants would exclude refugees from its application.

55. The contents of para 36 of the Respondents affidavit are denied in light of the various arguments that have been put forward in this rejoinder on behalf of the petitioners, completely denying any link between the presence of Rohingya refugees in India and national security concerns. The petitioners thus claim a right against deportation, in keeping with the Constitutional guarantees under Articles 14 and 21, read with Article 51 (c) of the Constitution of India, which protect against arbitrary deportation of Rohingya refugees who have sought asylum in India after escaping a situation akin to genocide in their home country.



DEPONENT

VERIFICATION:

I, the above named Deponent, do hereby verify that the contents of the above Affidavit are believed to be true and correct to the best of my knowledge, no part of it is false and nothing material has been concealed there from.

Verified at New Delhi on this _____ day of _____ 2017.



DEPONENT

Rohingya Muslims aren't only ones fleeing Myanmar genocide, over 500 Hindus cross over to Bangladesh**37****India Today**

Over 500 Hindus from the troubled areas of Myanmar have crossed over to Bangladesh's Cox's Bazaar ever since trouble started on August 25.

Sahidul Hasan Khokon Edited by Shashank Shantanu
Dhaka, September 4, 2017 UPDATED 14:31 IST

The bloodshed in Myanmar against Rohingya Muslims has forced nearly 90,000 people of the community to cross over to the neighbouring Bangladesh. However, it is not only the Rohingyas who are facing the brunt.

Over 500 Hindus from the troubled areas of Myanmar have crossed over to Bangladesh's Cox's Bazaar ever since trouble started on August 25.

The bloodshed in Myanmar's northwestern Rakhine state was triggered by an attack on August 25 on dozens of police posts and an army base by Rohingya insurgents. The ensuing clashes and a military counter-offensive have killed at least 400 people.

Myanmar officials blamed Rohingya militants for the burning of homes and civilian deaths but rights monitors and Rohingyas fleeing to neighbouring Bangladesh say the Myanmar army is trying to force Rohingyas out with a campaign of arson and killings.

'GENOCIDE'

A delegation of Hindu-Buddhist-Christian Oikya Parishad has visited the Ukhia Kutupalong area of Cox's Bazar to inquire about Hindu families who have taken refuge in Bangladesh.

"It's genocide, no matter who all are conducting it," said Bangladesh Hindu-Buddhist-Christian Oikya Parishad's General Secretary Advocate Rana Das Gupta.

At least 53 bodies have washed up on Bangladesh shores in last five days. The dead are believed to have drowned while trying to flee Myanmar on boats.

HINDU VILLAGES BURNT, LOOTED

"They told me there are 86 Hindus among the dead in Rakhine. Their houses were been burnt, looted," Rana Dasgupta said after meeting the refugees.

Ramani Sheel, 50, a Hindu from Rakhine, said his family had been living at Chikonchharhi village of Maungdaw for several generations. "Around 20 masked men attacked the village with sharp weapons and hacked many to death," he said, adding that the attackers burnt down their houses before leaving.

Panicked at the attack, he fled with his wife and five children to Kutupalong, where an unregistered Rohingya refugee camp is situated.

Octogenarian Kalo Sheel from Dhenkibunia of Maungdaw said three Hindus were hacked to death in his village on the first day of the latest violence. He fled to Bangladesh along with seven others of his family.

Rana Dasgupta said the Myanmar government will have to create a suitable environment to let the displaced people return home. A prosecutor of the International Crimes Tribunal, he also demanded proper investigation by the United Nations into the latest situation in Rakhine. "The United Nations will have to take the responsibility of trying those involved in crimes against humanity as per the international law," he said.

<http://indiatoday.intoday.in/story/rohingya-muslims-myanmar-violence-hindu-bangladesh/1/1040358.html>



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ANNEXURE-B

[http://www.mea.gov.in/Speeches-](http://www.mea.gov.in/Speeches-Statements.htm?dtl/26756/Remarks%20by%20Secretary%20West%20at%20Symposium%20on%20World%20Humanitarian%20Summit)

[Statements.htm?dtl/26756/Remarks by Secretary West at Symposium on World Humanitarian Summit](http://www.mea.gov.in/Speeches-Statements.htm?dtl/26756/Remarks%20by%20Secretary%20West%20at%20Symposium%20on%20World%20Humanitarian%20Summit)

Remarks by Secretary (West) at Symposium on World Humanitarian Summit

May 04, 2016

I am happy to be able to participate in this Symposium on an important event later this month - World Humanitarian Summit. The world faces a humanitarian crisis. That is both true and rhetorical, because in analytical terms we face not a single undifferentiated humanitarian crisis but a tragic variety of them and a tragic multiplicity of them. There are crises of movements of people, of refugee situations, of disaster situations - whether man-made or natural, there are crises born of the adverse impact of climate change - drought, desertification, extreme weather events, and of intolerable restrictions on the enjoyment of human rights. All of these add up to a humanitarian crisis but to try to address all with a single unified approach would be ineffective, inefficient, and inhumane. There are distinctions that require to be made, nuances which need to be reflected, and concerns to be flagged.

- The number of people affected by humanitarian crises has almost doubled over the past decade and is expected to rise further. Global economic shifts, climate change, demographic changes such as rapid population growth and urbanization have exacerbated the humanitarian landscape by intensifying pressure on resources. There is a realisation that the international development aid system has fallen short of the growing humanitarian challenges.
- The World Humanitarian Summit, convened by the UN Secretary General later this month, organised by OCHA therefore assumes significance and also generates high expectations, in terms of what it could achieve.
- The UNSG's report that sets out the "Agenda for Humanity", identifies the following five "Core Responsibilities" of the international community, which are also seen as critical for the UN:
 - Global leadership to prevent and end conflicts;

- Upholding the norms that safeguard humanity; Leaving no one behind: focus on the most vulnerable;
- Changing people's lives - From delivering aid to ending need;
- Investing in humanity.
- The UNSG's Report estimates the annual deficit in humanitarian relief at US \$ 15 billion. The UNSG advocates a new humanitarian aid architecture and seeks new financial arrangements to address consequences of dangerous policies, but does not refer to measures to prevent their emergence in the first place.
- We welcome the fact that the UNSG refers to the need to increase direct and predictable financing to national and local actors, while making a provision for long-term support to develop such actors' capacity.
- We also welcome the UNSG's observation that additional humanitarian financing cannot come at the expense of development funding and that developed countries should fulfil their commitments to provide 0.7% of Gross Domestic Product (GDP) as ODA.
- From a developing country perspective, some concerns on the Agenda set in the report do inevitably arise, these include the nature of the outcome document of the Summit and insufficient consultations with the Member States on the subject. We cannot support recommendations that carry the potential of diverting resources away from development programmes or the suggestion of an arbitrary concept of 'equitable responsibility' vis a vis CBDR.
- We believe that responsibility sharing should be based on agreed principles of CBDR and not on nebulous so-called equitable responsibility sharing.
- The focus on financing lays great emphasis on enhancing domestic resources. The methods recommended including risk management, expansion of tax coverage, complementing national investment with other forms of cooperation, facilitating public-private partnership. etc., these are national responsibilities. Furthermore, it is not very clear how societies or states facing severe socio-economic strain are expected to have economic and financial infrastructure to undertake such complex activities or faced with emergencies they should expend resources on these.
- There is a call for complementarity and greater levels of inter-operability between the UN system and other international humanitarian agencies in achieving sustainable and collective outcomes rather than coordination of individual projects and activities, recommending that UN system 'must move beyond the comfort of traditional silos, able to work across mandates, sectors and institutional boundaries'. These are noble sentiments but could be confused in implementation.

- Mandate creep among a number of UN funds and programme has to be avoided. The need to avoid diversion of resources from development programmes to what may be labelled as humanitarian actions has to be acknowledged.
- Furthermore, any effort at reducing or diluting the need to require Member States endorsement for commitment of resources would not be supported. This is an essential and relevant principle.
- This is particularly important for Least Developed Countries and other aid receiving countries. If implemented in an undifferentiated manner the assistance that LDCs for instance receive could be diverted almost arbitrarily.
- Looking at the entire issue of development through the prism of a humanitarian crisis is most likely to result in skewed priorities with a potential adverse impact on the essential developmental needs of those societies which are facing multiple and urgent crises as understood on their territory.
- Turning to the immediate - the root causes for the ongoing humanitarian emergencies - the largest movement of people since the Second World War, are deeply embedded in the recent conflicts in countries such as Iraq, Libya, Afghanistan and Syria. It is clear that there are fundamental issues surrounding the failure of UN Security Council in preventing the emergence of grave conflict situations in these countries leading to a humanitarian crisis. This also points starkly to the need for urgent reform of the UN Security Council.
- In the absence of strong political leadership to find sustainable solutions, there is a real danger of the humanitarian situation worsening further.
- While the World Humanitarian Summit may try to establish new ways to address the humanitarian challenges, in our view the salience of the Charter of the United Nations is not diminished. It is imperative for the sake of impartiality, neutrality and effectiveness of the humanitarian action that in general assistance be provided only with the consent of and at the request of the affected country.
- The UN should focus on playing a central role in providing leadership and coordination to the efforts of the international community to support strengthening its response capacity in a cost effective and timely manner.
- This support can include capacity building at local, national and regional levels through training, development of local leadership, thrust towards innovation and resilience building; strengthening of national actors, and so forth.
- The High Level Panel on Humanitarian Financing⁴ has reported that only 0.2% of reported humanitarian funding is channelled directly to local and national organisations, which in other words means that 99.8% of funds are used by those who have no or little knowledge on the ground. This results in a series of sub-

contracting arrangements which ultimately make the system ineffective and inefficient.

- The World Humanitarian Summit should also work out a robust mechanism for adequate & sustained financial support from the developed world, at concessional terms and conditions.
- We look forward to the World Humanitarian Summit creating a mechanism for smooth transition from relief to rehabilitation and development. There is also a need for strengthening of the coordination mechanism of emergency assistance, recovery and long term development so as to ensure effectiveness of humanitarian and development action.
- We believe there is no alternative to transparency, accountability and efficiency. This is also applicable to the humanitarian field and to humanitarian actors.
- The World Humanitarian Summit is taking place against the backdrop of the Refugee crisis in Europe. Some comments on this would be in order.
- The terms 'migrants' and 'refugees' are being used interchangeably which blurs the distinction between these two distinct categories and limits the obligations of countries of refuge to provide protection to refugees.
- Let me say that efforts such as the EU-Turkey deal, which tries to stem the flow of asylum seekers and irregular migrants travelling across the Aegean Sea from Turkey to the Greek islands is apparently a deviation from the 1951 UN Refugee Convention, and its 1967 Protocol, as the latter obligates the receiving States' Parties to provide protection to people in need, and also adhere to the principle of non-refoulement.
- As per the 1951 Refugee Convention and Protocol, Refugees are those who move out of their countries of origin because of threat to their lives and are in need of protection. Migration, on the other hand, is a voluntary process by which an individual chooses to move out of the country seeking employment opportunities, subject to the receiving relevant travel documents from the destination country. As a result, the destination country has the right to admit or deny entry of such migrants. Moreover, international migration should be seen in the context of demand and supply of workforce. Hence, the emphasis in such cases should be on the developmental dimension of migration.
- The blurring of the distinction between migrants and refugees is therefore a worrisome trend.
- India has been generally supportive of the principles of burden sharing and solidarity in respect of refugees. However, we have reservations in case there is an attempt to call for a so-called 'equitable or shared responsibility' to address refugee crises.

- In conclusion let me reaffirm India's commitment to providing humanitarian assistance as per our ability and national circumstances, to neighbouring and other friendly countries, based on their request and conscious of the gravity of the problem. We have amply demonstrated such commitment to support neighbouring countries, more recently, during the Nepal Earthquake in 2015.

Let me also end by saying that the subject of this colloquium is a complex one - in terms of concepts and in terms of implementation. The blurring of essential distinctions may lead to a dangerous simplification and a divisive debate which would take away from alleviating the suffering of those in need - whether in their homes or those who feel compelled to flee.

(TRUE COPY)



General Assembly

ANNEXURE - C

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Seventy-first session
Agenda items 13 and 117

Resolution adopted by the General Assembly on 19 September 2016

[without reference to a Main Committee (A/71/L.1)]

71/1. New York Declaration for Refugees and Migrants

The General Assembly

Adopts the following outcome document of the high-level plenary meeting on addressing large movements of refugees and migrants:

New York Declaration for Refugees and Migrants

We, the Heads of State and Government and High Representatives, meeting at United Nations Headquarters in New York on 19 September 2016 to address the question of large movements of refugees and migrants, have adopted the following political declaration.

I. Introduction

1. Since earliest times, humanity has been on the move. Some people move in search of new economic opportunities and horizons. Others move to escape armed conflict, poverty, food insecurity, persecution, terrorism, or human rights violations and abuses. Still others do so in response to the adverse effects of climate change, natural disasters (some of which may be linked to climate change), or other environmental factors. Many move, indeed, for a combination of these reasons.
2. We have considered today how the international community should best respond to the growing global phenomenon of large movements of refugees and migrants.
3. We are witnessing in today's world an unprecedented level of human mobility. More people than ever before live in a country other than the one in which they were born. Migrants are present in all countries in the world. Most of them move without incident. In 2015, their number surpassed 244 million, growing at a rate faster than the world's population. However, there are roughly 65 million forcibly displaced persons, including over 21 million refugees, 3 million asylum seekers and over 40 million internally displaced persons.
4. In adopting the 2030 Agenda for Sustainable Development¹ one year ago, we recognized clearly the positive contribution made by migrants for inclusive growth

¹ Resolution 70/1.



and sustainable development. Our world is a better place for that contribution. The benefits and opportunities of safe, orderly and regular migration are substantial and are often underestimated. Forced displacement and irregular migration in large movements, on the other hand, often present complex challenges.

5. We reaffirm the purposes and principles of the Charter of the United Nations. We reaffirm also the Universal Declaration of Human Rights² and recall the core international human rights treaties. We reaffirm and will fully protect the human rights of all refugees and migrants, regardless of status; all are rights holders. Our response will demonstrate full respect for international law and international human rights law and, where applicable, international refugee law and international humanitarian law.

6. Though their treatment is governed by separate legal frameworks, refugees and migrants have the same universal human rights and fundamental freedoms. They also face many common challenges and have similar vulnerabilities, including in the context of large movements. "Large movements" may be understood to reflect a number of considerations, including: the number of people arriving, the economic, social and geographical context, the capacity of a receiving State to respond and the impact of a movement that is sudden or prolonged. The term does not, for example, cover regular flows of migrants from one country to another. "Large movements" may involve mixed flows of people, whether refugees or migrants, who move for different reasons but who may use similar routes.

7. Large movements of refugees and migrants have political, economic, social, developmental, humanitarian and human rights ramifications, which cross all borders. These are global phenomena that call for global approaches and global solutions. No one State can manage such movements on its own. Neighbouring or transit countries, mostly developing countries, are disproportionately affected. Their capacities have been severely stretched in many cases, affecting their own social and economic cohesion and development. In addition, protracted refugee crises are now commonplace, with long-term repercussions for those involved and for their host countries and communities. Greater international cooperation is needed to assist host countries and communities.

8. We declare our profound solidarity with, and support for, the millions of people in different parts of the world who, for reasons beyond their control, are forced to uproot themselves and their families from their homes.

9. Refugees and migrants in large movements often face a desperate ordeal. Many take great risks, embarking on perilous journeys, which many may not survive. Some feel compelled to employ the services of criminal groups, including smugglers, and others may fall prey to such groups or become victims of trafficking. Even if they reach their destination, they face an uncertain reception and a precarious future.

10. We are determined to save lives. Our challenge is above all moral and humanitarian. Equally, we are determined to find long-term and sustainable solutions. We will combat with all the means at our disposal the abuses and exploitation suffered by countless refugees and migrants in vulnerable situations.

11. We acknowledge a shared responsibility to manage large movements of refugees and migrants in a humane, sensitive, compassionate and people-centred

² Resolution 217 A (III).

manner. We will do so through international cooperation, while recognizing that there are varying capacities and resources to respond to these movements. International cooperation and, in particular, cooperation among countries of origin or nationality, transit and destination, has never been more important; "win-win" cooperation in this area has profound benefits for humanity. Large movements of refugees and migrants must have comprehensive policy support, assistance and protection, consistent with States' obligations under international law. We also recall our obligations to fully respect their human rights and fundamental freedoms, and we stress their need to live their lives in safety and dignity. We pledge our support to those affected today as well as to those who will be part of future large movements.

12. We are determined to address the root causes of large movements of refugees and migrants, including through increased efforts aimed at early prevention of crisis situations based on preventive diplomacy. We will address them also through the prevention and peaceful resolution of conflict, greater coordination of humanitarian, development and peacebuilding efforts, the promotion of the rule of law at the national and international levels and the protection of human rights. Equally, we will address movements caused by poverty, instability, marginalization and exclusion and the lack of development and economic opportunities, with particular reference to the most vulnerable populations. We will work with countries of origin to strengthen their capacities.

13. All human beings are born free and equal in dignity and rights. Everyone has the right to recognition everywhere as a person before the law. We recall that our obligations under international law prohibit discrimination of any kind on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Yet in many parts of the world we are witnessing, with great concern, increasingly xenophobic and racist responses to refugees and migrants.

14. We strongly condemn acts and manifestations of racism, racial discrimination, xenophobia and related intolerance against refugees and migrants, and the stereotypes often applied to them, including on the basis of religion or belief. Diversity enriches every society and contributes to social cohesion. Demonizing refugees or migrants offends profoundly against the values of dignity and equality for every human being, to which we have committed ourselves. Gathered today at the United Nations, the birthplace and custodian of these universal values, we deplore all manifestations of xenophobia, racial discrimination and intolerance. We will take a range of steps to counter such attitudes and behaviour, in particular with regard to hate crimes, hate speech and racial violence. We welcome the global campaign proposed by the Secretary-General to counter xenophobia and we will implement it in cooperation with the United Nations and all relevant stakeholders, in accordance with international law. The campaign will emphasize, inter alia, direct personal contact between host communities and refugees and migrants and will highlight the positive contributions made by the latter, as well as our common humanity.

15. We invite the private sector and civil society, including refugee and migrant organizations, to participate in multi-stakeholder alliances to support efforts to implement the commitments we are making today.

16. In the 2030 Agenda for Sustainable Development, we pledged that no one would be left behind. We declared that we wished to see the Sustainable Development Goals and their targets met for all nations and peoples and for all segments of society. We said also that we would endeavour to reach the furthest

behind first. We reaffirm today our commitments that relate to the specific needs of migrants or refugees. The 2030 Agenda makes clear, *inter alia*, that we will facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies. The needs of refugees, internally displaced persons and migrants are explicitly recognized.

17. The implementation of all relevant provisions of the 2030 Agenda for Sustainable Development will enable the positive contribution that migrants are making to sustainable development to be reinforced. At the same time, it will address many of the root causes of forced displacement, helping to create more favourable conditions in countries of origin. Meeting today, a year after our adoption of the 2030 Agenda, we are determined to realize the full potential of that Agenda for refugees and migrants.

18. We recall the Sendai Framework for Disaster Risk Reduction 2015–2030³ and its recommendations concerning measures to mitigate risks associated with disasters. States that have signed and ratified the Paris Agreement on climate change⁴ welcome that agreement and are committed to its implementation. We reaffirm the Addis Ababa Action Agenda of the Third International Conference on Financing for Development,⁵ including its provisions that are applicable to refugees and migrants.

19. We take note of the report of the Secretary-General, entitled “In safety and dignity: addressing large movements of refugees and migrants”,⁶ prepared pursuant to General Assembly decision 70/539 of 22 December 2015, in preparation for this high-level meeting. While recognizing that the following conferences either did not have an intergovernmentally agreed outcome or were regional in scope, we take note of the World Humanitarian Summit, held in Istanbul, Turkey, on 23 and 24 May 2016, the high-level meeting on global responsibility-sharing through pathways for admission of Syrian refugees, convened by the Office of the United Nations High Commissioner for Refugees on 30 March 2016, the conference on “Supporting Syria and the Region”, held in London on 4 February 2016, and the pledging conference on Somali refugees, held in Brussels on 21 October 2015. While recognizing that the following initiatives are regional in nature and apply only to those countries participating in them, we take note of regional initiatives such as the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, the European Union-Horn of Africa Migration Route Initiative and the African Union-Horn of Africa Initiative on Human Trafficking and Smuggling of Migrants (the Khartoum Process), the Rabat Process, the Valletta Action Plan and the Brazil Declaration and Plan of Action.

20. We recognize the very large number of people who are displaced within national borders and the possibility that such persons might seek protection and assistance in other countries as refugees or migrants. We note the need for reflection on effective strategies to ensure adequate protection and assistance for internally displaced persons and to prevent and reduce such displacement.

³ Resolution 69/283, annex II.

⁴ See FCCC/CP/2015/10/Add.1, decision 1/CP.21, annex.

⁵ Resolution 69/313, annex.

⁶ A/70/59.

Commitments

21. We have endorsed today a set of commitments that apply to both refugees and migrants, as well as separate sets of commitments for refugees and migrants. We do so taking into account different national realities, capacities and levels of development and respecting national policies and priorities. We reaffirm our commitment to international law and emphasize that the present declaration and its annexes are to be implemented in a manner that is consistent with the rights and obligations of States under international law. While some commitments are mainly applicable to one group, they may also be applicable to the other. Furthermore, while they are all framed in the context of the large movements we are considering today, many may be applicable also to regular migration. Annex I to the present declaration contains a comprehensive refugee response framework and outlines steps towards the achievement of a global compact on refugees in 2018, while annex II sets out steps towards the achievement of a global compact for safe, orderly and regular migration in 2018.

II. Commitments that apply to both refugees and migrants

22. Underlining the importance of a comprehensive approach to the issues involved, we will ensure a people-centred, sensitive, humane, dignified, gender-responsive and prompt reception for all persons arriving in our countries, and particularly those in large movements, whether refugees or migrants. We will also ensure full respect and protection for their human rights and fundamental freedoms.

23. We recognize and will address, in accordance with our obligations under international law, the special needs of all people in vulnerable situations who are travelling within large movements of refugees and migrants, including women at risk, children, especially those who are unaccompanied or separated from their families, members of ethnic and religious minorities, victims of violence, older persons, persons with disabilities, persons who are discriminated against on any basis, indigenous peoples, victims of human trafficking, and victims of exploitation and abuse in the context of the smuggling of migrants.

24. Recognizing that States have rights and responsibilities to manage and control their borders, we will implement border control procedures in conformity with applicable obligations under international law, including international human rights law and international refugee law. We will promote international cooperation on border control and management as an important element of security for States, including issues relating to battling transnational organized crime, terrorism and illicit trade. We will ensure that public officials and law enforcement officers who work in border areas are trained to uphold the human rights of all persons crossing, or seeking to cross, international borders. We will strengthen international border management cooperation, including in relation to training and the exchange of best practices. We will intensify support in this area and help to build capacity as appropriate. We reaffirm that, in line with the principle of non-refoulement, individuals must not be returned at borders. We acknowledge also that, while upholding these obligations and principles, States are entitled to take measures to prevent irregular border crossings.

25. We will make efforts to collect accurate information regarding large movements of refugees and migrants. We will also take measures to identify correctly their nationalities, as well as their reasons for movement. We will take measures to identify those who are seeking international protection as refugees.

26. We will continue to protect the human rights and fundamental freedoms of all persons, in transit and after arrival. We stress the importance of addressing the immediate needs of persons who have been exposed to physical or psychological abuse while in transit upon their arrival, without discrimination and without regard to legal or migratory status or means of transportation. For this purpose, we will consider appropriate support to strengthen, at their request, capacity-building for countries that receive large movements of refugees and migrants.

27. We are determined to address unsafe movements of refugees and migrants, with particular reference to irregular movements of refugees and migrants. We will do so without prejudice to the right to seek asylum. We will combat the exploitation, abuse and discrimination suffered by many refugees and migrants.

28. We express our profound concern at the large number of people who have lost their lives in transit. We commend the efforts already made to rescue people in distress at sea. We commit to intensifying international cooperation on the strengthening of search and rescue mechanisms. We will also work to improve the availability of accurate data on the whereabouts of people and vessels stranded at sea. In addition, we will strengthen support for rescue efforts over land along dangerous or isolated routes. We will draw attention to the risks involved in the use of such routes in the first instance.

29. We recognize and will take steps to address the particular vulnerabilities of women and children during the journey from country of origin to country of arrival. This includes their potential exposure to discrimination and exploitation, as well as to sexual, physical and psychological abuse, violence, human trafficking and contemporary forms of slavery.

30. We encourage States to address the vulnerabilities to HIV and the specific health-care needs experienced by migrant and mobile populations, as well as by refugees and crisis-affected populations, and to take steps to reduce stigma, discrimination and violence, as well as to review policies related to restrictions on entry based on HIV status, with a view to eliminating such restrictions and the return of people on the basis of their HIV status, and to support their access to HIV prevention, treatment, care and support.

31. We will ensure that our responses to large movements of refugees and migrants mainstream a gender perspective, promote gender equality and the empowerment of all women and girls and fully respect and protect the human rights of women and girls. We will combat sexual and gender-based violence to the greatest extent possible. We will provide access to sexual and reproductive health-care services. We will tackle the multiple and intersecting forms of discrimination against refugee and migrant women and girls. At the same time, recognizing the significant contribution and leadership of women in refugee and migrant communities, we will work to ensure their full, equal and meaningful participation in the development of local solutions and opportunities. We will take into consideration the different needs, vulnerabilities and capacities of women, girls, boys and men.

32. We will protect the human rights and fundamental freedoms of all refugee and migrant children, regardless of their status, and giving primary consideration at all times to the best interests of the child. This will apply particularly to unaccompanied children and those separated from their families; we will refer their care to the relevant national child protection authorities and other relevant

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authorities. We will comply with our obligations under the Convention on the Rights of the Child.⁷ We will work to provide for basic health, education and psychosocial development and for the registration of all births on our territories. We are determined to ensure that all children are receiving education within a few months of arrival, and we will prioritize budgetary provision to facilitate this, including support for host countries as required. We will strive to provide refugee and migrant children with a nurturing environment for the full realization of their rights and capabilities.

33. Reaffirming that all individuals who have crossed or are seeking to cross international borders are entitled to due process in the assessment of their legal status, entry and stay, we will consider reviewing policies that criminalize cross-border movements. We will also pursue alternatives to detention while these assessments are under way. Furthermore, recognizing that detention for the purposes of determining migration status is seldom, if ever, in the best interest of the child, we will use it only as a measure of last resort, in the least restrictive setting, for the shortest possible period of time, under conditions that respect their human rights and in a manner that takes into account, as a primary consideration, the best interest of the child, and we will work towards the ending of this practice.

34. Reaffirming the importance of the United Nations Convention against Transnational Organized Crime and the two relevant Protocols thereto,⁸ we encourage the ratification of, accession to and implementation of relevant international instruments on preventing and combating trafficking in persons and the smuggling of migrants.

35. We recognize that refugees and migrants in large movements are at greater risk of being trafficked and of being subjected to forced labour. We will, with full respect for our obligations under international law, vigorously combat human trafficking and migrant smuggling with a view to their elimination, including through targeted measures to identify victims of human trafficking or those at risk of trafficking. We will provide support for the victims of human trafficking. We will work to prevent human trafficking among those affected by displacement.

36. With a view to disrupting and eliminating the criminal networks involved, we will review our national legislation to ensure conformity with our obligations under international law on migrant smuggling, human trafficking and maritime safety. We will implement the United Nations Global Plan of Action to Combat Trafficking in Persons.⁹ We will establish or upgrade, as appropriate, national and regional anti-human trafficking policies. We note regional initiatives such as the African Union-Horn of Africa Initiative on Human Trafficking and Smuggling of Migrants, the Plan of Action Against Trafficking in Persons, Especially Women and Children, of the Association of Southeast Asian Nations, the European Union Strategy towards the Eradication of Trafficking in Human Beings 2012–2016, and the Work Plans against Trafficking in Persons in the Western Hemisphere. We welcome reinforced technical cooperation, on a regional and bilateral basis, between countries of origin, transit and destination on the prevention of human trafficking and migrant smuggling and the prosecution of traffickers and smugglers.

⁷ United Nations, *Treaty Series*, vol. 1577, No. 27531.

⁸ *Ibid.*, vols. 2225, 2237 and 2241, No. 39574.

⁹ Resolution 64/293.

37. We favour an approach to addressing the drivers and root causes of large movements of refugees and migrants, including forced displacement and protracted crises, which would, inter alia, reduce vulnerability, combat poverty, improve self-reliance and resilience, ensure a strengthened humanitarian-development nexus, and improve coordination with peacebuilding efforts. This will involve coordinated prioritized responses based on joint and impartial needs assessments and facilitating cooperation across institutional mandates.

38. We will take measures to provide, on the basis of bilateral, regional and international cooperation, humanitarian financing that is adequate, flexible, predictable and consistent, to enable host countries and communities to respond both to the immediate humanitarian needs and to their longer-term development needs. There is a need to address gaps in humanitarian funding, considering additional resources as appropriate. We look forward to close cooperation in this regard among Member States, United Nations entities and other actors and between the United Nations and international financial institutions such as the World Bank, where appropriate. We envisage innovative financing responses, risk financing for affected communities and the implementation of other efficiencies such as reducing management costs, improving transparency, increasing the use of national responders, expanding the use of cash assistance, reducing duplication, increasing engagement with beneficiaries, diminishing earmarked funding and harmonizing reporting, so as to ensure a more effective use of existing resources.

39. We commit to combating xenophobia, racism and discrimination in our societies against refugees and migrants. We will take measures to improve their integration and inclusion, as appropriate, and with particular reference to access to education, health care, justice and language training. We recognize that these measures will reduce the risks of marginalization and radicalization. National policies relating to integration and inclusion will be developed, as appropriate, in conjunction with relevant civil society organizations, including faith-based organizations, the private sector, employers' and workers' organizations and other stakeholders. We also note the obligation for refugees and migrants to observe the laws and regulations of their host countries.

40. We recognize the importance of improved data collection, particularly by national authorities, and will enhance international cooperation to this end, including through capacity-building, financial support and technical assistance. Such data should be disaggregated by sex and age and include information on regular and irregular flows, the economic impacts of migration and refugee movements, human trafficking, the needs of refugees, migrants and host communities and other issues. We will do so consistent with our national legislation on data protection, if applicable, and our international obligations related to privacy, as applicable.

III. Commitments for migrants

41. We are committed to protecting the safety, dignity and human rights and fundamental freedoms of all migrants, regardless of their migratory status, at all times. We will cooperate closely to facilitate and ensure safe, orderly and regular migration, including return and readmission, taking into account national legislation.

42. We commit to safeguarding the rights of, protecting the interests of and assisting our migrant communities abroad, including through consular protection, assistance and cooperation, in accordance with relevant international law. We

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reaffirm that everyone has the right to leave any country, including his or her own, and to return to his or her country. We recall at the same time that each State has a sovereign right to determine whom to admit to its territory, subject to that State's international obligations. We recall also that States must readmit their returning nationals and ensure that they are duly received without undue delay, following confirmation of their nationalities in accordance with national legislation. We will take measures to inform migrants about the various processes relating to their arrival and stay in countries of transit, destination and return.

43. We commit to addressing the drivers that create or exacerbate large movements. We will analyse and respond to the factors, including in countries of origin, which lead or contribute to large movements. We will cooperate to create conditions that allow communities and individuals to live in peace and prosperity in their homelands. Migration should be a choice, not a necessity. We will take measures, inter alia, to implement the 2030 Agenda for Sustainable Development, whose objectives include eradicating extreme poverty and inequality, revitalizing the Global Partnership for Sustainable Development, promoting peaceful and inclusive societies based on international human rights and the rule of law, creating conditions for balanced, sustainable and inclusive economic growth and employment, combating environmental degradation and ensuring effective responses to natural disasters and the adverse impacts of climate change.

44. Recognizing that the lack of educational opportunities is often a push factor for migration, particularly for young people, we commit to strengthening capacities in countries of origin, including in educational institutions. We commit also to enhancing employment opportunities, particularly for young people, in countries of origin. We acknowledge also the impact of migration on human capital in countries of origin.

45. We will consider reviewing our migration policies with a view to examining their possible unintended negative consequences.

46. We also recognize that international migration is a multidimensional reality of major relevance for the development of countries of origin, transit and destination, which requires coherent and comprehensive responses. Migrants can make positive and profound contributions to economic and social development in their host societies and to global wealth creation. They can help to respond to demographic trends, labour shortages and other challenges in host societies, and add fresh skills and dynamism to the latter's economies. We recognize the development benefits of migration to countries of origin, including through the involvement of diasporas in economic development and reconstruction. We will commit to reducing the costs of labour migration and promote ethical recruitment policies and practices between sending and receiving countries. We will promote faster, cheaper and safer transfers of migrant remittances in both source and recipient countries, including through a reduction in transaction costs, as well as the facilitation of interaction between diasporas and their countries of origin. We would like these contributions to be more widely recognized and indeed, strengthened in the context of implementation of the 2030 Agenda for Sustainable Development.

47. We will ensure that all aspects of migration are integrated into global, regional and national sustainable development plans and into humanitarian, peacebuilding and human rights policies and programmes.

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48. We call upon States that have not done so to consider ratifying, or acceding to, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.¹⁰ We call also upon States that have not done so to consider acceding to relevant International Labour Organization conventions, as appropriate. We note, in addition, that migrants enjoy rights and protection under various provisions of international law.
49. We commit to strengthening global governance of migration. We therefore warmly support and welcome the agreement to bring the International Organization for Migration, an organization regarded by its Member States as the global lead agency on migration, into a closer legal and working relationship with the United Nations as a related organization.¹¹ We look forward to the implementation of this agreement, which will assist and protect migrants more comprehensively, help States to address migration issues and promote better coherence between migration and related policy domains.
50. We will assist, impartially and on the basis of needs, migrants in countries that are experiencing conflicts or natural disasters, working, as applicable, in coordination with the relevant national authorities. While recognizing that not all States are participating in them, we note in this regard the Migrants in Countries in Crisis initiative and the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change resulting from the Nansen Initiative.
51. We take note of the work done by the Global Migration Group to develop principles and practical guidance on the protection of the human rights of migrants in vulnerable situations.
52. We will consider developing non-binding guiding principles and voluntary guidelines, consistent with international law, on the treatment of migrants in vulnerable situations, especially unaccompanied and separated children who do not qualify for international protection as refugees and who may need assistance. The guiding principles and guidelines will be developed using a State-led process with the involvement of all relevant stakeholders and with input from the Special Representative of the Secretary-General on International Migration and Development, the International Organization for Migration, the Office of the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees and other relevant United Nations system entities. They would complement national efforts to protect and assist migrants.
53. We welcome the willingness of some States to provide temporary protection against return to migrants who do not qualify for refugee status and who are unable to return home owing to conditions in their countries.
54. We will build on existing bilateral, regional and global cooperation and partnership mechanisms, in accordance with international law, for facilitating migration in line with the 2030 Agenda for Sustainable Development. We will strengthen cooperation to this end among countries of origin, transit and destination, including through regional consultative processes, international organizations, the International Red Cross and Red Crescent Movement, regional economic organizations and local government authorities, as well as with relevant private

¹⁰ United Nations, *Treaty Series*, vol. 2220, No. 39481.

¹¹ Resolution 70/296, annex.

sector recruiters and employers, labour unions, civil society and migrant and diaspora groups. We recognize the particular needs of local authorities, who are the first receivers of migrants.

55. We recognize the progress made on international migration and development issues within the United Nations system, including the first and second High-level Dialogues on International Migration and Development. We will support enhanced global and regional dialogue and deepened collaboration on migration, particularly through exchanges of best practice and mutual learning and the development of national or regional initiatives. We note in this regard the valuable contribution of the Global Forum on Migration and Development and acknowledge the importance of multi-stakeholder dialogues on migration and development.

56. We affirm that children should not be criminalized or subject to punitive measures because of their migration status or that of their parents.

57. We will consider facilitating opportunities for safe, orderly and regular migration, including, as appropriate, employment creation, labour mobility at all skills levels, circular migration, family reunification and education-related opportunities. We will pay particular attention to the application of minimum labour standards for migrant workers regardless of their status, as well as to recruitment and other migration-related costs, remittance flows, transfers of skills and knowledge and the creation of employment opportunities for young people.

58. We strongly encourage cooperation among countries of origin or nationality, countries of transit, countries of destination and other relevant countries in ensuring that migrants who do not have permission to stay in the country of destination can return, in accordance with international obligations of all States, to their country of origin or nationality in a safe, orderly and dignified manner, preferably on a voluntary basis, taking into account national legislation in line with international law. We note that cooperation on return and readmission forms an important element of international cooperation on migration. Such cooperation would include ensuring proper identification and the provision of relevant travel documents. Any type of return, whether voluntary or otherwise, must be consistent with our obligations under international human rights law and in compliance with the principle of non-refoulement. It should also respect the rules of international law and must in addition be conducted in keeping with the best interests of children and with due process. While recognizing that they apply only to States that have entered into them, we acknowledge that existing readmission agreements should be fully implemented. We support enhanced reception and reintegration assistance for those who are returned. Particular attention should be paid to the needs of migrants in vulnerable situations who return, such as children, older persons, persons with disabilities and victims of trafficking.

59. We reaffirm our commitment to protect the human rights of migrant children, given their vulnerability, particularly unaccompanied migrant children, and to provide access to basic health, education and psychosocial services, ensuring that the best interests of the child is a primary consideration in all relevant policies.

60. We recognize the need to address the special situation and vulnerability of migrant women and girls by, inter alia, incorporating a gender perspective into migration policies and strengthening national laws, institutions and programmes to combat gender-based violence, including trafficking in persons and discrimination against women and girls.

61. While recognizing the contribution of civil society, including non-governmental organizations, to promoting the well-being of migrants and their integration into societies, especially at times of extremely vulnerable conditions, and the support of the international community to the efforts of such organizations, we encourage deeper interaction between Governments and civil society to find responses to the challenges and the opportunities posed by international migration. 54

62. We note that the Special Representative of the Secretary-General on International Migration and Development, Mr. Peter Sutherland, will be providing, before the end of 2016, a report that will propose ways of strengthening international cooperation and the engagement of the United Nations on migration.

63. We commit to launching, in 2016, a process of intergovernmental negotiations leading to the adoption of a global compact for safe, orderly and regular migration at an intergovernmental conference to be held in 2018. We invite the President of the General Assembly to make arrangements for the determination of the modalities, timeline and other practicalities relating to the negotiation process. Further details regarding the process are set out in annex II to the present declaration.

IV. Commitments for refugees

64. Recognizing that armed conflict, persecution and violence, including terrorism, are among the factors which give rise to large refugee movements, we will work to address the root causes of such crisis situations and to prevent or resolve conflict by peaceful means. We will work in every way possible for the peaceful settlement of disputes, the prevention of conflict and the achievement of the long-term political solutions required. Preventive diplomacy and early response to conflict on the part of States and the United Nations are critical. The promotion of human rights is also critical. In addition, we will promote good governance, the rule of law, effective, accountable and inclusive institutions, and sustainable development at the international, regional, national and local levels. Recognizing that displacement could be reduced if international humanitarian law were respected by all parties to armed conflict, we renew our commitment to uphold humanitarian principles and international humanitarian law. We confirm also our respect for the rules that safeguard civilians in conflict.

65. We reaffirm the 1951 Convention relating to the Status of Refugees¹² and the 1967 Protocol thereto¹³ as the foundation of the international refugee protection regime. We recognize the importance of their full and effective application by States parties and the values they embody. We note with satisfaction that 148 States are now parties to one or both instruments. We encourage States not parties to consider acceding to those instruments and States parties with reservations to give consideration to withdrawing them. We recognize also that a number of States not parties to the international refugee instruments have shown a generous approach to hosting refugees.

66. We reaffirm that international refugee law, international human rights law and international humanitarian law provide the legal framework to strengthen the protection of refugees. We will ensure, in this context, protection for all who need it. We take note of regional refugee instruments, such as the Organization of African

¹² United Nations, *Treaty Series*, vol. 189, No. 2545

¹³ *Ibid.*, vol. 606, No. 8791.

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Unity Convention governing the specific aspects of refugee problems in Africa¹⁴ and the Cartagena Declaration on Refugees.

67. We reaffirm respect for the institution of asylum and the right to seek asylum. We reaffirm also respect for and adherence to the fundamental principle of non-refoulement in accordance with international refugee law.

68. We underline the centrality of international cooperation to the refugee protection regime. We recognize the burdens that large movements of refugees place on national resources, especially in the case of developing countries. To address the needs of refugees and receiving States, we commit to a more equitable sharing of the burden and responsibility for hosting and supporting the world's refugees, while taking account of existing contributions and the differing capacities and resources among States.

69. We believe that a comprehensive refugee response should be developed and initiated by the Office of the United Nations High Commissioner for Refugees, in close coordination with relevant States, including host countries, and involving other relevant United Nations entities, for each situation involving large movements of refugees. This should involve a multi-stakeholder approach that includes national and local authorities, international organizations, international financial institutions, civil society partners (including faith-based organizations, diaspora organizations and academia), the private sector, the media and refugees themselves. A comprehensive framework of this kind is annexed to the present declaration.

70. We will ensure that refugee admission policies or arrangements are in line with our obligations under international law. We wish to see administrative barriers eased, with a view to accelerating refugee admission procedures to the extent possible. We will, where appropriate, assist States to conduct early and effective registration and documentation of refugees. We will also promote access for children to child-appropriate procedures. At the same time, we recognize that the ability of refugees to lodge asylum claims in the country of their choice may be regulated, subject to the safeguard that they will have access to, and enjoyment of, protection elsewhere.

71. We encourage the adoption of measures to facilitate access to civil registration and documentation for refugees. We recognize in this regard the importance of early and effective registration and documentation, as a protection tool and to facilitate the provision of humanitarian assistance.

72. We recognize that statelessness can be a root cause of forced displacement and that forced displacement, in turn, can lead to statelessness. We take note of the campaign of the Office of the United Nations High Commissioner for Refugees to end statelessness within a decade and we encourage States to consider actions they could take to reduce the incidence of statelessness. We encourage those States that have not yet acceded to the 1954 Convention relating to the Status of Stateless Persons¹⁵ and the 1961 Convention on the Reduction of Statelessness¹⁶ to consider doing so.

73. We recognize that refugee camps should be the exception and, to the extent possible, a temporary measure in response to an emergency. We note that 60 per cent

¹⁴ Ibid., vol. 1001, No. 14691.

¹⁵ Ibid., vol. 360, No. 5158.

¹⁶ Ibid., vol. 989, No. 14458.

of refugees worldwide are in urban settings and only a minority are in camps. We will ensure that the delivery of assistance to refugees and host communities is adapted to the relevant context. We underline that host States have the primary responsibility to ensure the civilian and humanitarian character of refugee camps and settlements. We will work to ensure that this character is not compromised by the presence or activities of armed elements and to ensure that camps are not used for purposes that are incompatible with their civilian character. We will work to strengthen security in refugee camps and surrounding local communities, at the request and with the consent of the host country.

74. We welcome the extraordinarily generous contribution made to date by countries that host large refugee populations and will work to increase the support for those countries. We call for pledges made at relevant conferences to be disbursed promptly.

75. We commit to working towards solutions from the outset of a refugee situation. We will actively promote durable solutions, particularly in protracted refugee situations, with a focus on sustainable and timely return in safety and dignity. This will encompass repatriation, reintegration, rehabilitation and reconstruction activities. We encourage States and other relevant actors to provide support through, inter alia, the allocation of funds.

76. We reaffirm that voluntary repatriation should not necessarily be conditioned on the accomplishment of political solutions in the country of origin.

77. We intend to expand the number and range of legal pathways available for refugees to be admitted to or resettled in third countries. In addition to easing the plight of refugees, this has benefits for countries that host large refugee populations and for third countries that receive refugees.

78. We urge States that have not yet established resettlement programmes to consider doing so at the earliest opportunity. Those which have already done so are encouraged to consider increasing the size of their programmes. It is our aim to provide resettlement places and other legal pathways for admission on a scale that would enable the annual resettlement needs identified by the Office of the United Nations High Commissioner for Refugees to be met.

79. We will consider the expansion of existing humanitarian admission programmes, possible temporary evacuation programmes, including evacuation for medical reasons, flexible arrangements to assist family reunification, private sponsorship for individual refugees and opportunities for labour mobility for refugees, including through private sector partnerships, and for education, such as scholarships and student visas.

80. We are committed to providing humanitarian assistance to refugees so as to ensure essential support in key life-saving sectors, such as health care, shelter, food, water and sanitation. We commit to supporting host countries and communities in this regard, including by using locally available knowledge and capacities. We will support community-based development programmes that benefit both refugees and host communities.

81. We are determined to provide quality primary and secondary education in safe learning environments for all refugee children, and to do so within a few months of the initial displacement. We commit to providing host countries with support in this regard. Access to quality education, including for host communities, gives fundamental protection to children and youth in displacement contexts, particularly in situations of conflict and crisis.

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82. We will support early childhood education for refugee children. We will also promote tertiary education, skills training and vocational education. In conflict and crisis situations, higher education serves as a powerful driver for change, shelters and protects a critical group of young men and women by maintaining their hopes for the future, fosters inclusion and non-discrimination and acts as a catalyst for the recovery and rebuilding of post-conflict countries.

83. We will work to ensure that the basic health needs of refugee communities are met and that women and girls have access to essential health-care services. We commit to providing host countries with support in this regard. We will also develop national strategies for the protection of refugees within the framework of national social protection systems, as appropriate.

84. Welcoming the positive steps taken by individual States, we encourage host Governments to consider opening their labour markets to refugees. We will work to strengthen host countries' and communities' resilience, assisting them, for example, with employment creation and income generation schemes. In this regard, we recognize the potential of young people and will work to create the conditions for growth, employment and education that will allow them to be the drivers of development.

85. In order to meet the challenges posed by large movements of refugees, close coordination will be required among a range of humanitarian and development actors. We commit to putting those most affected at the centre of planning and action. Host Governments and communities may need support from relevant United Nations entities, local authorities, international financial institutions, regional development banks, bilateral donors, the private sector and civil society. We strongly encourage joint responses involving all such actors in order to strengthen the nexus between humanitarian and development actors, facilitate cooperation across institutional mandates and, by helping to build self-reliance and resilience, lay a basis for sustainable solutions. In addition to meeting direct humanitarian and development needs, we will work to support environmental, social and infrastructural rehabilitation in areas affected by large movements of refugees.

86. We note with concern a significant gap between the needs of refugees and the available resources. We encourage support from a broader range of donors and will take measures to make humanitarian financing more flexible and predictable, with diminished earmarking and increased multi-year funding, in order to close this gap. United Nations entities such as the Office of the United Nations High Commissioner for Refugees and the United Nations Relief and Works Agency for Palestine Refugees in the Near East and other relevant organizations require sufficient funding to be able to carry out their activities effectively and in a predictable manner. We welcome the increasing engagement of the World Bank and multilateral development banks and improvements in access to concessional development financing for affected communities. It is clear, furthermore, that private sector investment in support of refugee communities and host countries will be of critical importance over the coming years. Civil society is also a key partner in every region of the world in responding to the needs of refugees.

87. We note that the United States of America, Canada, Ethiopia, Germany, Jordan, Mexico, Sweden and the Secretary-General will host a high-level meeting on refugees on 20 September 2016.

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V. Follow-up to and review of our commitments

88. We recognize that arrangements are needed to ensure systematic follow-up to and review of all of the commitments we are making today. Accordingly, we request the Secretary-General to ensure that the progress made by Member States and the United Nations in implementing the commitments made at today's high-level meeting will be the subject of periodic assessments provided to the General Assembly with reference, as appropriate, to the 2030 Agenda for Sustainable Development.

89. In addition, a role in reviewing relevant aspects of the present declaration should be envisaged for the periodic High-level Dialogues on International Migration and Development and for the annual report of the United Nations High Commissioner for Refugees to the General Assembly.

90. In recognition of the need for significant financial and programme support to host countries and communities affected by large movements of refugees and migrants, we request the Secretary-General to report to the General Assembly at its seventy-first session on ways of achieving greater efficiency, operational effectiveness and system-wide coherence, as well as ways of strengthening the engagement of the United Nations with international financial institutions and the private sector, with a view to fully implementing the commitments outlined in the present declaration.

*3rd plenary meeting
19 September 2016*

Annex I

Comprehensive refugee response framework

1. The scale and nature of refugee displacement today requires us to act in a comprehensive and predictable manner in large-scale refugee movements. Through a comprehensive refugee response based on the principles of international cooperation and on burden- and responsibility-sharing, we are better able to protect and assist refugees and to support the host States and communities involved.

2. The comprehensive refugee response framework will be developed and initiated by the Office of the United Nations High Commissioner for Refugees, in close coordination with relevant States, including host countries, and involving other relevant United Nations entities, for each situation involving large movements of refugees. A comprehensive refugee response should involve a multi-stakeholder approach, including national and local authorities, international organizations, international financial institutions, regional organizations, regional coordination and partnership mechanisms, civil society partners, including faith-based organizations and academia, the private sector, media and the refugees themselves.

3. While each large movement of refugees will differ in nature, the elements noted below provide a framework for a comprehensive and people-centred refugee response, which is in accordance with international law and best international practice and adapted to the specific context.

4. We envisage a comprehensive refugee response framework for each situation involving large movements of refugees, including in protracted situations, as an integral and distinct part of an overall humanitarian response, where it exists, and which would normally contain the elements set out below.

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Reception and admission

5. At the outset of a large movement of refugees, receiving States, bearing in mind their national capacities and international legal obligations, in cooperation, as appropriate, with the Office of the United Nations High Commissioner for Refugees, international organizations and other partners and with the support of other States as requested, in conformity with international obligations, would:

(a) Ensure, to the extent possible, that measures are in place to identify persons in need of international protection as refugees, provide for adequate, safe and dignified reception conditions, with a particular emphasis on persons with specific needs, victims of human trafficking, child protection, family unity, and prevention of and response to sexual and gender-based violence, and support the critical contribution of receiving communities and societies in this regard;

(b) Take account of the rights, specific needs, contributions and voices of women and girl refugees;

(c) Assess and meet the essential needs of refugees, including by providing access to adequate safe drinking water, sanitation, food, nutrition, shelter, psychosocial support and health care, including sexual and reproductive health, and providing assistance to host countries and communities in this regard, as required;

(d) Register individually and document those seeking protection as refugees, including in the first country where they seek asylum, as quickly as possible upon their arrival. To achieve this, assistance may be needed, in areas such as biometric technology and other technical and financial support, to be coordinated by the Office of the United Nations High Commissioner for Refugees with relevant actors and partners, where necessary;

(e) Use the registration process to identify specific assistance needs and protection arrangements, where possible, including but not exclusively for refugees with special protection concerns, such as women at risk, children, especially unaccompanied children and children separated from their families, child-headed and single-parent households, victims of trafficking, victims of trauma and survivors of sexual violence, as well as refugees with disabilities and older persons;

(f) Work to ensure the immediate birth registration for all refugee children born on their territory and provide adequate assistance at the earliest opportunity with obtaining other necessary documents, as appropriate, relating to civil status, such as marriage, divorce and death certificates;

(g) Put in place measures, with appropriate legal safeguards, which uphold refugees' human rights, with a view to ensuring the security of refugees, as well as measures to respond to host countries' legitimate security concerns;

(h) Take measures to maintain the civilian and humanitarian nature of refugee camps and settlements;

(i) Take steps to ensure the credibility of asylum systems, including through collaboration among the countries of origin, transit and destination and to facilitate the return and readmission of those who do not qualify for refugee status.

Support for immediate and ongoing needs

6. States, in cooperation with multilateral donors and private sector partners, as appropriate, would, in coordination with receiving States:

(a) Mobilize adequate financial and other resources to cover the humanitarian needs identified within the comprehensive refugee response framework;

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(b) Provide resources in a prompt, predictable, consistent and flexible manner, including through wider partnerships involving State, civil society, faith-based and private sector partners;

(c) Take measures to extend the finance lending schemes that exist for developing countries to middle-income countries hosting large numbers of refugees, bearing in mind the economic and social costs to those countries;

(d) Consider establishing development funding mechanisms for such countries;

(e) Provide assistance to host countries to protect the environment and strengthen infrastructure affected by large movements of refugees;

(f) Increase support for cash-based delivery mechanisms and other innovative means for the efficient provision of humanitarian assistance, where appropriate, while increasing accountability to ensure that humanitarian assistance reaches its beneficiaries.

7. Host States, in cooperation with the Office of the United Nations High Commissioner for Refugees and other United Nations entities, financial institutions and other relevant partners, would, as appropriate:

(a) Provide prompt, safe and unhindered access to humanitarian assistance for refugees in accordance with existing humanitarian principles;

(b) Deliver assistance, to the extent possible, through appropriate national and local service providers, such as public authorities for health, education, social services and child protection;

(c) Encourage and empower refugees, at the outset of an emergency phase, to establish supportive systems and networks that involve refugees and host communities and are age- and gender-sensitive, with a particular emphasis on the protection and empowerment of women and children and other persons with specific needs;

(d) Support local civil society partners that contribute to humanitarian responses, in recognition of their complementary contribution;

(e) Ensure close cooperation and encourage joint planning, as appropriate, between humanitarian and development actors and other relevant actors.

Support for host countries and communities

8. States, the Office of the United Nations High Commissioner for Refugees and relevant partners would:

(a) Implement a joint, impartial and rapid risk and/or impact assessment, in anticipation or after the onset of a large refugee movement, in order to identify and prioritize the assistance required for refugees, national and local authorities, and communities affected by a refugee presence;

(b) Incorporate, where appropriate, the comprehensive refugee response framework in national development planning, in order to strengthen the delivery of essential services and infrastructure for the benefit of host communities and refugees;

(c) Work to provide adequate resources, without prejudice to official development assistance, for national and local government authorities and other service providers in view of the increased needs and pressures on social services. Programmes should benefit refugees and the host country and communities.

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Durable solutions

9. We recognize that millions of refugees around the world at present have no access to timely and durable solutions, the securing of which is one of the principal goals of international protection. The success of the search for solutions depends in large measure on resolute and sustained international cooperation and support.

10. We believe that actions should be taken in pursuit of the following durable solutions: voluntary repatriation, local solutions and resettlement and complementary pathways for admission. These actions should include the elements set out below.

11. We reaffirm the primary goal of bringing about conditions that would help refugees return in safety and dignity to their countries and emphasize the need to tackle the root causes of violence and armed conflict and to achieve necessary political solutions and the peaceful settlement of disputes, as well as to assist in reconstruction efforts. In this context, States of origin/nationality would:

(a) Acknowledge that everyone has the right to leave any country, including his or her own, and to return to his or her country;

(b) Respect this right and also respect the obligation to receive back their nationals, which should occur in a safe, dignified and humane manner and with full respect for human rights in accordance with obligations under international law;

(c) Provide necessary identification and travel documents;

(d) Facilitate the socioeconomic reintegration of returnees;

(e) Consider measures to enable the restitution of property.

12. To ensure sustainable return and reintegration, States, United Nations organizations and relevant partners would:

(a) Recognize that the voluntary nature of repatriation is necessary as long as refugees continue to require international protection, that is, as long as they cannot regain fully the protection of their own country;

(b) Plan for and support measures to encourage voluntary and informed repatriation, reintegration and reconciliation;

(c) Support countries of origin/nationality, where appropriate, including through funding for rehabilitation, reconstruction and development, and with the necessary legal safeguards to enable refugees to access legal, physical and other support mechanisms needed for the restoration of national protection and their reintegration;

(d) Support efforts to foster reconciliation and dialogue, particularly with refugee communities and with the equal participation of women and youth, and to ensure respect for the rule of law at the national and local levels;

(e) Facilitate the participation of refugees, including women, in peace and reconciliation processes, and ensure that the outcomes of such processes duly support their return in safety and dignity;

(f) Ensure that national development planning incorporates the specific needs of returnees and promotes sustainable and inclusive reintegration, as a measure to prevent future displacement.

13. Host States, bearing in mind their capacities and international legal obligations, in cooperation with the Office of the United Nations High Commissioner for Refugees, the United Nations Relief and Works Agency for

Palestine Refugees in the Near East, where appropriate, and other United Nations entities, financial institutions and other relevant partners, would:

(a) Provide legal stay to those seeking and in need of international protection as refugees, recognizing that any decision regarding permanent settlement in any form, including possible naturalization, rests with the host country;

(b) Take measures to foster self-reliance by pledging to expand opportunities for refugees to access, as appropriate, education, health care and services, livelihood opportunities and labour markets, without discriminating among refugees and in a manner which also supports host communities;

(c) Take measures to enable refugees, including in particular women and youth, to make the best use of their skills and capacities, recognizing that empowered refugees are better able to contribute to their own and their communities' well-being;

(d) Invest in building human capital, self-reliance and transferable skills as an essential step towards enabling long-term solutions.

14. Third countries would:

(a) Consider making available or expanding, including by encouraging private sector engagement and action as a supplementary measure, resettlement opportunities and complementary pathways for admission of refugees through such means as medical evacuation and humanitarian admission programmes, family reunification and opportunities for skilled migration, labour mobility and education;

(b) Commit to sharing best practices, providing refugees with sufficient information to make informed decisions and safeguarding protection standards;

(c) Consider broadening the criteria for resettlement and humanitarian admission programmes in mass displacement and protracted situations, coupled with, as appropriate, temporary humanitarian evacuation programmes and other forms of admission.

15. States that have not yet established resettlement programmes are encouraged to do so at the earliest opportunity. Those that have already done so are encouraged to consider increasing the size of their programmes. Such programmes should incorporate a non-discriminatory approach and a gender perspective throughout.

16. States aim to provide resettlement places and other legal pathways on a scale that would enable the annual resettlement needs identified by the Office of the United Nations High Commissioner for Refugees to be met.

The way forward

17. We commit to implementing this comprehensive refugee response framework.

18. We invite the Office of the United Nations High Commissioner for Refugees to engage with States and consult with all relevant stakeholders over the coming two years, with a view to evaluating the detailed practical application of the comprehensive refugee response framework and assessing the scope for refinement and further development. This process should be informed by practical experience with the implementation of the framework in a range of specific situations. The objective would be to ease pressures on the host countries involved, to enhance refugee self-reliance, to expand access to third-country solutions and to support conditions in countries of origin for return in safety and dignity.

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19. We will work towards the adoption in 2018 of a global compact on refugees, based on the comprehensive refugee response framework and on the outcomes of the process described above. We invite the United Nations High Commissioner for Refugees to include such a proposed global compact on refugees in his annual report to the General Assembly in 2018, for consideration by the Assembly at its seventy-third session in conjunction with its annual resolution on the Office of the United Nations High Commissioner for Refugees.

Annex II

Towards a global compact for safe, orderly and regular migration

I. Introduction

1. This year, we will launch a process of intergovernmental negotiations leading to the adoption of a global compact for safe, orderly and regular migration.
2. The global compact would set out a range of principles, commitments and understandings among Member States regarding international migration in all its dimensions. It would make an important contribution to global governance and enhance coordination on international migration. It would present a framework for comprehensive international cooperation on migrants and human mobility. It would deal with all aspects of international migration, including the humanitarian, developmental, human rights-related and other aspects of migration. It would be guided by the 2030 Agenda for Sustainable Development¹⁷ and the Addis Ababa Action Agenda of the Third International Conference on Financing for Development,¹⁸ and informed by the Declaration of the High-level Dialogue on International Migration and Development adopted in October 2013.¹⁹

II. Context

3. We acknowledge the important contribution made by migrants and migration to development in countries of origin, transit and destination, as well as the complex interrelationship between migration and development.
4. We recognize the positive contribution of migrants to sustainable and inclusive development. We also recognize that international migration is a multidimensional reality of major relevance for the development of countries of origin, transit and destination, which requires coherent and comprehensive responses.
5. We will cooperate internationally to ensure safe, orderly and regular migration involving full respect for human rights and the humane treatment of migrants, regardless of migration status. We underline the need to ensure respect for the dignity of migrants and the protection of their rights under applicable international law, including the principle of non-discrimination under international law.
6. We emphasize the multidimensional character of international migration, the importance of international, regional and bilateral cooperation and dialogue in this regard, and the need to protect the human rights of all migrants, regardless of status, particularly at a time when migration flows have increased.

¹⁷ Resolution 70/1.

¹⁸ Resolution 69/313, annex.

¹⁹ Resolution 68/4.

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7. We bear in mind that policies and initiatives on the issue of migration should promote holistic approaches that take into account the causes and consequences of the phenomenon. We acknowledge that poverty, underdevelopment, lack of opportunities, poor governance and environmental factors are among the drivers of migration. In turn, pro-poor policies relating to trade, employment and productive investments can stimulate growth and create enormous development potential. We note that international economic imbalances, poverty and environmental degradation, combined with the absence of peace and security and lack of respect for human rights, are all factors affecting international migration.

III. Content

8. The global compact could include, but would not be limited to, the following elements:

(a) International migration as a multidimensional reality of major relevance for the development of countries of origin, transit and destination, as recognized in the 2030 Agenda for Sustainable Development;

(b) International migration as a potential opportunity for migrants and their families;

(c) The need to address the drivers of migration, including through strengthened efforts in development, poverty eradication and conflict prevention and resolution;

(d) The contribution made by migrants to sustainable development and the complex interrelationship between migration and development;

(e) The facilitation of safe, orderly, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies; this may include the creation and expansion of safe, regular pathways for migration;

(f) The scope for greater international cooperation, with a view to improving migration governance;

(g) The impact of migration on human capital in countries of origin;

(h) Remittances as an important source of private capital and their contribution to development and promotion of faster, cheaper and safer transfers of remittances through legal channels, in both source and recipient countries, including through a reduction in transaction costs;

(i) Effective protection of the human rights and fundamental freedoms of migrants, including women and children, regardless of their migratory status, and the specific needs of migrants in vulnerable situations;

(j) International cooperation for border control, with full respect for the human rights of migrants;

(k) Combating trafficking in persons, smuggling of migrants and contemporary forms of slavery;

(l) Identifying those who have been trafficked and considering providing assistance, including temporary or permanent residency, and work permits, as appropriate;

(m) Reduction of the incidence and impact of irregular migration;

- (n) Addressing the situations of migrants in countries in crisis;
- (o) Promotion, as appropriate, of the inclusion of migrants in host societies, access to basic services for migrants and gender-responsive services;
- (p) Consideration of policies to regularize the status of migrants;
- (q) Protection of labour rights and a safe environment for migrant workers and those in precarious employment, protection of women migrant workers in all sectors and promotion of labour mobility, including circular migration;
- (r) The responsibilities and obligations of migrants towards host countries;
- (s) Return and readmission, and improving cooperation in this regard between countries of origin and destination;
- (t) Harnessing the contribution of diasporas and strengthening links with countries of origin;
- (u) Combating racism, xenophobia, discrimination and intolerance towards all migrants;
- (v) Disaggregated data on international migration;
- (w) Recognition of foreign qualifications, education and skills and cooperation in access to and portability of earned benefits;
- (x) Cooperation at the national, regional and international levels on all aspects of migration.

IV. The way forward

9. The global compact would be elaborated through a process of intergovernmental negotiations, for which preparations will begin immediately. The negotiations, which will begin in early 2017, are to culminate in an intergovernmental conference on international migration in 2018 at which the global compact will be presented for adoption.

10. As the Third High-level Dialogue on International Migration and Development is to be held in New York no later than 2019,²⁰ a role should be envisaged for the High-level Dialogue in the process.

11. The President of the General Assembly is invited to make early arrangements for the appointment of two co-facilitators to lead open, transparent and inclusive consultations with States, with a view to the determination of modalities, a timeline, the possible holding of preparatory conferences and other practicalities relating to the intergovernmental negotiations, including the integration of Geneva-based migration expertise.

12. The Secretary-General is requested to provide appropriate support for the negotiations. We envisage that the Secretariat of the United Nations and the International Organization for Migration would jointly service the negotiations, the former providing capacity and support and the latter extending the technical and policy expertise required.

13. We envisage also that the Special Representative of the Secretary-General for International Migration and Development, Mr. Peter Sutherland, would coordinate

²⁰ See resolution 69/229, para. 32.

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the contributions to be made to the negotiation process by the Global Forum on Migration and Development and the Global Migration Group. We envisage that the International Labour Organization, the United Nations Office on Drugs and Crime, the Office of the United Nations High Commissioner for Refugees, the United Nations Development Programme, the Office of the United Nations High Commissioner for Human Rights and other entities with significant mandates and expertise related to migration would contribute to the process.

14. Regional consultations in support of the negotiations would be desirable, including through existing consultative processes and mechanisms, where appropriate.

15. Civil society, the private sector, diaspora communities and migrant organizations would be invited to contribute to the process for the preparation of the global compact.

(TRUE COPY)

Statement by Mr. Anil Kumar Rai, Counsellor (Humanitarian Affairs) on 1st Thematic Discussion towards a Global Compact on Refugees delivered on 10 July 2017

1st Thematic Discussion towards a Global Compact on Refugees

[Geneva, 10 July 2017]

Statement by India

Mr. Chair,

Please allow me to start by congratulating people of Iraq and the forces that had played role in liberation of Mosul, the city which has been under occupation for more than 3 years and has seen mass exodus of people in search of safety. In our view, the best solution strategy is to start the re-construction work at the earliest so that Iraqi people move to their homeland happily and peacefully.

We wish that other protracted crisis situations should also move towards peace building and the reconstruction work should start at the earliest so that displaced people do not look for refuge but return to their homeland, for which they have been waiting for years and in certain cases, even for generations.

We are happy to note that new concessional lending instruments developed by World Bank and the UN for supporting the host communities and countries have seen successful piloting in certain parts of the world and had paved the way for implementation at larger scale. We also welcome new global lending facility launched in New York and designed to external concessional financial arrangements to mid-income countries hosting disproportionately large refugee populations.

We welcome the "Grand Bargain" concepts to strengthen the humanitarian action. We see that few nascent steps have been taken in this direction which has brought welcome outcomes and had made positive impacts on the affected community. Now it's time for us to scale it up and mainstream the "Grand Bargain" concepts in all aspects of humanitarian action.

We support the concept of Burden Sharing, including relocation of refugees on case to case basis, that too with the consent of the refugees. While doing so, we need to be cautious not to open the path for re-defining the Refugee Convention and its protocol, and in no case diluting the principle of 'non-refoulment'.

Finally, we may like to point out towards growing trend of increasing the qualification bar for granting of refugee status by adopting of opaque mechanisms. This has led to disqualification of large number of applicants, making them irregular and unknowingly pushing them to greater degree of vulnerability. This approach needs a serious introspection.

Thank you very much Mr. Chair.

(TRUE COPY)



UN human rights chief points to 'textbook example of ethnic cleansing' in Myanmar

<http://www.un.org/apps/news/story.asp?NewsID=57490#.WcNbrcgjE2w>



Rohingya refugee children from Myanmar stand outside Kutupalong camp in Bangladesh (July 2017) Photo: [Poppy McPherson/IRIN](#)

11 September 2017 – The United Nations human rights chief today lashed out at the treatment of the Rohingya in Myanmar which has led to more than 300,000 people fleeing to Bangladesh in the past three weeks, as security forces and local militia reportedly burn villages and shoot civilians.

"The situation seems a textbook example of ethnic cleansing," Zeid Ra'ad al-Husseini told the UN Human Rights Council in Geneva, noting that the current situation cannot yet be fully assessed since Myanmar has refused access to human rights investigators.

He cited reports of Myanmar authorities laying landmines along the border with Bangladesh and requiring returnees to provide "proof of nationality," an impossibility given that successive Myanmar governments have since 1962 progressively stripped the Rohingya population of their political and civil rights, including citizenship rights.

The latest security operation in Rakhine state follows attacks by militants on 25 August against 30 police posts.

The High Commissioner called the response "clearly disproportionate" and "without regard for basic principles of international law," and said the Government should "stop claiming that the Rohingyas are setting fire to their own homes and laying waste to their own villages."

"This complete denial of reality is doing great damage to the international standing of a Government which, until recently, benefited from immense good will," he said.

"I call on the Government to end its current cruel military operation, with accountability for all violations that have occurred and to reverse the pattern of severe and widespread discrimination against the Rohingya population," he added, calling for his Office (OHCHR) to obtain unfettered access to the country.

Last year, Mr. Zeid issued a report warning that the pattern of gross violations of the human rights of the Rohingya suggested a widespread or systematic attack against the community, possibly amounting to crimes against humanity.

In today's statement, he also addressed Bangladeshi authorities, encouraging them to maintain open borders for the refugees, and the international community to help support the refugees. Humanitarian agencies in Bangladesh today appealed for \$77 million to aid an estimated 300,000 refugees through the end of the year.

At the same time, he deplored measures taken by India, which has said it is not a signatory to the Refugee Convention and can deport Rohingyas.

(TRUE COPY)



ANNEXURE - F
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United Nations Secretary-General

1 September 2017

Statement attributable to the Spokesperson for the Secretary-General on Myanmar

<https://www.un.org/sg/en/content/sg/statement/2017-09-01/statement-attributable-spokesperson-secretary-general-myanmar>

The Secretary-General is deeply concerned by the reports of excesses during the security operations conducted by Myanmar's security forces in Rakhine State and urges restraint and calm to avoid a humanitarian catastrophe.

The Secretary-General underlines the responsibility of the Government of Myanmar to provide security and assistance to all those in need and to enable the United Nations and its partners to extend the humanitarian support they are ready to provide.

The current situation underlines the urgency of seeking holistic approaches to addressing the complex root causes of violence. The Secretary-General urges the Government of Myanmar to implement the recommendations of the Advisory Commission on Rakhine.

The Secretary-General appreciates the efforts of the Bangladesh authorities and communities to meet the dire needs of recent arrivals. He encourages the Government to ensure refugees are able to avail themselves of the support the United Nations and partners are mobilised to provide.

Eri Kaneko, Associate Spokesperson for the Secretary-General

(TRUE COPY)

Statement by Anthony Lake, UNICEF Executive Director, on children affected by the violence in Rakhine, Myanmar

https://www.unicef.org/media/media_100724.html

NEW YORK, 5 September 2017 – “More than 125,000 Rohingya refugees have fled across the border from Rakhine State, Myanmar, into Bangladesh since 25 August, as many as 80 per cent of them are women and children. Many more children in need of support and protection remain in the areas of northern Rakhine State that have been wracked by violence.

“In Bangladesh, UNICEF is scaling up its response to provide refugee children with protection, nutrition, health, water and sanitation support.

“In Myanmar, UNICEF does not at present have access to the affected areas in northern Rakhine State. We are unable to reach the 28,000 children to whom we were previously providing psychosocial care or the more than 4,000 children who were treated for malnutrition in Buthidaung and Maungdaw. Our clean water and sanitation work has been suspended, as have school repairs that were under way.

“Children on **both** sides of the border need urgent help and protection.”

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About UNICEF

UNICEF works in some of the world's toughest places, to reach the world's most disadvantaged children. Across 190 countries and territories, we work for every child, everywhere, to build a better world for everyone.

(TRUE COPY)

SEPTEMBER 14, 2017 / 12:06 AM / 7 DAYS AGO

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U.N. Security Council condemns excessive violence in Myanmar

Reuters Staff

<https://www.reuters.com/article/us-myanmar-rohingya-un-statement/u-n-security-council-condemns-excessive-violence-in-myanmar-idUSKCN1B02GT>

UNITED NATIONS (Reuters) - The United Nations Security Council expressed deep concern on Wednesday about violence in Myanmar's Rakhine state, where about 400,000 Rohingya Muslims have been forced to flee to Bangladesh.

In a statement, the 15-member council "expressed concern about reports of excessive violence during the security operations and called for immediate steps to end the violence in Rakhine, de-escalate the situation, re-establish law and order, ensure the protection of civilians."

British U.N. Ambassador Matthew Rycroft said it was the first time in nine years the council had agreed a statement on Myanmar.

Reporting by Michelle Nichols; editing by Grant McCool
Our Standards: The Thomson Reuters Trust Principles

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HUMAN
RIGHTS
WATCH

Burma: Rohingya Describe Military Atrocities

<https://www.hrw.org/news/2017/09/08/burma-rohingya-describe-military-atrocities>

September 8, 2017 8:31PM EDT

Military's 'Unfinished Business' Has Hallmarks of 'Ethnic
Cleansing'



Shamsun Nahar (L), 60, a Rohingya widow who fled from Kha Maung Seik village of Myanmar to Bangladesh alone, whose 30-year-old son is missing, tells her story at Kutupalang Makeshift Camp in Cox's Bazar, Bangladesh, September 4, 2017.

(New York) – Ethnic Rohingya Muslims fleeing Burmese security forces in Burma's Rakhine State have described killings, shelling, and arson in their villages that have all the hallmarks of a campaign of "ethnic cleansing," Human Rights Watch said today.

Burmese army, police, and ethnic Rakhine armed groups have carried out operations against predominantly Rohingya villages since the August 25, 2017 attacks by Arakan Rohingya Salvation Army (ARSA) militants against about 30 police posts and an army base. Burmese army commander Sr. Gen. Min Aung Hlaing told the media that the government-approved military clearance operations in Rakhine State was "unfinished business" dating back to the Second World War.

Ethnic Rohingya Muslims fleeing Burmese security forces in Burma's Rakhine State have described killings, shelling, and arson in their villages that have all the hallmarks of a campaign of "ethnic cleansing."

The United Nations Security Council should hold a public emergency meeting and warn the Burmese authorities that they will face severe sanctions unless they put an end to the brutal campaign against the Rohingya population.

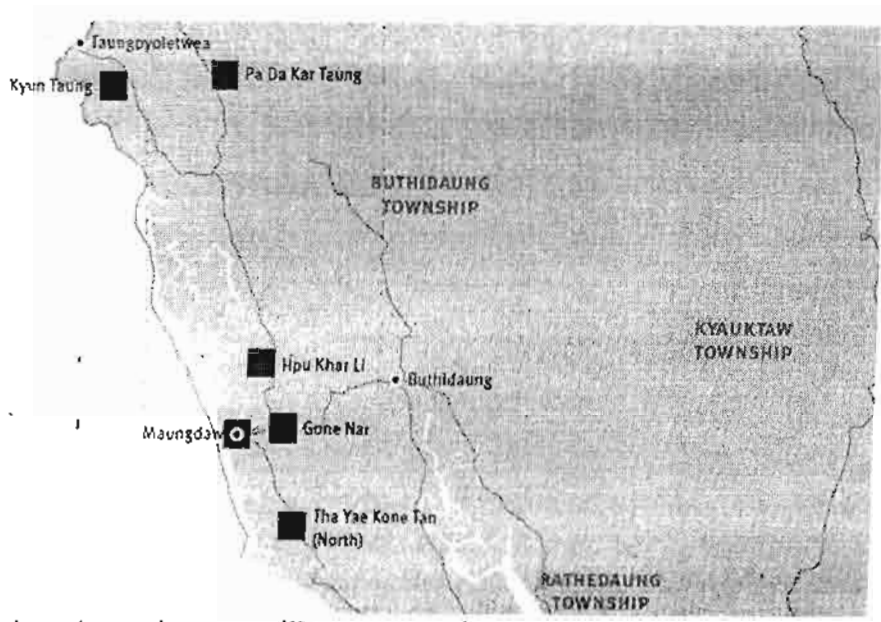
"Rohingya refugees have harrowing accounts of fleeing Burmese army attacks and watching their villages be destroyed," said Meenakshi Ganguly, South Asia director. "Lawful operations against armed groups do not involve burning the local population out of their homes."

In early September, Human Rights Watch interviewed more than 50 Rohingya refugees who had fled across the border to Bangladesh and obtained detailed accounts from about a dozen people. The Rohingya told Human Rights Watch that Burmese government security forces had carried out armed attacks on villagers, inflicting bullet and shrapnel injuries, and burned down their homes. They described the military's use of small arms, mortars, and armed helicopters in the attacks.



Rohingya refugees carry their child as they walk through water after crossing the border by boat through the Naf River in Teknaf, Bangladesh, September 7, 2017.

Human Rights Watch obtained satellite data and images that are consistent with widespread burnings in northern Rakhine State, encompassing the townships of Rathedaung, Buthidaung, and Maungdaw. To date, Human Rights Watch has found 21 unique locations where heat sensing technology on satellites identified significant, large fires. Knowledgeable sources in Bangladesh told Human Rights Watch that they heard the distinctive sounds of heavy and light machine gun fire and mortar shelling in villages just across the border in Burma, and spotted smoke arising from these villages shortly afterward.



Map depicting sites where satellite sensors detected active fires between August 25 and 28, 2017. (Note that the size of the box does not represent the size of the fire detected.)

The Burmese government has denied security force abuses, claiming that it is engaged in a counterterrorism operation in which nearly 400 people have been killed, most of them suspected militants. The Burmese authorities assert, without substantiating their claims, that militants and Rohingya villagers have burned 6,845 houses across 60 villages in northern Rakhine State. Refugee accounts contradict the claims of Burmese officials.

For example, Momena, a 32-year-old Rohingya woman from Maungdaw Township, said that she fled to Bangladesh on August 26, a day after security forces attacked her village. She first hid with her children when the soldiers arrived, but returning to the village she said she saw 40 to 50 villagers dead, including some children and elderly people: “All had knife wounds or bullet wounds, some had both. My father was among the dead; his neck had been cut open. I was unable to do last rites for my father – I just fled.”

At the Cox’s Bazar hospital, Human Right Watch interviewed several Rohingya with bullet wounds. Some said they were hit while at home, others said they

were shot when running for safety from their villages, or while hiding in the fields or hills from Burmese soldiers.



Rohingya refugees wait for a boat to cross a canal after crossing the border through the Naf River in Teknaf, Bangladesh, September 7, 2017.

Usman Goni, 20, said that he and five friends were in the hills outside their village, tending cattle, when they were attacked. He saw a helicopter flying overhead and then something fall out of it. He later realized he had been hit by whatever the helicopter dropped. Four of his friends died from fragment injuries while villagers transported Goni to Bangladesh for treatment. The fragments in his torso had not yet been removed when Human Rights Watch met him in the hospital.

Human Rights Watch's initial investigations of the current situation in Rakhine State are indicative of an ethnic cleansing campaign. Although "ethnic cleansing" is not formally defined under international law, a UN commission of experts has defined the term as a "purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas....

This purpose appears to be the occupation of territory to the exclusion of the purged group or groups.”

“There is no indication that the horrors we and others are uncovering in Rakhine State are letting up,” Ganguly said. “The United Nations and concerned governments need to press Burma right now to end these horrific abuses against the Rohingya as a first step toward restoring Rohingya to their homes.”

Attacks on villages in Maungdaw Township, Rakhine State, based on interviews with Rohingya refugees in Bangladesh, August 30, 2017 to September 5, 2017

Yasin Ali

Yasin Ali, 25, said that Burmese security forces attacked his village of Reka Para on August 27. Prior to the attack, tensions had been building in Reka Para and neighboring Rohingya villages as local Rakhine harassed and abused them for months. Ali said: “They would come around to us and say, ‘This is not your land. Don’t cultivate this land, and don’t dare take the food growing on it.’ If we went near their lands, they would beat us with sticks.”

During the August 27 attack, all the villagers went into hiding. Ali said the women and children were sent further away to seek shelter, while the men stayed close by to wait out the attack in the hopes that they could quickly return to the village after the soldiers left. He said he hid by the roadside, about half a kilometer from where the soldiers made their approach. He heard what sounded like mortar shells hitting the village: “I heard boom boom boom, and then I saw the houses just collapse.” After a while, he saw the soldiers advance toward the village, and from his vantage point, he saw that they were carrying small arms and what looked like light machine guns. He also said he saw a mortar system on the shoulder of a soldier, and some apparent mortar rounds the size of a grapefruit.

Ali said that when the soldiers entered the village, they started shooting indiscriminately. He and the other men from the village then decided to run away into the hills for shelter. From the hills, he saw a helicopter painted olive

green circle his village four times, and saw something being dropped from the helicopter after which the houses in the village caught fire.

Ali and his family walked to Bangladesh and were allowed to enter by the border guards. They arrived on August 31, and at the time Ali spoke with Human Rights Watch, they were waiting outside trying to sort out where they could get shelter.

Momena

Momena, 32, fled her village of Kirgari Para on August 26 with two of her three children. She said that soldiers had previously attacked the village during the military operations in late 2016, but the situation in her village had settled down since then. She described the events that prompted her to flee:

I heard the sounds of fighting around 4 p.m. on Friday [August 25]. There was a lot of noise, worse than before. I saw them [the soldiers] myself as they entered my village. I don't know how many there were but it looked like a lot to me. I fled with the other villagers and we sheltered in the jungle overnight. When I returned to the village the next morning, after the soldiers had left, I saw about 40 to 50 villagers dead, including some children and some elderly. All had knife wounds or bullet wounds – some had both. My father was among the dead; his neck had been cut open. I was unable to do last rites for my father, I just fled.

Momena said she had to leave her husband and 10-year-old son behind. She has had no news of them since then. Her husband has no mobile phone and other villagers she is in contact with have heard no news of either of them. She heard that her mother is alive but has no idea where she is or how she is.

From her vantage point while hiding in the jungle, Momena said she could see some of the houses in her village burning at night. She believes soldiers set fire to the houses as a warning to the villagers.

Momena said she did not know of any armed Rohingya militants in the village. She had heard some youth in the village talking about resisting, but she never saw anyone take any action on this, there was just talk. She said many young Rohingya men fled into the jungle after the attack.

In addition to bodies found in her village, Momena said she saw several bodies of children in the Naf River at one of the crossing points into Bangladesh.

Momena said that when she and others fleeing with her crossed into Bangladesh, the Bangladesh Border Guards stopped them and said: “We have to stop you but if you shout and insist on entering, we’ll let you in.” She understood this as the guards pretending to obey their orders to refuse refugees entry to Bangladesh, but in practice helping the refugees enter the country.

Khatija Khaton

Khatija Khaton, a widow, lived in the village of Ashikha Mushi with her four children. She said that on August 25, an armed group of ethnic Rakhine youth came to her house and issued vague threats. She recognized them from previous encounters because most of them had been involved in the violence against her community in October 2016.

Khaton said she had never reported previous threats because “We don’t trust the police, we just escape, that’s our only solution.”

The youth were armed with rifles and slingshots. She heard periodic gunshots, and other villagers said that the army was helping the Rakhine youth, but she did not see any evidence of that herself.

After seeing the armed Rakhine group kill a young Rohingya man, a 22-year-old called Rahim, she decided to leave her village that day after Friday noon prayers. She said that initially the Rohingya youth in the village responded to the Rakhine group’s show of armed strength and threats by protesting with bamboo poles, but the Rakhine group opened fire on them:

Jumma prayers were just over that Friday, and the men and boys were outside the mosque when the Rakhine armed men came up to them. Rahim and others took up bamboo poles, that’s all they had, but Rahim panicked when they began to shoot. He started running away. I saw them shoot him – the bullet went through his cheek, right by his cheekbone under his eye. He died from that wound.

After witnessing that shooting, Khaton panicked and fled into the hills with her three teenage daughters, ages 13, 15, and 18, whose safety she most feared for.

She left her 5-year-old son behind – many Rohingya thought younger children might be safe from attack – but since then, she has no news of him.

She learned that the armed Rakhine group had returned to attack her village in the early hours of August 26. While hiding in the hills, Khaton said she saw several helicopters. She also said she heard bombs being dropped near and around her village: “It was a constant boom boom boom.” She saw her village mosque and one house in her village burning.

Khaton and her daughters had no trouble entering Bangladesh, but she remains concerned about the security of her daughters, and is troubled by uncertainty and guilt for her young son left behind.

Nurus Safa

Nurus Safa, about 40, fled from Fahira Bazar in the village tract of Kha Maung Seik on August 29. She appeared to be in a state of shock when Human Rights Watch met her less than 24 hours after she arrived Bangladesh. “Many people were killed by knives, houses burned,” she said. “We were threatened, people were wounded, so I just fled.”

Safa said her village was attacked on August 25 by men in uniform whom she assumes were Burmese army soldiers. She and other villagers ran from the village and hid in the nearby hills for a few days and nights. She had heard rumors that some Rohingya youth in her village had been arming themselves and organizing protests, but she did not know this directly and had seen no signs of it.

In her panic to leave, Safa left behind the three eldest of her six children, ages 7, 8, and 15. She has received no news about them or her husband, Shafique Ahmed. She said that when she crossed the Naf River, the water level was up to her neck because of heavy monsoon rains. She said she saw many wounded people crossing the river into Bangladesh, but does not know who they were or how they were injured.

Safa says she and her younger children did not have any trouble from the Bangladeshi border guards when entering Bangladesh.

Mohammad Yunus

Mohammad Yunus, 26, said his village of Sikadir Para in Tat U Chaung village tract, close to the border with Bangladesh, was attacked on August 26. Although the villagers had had no prior warning of the attack, they were nervous because other people had come to his village fleeing attacks on their own villages further inland. He described the attack on the neighboring village of Falinga Ziri:

I remember army helicopters, olive green in color, flying around. I was standing on the other side of a canal, watching all this happen directly across from me. I was very close and saw it all myself. The soldiers were using guns that shoot fire, or something that explodes and sets fire.

Yunus was not sure how many soldiers were involved in the operation, but he thinks there might have been over 250. He said he saw about 25 to 30 houses set on fire in Falinga Kiri from his vantage point. He said that at the time of the attack, it looked to him like there were no villagers left; they had all fled earlier.

Yunus and his fellow villagers quickly decided to flee their village as well. The next day, August 27, as they were heading toward shelter in neighboring hills, he saw soldiers and police shooting at villagers fleeing. He learned later that one woman had been killed.

Yunus said that he did not know of any Rohingya men who had been training or arming themselves, or had engaged in any militant activity.

Begum Bahar

Begum Bahar said that soldiers attacked her village of Kun Thee Pyin on August 25. They wore olive green uniforms and she believes they were Burmese army. She along with seven of her children and other villagers fled in panic when they saw the soldiers and heard gunfire. They ran into the jungle to cross the border into Bangladesh for safety, a two-hour walk away.

Bahar said she saw at least three bodies as she fled to the border crossing. One had a cut on the back of the neck and two suffered from bullet wounds. She heard the "boom boom boom" of large weapons firing all day August 26 and 27, as she was attempting to cross the Naf River into Bangladesh. During the river crossing, she lost contact with her 12-year-old son and does not know if he survived.

Begum Behar said she was unaware of Rohingya militant training or anti-government activities. She said that the authorities had ordered all Rohingya villages to deposit sharp weapons to local leaders to turn over to the police, so any kind of resistance would be difficult. She did admit that her 22-year-old son had opposed her decision to leave and stayed behind when she left with her other children.

Tabarak Hussein

Hussein, 19, said that on August 27 at about 9 a.m., about 200 to 300 Burmese security forces in uniform along with local Rakhine men arrived at his village of Kun Thee Pyun (Kwashong in Rohingya). He said they were all armed, but was too frightened to have a proper look at their weapons. They began a spree of indiscriminate shooting in the village.

Hussein said that before the attack, tensions had been running high:

The local police had been harassing us, mistreating us for at least six months before this. They would take away our cows, for example. We were angry about this but we didn't protest; we knew protesting would come to nothing. Then on the Friday [August 25] before the attack, four people were killed in my village [by the police]. I don't know exactly how it happened. They were all Rohingya men. We left the village that day and hid in the hills, but came back because the police seemed to back down and leave. We thought it was all over, but it was not.

Hussein said that when the August 27 attack began, he and the other villagers fled into the hills. From atop one hill, he saw a helicopter flying over Kun Thee Pyun village, and then almost immediately after he saw houses in the village catch on fire. He doesn't know what caused the houses to catch fire.

He said that none of the villagers in his village were killed or injured during the August 27 attack. He walked for two days and on August 29 arrived at the Bangladeshi border. He said the Bangladesh border guards stopped his group at the border for a while, and then instructed them to take another route to enter Bangladesh. The group did that and they were allowed in.

Anwar Shah

Anwar Shah, 17, said that on the morning of August 27, Burmese security forces in uniform opened fire on a crowd in his village of Let Ya Chaung, killing three Rohingya men and a boy, and wounding 18 others. He said he didn't know the circumstances of the shooting, but there had been tensions between the authorities and local Rakhine and Rohingya villagers for some time. He didn't think the four were armed or posed any security threat. The dead included Shah's brother, Abdu Satter, 22. Abdu Shukur, about 50, Nur Alam, about 15, and Haroun, about 25. Their families buried them in the neighboring village of Kum Para because they were too frightened to bury them in their own village.

Shah said that after the attack he saw the local village mosque was on fire. He heard that the local police were responsible setting the blaze but did not witness that.

Shah said that following his brother's death, he fled to Bangladesh. He learned that there was a big attack on his village the next day, August 28, and that all houses were set on fire.

(TRUE COPY)

Myanmar: Worsening cycle of violence in Rakhine must be broken urgently, UN expert warns

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<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22018&LangID=E>

GENEVA (31 August 2017) – A United Nations human rights expert has expressed alarm at the deteriorating situation in Myanmar's Rakhine State, affecting not just the Rakhine and Muslim populations but also other communities. Tens of thousands of Rohingya Muslims are now reported to be fleeing towards Bangladesh.

"The humanitarian situation is deteriorating rapidly and I am concerned that many thousands of people are increasingly at risk of grave violations of their human rights," said the UN Special Rapporteur on the human rights situation in Myanmar, Yanghee Lee.

"The worsening cycle of violence is of grave concern and must be broken urgently."

Ms. Lee said the suffering of the Rohingya was particularly poignant this week, while the world's Muslim communities celebrated Eid al-Adha on 1 September but the Rohingya remained in a precarious situation, not knowing their future or the fate of their relatives.

Latest estimates from UN sources suggest more than 27,000 people have crossed into Bangladesh in the area around Cox's Bazar, while 20,000 more remain stranded between the two countries. The number continues to grow.

The Special Rapporteur noted concerns over both the extremist attacks which followed the release of the final report by the Rakhine Advisory Commission, led by former UN Secretary-General Kofi Annan, and the major security operations undertaken in response to the attacks.

"I am concerned that these events will derail efforts to address the root causes of the systematic discrimination and recurrent violence in Rakhine State," said the Special Rapporteur.

"If human rights concerns are not properly addressed, and if people remain politically and economically marginalized, then northern Rakhine may provide fertile ground for radicalization, with people becoming increasingly vulnerable to recruitment by extremists," said Ms. Lee. "These concerns were raised by the Advisory Commission and I share them fully."

"I am saddened to receive reports that, while the authorities are helping Rakhine and other communities living in affected townships evacuate to safer locations, this assistance is not being extended to the Rohingya Muslims," she added.

The situation had worsened considerably since extremist attacks on 25 August, with credible multiple sources reporting violations which include Rohingyas being indiscriminately killed and injured by military gunfire, even while fleeing, and helicopters and rocket-propelled grenades being used against the civilian population.

Ms. Lee reminded the authorities of their human rights obligations to give equal protection to people from all communities, whether from attacks by extremists or excessive action from the security forces. She has previously expressed concern over the military build-up in Rakhine State, urging the security forces to exercise restraint in all circumstances and to respect human rights.

"I express the strongest condemnation of the attacks carried out by militant extremists and urge them to immediately halt further violence against the innocent civilian population.

"I call on the Government to ensure the immediate provision of assistance to all affected communities in Rakhine State, and grant unfettered access to the United Nations to provide humanitarian assistance, including to address protection concerns, and to monitor the situation. Even before last Friday's attacks, access for humanitarian actors had been very limited in northern Rakhine, negatively impacting the support they provide."

This statement has been endorsed by the UN Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, and the Special Rapporteur on minority issues, Fernand de Varennes.

ENDS

(TRUE COPY)

NHRC to oppose govt's deportation plan for Rohingyas ^{ANNEXURE-K} 88

Neeraj Chauhan | TNN | Updated: Sep 16, 2017, 10:46 IST

NEW DELHI: The **National Human Rights Commission (NHRC)** will **oppose** the government's plans to deport 40,000-odd Rohingya Muslim refugees living illegally in the country, when the Centre submits its affidavit on the issue in the Supreme Court on Monday. The rights body will plead against their deportation on "humanitarian grounds" and for fear of persecution if they are sent back.

The ministry of home affairs (MHA) is set to file the affidavit on deportation of Rohingyas whose stay has been termed as "illegal, a **security threat** and strain on India's resources". NHRC chairperson and former CJI Justice H L Dattu told TOI, "We will intervene in the matter on human grounds. We are a human rights body and if these persons (Rohingyas) are deported back to their country, we see it as a violation of human rights."

The rights body is also likely to cite various orders of the SC in which it has held that fundamental right to life and liberty enshrined under Article 21 of the Constitution applies to all, irrespective of whether they are Indian citizens or not, said sources. Earlier, while issuing a notice to the home ministry last month and criticising its decision to deport Rohingyas, NHRC had stated that "India has been home to refugees for centuries. It has continued to receive a large number of refugees from different countries".

<http://timesofindia.indiatimes.com/india/nhrc-to-oppose-govts-deportation-plan-for-rohingyas-likely-to-fight-for-refugees-in-sc/articleshow/60704936.cms>

(TRUE COPY)

Executive Committee's membership by year of admission**UNHCR Advisory Committee established in 1951**

The following fifteen members

Australia	France	Switzerland
Austria	Germany	Turkey
Belgium	Holy See	United Kingdom
Brazil	Israel	United States
Denmark	Italy	Venezuela, Bolivarian Republic of*

The UNREF Executive Committee established in 1955

The same fifteen members as the Advisory Committee, plus:

Colombia	the Netherlands	as of 1957
Greece	Norway	Canada
Iran, Islamic Republic of		

Executive Committee of the High Commissioner's Programme, 1958

The same twenty-one members as the UNREF Executive Committee, plus:

China	as of 1996	as of 2008
Sweden	Ireland	Benin
Tunisia		Luxembourg
Yugoslavia, Socialist Federal Republic of**	as of 1997	Montenegro
	Poland	the former Yugoslav Republic of Macedonia
	South Africa	
as of 1963		as of 2009
Algeria		Djibouti
Lebanon	as of 1999	Republic of Moldova
Madagascar	Mozambique	
Nigeria		as of 2010
United Republic of Tanzania	as of 2000	Slovenia
	Chile	
as of 1967	Côte d'Ivoire	as of 2011
Uganda	Republic of Korea	Bulgaria
		Cameroon
as of 1979	as of 2001	Congo
Argentina	Mexico	Croatia
Finland		Togo
Japan	as of 2002	Turkmenistan
Lesotho	Ecuador	
Morocco	Guinea	as of 2012
Nicaragua	New Zealand	Azerbaijan
Sudan	Serbia**	Rwanda
Thailand		
Democratic Republic of the Congo***	as of 2003	as of 2014
	Cyprus	Afghanistan
as of 1982	Kenya	Belarus
Namibia	Yemen	Czech Republic
		Latvia
as of 1988	as of 2004	Peru
Pakistan	Egypt	Senegal
Somalia	Zambia	
		as of 2015
as of 1991	as of 2005	Armenia
Philippines	Ghana	Chad
	Romania	Georgia
as of 1993		Uruguay
Ethiopia	as of 2006	
Hungary	Jordan	As of 2017
	Portugal	Fiji
as of 1994		Lithuania
Spain	as of 2007	Paraguay
	Estonia	
as of 1995	Costa Rica	Total = 101
Bangladesh		
India		
Russian Federation		

* On 17 November 2004, the United Nations was informed that the short name of Venezuela had been changed to Venezuela (Bolivarian Republic of).

** In 2002, following the dissolution of the Federal Republic of Yugoslavia (after the secession of Croatia, Slovenia, the former Yugoslav Republic of Macedonia and Bosnia and Herzegovina), the Socialist Federal Republic of Yugoslavia (Montenegro and Serbia) was admitted as a new member. On 4 February 2003, the Federal Republic of Yugoslavia informed the United Nations that it had changed its name to Serbia and Montenegro. On 3 June 2006, following the Declaration of Independence adopted by the Republic of Montenegro, the Republic of Serbia (Serbia) informed the United Nations that it would continue the United Nations membership previously held by Serbia and Montenegro.

*** On 20 May 1997, the Republic of Zaire was renamed the Democratic Republic of the Congo.

(TRUE COPY)

International Convention for the Protection of All Persons from Enforced
Disappearance

Preamble

The States Parties to this Convention,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to the Universal Declaration of Human Rights,

Recalling the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the other relevant international instruments in the fields of human rights, humanitarian law and international criminal law,

Also recalling the Declaration on the Protection of All Persons from Enforced Disappearance adopted by the General Assembly of the United Nations in its resolution 47/133 of 18 December 1992,

Aware of the extreme seriousness of enforced disappearance, which constitutes a crime and, in certain circumstances defined in international law, a crime against humanity,

Determined to prevent enforced disappearances and to combat impunity for the crime of enforced disappearance,

Considering the right of any person not to be subjected to enforced disappearance, the right of victims to justice and to reparation,

Affirming the right of any victim to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person, and the right to freedom to seek, receive and impart information to this end,

Have agreed on the following articles

Part I

Article 1

1. No one shall be subjected to enforced disappearance.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.

Article 2

For the purposes of this Convention, "enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

Article 3

Each State Party shall take appropriate measures to investigate acts defined in article 2 committed by persons or groups of persons acting without

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the authorization, support or acquiescence of the State and to bring those responsible to justice.

Article 4

Each State Party shall take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law.

Article 5

The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law.

Article 6

1. Each State Party shall take the necessary measures to hold criminally responsible at least:

(a) Any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance;

(b) A superior who:

(i) Knew, or consciously disregarded information which clearly indicated, that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance;

(ii) Exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance; and

(iii) Failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution;

(c) Subparagraph (b) above is without prejudice to the higher standards of responsibility applicable under relevant international law to a military commander or to a person effectively acting as a military commander.

2. No order or instruction from any public authority, civilian, military or other, may be invoked to justify an offence of enforced disappearance.

Article 7

1. Each State Party shall make the offence of enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness.

2. Each State Party may establish:

(a) Mitigating circumstances, in particular for persons who, having been implicated in the commission of an enforced disappearance, effectively contribute to bringing the disappeared person forward alive or make it possible to clarify cases of enforced disappearance or to identify the perpetrators of an enforced disappearance;

(b) Without prejudice to other criminal procedures, aggravating circumstances, in particular in the event of the death of the disappeared person or the commission of an enforced disappearance in respect of pregnant

women, minors, persons with disabilities or other particularly vulnerable persons

Article 8

Without prejudice to article 5,

1. A State Party which applies a statute of limitations in respect of enforced disappearance shall take the necessary measures to ensure that the term of limitation for criminal proceedings:

(a) Is of long duration and is proportionate to the extreme seriousness of this offence;

(b) Commences from the moment when the offence of enforced disappearance ceases, taking into account its continuous nature.

2. Each State Party shall guarantee the right of victims of enforced disappearance to an effective remedy during the term of limitation.

Article 9

1. Each State Party shall take the necessary measures to establish its competence to exercise jurisdiction over the offence of enforced disappearance:

(a) When the offence is committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is one of its nationals;

(c) When the disappeared person is one of its nationals and the State Party considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its competence to exercise jurisdiction over the offence of enforced disappearance when the alleged offender is present in any territory under its jurisdiction, unless it extradites or surrenders him or her to another State in accordance with its international obligations or surrenders him or her to an international criminal tribunal whose jurisdiction it has recognized.

3. This Convention does not exclude any additional criminal jurisdiction exercised in accordance with national law.

Article 10

1. Upon being satisfied, after an examination of the information available to it, that the circumstances so warrant, any State Party in whose territory a person suspected of having committed an offence of enforced disappearance is present shall take him or her into custody or take such other legal measures as are necessary to ensure his or her presence. The custody and other legal measures shall be as provided for in the law of that State Party but may be maintained only for such time as is necessary to ensure the person's presence at criminal, surrender or extradition proceedings.

2. A State Party which has taken the measures referred to in paragraph 1 of this article shall immediately carry out a preliminary inquiry or investigations to establish the facts. It shall notify the States Parties referred to in article 9, paragraph 1, of the measures it has taken in pursuance of paragraph 1 of this article, including detention and the circumstances

warranting detention, and of the findings of its preliminary inquiry or its investigations, indicating whether it intends to exercise its jurisdiction.

3. Any person in custody pursuant to paragraph 1 of this article may communicate immediately with the nearest appropriate representative of the State of which he or she is a national, or, if he or she is a stateless person, with the representative of the State where he or she usually resides.

Article 11

1. The State Party in the territory under whose jurisdiction a person alleged to have committed an offence of enforced disappearance is found shall, if it does not extradite that person or surrender him or her to another State in accordance with its international obligations or surrender him or her to an international criminal tribunal whose jurisdiction it has recognized, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State Party. In the cases referred to in article 9, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 9, paragraph 1.

3. Any person against whom proceedings are brought in connection with an offence of enforced disappearance shall be guaranteed fair treatment at all stages of the proceedings. Any person tried for an offence of enforced disappearance shall benefit from a fair trial before a competent, independent and impartial court or tribunal established by law.

Article 12

1. Each State Party shall ensure that any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to the competent authorities, which shall examine the allegation promptly and impartially and, where necessary, undertake without delay a thorough and impartial investigation. Appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.

2. Where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, the authorities referred to in paragraph 1 of this article shall undertake an investigation, even if there has been no formal complaint.

3. Each State Party shall ensure that the authorities referred to in paragraph 1 of this article:

(a) Have the necessary powers and resources to conduct the investigation effectively, including access to the documentation and other information relevant to their investigation;

(b) Have access, if necessary with the prior authorization of a judicial authority, which shall rule promptly on the matter, to any place of detention or any other place where there are reasonable grounds to believe that the disappeared person may be present.

4. Each State Party shall take the necessary measures to prevent and sanction acts that hinder the conduct of an investigation. It shall ensure in particular that persons suspected of having committed an offence of enforced disappearance are not in a position to influence the progress of an investigation by means of pressure or acts of intimidation or reprisal aimed at the complainant, witnesses, relatives of the disappeared person or their defence counsel, or at persons participating in the investigation.

Article 13

1. For the purposes of extradition between States Parties, the offence of enforced disappearance shall not be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition based on such an offence may not be refused on these grounds alone.

2. The offence of enforced disappearance shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties before the entry into force of this Convention.

3. States Parties undertake to include the offence of enforced disappearance as an extraditable offence in any extradition treaty subsequently to be concluded between them.

4. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the necessary legal basis for extradition in respect of the offence of enforced disappearance.

5. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offence of enforced disappearance as an extraditable offence between themselves.

6. Extradition shall, in all cases, be subject to the conditions provided for by the law of the requested State Party or by applicable extradition treaties, including, in particular, conditions relating to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition or make it subject to certain conditions.

7. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin, political opinions or membership of a particular social group, or that compliance with the request would cause harm to that person for any one of these reasons.

Article 14

1. States Parties shall afford one another the greatest measure of mutual legal assistance in connection with criminal proceedings brought in respect of an offence of enforced disappearance, including the supply of all evidence at their disposal that is necessary for the proceedings.

2. Such mutual legal assistance shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable treaties on mutual legal assistance, including, in particular, the conditions in

liberty, which shall be made promptly available, upon request, to any judicial or other competent authority or institution authorized for that purpose by the law of the State Party concerned or any relevant international legal instrument to which the State concerned is a party. The information contained therein shall include, as a minimum:

- (a) The identity of the person deprived of liberty;
- (b) The date, time and place where the person was deprived of liberty and the identity of the authority that deprived the person of liberty;
- (c) The authority that ordered the deprivation of liberty and the grounds for the deprivation of liberty;
- (d) The authority responsible for supervising the deprivation of liberty;
- (e) The place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty and the authority responsible for the place of deprivation of liberty;
- (f) Elements relating to the state of health of the person deprived of liberty;
- (g) In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains;
- (h) The date and time of release or transfer to another place of detention, the destination and the authority responsible for the transfer.

Article 18

1. Subject to articles 19 and 20, each State Party shall guarantee to any person with a legitimate interest in this information, such as relatives of the person deprived of liberty, their representatives or their counsel, access to at least the following information:

- (a) The authority that ordered the deprivation of liberty;
- (b) The date, time and place where the person was deprived of liberty and admitted to the place of deprivation of liberty.
- (c) The authority responsible for supervising the deprivation of liberty;
- (d) The whereabouts of the person deprived of liberty, including, in the event of a transfer to another place of deprivation of liberty, the destination and the authority responsible for the transfer;
- (e) The date, time and place of release;
- (f) Elements relating to the state of health of the person deprived of liberty;
- (g) In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains.

2. Appropriate measures shall be taken, where necessary, to protect the persons referred to in paragraph 1 of this article, as well as persons participating in the investigation, from any ill-treatment, intimidation or sanction as a result of the search for information concerning a person deprived of liberty.

Article 19

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1. Personal information, including medical and genetic data, which is collected and/or transmitted within the framework of the search for a disappeared person shall not be used or made available for purposes other than the search for the disappeared person. This is without prejudice to the use of such information in criminal proceedings relating to an offence of enforced disappearance or the exercise of the right to obtain reparation.

2. The collection, processing, use and storage of personal information, including medical and genetic data, shall not infringe or have the effect of infringing the human rights, fundamental freedoms or human dignity of an individual.

Article 20

1. Only where a person is under the protection of the law and the deprivation of liberty is subject to judicial control may the right to information referred to in article 18 be restricted, on an exceptional basis, where strictly necessary and where provided for by law, and if the transmission of the information would adversely affect the privacy or safety of the person, hinder a criminal investigation, or for other equivalent reasons in accordance with the law, and in conformity with applicable international law and with the objectives of this Convention. In no case shall there be restrictions on the right to information referred to in article 18 that could constitute conduct defined in article 2 or be in violation of article 17, paragraph 1.

2. Without prejudice to consideration of the lawfulness of the deprivation of a person's liberty, States Parties shall guarantee to the persons referred to in article 18, paragraph 1, the right to a prompt and effective judicial remedy as a means of obtaining without delay the information referred to in article 18, paragraph 1. This right to a remedy may not be suspended or restricted in any circumstances.

Article 21

Each State Party shall take the necessary measures to ensure that persons deprived of liberty are released in a manner permitting reliable verification that they have actually been released. Each State Party shall also take the necessary measures to assure the physical integrity of such persons and their ability to exercise fully their rights at the time of release, without prejudice to any obligations to which such persons may be subject under national law.

Article 22

Without prejudice to article 6, each State Party shall take the necessary measures to prevent and impose sanctions for the following conduct:

(a) Delaying or obstructing the remedies referred to in article 17, paragraph 2 (f), and article 20, paragraph 2;

(b) Failure to record the deprivation of liberty of any person, or the recording of any information which the official responsible for the official register knew or should have known to be inaccurate;

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(c) Refusal to provide information on the deprivation of liberty of a person, or the provision of inaccurate information, even though the legal requirements for providing such information have been met.

Article 23

1. Each State Party shall ensure that the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty includes the necessary education and information regarding the relevant provisions of this Convention, in order to:

- (a) Prevent the involvement of such officials in enforced disappearances;
- (b) Emphasize the importance of prevention and investigations in relation to enforced disappearances;
- (c) Ensure that the urgent need to resolve cases of enforced disappearance is recognized.

2. Each State Party shall ensure that orders or instructions prescribing, authorizing or encouraging enforced disappearance are prohibited. Each State Party shall guarantee that a person who refuses to obey such an order will not be punished.

3. Each State Party shall take the necessary measures to ensure that the persons referred to in paragraph 1 of this article who have reason to believe that an enforced disappearance has occurred or is planned report the matter to their superiors and, where necessary, to the appropriate authorities or bodies vested with powers of review or remedy.

Article 24

1. For the purposes of this Convention, "victim" means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.

2. Each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard.

3. Each State Party shall take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains.

4. Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation.

5. The right to obtain reparation referred to in paragraph 4 of this article covers material and moral damages and, where appropriate, other forms of reparation such as:

- (a) Restitution;
- (b) Rehabilitation;
- (c) Satisfaction, including restoration of dignity and reputation;
- (d) Guarantees of non-repetition.

6. Without prejudice to the obligation to continue the investigation until the fate of the disappeared person has been clarified, each State Party shall take the appropriate steps with regard to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights.

7. Each State Party shall guarantee the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance.

Article 25

1. Each State Party shall take the necessary measures to prevent and punish under its criminal law:

(a) The wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance;

(b) The falsification, concealment or destruction of documents attesting to the true identity of the children referred to in subparagraph (a) above.

2. Each State Party shall take the necessary measures to search for and identify the children referred to in paragraph 1 (a) of this article and to return them to their families of origin, in accordance with legal procedures and applicable international agreements.

3. States Parties shall assist one another in searching for, identifying and locating the children referred to in paragraph 1 (a) of this article.

4. Given the need to protect the best interests of the children referred to in paragraph 1 (a) of this article and their right to preserve, or to have re-established, their identity, including their nationality, name and family relations as recognized by law, States Parties which recognize a system of adoption or other form of placement of children shall have legal procedures in place to review the adoption or placement procedure, and, where appropriate, to annul any adoption or placement of children that originated in an enforced disappearance.

5. In all cases, and in particular in all matters relating to this article, the best interests of the child shall be a primary consideration, and a child who is capable of forming his or her own views shall have the right to express those views freely, the views of the child being given due weight in accordance with the age and maturity of the child.

Part II

Article 26

1. A Committee on Enforced Disappearances (hereinafter referred to as "the Committee") shall be established to carry out the functions provided for under this Convention. The Committee shall consist of ten experts of high moral character and recognized competence in the field of human rights, who shall serve in their personal capacity and be independent and impartial. The members of the Committee shall be elected by the States Parties according to equitable geographical distribution. Due account shall be taken of the

usefulness of the participation in the work of the Committee of persons having relevant legal experience and of balanced gender representation.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties from among their nationals, at biennial meetings of the States Parties convened by the Secretary-General of the United Nations for this purpose. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

3. The initial election shall be held no later than six months after the date of entry into force of this Convention. Four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the State Party which nominated each candidate, and shall submit this list to all States Parties.

4. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 2 of this article.

5. If a member of the Committee dies or resigns or for any other reason can no longer perform his or her Committee duties, the State Party which nominated him or her shall, in accordance with the criteria set out in paragraph 1 of this article, appoint another candidate from among its nationals to serve out his or her term, subject to the approval of the majority of the States Parties. Such approval shall be considered to have been obtained unless half or more of the States Parties respond negatively within six weeks of having been informed by the Secretary-General of the United Nations of the proposed appointment.

6. The Committee shall establish its own rules of procedure.

7. The Secretary-General of the United Nations shall provide the Committee with the necessary means, staff and facilities for the effective performance of its functions. The Secretary-General of the United Nations shall convene the initial meeting of the Committee.

8. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations, as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

9. Each State Party shall cooperate with the Committee and assist its members in the fulfilment of their mandate, to the extent of the Committee's functions that the State Party has accepted.

Article 27

A Conference of the States Parties will take place at the earliest four years and at the latest six years following the entry into force of this Convention to evaluate the functioning of the Committee and to decide, in accordance with

the procedure described in article 44, paragraph 2, whether it is appropriate to transfer to another body — without excluding any possibility — the monitoring of this Convention, in accordance with the functions defined in articles 28 to 36.

Article 28:

1. In the framework of the competencies granted by this Convention, the Committee shall cooperate with all relevant organs, offices and specialized agencies and funds of the United Nations, with the treaty bodies instituted by international instruments, with the special procedures of the United Nations and with the relevant regional intergovernmental organizations or bodies, as well as with all relevant State institutions, agencies or offices working towards the protection of all persons against enforced disappearances.

2. As it discharges its mandate, the Committee shall consult other treaty bodies instituted by relevant international human rights instruments, in particular the Human Rights Committee instituted by the International Covenant on Civil and Political Rights, with a view to ensuring the consistency of their respective observations and recommendations.

Article 29

1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a report on the measures taken to give effect to its obligations under this Convention, within two years after the entry into force of this Convention for the State Party concerned.

2. The Secretary-General of the United Nations shall make this report available to all States Parties.

3. Each report shall be considered by the Committee, which shall issue such comments, observations or recommendations as it may deem appropriate. The comments, observations or recommendations shall be communicated to the State Party concerned, which may respond to them, on its own initiative or at the request of the Committee.

4. The Committee may also request States Parties to provide additional information on the implementation of this Convention.

Article 30

1. A request that a disappeared person should be sought and found may be submitted to the Committee, as a matter of urgency, by relatives of the disappeared person or their legal representatives, their counsel or any person authorized by them, as well as by any other person having a legitimate interest.

2. If the Committee considers that a request for urgent action submitted in pursuance of paragraph 1 of this article:

(a) Is not manifestly unfounded;

(b) Does not constitute an abuse of the right of submission of such requests;

(c) Has already been duly presented to the competent bodies of the State Party concerned, such as those authorized to undertake investigations, where such a possibility exists;

(d) Is not incompatible with the provisions of this Convention; and

(e) The same matter is not being examined under another procedure of international investigation or settlement of the same nature;

it shall request the State Party concerned to provide it with information on the situation of the persons sought, within a time limit set by the Committee.

3. In the light of the information provided by the State Party concerned in accordance with paragraph 2 of this article, the Committee may transmit recommendations to the State Party, including a request that the State Party should take all the necessary measures, including interim measures, to locate and protect the person concerned in accordance with this Convention and to inform the Committee, within a specified period of time, of measures taken, taking into account the urgency of the situation. The Committee shall inform the person submitting the urgent action request of its recommendations and of the information provided to it by the State as it becomes available.

4. The Committee shall continue its efforts to work with the State Party concerned for as long as the fate of the person sought remains unresolved. The person presenting the request shall be kept informed.

Article 31

1. A State Party may at the time of ratification of this Convention or at any time afterwards declare that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation by this State Party of provisions of this Convention. The Committee shall not admit any communication concerning a State Party which has not made such a declaration.

2. The Committee shall consider a communication inadmissible where:

(a) The communication is anonymous;

(b) The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of this Convention;

(c) The same matter is being examined under another procedure of international investigation or settlement of the same nature; or where

(d) All effective available domestic remedies have not been exhausted. This rule shall not apply where the application of the remedies is unreasonably prolonged.

3. If the Committee considers that the communication meets the requirements set out in paragraph 2 of this article, it shall transmit the communication to the State Party concerned, requesting it to provide observations and comments within a time limit set by the Committee.

4. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party will take such interim measures as may be necessary to avoid possible irreparable damage to the victims of the alleged violation. Where the Committee exercises its discretion, this does not imply a determination on admissibility or on the merits of the communication.

5. The Committee shall hold closed meetings when examining communications under the present article. It shall inform the author of a communication of the responses provided by the State Party concerned. When

the Committee decides to finalize the procedure, it shall communicate its views to the State Party and to the author of the communication.

Article 32

A State Party to this Convention may at any time declare that it recognizes the competence of the Committee to receive and consider communications in which a State Party claims that another State Party is not fulfilling its obligations under this Convention. The Committee shall not receive communications concerning a State Party which has not made such a declaration, nor communications from a State Party which has not made such a declaration.

Article 33

1. If the Committee receives reliable information indicating that a State Party is seriously violating the provisions of this Convention, it may, after consultation with the State Party concerned, request one or more of its members to undertake a visit and report back to it without delay.

2. The Committee shall notify the State Party concerned, in writing, of its intention to organize a visit, indicating the composition of the delegation and the purpose of the visit. The State Party shall answer the Committee within a reasonable time.

3. Upon a substantiated request by the State Party, the Committee may decide to postpone or cancel its visit.

4. If the State Party agrees to the visit, the Committee and the State Party concerned shall work together to define the modalities of the visit and the State Party shall provide the Committee with all the facilities needed for the successful completion of the visit.

5. Following its visit, the Committee shall communicate to the State Party concerned its observations and recommendations.

Article 34

If the Committee receives information which appears to it to contain well-founded indications that enforced disappearance is being practised on a widespread or systematic basis in the territory under the jurisdiction of a State Party, it may, after seeking from the State Party concerned all relevant information on the situation, urgently bring the matter to the attention of the General Assembly of the United Nations, through the Secretary-General of the United Nations.

Article 35

1. The Committee shall have competence solely in respect of enforced disappearances which commenced after the entry into force of this Convention.

2. If a State becomes a party to this Convention after its entry into force, the obligations of that State vis-à-vis the Committee shall relate only to enforced disappearances which commenced after the entry into force of this Convention for the State concerned.

Article 36

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1. The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

2. Before an observation on a State Party is published in the annual report, the State Party concerned shall be informed in advance and shall be given reasonable time to answer. This State Party may request the publication of its comments or observations in the report.

Part III

Article 37

Nothing in this Convention shall affect any provisions which are more conducive to the protection of all persons from enforced disappearance and which may be contained in:

- (a) The law of a State Party;
- (b) International law in force for that State.

Article 38

1. This Convention is open for signature by all Member States of the United Nations.

2. This Convention is subject to ratification by all Member States of the United Nations. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention is open to accession by all Member States of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General.

Article 39

1. This Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the twentieth instrument of ratification or accession, this Convention shall enter into force on the thirtieth day after the date of the deposit of that State's instrument of ratification or accession.

Article 40

The Secretary-General of the United Nations shall notify all States Members of the United Nations and all States which have signed or acceded to this Convention of the following:

- (a) Signatures, ratifications and accessions under article 38;
- (b) The date of entry into force of this Convention under article 39.

Article 41

The provisions of this Convention shall apply to all parts of federal States without any limitations or exceptions.

Article 42

105

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation or by the procedures expressly provided for in this Convention shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. A State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party having made such a declaration.

3. Any State Party having made a declaration in accordance with the provisions of paragraph 2 of this article may at any time withdraw this declaration by notification to the Secretary-General of the United Nations.

Article 43

This Convention is without prejudice to the provisions of international humanitarian law, including the obligations of the High Contracting Parties to the four Geneva Conventions of 12 August 1949 and the two Additional Protocols thereto of 8 June 1977, or to the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 44

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to this Convention with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations.

2. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all the States Parties for acceptance.

3. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two thirds of the States Parties to this Convention have accepted it in accordance with their respective constitutional processes.

4. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendment which they have accepted.

Article 45

106

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States referred to in article 38.

(TRUE COPY)

Convention against Torture and Other Cruel, Inhuman or
Degrading Treatment or Punishment

107

Adopted and opened for signature, ratification and accession by General
Assembly resolution 39/46 of 10 December 1984
entry into force 26 June 1987, in accordance with article 27 (1)

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

PART I

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

- 1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
- 2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
- 3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

- 1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
- 2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

- 1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:
 - (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
 - (b) When the alleged offender is a national of that State;
 - (c) When the victim is a national of that State if that State considers it appropriate.
- 2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory

under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.
2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

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Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.
2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

PART II

Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum; the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 18

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Six members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

Article 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1 of this article.

Article 20

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.
3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.
4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.
5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

Article 21

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:
 - (a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;
 - (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

- (c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;
- (d) The Committee shall hold closed meetings when examining communications under this article; (e) Subject to the provisions of subparagraph
- (e), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;
- (f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;
- (g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;
- (h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:
- (i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
- (ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.
2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.
3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned. 5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:
 - (a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;
 - (b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.
6. The Committee shall hold closed meetings when examining communications under this article.
7. The Committee shall forward its views to the State Party concerned and to the individual.
8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

Article 23

The members of the Committee and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph 1 (e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 24

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

PART III

Article 25

1. This Convention is open for signature by all States. 2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 27

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.

2. Any State Party having made a reservation in accordance with paragraph 1 of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 29

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a

conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

Article 30

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 31

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 32

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

- (a) Signatures, ratifications and accessions under articles 25 and 26;
- (b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;
- (c) Denunciations under article 31.

Article 33

- 1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
- 2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

(TRUE COPY)

Universal Declaration of Human Rights

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by

teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

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Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier

penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

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1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

(TRUE COPY)

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

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1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

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1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3.

(a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

TRUE COPY



**Advisory Opinion on the Extraterritorial Application of
Non-Refoulement Obligations under the 1951 Convention relating to
the Status of Refugees and its 1967 Protocol***

Introduction

1. In this advisory opinion, the Office of the United Nations High Commissioner for Refugees ("UNHCR") addresses the question of the extraterritorial application of the principle of *non-refoulement* under the 1951 Convention relating to the Status of Refugees¹ and its 1967 Protocol.²

2. Part I of the opinion provides an overview of States' *non-refoulement* obligations with regard to refugees and asylum-seekers under international refugee and human rights law. Part II focuses more specifically on the extraterritorial application of these obligations and sets out UNHCR's position with regard to the territorial scope of States' *non-refoulement* obligations under the 1951 Convention and its 1967 Protocol.

3. UNHCR has been charged by the United Nations General Assembly with the responsibility of providing international protection to refugees and other persons within its mandate and of seeking permanent solutions to the problem of refugees by assisting governments and private organizations.³ As set forth in its Statute, UNHCR fulfils its international protection mandate by, *inter alia*, "[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto."⁴ UNHCR's supervisory responsibility under its Statute is mirrored in Article 35 of the 1951 Convention and Article II of the 1967 Protocol.

4. The views of UNHCR are informed by over 50 years of experience supervising international refugee instruments. UNHCR is represented in 116 countries. It provides guidance in connection with the establishment and implementation of national procedures for refugee status determinations and also conducts such determinations under its own mandate. UNHCR's interpretation of the provisions of the 1951

* This Opinion was prepared in response to a request for UNHCR's position on the extraterritorial application of the *non-refoulement* obligations under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. The Office's views as set out in the Advisory Opinion are offered in a broad perspective, given the relevance of the legal questions involved to a variety of situations outside a State's national territory.

¹ The 1951 Convention relating to the Status of Refugees, 189 U.N.T.S. 137, entered into force 22 April 1954 [hereinafter "1951 Convention"].

² The 1967 Protocol relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force 4 October 1967 [hereinafter "1967 Protocol"].

³ See: *Statute of the Office of the United Nations High Commissioner for Refugees*, G.A. Res. 428(V), Annex, U.N. Doc. A/1775, para. 1 (1950).

⁴ *Id.*, para. 8(a).

human rights violations, notably arbitrary deprivation of life³⁷, or torture or other cruel, inhuman or degrading treatment or punishment.³⁸

18. An explicit *non-refoulement* provision is contained in Article 3 of the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,³⁹ which prohibits the removal of a person to a country where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

19. Obligations under the 1966 Covenant on Civil and Political Rights,⁴⁰ as interpreted by the Human Rights Committee, also encompass the obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by Articles 6 [right to life] and 7 [right to be free from torture or other cruel, inhuman or degrading treatment or punishment] of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed.⁴¹ The prohibition of *refoulement* to a risk of serious human rights violations, particularly torture and other forms of ill-treatment, is also firmly established under regional human rights treaties.⁴²

³⁷ The right to life is guaranteed under Article 6 of the ICCPR and, for example, Article 2 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, ETS 005, 213 U.N.T.S. 222, entered into force 3 September 1953 [hereinafter: "ECHR"]; Article 4 ACHR; Article 4 of the African (Banjul) Charter on Human and People's Rights, 21 I.L.M. 58 (1982), entered into force 21 October 1986 [hereinafter: "Banjul Charter"].

³⁸ The right to be free from torture is guaranteed under Article 1 of the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Article 2 of the 1985 Inter-American Convention to Prevent and Punish Torture, 25 I.L.M. 519 (1992), entered into force 28 February 1987. Article 16 of the Convention Against Torture prohibits other cruel, inhuman or degrading treatment or punishment. A prohibition of torture and other cruel, inhuman or degrading treatment or punishment is guaranteed under Article 7 of the ICCPR and provisions in regional human rights treaties, such as, for example, Article 3 of the ECHR; Article 5(2) of the ACHR; or Article 5 of the Banjul Charter.

³⁹ The 1984 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 U.N.T.S. 85, entered into force 26 June 1987 [hereinafter: "Convention Against Torture"].

⁴⁰ 1966 International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, entered into force 23 March 1976 [hereinafter: "ICCPR"].

⁴¹ With regard to the scope of the obligations under Article 7 of the ICCPR, see Human Rights Committee in its *General Comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment)*, 10 March 1992, U.N. Doc. HRI/ GEN/1/Rev.7, para. 9 ("States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or *refoulement*"); and *General Comment No. 31 on the Nature of the General Legal Obligation on States Parties to the Covenant*, U.N. Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 12. Similarly, in its *General Comment No. 6 (2005) on the Treatment of unaccompanied and separated children outside their country of origin*, U.N. Doc. CRC/GC/2005/6, 1 September 2005, the Committee on the Rights of the Child stated that States party to the Convention on the Rights of the Child "[...] shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6 [right to life] and 37 [right to be free from torture or other cruel, inhuman or degrading treatment or punishment and right not to be arbitrarily deprived of liberty] of the Convention." (para. 27).

⁴² See, for example, the jurisprudence of the European Court of Human Rights, which has held that *non-refoulement* is an inherent obligation under Article 3 of the ECHR in cases where there is a real risk of exposure to torture, inhuman or degrading treatment or punishment, including, in particular, the Court's decisions in *Saering v. United Kingdom*, Application No. 14038/88, 7 July 1989 and subsequent cases, including *Cruz Varas v. Sweden*, Application No. 15567/89, 20 March 1991;



CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other
Cruel, Inhuman or Degrading Treatment or Punishment)

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*Adopted at the Forty-fourth Session of the Human Rights Committee,
on 10 March 1992*

[Replaces general comment 7 concerning prohibition of torture and cruel treatment or
punishment]

1. This general comment replaces general comment No. 7 (the sixteenth session, 1982) reflecting and further developing it.
2. The aim of the provisions of article 7 of the International Covenant on Civil and Political Rights is to protect both the dignity and the physical and mental integrity of the individual. It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity. The prohibition in article 7 is complemented by the positive requirements of article 10, paragraph 1, of the Covenant, which stipulates that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."
3. The text of article 7 allows of no limitation. The Committee also reaffirms that, even in situations of public emergency such as those referred to in article 4 of the Covenant, no derogation from the provision of article 7 is allowed and its provisions must remain in force. The Committee likewise observes that no justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reasons, including those based on an order from a superior officer or public authority.
4. The Covenant does not contain any definition of the concepts covered by article 7, nor does the Committee consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied.
5. The prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim. In the Committee's view, moreover, the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure. It is appropriate to emphasize in this regard that article 7 protects, in particular, children, pupils and patients in teaching and medical institutions.
6. The Committee notes that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7. As the Committee has stated in its general comment No. 6 (16), article 6 of the Covenant refers generally to abolition of the death penalty in terms that strongly suggest that abolition is desirable. Moreover, when the death penalty is applied by a State party for the most serious



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crimes, it must not only be strictly limited in accordance with article 6 but it must be carried out in such a way as to cause the least possible physical and mental suffering.

7. Article 7 expressly prohibits medical or scientific experimentation without the free consent of the person concerned. The Committee notes that the reports of States parties generally contain little information on this point. More attention should be given to the need and means to ensure observance of this provision. The Committee also observes that special protection in regard to such experiments is necessary in the case of persons not capable of giving valid consent, and in particular those under any form of detention or imprisonment. Such persons should not be subjected to any medical or scientific experimentation that may be detrimental to their health.

8. The Committee notes that it is not sufficient for the implementation of article 7 to prohibit such treatment or punishment or to make it a crime. States parties should inform the Committee of the legislative, administrative, judicial and other measures they take to prevent and punish acts of torture and cruel, inhuman and degrading treatment in any territory under their jurisdiction.

9. In the view of the Committee, States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement. States parties should indicate in their reports what measures they have adopted to that end.

10. The Committee should be informed how States parties disseminate, to the population at large, relevant information concerning the ban on torture and the treatment prohibited by article 7. Enforcement personnel, medical personnel, police officers and any other persons involved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment must receive appropriate instruction and training. States parties should inform the Committee of the instruction and training given and the way in which the prohibition of article 7 forms an integral part of the operational rules and ethical standards to be followed by such persons.

11. In addition to describing steps to provide the general protection against acts prohibited under article 7 to which anyone is entitled, the State party should provide detailed information on safeguards for the special protection of particularly vulnerable persons. It should be noted that keeping under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment is an effective means of preventing cases of torture and ill-treatment. To guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends. To the same effect, the time and place of all interrogations should be recorded, together with the names of all those present and this information should also be available for purposes of judicial or administrative proceedings. Provisions should also be made against incommunicado detention. In that connection, States parties should ensure that any places of detention be free from any equipment liable to be used for inflicting torture or ill-treatment. The protection of the detainee



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also requires that prompt and regular access be given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members.

12. It is important for the discouragement of violations under article 7 that the law must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment.

13. States parties should indicate when presenting their reports the provisions of their criminal law which penalize torture and cruel, inhuman and degrading treatment or punishment, specifying the penalties applicable to such acts, whether committed by public officials or other persons acting on behalf of the State, or by private persons. Those who violate article 7, whether by encouraging, ordering, tolerating or perpetrating prohibited acts, must be held responsible. Consequently, those who have refused to obey orders must not be punished or subjected to any adverse treatment.

14. Article 7 should be read in conjunction with article 2, paragraph 3, of the Covenant. In their reports, States parties should indicate how their legal system effectively guarantees the immediate termination of all the acts prohibited by article 7 as well as appropriate redress. The right to lodge complaints against maltreatment prohibited by article 7 must be recognized in the domestic law. Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective. The reports of States parties should provide specific information on the remedies available to victims of maltreatment and the procedure that complainants must follow, and statistics on the number of complaints and how they have been dealt with.

15. The Committee has noted that some States have granted amnesty in respect of acts of torture. Amnesties are generally incompatible with the duty of States to investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future. States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible.

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Declaration on Territorial Asylum

XXII. RESOLUTIONS ADOPTED ON THE REPORTS OF THE SIXTH COMMITTEE
2312. Declaration on Territorial Asylum

The General Assembly,

Recalling its resolutions 1839 (XVII) of 19 December 1962, 2100 (XX) of 20 December 1965 and 2203 (XXI) of 16 December 1966 concerning a declaration on the right of asylum,

Considering the work of codification to be undertaken by the International Law Commission in accordance with General Assembly resolution 1400 (XIV) of 21 November 1959,

Adopts the following Declaration:

DECLARATION ON TERRITORIAL ASYLUM

The General Assembly,

Noting that the purposes proclaimed in the Charter of the United Nations are to maintain international peace and security, to develop friendly relations among all nations and to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion,

Mindful of the Universal Declaration of Human Rights, which declares in article 14 that:

"1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

"2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations".

Recalling also article 13, paragraph 2, of the Universal Declaration of Human Rights, which states:

"Everyone has the right to leave any country, including his own, and to return to his country",

Recognizing that the grant of asylum by a State to persons entitled to invoke article 14 of the Universal Declaration of Human Rights is a peaceful and humanitarian act and that, as such, it cannot be regarded as unfriendly by any other State,

Recommends that, without prejudice to existing instruments dealing with asylum and the status of refugees and stateless persons, States should base themselves in their practices relating to territorial asylum on the following principles:

Article 1

1. Asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke article 14 of the Universal Declaration of Human Rights, including persons struggling against colonialism, shall be respected by all other States.

2. The right to seek and to enjoy asylum may not be invoked by any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.

3. It shall rest with the State granting asylum to evaluate the grounds for the grant of asylum.

Article 2

1. The situation of persons referred to in article 1, paragraph 1, is, without prejudice to the sovereignty of States and the purposes and principles of the United Nations, of concern to the international community.

2. Where a State finds difficulty in granting or continuing to grant asylum, States individually or jointly or through the United Nations shall consider, in a spirit of international solidarity, appropriate measures to lighten the burden on that State.

Article 3

1. No person referred to in article 1, paragraph 1, shall be subjected to measures such as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any State where he may be subjected to persecution.

2. Exception may be made to the foregoing principle only for overriding reasons of national security or in order to safeguard the population, as in the case of a mass influx of persons.

3. Should a State decide in any case that exception to the principle stated in paragraph 1 of this article would be justified, it shall consider the possibility of granting to the person concerned, under such conditions as it may deem appropriate, an opportunity, whether by way of provisional asylum or otherwise, of going to another State.

Article 4

States granting asylum shall not permit persons who have received asylum to engage in activities contrary to the purposes and principles of the United Nations.

1631st plenary meeting,
14 December 1967.

TRUE COPY

SIXTH MINISTERIAL CONFERENCE OF THE BALI PROCESS ON
PEOPLE SMUGGLING, TRAFFICKING IN PERSONS AND
RELATED TRANSNATIONAL CRIME

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BALI, INDONESIA, 23 MARCH 2016
CO-CHAIRS' STATEMENT

We, the Foreign Ministers of Indonesia and Australia, had the honour to co-chair the Sixth Ministerial Conference of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime in Bali, Indonesia on 23 March 2016.

1. Decisions and Recommendations for Future Activities

1. Ministers acknowledged the unprecedented levels of displacement and mobility seen globally since the last Ministerial Conference. There had been a surge in irregular movements of persons in the Bay of Bengal and Andaman Sea in the first half of 2015, with high fatality rates recorded. Recognising the need for an urgent, and collective response, members adopted a Bali Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime (Attachment A) to reinforce their commitment to tackling these complex challenges.
2. Ministers welcomed progress since the last Ministerial Conference and agreed on a strong program of activities to move the Bali Process forward. Ministers recommended that members review the region's response to Andaman Sea situation of May 2015 to share lessons and work to implement necessary improvements. Ministers agreed the review would consider options for improving national, regional and subregional contingency planning and preparedness for potential large influxes of irregular migrants in the future.
3. In this context, Ministers welcomed the important contribution of the United Nations and the International Organization for Migration (IOM) in helping states to address the challenges posed by irregular migration. The meeting recalled in particular the United Nations Agenda for Sustainable Development, and the five action areas outlined by the UN Secretary General at the General Assembly Plenary Session on irregular migrants (20 November 2015).
4. Ministers further welcomed national and regional efforts to date to respond in a timely manner to the irregular movements in the Andaman Sea and the Indian Ocean, including the Special Meetings on Irregular Migration in the Indian Ocean (29 May and 4 December 2015); the Special Retreat on Irregular Migration in the Indian Ocean (1 February 2016, Bangkok); the Emergency ASEAN Ministerial Meeting on Transnational Crime: Irregular Movement of Persons in the Southeast Asia Region (2 July 2015); and the Jakarta Declaration Roundtable Meeting on Addressing the Root Causes of Irregular Movement of Persons (27-28 November 2015). The Ministers looked forward to the UN Summit on Addressing Large Movements of Refugees and Migrants (to be held in the General Assembly in September 2016).
5. Ministers further acknowledged the need for more agile, timely responses by Bali Process members. To this end, Ministers agreed to have a mechanism which

would authorise the Co-Chairs to consult, and if necessary, convene future meetings to discuss urgent irregular migration issues with affected and interested countries in response to current regional issues or future emergency situations. Participation in the mechanism will be voluntary and non-binding.

6. Ministers noted that more concerted efforts were needed to address the root causes of irregular migration. Until these underlying causes are addressed, people will continue risking their lives on smugglers' boats. Ministers reaffirmed the importance of inclusive socio-economic development, full respect for human rights and measures to reduce statelessness.
7. Ministers noted the importance of civil registration in border management and in providing basic protection for migrants, refugees and asylum seekers. Ministers welcomed advice that a toolkit is being developed to help states strengthen their systems for registering births, deaths and marriages. The project seeks to expand registration and documentation coverage, and in turn, enhance the capacity of states to identify and provide protection to at-risk populations. Member countries were encouraged to participate in the project.
8. Ministers underscored the importance of addressing humanitarian and protection needs in managing irregular migration. Ministers directed that members give priority to coordinating procedures for rescue at sea, identifying predictable places for disembarkation, improving reception and screening systems, and engaging civil society in delivery of post-disembarkation emergency assistance. Ministers also highlighted the importance of temporary protection and local stay arrangements and recommended research into their viability.
9. Ministers further highlighted the importance of information dissemination to raise awareness of the risk of irregular sea voyages, using social media and other innovative platforms. Ministers noted progress towards implementing joint, regional information campaigns, and encouraged this work to continue.
10. Ministers reinforced the need to expand safe, legal and affordable migration pathways, including labour migration and family reunification programs, to provide an alternative to dangerous, irregular movement. Ministers encouraged members to consider how labour migration opportunities can be opened up to persons with international protection needs.
11. Ministers noted that return of persons found not to be entitled to international protection was important to the integrity and efficiency of the orderly migration. Building on outcomes from a 2015 roundtable, Ministers agreed that a Technical Experts Group would be established to exchange best practices with respect to returns and reintegration. Model readmission agreements would also be developed for use by interested member states.
12. Ministers commended the efforts of the Working Group on Trafficking in Persons to strengthen criminal justice responses to trafficking. Ministers welcomed advice that two sets of policy guides have been developed to assist member states criminalise people smuggling and trafficking in persons, and to improve identification and protection of trafficking victims. The guides have been

translated into 14 regional languages and the Working Group on Trafficking in Persons continues to promote them at regional training. Ministers directed that members give priority to implementing the guides' best practice principles.

- 13. Ministers welcomed updates from states on progress to effectively criminalise people smuggling and trafficking in persons. Ministers noted the importance of complementary obligations to criminalise money laundering and proceeds of crime, in order to target the financial incentives for people smuggling and trafficking in persons. Ministers recommended that the Working Group on Trafficking in Persons deliver training and develop regional guidance on this topic to help countries further bolster their legal frameworks.
- 14. Ministers acknowledged the critical role of the private sector in preventing and detecting trafficking in persons. Ministers noted the importance of engaging constructively with private industry in a genuine partnership to combat trafficking in our region and promote good practices in their supply chains.
- 15. Ministers welcomed the establishment of a Working Group on Disruption of Criminal Syndicates involved in People Smuggling and Trafficking in Persons. Ministers noted an update on the initial Joint Period of Action, which saw eight countries conduct separate, but coordinated, law enforcement operations against criminal syndicates. In total, authorities made 32 arrests and launched eight new investigations. Ministers commended the initiative as an example of successful operational outcomes that can be achieved when members work together in a practical way. Ministers recommended that the follow up Joint Period of Action focus on strengthening cross border cooperation.
- 16. Ministers further recommended that members maximise information-sharing networks to assist law enforcement and justice officials trace and recover criminal assets associated with people smuggling and trafficking across borders.
- 17. Ministers noted the value of biometric data sharing for verifying traveller identities and tracking migration flows. Ministers welcomed advice that a regional biometric data-sharing system has been developed. The voluntary, non-binding arrangement provides a secure, electronic means of sharing biometric data, within a policy framework that ensures privacy and data protection.
- 18. Ministers recognised the value of the Bali Process Strategy for Regional Cooperation in guiding the work of members and noted the Ad Hoc Group will continue updating it to reflect ministerial priorities.

II. Review of Progress since the Fifth Bali Process Ministerial Conference

- 19. Ministers acknowledged the Co-chairs' Statements from the AHG Senior Officials Meeting in Bangkok, Thailand on 2 February 2016 and the report of activities implemented since the Fifth Bali Process Ministerial Conference as stated in the Senior Officials Meeting Co-chairs' Statement on 22 March 2016 (Attachment B).
- 20. Ministers commended member efforts in implementing Ministerial objectives set out at the Fifth Ministerial Conference in April 2013, as outlined in the Progress

Report of the Ad Hoc Group. Ministers welcomed the funding and personnel contributions of members towards the Regional Support Office (RSO). Ministers encouraged countries to second officials to the RSO on a project basis.

III. Participants

- 21. The Sixth Ministerial Conference was attended by representatives of Afghanistan, Australia, Bangladesh, Bhutan, Brunei Darussalam, Cambodia, China, Fiji, France (New Caledonia), Hong Kong SAR, India, Indonesia, Iran, Iraq, Japan, Jordan, Lao PDR, Macau SAR, Malaysia, Maldives, Myanmar, Nauru, Nepal, New Zealand, Pakistan, Papua New Guinea, Philippines, Republic of Korea, Samoa, Singapore, Solomon Islands, Syrian Arab Republic, Sri Lanka, Thailand, Timor-Leste, Tonga, Turkey, United Arab Emirates, United States of America, Vanuatu, Viet Nam, International Organization for Migration (IOM), the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Office on Drugs and Crime (UNODC). Canada, European Commission, Finland, Germany, Italy, Netherlands, Poland, Russian Federation, Spain, Switzerland, Sweden, the United Kingdom, International Committee of the Red Cross (ICRC), International Federation of Red Cross and Red Crescent Societies (IFRC), International Labour Organization (ILO), INTERPOL and United Nations Development Programme (UNDP) attended the meeting as observers.

- 22. Ministers expressed its appreciation to the Government of Indonesia for its generosity and hospitality in hosting the Sixth Ministerial Conference.

**BALI DECLARATION ON PEOPLE SMUGGLING,
TRAFFICKING IN PERSONS AND RELATED
TRANSNATIONAL CRIME**

**The Sixth Ministerial Conference of the Bali Process on
People Smuggling, Trafficking in Persons and Related
Transnational Crime**

Bali, 23 March 2016

1. We, Ministers and representatives of member states and organisations of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, note with concern the growing scale and complexity of irregular migration challenges, both within and outside the Asia Pacific region. We are particularly concerned by the tragic loss of life at sea, and by the abuse and exploitation of migrants and refugees at the hands of people smugglers and human traffickers. We also acknowledge that irregular migration poses social, economic, and security concerns for affected countries, with implication for regional and global stability.
2. We welcome the important contributions of member states and the support provided by member organisations in addressing the challenges posed by irregular migration. We welcome regional efforts to date, particularly by the most affected countries, in responding to the irregular movement of persons in the region, including in the Andaman Sea and the Indian Ocean. We note the decline in irregular movement of persons in these waters in the second half of 2015, attributable to the resolute actions by

affected countries to disrupt smuggling networks, among other factors.

3. While recognising the sovereign rights and legitimate interests of states to safeguard their borders and determine their migration policies, consistent with relevant international law, we underline that the transnational nature of irregular migration requires a comprehensive regional approach, based on the principles of burden sharing and collective responsibility. We reaffirm our commitment to our respective international legal obligations and encourage members to identify and provide safety and protection to migrants, victims of human trafficking, smuggled persons, asylum seekers and refugees, whilst addressing the needs of vulnerable groups including women and children, and taking into account prevailing national laws and circumstances.

4. We underline the need to address the root causes of irregular movement of persons and forced displacement, and the frequent linkage between the breakdown of good governance and the ease of people smuggling and irregular migrant ventures. Our collective response should promote good governance, rule of law, full respect for human rights and fundamental freedoms, a sense of security and belonging, inclusive economic growth, livelihood opportunities, access to basic services, social tolerance and understanding, and measures to prevent and reduce statelessness, consistent with relevant international instruments. We note with appreciation the humanitarian and development assistance offered by partner countries through bilateral, regional and multilateral arrangements towards at-risk communities, and

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we encourage continued, inclusive development cooperation within the region. We recognise the need to enhance safe and orderly migration pathways, including for migrant workers, to provide an alternative to dangerous irregular movement.

5. We acknowledge the importance of a comprehensive approach to managing irregular migration by land, air and sea, including victim-centered and protection-sensitive strategies, as appropriate. We recognise the need to grant protection for those entitled to it, consistent with relevant international legal instruments and in all cases, the principle of *non-refoulement* should be strictly respected. Against a backdrop of increasingly mixed migratory movements, we welcome efforts by member states to improve identification of those with protection needs, including through effective and efficient screening processes, paying particular attention to the needs of vulnerable groups. We encourage states to work to identify more predictable disembarkation options. We welcome efforts by members to strengthen information sharing to provide accurate data on the whereabouts of migrants and vessels stranded at sea. We encourage further capacity building of the relevant agencies in search and rescue operations.

6. We encourage member states to explore potential temporary protection and local stay arrangements for asylum seekers and refugees, subject to domestic laws and policies of member states. We acknowledge the need for adequate access to irregular migrants wherever they are, by humanitarian providers especially the UNHCR and the IOM, as appropriate. We

encourage member states to explore alternatives to detention for vulnerable groups.

7. We acknowledge the importance of civil registration in providing identity and basic protection for individuals, as well as helping states track migration flows. We recall the 2014 Ministerial Conference on Civil Registration and Vital Statistics in Asia and the Pacific which proclaimed a shared vision that, by 2024, all people in Asia and the Pacific should benefit from universal and responsive civil registration and vital statistics systems. We therefore encourage members to continue working towards this target.
8. We are deeply concerned by the activities of transnational organised criminal groups that profit from smuggling and trafficking of human beings and continue to put lives at risk. We recognise that although people smuggling and trafficking in persons are distinct crime types, they often overlap. We encourage members to effectively criminalise people smuggling and trafficking in persons, in accordance with relevant international law, and regional instruments. We acknowledge the need for robust mechanisms that promote international cooperation, including law enforcement cooperation, mutual legal assistance and extradition, if applicable, to facilitate timely investigation and prosecution of offenders. We recognise that trafficking in persons constitutes a serious violation of human rights and that trafficking victims should be provided with assistance and protection. We encourage further law enforcement capacity building to combat

people smugglers and human traffickers, and to target the financial incentives of related transnational crimes.

9. We recognise the need for comprehensive and long-term solutions for mixed migration flows, which by definition can include refugees and irregular migrants, and the collective role of countries in the region in finding solutions. We welcome provision of resettlement places which allow refugees to start new lives in safety, subject to the domestic laws and policies of member states. We also welcome appropriate local solutions.

10. We recognise that timely, safe and dignified return of those found not to be entitled to international protection is an important element of orderly migration. We acknowledge that while voluntary return is preferred, a comprehensive and balanced approach to migration management may include involuntary return of those found not to be entitled to international protection, consistent with human rights and humanitarian laws. We encourage members to ensure that all returns are carried out in full respect of human rights, and recognise the responsibility of states to accept the return of their nationals. We should improve cooperation on sustainable return and reintegration strategies, including supporting source countries' initiatives to enhance their absorption capacity particularly through community-based investments in return areas, and by sharing information and good practices.

11. We recognise that the large flows of people in the Asia-Pacific provide both challenges and opportunities for governments in

the region. We therefore welcome efforts and initiatives by member states to expand safe, legal and affordable migration pathways and reduce migrant exploitation, including by regulating and legalising labour migration flows, ensuring transparent and fair recruitment processes and exploring viable temporary migration schemes.

12. We recognise the need to engage constructively with the private sector to expand legal and legitimate opportunities for labour migration and to combat human trafficking and related exploitation, including by promoting and implementing humane, non-abusive labour practices throughout their supply chains.
13. We intend to scale up public information campaigns to raise awareness of the risks of irregular migration, the existing regular migration pathways, and the serious determination of law enforcement authorities to bring smugglers and traffickers to justice.
14. We reaffirm the value of the Bali Process as a voluntary, inclusive, non-binding forum for policy dialogue, information-sharing and capacity building, and we are committed to have a mechanism of the Bali Process to facilitate timely and proactive consultation to respond to emergency situations. We underline the need to translate political commitments into concrete actions. We acknowledge the tangible efforts by governments and also welcome the work of the Regional Support Office in this regard. We acknowledge the role that international organisations, the

private sector and civil society play to help address the challenges caused by human trafficking and irregular migration, and encourage members to engage with them accordingly. We also recognise the need for enhanced cooperation and coordination among members, and with other ongoing regional and global initiatives.

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Convention on the Rights of the Child

Adopted and opened for signature, ratification and accession by General Assembly
resolution 44/25 of 20 November 1989

entry into force 2 September 1990, in accordance with article 49

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

- 1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
- 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

- 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
- 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
- 3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their

own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

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1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

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1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.
4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
 - (d) To ensure appropriate pre-natal and post-natal health care for mothers;
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
 - (f) To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

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States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy

throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

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2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State party; or

(b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute

a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

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In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any

amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

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**Convention on the
Rights of the Child**

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TREATMENT OF UNACCOMPANIED AND SEPARATED CHILDREN
OUTSIDE THEIR COUNTRY OF ORIGIN

information to children about the risks they may encounter, and establishment of measures to provide follow-up to children particularly at risk. These measures should be regularly evaluated to ensure their effectiveness.

(e) Right of the child to express his or her views freely (art. 12)

25. Pursuant to article 12 of the Convention, in determining the measures to be adopted with regard to unaccompanied or separated children, the child's views and wishes should be elicited and taken into account (art. 12 (1)). To allow for a well-informed expression of such views and wishes, it is imperative that such children are provided with all relevant information concerning, for example, their entitlements, services available including means of communication, the asylum process, family tracing and the situation in their country of origin (arts. 13, 17 and 22 (2)). In guardianship, care and accommodation arrangements, and legal representation, children's views should also be taken into account. Such information must be provided in a manner that is appropriate to the maturity and level of understanding of each child. As participation is dependent on reliable communication, where necessary, interpreters should be made available at all stages of the procedure.

(f) Respect for the principle of non-refoulement

26. In affording proper treatment of unaccompanied or separated children, States must fully respect non-refoulement obligations deriving from international human rights, humanitarian and refugee law and, in particular, must respect obligations codified in article 33 of the 1951 Refugee Convention and in article 3 of CAT.

27. Furthermore, in fulfilling obligations under the Convention, States shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6 and 37 of the Convention, either in the country to which removal is to be effected or in any country to which the child may subsequently be removed. Such non-refoulement obligations apply irrespective of whether serious violations of those rights guaranteed under the Convention originate from non-State actors or whether such violations are directly intended or are the indirect consequence of action or inaction. The assessment of the risk of such serious violations should be conducted in an age and gender-sensitive manner and should, for example, take into account the particularly serious consequences for children of the insufficient provision of food or health services.

28. As underage recruitment and participation in hostilities entails a high risk of irreparable harm involving fundamental human rights, including the right to life, State obligations deriving from article 38 of the Convention, in conjunction with articles 3 and 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, entail extraterritorial effects and States shall refrain from returning a child in any manner whatsoever to the borders of a State where there is a real risk of underage recruitment, including recruitment not only as a combatant but also to provide sexual services for the military or where there is a real risk of direct or indirect participation in hostilities, either as a combatant or through carrying out other military duties.

(h) Prevention of military recruitment and protection against effects of war
(arts. 38 and 39)

Prevention of recruitment

54. State obligations deriving from article 38 of the Convention and from articles 3 and 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict also apply to unaccompanied and separated children. A State must take all necessary measures to prevent recruitment or use of such children by any party to a conflict. This also applies to former child soldiers who have defected from their units and who require protection against re-recruitment.

Care arrangements

55. Care arrangements for unaccompanied and separated children shall be made in a manner which prevents their recruitment, re-recruitment or use by any party to a conflict. Guardianships should not be given to individuals or organizations who are directly or indirectly involved in a conflict.

Former child soldiers

56. Child soldiers should be considered primarily as victims of armed conflict. Former child soldiers, who often find themselves unaccompanied or separated at the cessation of the conflict or following defection, shall be given all the necessary support services to enable reintegration into normal life, including necessary psychosocial counselling. Such children shall be identified and demobilized on a priority basis during any identification and separation operation. Child soldiers, in particular, those who are unaccompanied or separated, should not normally be interned, but rather, benefit from special protection and assistance measures, in particular as regards their demobilization and rehabilitation. Particular efforts must be made to provide support and facilitate the reintegration of girls who have been associated with the military, either as combatants or in any other capacity.

57. If, under certain circumstances, exceptional internment of a child soldier over the age of 15 years is unavoidable and in compliance with international human rights and humanitarian law, for example, where she or he poses a serious security threat, the conditions of such internment should be in conformity with international standards, including article 37 of the Convention and those pertaining to juvenile justice, and should not preclude any tracing efforts and priority participation in rehabilitation programmes.

Non-refoulement

58. As under-age recruitment and participation in hostilities entails a high risk of irreparable harm involving fundamental human rights, including the right to life, State obligations deriving from article 38 of the Convention, in conjunction with articles 3 and 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict,

entail extraterritorial effects and States shall refrain from returning a child in any manner whatsoever to the borders of a State where there is a real risk of under-age recruitment or participation, directly or indirectly, in hostilities.

Child-specific forms and manifestations of persecution³

59. Reminding States of the need for age and gender-sensitive asylum procedures and an age and gender-sensitive interpretation of the refugee definition, the Committee highlights that under-age recruitment (including of girls for sexual services or forced marriage with the military) and direct or indirect participation in hostilities constitutes a serious human rights violation and thereby persecution, and should lead to the granting of refugee status where the well-founded fear of such recruitment or participation in hostilities is based on "reasons of race, religion, nationality, membership of a particular social group or political opinion" (article 1A (2), 1951 Refugee Convention).

Rehabilitation and recovery

60. States shall develop, where needed, in cooperation with international agencies and NGOs, a comprehensive age-appropriate and gender-sensitive system of psychological support and assistance for unaccompanied and separated children affected by armed conflict.

(i) Prevention of deprivation of liberty and treatment in cases thereof

61. In application of article 37 of the Convention and the principle of the best interests of the child, unaccompanied or separated children should not, as a general rule, be detained. Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof. Where detention is exceptionally justified for other reasons, it shall be conducted in accordance with article 37 (b) of the Convention that requires detention to conform to the law of the relevant country and only to be used as a measure of last resort and for the shortest appropriate period of time. In consequence, all efforts, including acceleration of relevant processes, should be made to allow for the immediate release of unaccompanied or separated children from detention and their placement in other forms of appropriate accommodation.

62. In addition to national requirements, international obligations constitute part of the law governing detention. With regard to asylum-seeking, unaccompanied and separated children, States must, in particular, respect their obligations deriving from article 31 (1) of the 1951 Refugee Convention. States should further take into account that illegal entry into or stay in a country by an unaccompanied or separated child may also be justified according to general principles of law, where such entry or stay is the only way of preventing a violation of the fundamental human rights of the child. More generally, in developing policies on unaccompanied or separated children, including those who are victims of trafficking and exploitation, States should ensure that such children are not criminalized solely for reasons of illegal entry or presence in the country.

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83. Whenever family reunification in the country of origin is not possible, irrespective of whether this is due to legal obstacles to return or whether the best-interests-based balancing test has decided against return, the obligations under article 9 and 10 of the Convention come into effect and should govern the host country's decisions on family reunification therein. In this context, States parties are particularly reminded that "applications by a child or his or her parents to enter or leave a State party for the purpose of family reunification shall be dealt with by States parties in a positive, humane and expeditious manner" and "shall entail no adverse consequences for the applicants and for the members of their family" (art. 10 (1)). Countries of origin must respect "the right of the child and his or her parents to leave any country, including their own, and to enter their own country" (art. 10 (2)).

(c) Return to the country of origin

84. Return to the country of origin is not an option if it would lead to a "reasonable risk" that such return would result in the violation of fundamental human rights of the child, and in particular, if the principle of non-refoulement applies. Return to the country of origin shall in principle only be arranged if such return is in the best interests of the child. Such a determination shall, *inter alia*, take into account:

- The safety, security and other conditions, including socio-economic conditions, awaiting the child upon return, including through home study, where appropriate, conducted by social network organizations;
- The availability of care arrangements for that particular child;
- The views of the child expressed in exercise of his or her right to do so under article 12 and those of the caretakers;
- The child's level of integration in the host country and the duration of absence from the home country;
- The child's right "to preserve his or her identity, including nationality, name and family relations" (art. 8);
- The "desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background" (art. 20).

85. In the absence of the availability of care provided by parents or members of the extended family, return to the country of origin should, in principle, not take place without advance secure and concrete arrangements of care and custodial responsibilities upon return to the country of origin.

86. Exceptionally, a return to the home country may be arranged, after careful balancing of the child's best interests and other considerations, if the latter are rights-based and override best interests of the child. Such may be the case in situations in which the child constitutes a serious risk to the security of the State or to the society. Non-rights-based arguments such as those relating to general migration control, cannot override best interests considerations.

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We would also like to thank leaders of the various refugee communities in Delhi who shared their own experiences and facilitated our interaction with members of their communities. We are particularly grateful to all the respondents who generously contributed their thoughts and time.

We would further like to extend our appreciation to those government officials, representatives of non-government organizations, lawyers and others who shared information, ideas and insights during the course of our research and redaction of this Report.

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Layout and Design: The Ara Trust



Best Practice:

SRI LANKAN AND TIBETAN MODEL.

As stated earlier, refugee populations from Sri Lanka and Tibet fall under the mandate of the Government of India and through it, the various State Governments where these refugees are resident. The Central and State Governments have, over the course of time, taken a number of steps towards the welfare of these refugees, in the sectors of education, health, etc., sometimes conferring on them a status comparable with that of Indian citizens. Given that these nationalities have greater access to socio-economic rights when compared to UNHCR mandate refugees, this chapter examines the various schemes and rights specific to them. Some of these can be referred to as best practice which could be replicated in the Central and State Governments' dealings with other refugee populations.

GOVERNMENT SCHEMES FOR SRI LANKAN REFUGEES

All Sri Lankan refugees in Tamil Nadu have access to most of the socio-economic schemes available to citizens. There are also certain schemes initiated by the State Government specifically for their benefit. These are as follows:

Access to Documentation¹⁴⁹

- (a) Individual multi-colour IDs have been prepared and issued to every Sri Lankan refugee above the age of 12 years in order to ensure their welfare and security.
- (b) The government has relaxed the restrictions on issuing driving licenses to refugees who are staying in camps, so as to enable them to improve their standard of living.
- (c) Birth, death, marriage, income and refugee certificates are issued by the concerned officials upon request.
- (d) A family card that includes a family photo, names of family members, their age, relationship, gender, date of arrival in India, location of arrival, education, as well as their address in Sri Lanka, is also issued by the government.

Access to Education¹⁵⁰

- (a) Special cash incentives, footwear, bags and geometry boxes, as well as bicycles, have been provided free of cost for Sri Lankan Tamil students studying in government and government-aided schools. Students in higher secondary schools were also provided laptops.¹⁵¹
- (b) Nearly 21,500 refugee students are enrolled in educational institutions. For pursuing higher education in Arts and Science colleges in the State, refugees can avail of the seats falling vacant after regular admissions are completed. In the Tamil Nadu Engineering Admission, refugees are permitted to participate in the open quota. The government also provides residential facilities for refugee students who are studying far from home.
- (c) The government has further extended the scheme of providing free bus passes to all refugee students in camps pursuing studies in Arts, Science and Engineering colleges in the State.

¹⁴⁹ The content of this section is based on information from the website of the Tamil Nadu Government, Department of Rehabilitation, at: http://www.tn.gov.in/rti/preactive/public/handbook_rehabilitation.pdf (accessed on January 13, 2015); and Canada: Immigration and Refugee Board of Canada, Sri Lanka/India: Status of Sri Lankan Tamil refugees in India, including information on identity documents, citizenship, movement, employment, property, education, government aid, camp conditions and repatriation (2008-January 2010), 3 February 2010, at: <http://www.refworld.org/docid/4dd23fd8a.html> (accessed on January 13, 2015).

¹⁵⁰ Except where specifically mentioned, the content of this section is based on information from the website of Organisation for Eelam Refugees Rehabilitation (OfERR) at http://www.oferr.org/tamil_refugees.php (accessed on January 22, 2015).

¹⁵¹ See Tamil Nadu Government, Publication of Information and Public Relations Department, Tamil Arasu Magazine, Vol. 45, May-June 2014, pp. 202-203, at: [http://www.tn.gov.in/pdf/3YearAchievement\(English\).pdf](http://www.tn.gov.in/pdf/3YearAchievement(English).pdf) (accessed on January 23, 2015).

CONFIDENTIAL

No. 25022/34/2001-F.IV
Government Of India
Ministry Of Home Affairs
(Foreigners Division)

ANNEXURE-W
174

Jaisalmer House, 26-Man Singh Road
New Delhi-110011, Dated 29th December, 201

2011.

To,

Chief Secretaries of State Governments

Chief Administrators of Union Territories,

Sir,

1. I am directed to state that Government of India have been considering enactment of a comprehensive 'Refugee' Law. Pending the enactment, it has been decided to prescribe a standard operating procedure. This needs to be followed by all concerned agencies while dealing with foreign nationals who claim to be refugees.

2. Enclosed herewith please find a copy of the internal guidelines. This may please be brought to the notice of all the concerned for strict compliance.

Yours faithfully

End: As stated

(G.V.V sarma)

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Joint Secretary (Foreigners)

Ph: 23383075

Fax: 23383888

Copy to:

(i) Joint Director, Bureau of Immigration, East Block-8, Level-5,
Sector-1, R.K Puram, New Delhi.

(ii) FRRO's, Delhi,
Mumbai, Kolkata, Chennai, Hyderabad, Bengaluru and Amritsar.

(iii) Shri Amarendra Khatu, Joint Secretary (PV), Ministry of
External Affairs, patiala House, New Delhi

(G.V.V Sarma)

Joint Secretary (Foreigners)

Copy to Director (I&C), Director (F), DS (F)

(G.V.V Sarma)

Joint Secretary (Foreigners)

No. 25022/34/2001-F.IV

Copy also forwarded for information and necessary action to all
DGPs/Commissioners of Uts/IGPs of all states.

CONFIDENTIALInternal guidelines to deal with the foreign nationals in India, who claim to be 'refugees'

The following Standard Operating Procedure will be followed whenever an FRRO/FRO comes across foreign nationals who claim to be 'refugee':-

- (i) The version of the foreign national making such claim will be carefully examined. Details of the reasons for leaving the originating country and the manner in which he/she has entered India would be elicited from the foreigner.
- (ii) The documents available with the foreigner, issued by anybody either in India or abroad, will also be taken as inputs in arriving at a conclusion by the FRRO/ FRO. In case it is found that prima face the claim is justified, (on the account of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion), the matter will be recommended to MHA for grant of Long Term Visa

within thirty days from the date of claim by the foreigner. One of the factors to be seen is the general perceived condition in the home country, of the people belonging to the community of the foreigner in question.

- (iii) MHA will consider all the inputs including the report of FRRO/FRO as well as inputs of Ministry of External Affairs and arrive at a decision on LTV with validity upto one year from the date of issue. Details of case in which LTV is ordered will be shared by MHA with MEA.
- (iv) The LTV for such foreigners will be renewed every year, for a maximum of five years at the level of the FRRO/FRO concerned based on assessment of the conduct of the foreigner and security implications. In case of any adverse report, Ministry of Home Affairs will be intimated immediately for taking a suitable decision.
- (v) If renewal is justified for the sixth year, the FRRO/FRO will furnish a proposal to MHA with his views for a decision.
- (vi) During such period of stay in India, a foreigner to whom LTV is permitted by MHA will be allowed to take

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up any employment in the private sector or undertake studies in any academic institution.

- (vii) A foreigner to whom LTV has been permitted by the Ministry of Home Affairs will not be treated as an illegal immigrant for the purpose of Citizenship Act, 1955.
- (viii) No such foreign national will be deported without specific clearance of MHA.
- (ix) It may be noted that economic immigrants i.e. foreigners who have arrived in India in search of economic opportunities, without any fear of persecution, WILL NOT be eligible for LTV. If such people are detected, the cases will be investigated promptly and the persons will be persecuted under the Foreigners Act.
- (x) In cases where the foreign national is considered not fit for grant of LTV, a decision to this effect will be conveyed by MHA to the FRRO within a period of three months foreigner will be confined to a detention center under the provisions of Foreigners Act. Steps will be

initiated in such cases for deportation of the foreigner through diplomatic channels.

(xi) In case it is decided that the case in not fit to warrant LTV or that LTV cannot be renewed, MHA will consider all possible alternatives including deportation to the home country and consultation with UNHCR for a third country option.

(xii) In cases in which the diplomatic channels do not yield concrete results within a period of six months, the foreign national, who is not considered fit for grant of LTV, will be released from detention center subject to collection of biometric details, with conditions of local surety, good behaviour and monthly police reporting as an Interim measure till Issue of travel documents and deportation.

TRUE COPY

Rights to Refugees

ANNEXURE - X

The number of Afghan, Myanmar, Sri Lankan and Stateless persons who claim to be refugees and livings in India as per information are as under:-

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Afghanistan	:	10340
Myanmar	:	4621
Sri Lanka	:	102241
Stateless (including Tibetans)	:	101148

Government has issued a Standard Operating Procedure for dealing with foreign nationals who claim to be refugees to all State Governments/Union Territories on December 29, 2011. This Standard Operating Procedure stipulate that cases, which are prima facie justified on the grounds of a well founded fear of persecution on account of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion, can be recommended by the State Government/Union Territory Administration to the Ministry of Home Affairs for grant of Long term Visa (LTV) after due security verification. A foreigner to whom LTV is permitted by the Ministry of Home Affairs will be allowed to take up any employment in the private sector or to undertake studies in any academic institution.

This was stated by Shri Kiren Rijju, Minister of State in the Ministry of Home Affairs in written reply to a question by Shri Kodikkunnil Suresh in the Lok Sabha today.

KSD/BK/PK/sk

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(Updated as on 16th September, 2014)Powers delegated to State Governments/ UT Administrations/ FRROs/ FROs for various visa related services

S.No.	Type of Visa	Visa related service	Powers delegated
1	Any type of visa	Exit permission	FRROs/FROs are empowered to regularize overstay of foreign nationals and grant exit subject to no local objection, no LOC, no Court case pending due to overstay and on payment of fees/penalty.
2	Any type of visa	Temporary extension	In case any request of a foreign national (other than a Pakistani national) for extension of visa is forwarded by FRROs/FROs to the Ministry of Home Affairs for approval, FRROs/ FROs may grant temporary extension of visa for 3 months and also may grant return visa for visiting their home country or for holiday to nearby countries.
3	Any type of visa	Cancellation of visa	In the case of conviction by a court, violation of visa conditions, deportation, issue of Leave India Notice/ Exit of foreigners, Entry refusal, non-issuance of appropriate visas, FRRO/FRO concerned is empowered to cancel the Indian visa of the foreigner before grant of exit/ deportation.
4	Visa/Exit permission to child born in India (other than surrogacy cases)	Child born in India (other than surrogacy cases) Endorsement of visa/ exit permission	In all cases relating to child born in India (other than surrogacy cases), visa endorsement/ exit permission may be granted by FRROs/ FROs subject to usual checks. Any further extension of visa may also be granted by FRROs/ FROs.
5	Visa/exit permission for a child born in India (in surrogacy cases)	Endorsement of visa/ exit permission on the passport of a child born in India (in surrogacy cases)	In such cases, visa endorsement/exit permission may be granted by the FRROs/FROs subject to ensuring that the following documents are submitted by the foreign nationals concerned before grant of visa/exit permit:- 1. Notarised agreement between the commissioning parents, surrogate mother and doctor treating the case

			<p>or one year, whichever is earlier.</p> <p>Other purpose Long term stay initially for one year extendable on yearly basis on the basis on the recommendation of CTA after conducting police verification.</p>
			<p>No request for change in purpose of stay will be entertained. No request for extension of stay will be entertained except in case of long term stay.</p>
53	Stay Visa/ Residential Permit of Afghan nationals	Extension of Stay Visa/ Residential Permit, Registration, NORI etc. in respect of Afghan nationals	<p>The following guidelines have been issued by the Ministry of Home Affairs vide letter no. 25022/16/2004-F.V dated 27.6.2014 regarding extension of Stay Visa/ RP, Registration, NORI etc. in respect of Afghan nationals:-</p> <p><u>Extension of Stay Visa/ Residential Permit</u></p> <p>(1) Extension of Stay Visa/ Residential Permit may be granted by the FRROs/FROs concerned up to one year for ethnic Afghan nationals and up to two years for non-ethnic Afghan nationals (ie. Hindus and Sikhs).</p> <p>(2) Extension of Stay Visa/ Residential Permit may be granted to non-ethnic Afghan nationals, who have arrived in India after 1.1.2009 on the basis of refugee certificates issued by UNHCR. The extension of Stay Visa/ Residential Permit will also continue to be available to non-ethnic Afghan nationals who arrived before 1.1.2009.</p> <p>(3) Extension of Stay Visa/ Residential Permit may be granted to ethnic Afghan nationals who have arrived in India after 1.1.2009 on case to case basis by a Committee under the</p>

			<p>Chairmanship of FRRO/FRO concerned after carefully scrutinizing all the documents including UNHCR card, local enquiries, interview and after substantiating his/ her nationality as an Afghan national.</p> <p>(4) Non-ethnic Afghan nationals entering India from Afghanistan or a third country, with a valid Passport and valid Visa and who have their families (mother, father, children and spouse) in India already registered with the FRRO/ FRO may be granted extension for a maximum period of 6 months irrespective of visa type.</p> <p>(5) Extension of visa on medical grounds may be granted to an Afghan national who falls ill after his/her entry into India rendering him/her unfit to travel and who requires specialized medical treatment on production of a Medical Certificate from a Government/ ICMR recognized hospital. The individual whose visa is not so extended shall leave India immediately and may come back to India after obtaining a visa of appropriate category.</p> <p><u>Police Reporting/ Registration and Exit permission</u></p> <p>(6) Exemption from Police Reporting (EPR) to be granted to Afghan nationals, up to the age of 12 years or those above 65 years of age, who are in possession of separate passport. Afghan nationals who are issued visas by Head of Mission at Kabul with 'Exemption from Police Reporting', shall be exempt from both Police Reporting as well as Exit</p>
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			<p>permission within the visa validity period.</p> <p>(7) Afghan nationals up to the age of 12 years who are not in possession of a separate passport and are travelling on the joint passport of their parents/guardians are not required to be physically present at the time of registration at FRRO/ FRO.</p> <p>(8) Afghan nationals with a visa duration of 30 days or less, are exempt from the requirement of registration, provided the visa applicant gives the Indian Mission his/her local address in India. In other cases registration of Afghan nationals with the FRRO/ FRO within 14 days of arrival is required.</p> <p>(9) All Afghan nationals entering India on fresh visa for more than 30 days will be required to be registered within 14 days (temporary registration) as at present except the following:-</p> <p>(a) Individuals holding diplomatic/ official passports travelling on official work and their immediate family members accompanying them.</p> <p>(b) Government of India sponsored Afghan nationals coming to India for studies/ training/ workshops/ conferences provided their names have been security vetted by MHA.</p>
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			<p>(10) Afghan students intending to pursue higher studies are permitted to report within 14 days in conformity with the provision for other foreigners as per Visa Manual.</p> <p>(11) Exit permission is not required for those Afghan nationals who leave India within the validity of the visa period.</p> <p><u>Re-entry permission</u></p> <p>(12) In keeping with the policy of the Government to encourage them to leave the country permanently, ethnic Afghan nationals staying in India on Stay Visa/ Residential Permit should not be granted re-entry facility for any purpose.</p> <p>(13) Non-ethnic Afghan nationals (i.e. Hindus and Sikhs) who are staying in India on Stay Visa/ Residential Permit and registered with FRRO/FRO may be granted-</p> <ul style="list-style-type: none"> (i) one re-entry facility for a maximum period of 90 days in a year with the endorsement that the said person is not entitled for second re-entry; or else (ii) two re-entry facilities in a year for a maximum period of 45 days each, for- <ul style="list-style-type: none"> (a) disposal of their property in Afghanistan; or (b) visiting a country other than
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			<p>Afghanistan and Pakistan, if the request is found justified.</p> <p>General</p> <p>(14) Afghan nationals who are Medical Attendants (Med X visa holders) will be allowed entry only if they are accompanied by the patients (Med visa holders).</p> <p>(15) No restriction on travel within India (except RAP, PAP, other restricted or prohibited areas). They shall be treated at par with other foreigners for this purpose.</p> <p>(16) No exit fee/ overstayal fee to be charged from these Afghan nationals when they are leaving the country permanently. In all such cases, bio-metric enrolment and photograph shall be taken by FRRO/ FRO concerned before granting exit permission.</p> <p>-</p> <p>(17) All Afghan nationals on Stay Visa/ Residential Permit who have entered into marriage in India and have their children/ family staying in India should in due course be encouraged to apply for Indian Citizenship by neutralization.</p> <p>(18) All Afghan nationals, ethnic as well as non-ethnic, found to be overstaying will be dealt with under the Foreigners Act, 1946.</p> <p>(19) As regards the grant of Tourist</p>
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			<p>Visa, Student Visa, Medical Visa etc., the general policy guidelines for other foreign nationals, as per the provisions of the Visa Manual and instructions issued from time to time, shall be applicable to Afghan nationals as well.</p> <p>(20) Cases not falling in the above categories, if any, may be referred to the Ministry of Home Affairs for an appropriate decision.</p> <p>(21) The above mentioned policy guidelines may be reviewed/ amended by the Ministry of Home Affairs as deemed necessary</p> <p>The above policy will continue up to 30th June, 2016.</p>
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ANNEXURE - Z

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ALJAZEERA

NEWSTHAILAND 19 JULY 2017

<http://www.aljazeera.com/news/2017/07/thai-court-deliver-verdict-people-smuggling-case-170719024750630.htm>

Guilty verdicts for Rohingya trafficking deaths

Many of the victims found in mass graves were Rohingya Muslims – a persecuted minority from Myanmar's Rakhine state.

- More than 103 defendants to be handed verdicts
- Army general, Thai police, local politicians among those accused
- Arrests began in 2015 after discovery of shallow graves
- Rights groups say trafficking networks remain intact

An army general in Thailand was one of the most prominent figures found guilty in a major human trafficking trial that included more than 103 defendants accused of involvement in a modern-day slavery trade.

Lieutenant-General Manas Kongpaen was convicted on Wednesday of several offences involving trafficking and taking bribes.

At least one other defendant considered a kingpin in the illegal trade, Pajjuban Aungkachotephan, was also found guilty. He was a prominent businessman and former politician in the southern province of Satun.

By Wednesday evening, 62 people were found guilty, with sentences ranging from four years to the maximum 50 years allowed under the criminal code, officials said. Individual sentences were not immediately announced.

As well as the general, Myanmar nationals, Thai police officers and local politicians are among those accused.

Arrests began in 2015 following the discovery of 36 bodies in shallow graves in southern Thailand.

That discovery exposed networks which trafficked Rohingya Muslims fleeing persecution in Myanmar and held them for ransom in jungle camps before they were granted passage to Malaysia.

The trial began that year, when authorities said traffickers held migrants in the camps as hostages until relatives were able to pay for their release.

Many never made it out.

The case drew special attention when its lead police investigator, Major-General Paween Pongsirin, fled to Australia and said he feared for his life after his findings implicated "influential people" in Thailand who wanted to silence him.

Thailand's military government has said it is making the fight against human trafficking a national priority.

Thailand has yet to release a full report on the graves and the results of post-mortem forensic testing.



Rights groups say trafficking networks were largely left intact despite the 2015 crackdown and trial [Reuters]

Rights groups say trafficking networks were largely left intact by the 2015 crackdown and trial.

"We believe that the crackdown is only a disruption of a trafficking network but that network is still very much well in place," said Amy Smith, an executive director of rights group Fortify Rights.

Smith also said the current trial has a narrow focus.

"We expect there are many more perpetrators out there," she said. "This is a big business with big money."

Sunai Phasuk, a senior researcher on Thailand at Human Rights Watch, said: "There needs to be more prosecution against traffickers as well as more work on rehabilitation of trafficking victims."

Lengthy legal process

The legal process in handing down verdicts is lengthy in Thailand, and it may take hours before the judge reveals the exact details of the verdicts to a packed Bangkok court.

The trial has been marred by allegations of intimidation against witnesses, interpreters and police investigators.

Thitinan Pongsudhirak, director of the Institute of Security and International Studies at Chulalongkorn University, said this trial will serve as a litmus for Thailand's military government, which is marred by controversies and corruption scandals.

"Overall, this case is going to decide whether this government has any lasting legacies or achievements at all and they are putting a lot of emphasis on the trial to show its credibility," he told Al Jazeera, from Bangkok.

Thailand's government denies that trafficking syndicates are still flourishing and has said it has largely eliminated human trafficking in the country.

Journalists were not allowed in the court room on Wednesday, but proceedings were relayed on television screens provided by the court.

Thailand has historically been a source, destination and transit country for men, women and children who are often smuggled and trafficked from poorer, neighbouring countries including Cambodia, Laos and Myanmar to work in Thailand or further afield in Malaysia, often as labourers and sex workers.

Mass grave

Last month the US state department left Thailand on a Tier 2 Watchlist, just above the lowest ranking of Tier 3, in its annual Trafficking in Persons (TIP) Report because it did not do enough to tackle human smuggling and trafficking.

Al Jazeera's Scott Heidler, reporting from Bangkok, said the scale of the trial meant the verdicts would take several hours to read and the hearing could last into tomorrow.

"Most [human rights] observers are hoping that there are going to be follow-up cases because they also believe - when you look at this case - we're looking at a very small area; this one mass grave they found along the border in 2015 and one ring that supplied those camps with the people coming across down from Myanmar," he said.

"Human rights observers are hoping that this is just the beginning and there will be many more cases to come."

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All the defendants earlier pleaded not guilty and were placed under pre-trial detention.

Source: Al Jazeera and news agencies

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MOST IMMEDIATE

No. 14051/14/2011-F.VI
Government of India
Ministry of Home Affairs
(Foreigners Division)

ANNEXURE - ZA

Dated 1st May, 2012

OFFICE MEMORANDUM

Sub: Advisory on preventing and combating human trafficking in India - dealing with foreign nationals.

The undersigned is directed to refer to this Ministry's Office Memorandum No. 15011/6/2009-ATC (Advisory) dated 09.09.2009 on the above mentioned subject (copy enclosed). It has come to the notice of this Ministry that foreign nationals are associated in some instances of human trafficking among women and children.

2. Further to the detailed procedure outlined in the above mentioned Office Memorandum, it has been decided with the approval of the competent authority that in cases of foreign nationals who are apprehended in connection with human trafficking, the State Governments / UT Administrations may follow the following procedure :-

- (i) Immediately after a foreign national is apprehended on charges of human trafficking, a detailed interrogation/investigation should be carried out to ascertain whether the person concerned is a victim or a trafficker.
- (ii) The victims and the persons actually involved in human trafficking should be treated differently by the police authorities. This is in line with the SAARC Convention which advocates a victim-centric approach.
- (iii) Missions/Posts in India may be informed of the arrest/detention of the foreign national by the concerned state or other authorities through CPV division in the Ministry of External Affairs(MEA) or the concerned territorial Division in MEA.

Contd...2...

- (iv) It is seen that in general, the foreign victims of human trafficking are found without valid passport or visa. If, after investigation, the woman or child is found to be a victim, she should not be prosecuted under the Foreigners Act. *If the investigation reveals that she did not come to India or did not indulge in crime out of her own free will, the State Government / UT Administration may not file a charge sheet against the victim. If the chargesheet has already been filed under the Foreigners Act and other relevant laws of the land, steps may be taken to withdraw the case from prosecution so far as the victim is concerned.* Immediate action may be taken to furnish the details of such victims to the Ministry of External Affairs (Consular Division), Patiala House, New Delhi so as to ensure that the person concerned is repatriated to the country of her origin through diplomatic channels.
- (v) During the interim period, pending repatriation, the victim may be taken care of in an appropriate children's home, or "Ujjawala" home or appropriate shelter home either of the State Government concerned or of any NGO aided by the Government of India / State Government.
- (vi) If the investigation reveals that the person is actually a trafficker, he/she may be charge-sheeted under the Immoral Trafficking Prevention Act and the Foreigners Act and due process of law should be followed in such cases.
- (vii) In order to ensure better conviction rates of perpetrators of the crime of trafficking, prosecution should be based on documentary, forensic and material evidence. State Governments are advised to encourage the law enforcement agencies to investigate the cases in a manner that they are able to build fool proof cases against the traffickers, so that convictions can be guaranteed. Use of fast-track courts and video conferencing to the extent possible also need to be ensured. Please refer to para 7 of the enclosed Advisory dated 9.9.2009.

Contd...3..

3. All other instructions contained in this Ministry's Advisory dated 09.09.2009 including reporting to the Anti Human Trafficking Nodal Cell in MHA will be applicable in the case of foreign nationals associated with human trafficking, whether they are women or children(children means both boys and girls upto 18 years of age).
4. You are requested to issue suitable directions to all concerned under intimation to this Ministry.
5. The receipt of this Office Memorandum may kindly be acknowledged.

(G.V.V. Sarma)
Joint Secretary to the Govt. of India

To

The Chief Secretaries/Principal Secretaries/ Secretary (Home) of all State Governments and Union Territory Administrations.

Copy for information and necessary action to:-

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- (i) The DGs / IGs (In-charge of Prisons) /- All State Governments/ UTs
- (ii) Sri Sandeep Goel, Joint Commissioner(Crime), 3rd Floor, Police Station Kamla Market, Delhi.
- (iii) Ministry of Women and Child Development(Smt. Aditi Ray, Senior Economic Advisor), Shastri Bhavan, New Delhi.
- (iv) Secretary, Ministry of Labour, Shram Shakti Bhavan, New Delhi
- (v) Secretary, Ministry of Social Justice & Empowerment, Shastri Bhavan, New Delhi.
- (vi) Secretary, Ministry of Overseas Indian Affairs, Akbar Bhavan, New Delhi.
- (vii) Ministry of External Affairs:
(a) Addl. Secretary(PV) (b) JS(Consular) (c) JS(BSM)
- (viii) Chairperson, National Commission for Women, 4, Deen Dayal Upadhyaya Marg, New Delhi.
- (ix) Chairperson, National Commission for Protection of Child Rights, 5th Floor, Chandralok Building, Janpath, New Delhi.
- (x) Chairperson, National Human Rights Commission, Copernicus Marg, New Delhi.
- (xi) Director General, NCRB, R.K.Puram, New Delhi.
- (xii) Director General, BPR&D, New Delhi.
- (xiii) Director General, Border Security Force, New Delhi.
- (xiv) Director, CBI, New Delhi..
- (xv) AS(CS) / JS(CS) / JS(UT) / JS(NE) / JS(K), MHA, North Block, New Delhi.

(G.V.V. Sarma)
Joint Secretary to the Govt. of India

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F.NO.15011/6/2009-ATC (Advisory)
GOVERNMENT OF INDIA/BHARAT SARKAR
MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA
NORTH BLOCK NEW DELHI /CS DIVISION

New Delhi, the 09.09.2009

OFFICE MEMORANDUM

Subject: Advisory on Preventing and Combating Human Trafficking in India

Introduction:

The Trafficking in Human Beings (THB) is a crime committed in order to target, lead or drive a human being into an exploitative situation with the aim to make profits. Such exploitation may take many forms, for example commercial sexual exploitation, child labour, forced labour, bonded labour or illegal organ removal etc. The country is witnessing cross-border as well as internal (intra-country) trafficking.

Human Trafficking and Indian Laws:

Trafficking in Human Beings (THB) is prohibited under the Constitution of India under Article 23 (1). Following specific legislations deal with Trafficking in Human Beings (THB)

- Laws relating to trafficking in women and children being administered by the MWCD (wcd.nic.in)
 - i. Immoral Traffic (Prevention) Act, 1956,
 - ii. Prohibition of Child Marriage Act (PCMA), 2006.
- The "Bonded Labour System (Abolition) Act, 1976", being administered by Ministry of Labour and Employment (labour.nic.in), provides for abolition of the system of bonded labour and the rehabilitation of released labourers. Child Labour (Prohibition and Regulation) Act, 1986 is also being administered by Ministry of Labour.
- Further, commercial dealing in human organs is a punishable offence under the Transplantation of Human Organs act, 1994, being administered by Ministry of Health and family Welfare (mohfw.nic.in). The appropriate authorities appointed under the Act are responsible and empowered to check the illegal activities of human organs traffickers.
- Specific Sections in the IPC, e.g., Sections 372 and 373 dealing with selling and buying of girls for the purposes of prostitution.

'Public Order' and 'Police' as per the 7th Schedule of the Constitution of India, are State subjects and, as such, detection, registration, investigation and prevention of crime is primarily the responsibility of the State Governments. However, Central Government supplements the efforts of the State Governments by providing policy guidelines, financial assistance for modernization of the State Police Forces in terms of weaponry, communication, equipment, mobility, training and other infrastructure under the Scheme of Modernization of State Police Forces.

A working Group comprising of Directors General of Police of some of the affected States was constituted in 2004 by MHA to study the issues relating to cross border trafficking. The recommendations of this group were sent to the State Governments and they were advised to

evolve a comprehensive strategy for effectively dealing with the problem of trafficking. Also an “Integrated National Plan of Action to Prevent and Combat Trafficking in Human Beings Specially Women and Children” (nhrc.nic.in/planofaction.doc), which has been worked out through a consultation process of all related Ministries and other stakeholders, has been adopted by Government of India in the Ministry of Women and Child Development. This plan deals with all aspects of prevention, rescue, registration of cases, investigations, prosecution, conviction, cross border trafficking issues, rehabilitation, repatriation and reintegration of victims etc. Based on these the recommendations of DGPs and the integrated action plan stated above the State Governments may evolve a holistic approach towards combating Trafficking in Human Beings (THB), encompassing all aspects of prevention, rescue and rehabilitation. Convergence should be adopted between various state departments and stakeholders for effective handling of crime of Trafficking in Human Beings (THB).

Following key points of advice have been worked out in collaboration with the related Ministries of Women and Child Development, Labour and Employment, and Health and family Welfare where the assistance/ action by the State Government/ Police would be required for the effective implementation/ enforcement of laws relating to Trafficking in Human Beings (THB):

1. Constitution of the State Advisory Committee for Preventing and Combating Trafficking of Women and Children for Commercial Sexual Exploitation.

According to the Supreme Court order dated 2/05/09 (Vishal Jeet Vs Union of India), every State Government should set-up a State Advisory Committee for Preventing and Combating Trafficking of Women and Children for Commercial Sexual Exploitation. Ministry of Women & Child Development (MWCD) has already issued an advisory in this regard to all the State Governments.

2. Implementation of Immoral Traffic (Prevention) Act (ITPA), 1956.

- 2.1. Since ITPA is the main Act that can be used to book trafficking for commercial sexual exploitation, its implementation is essential for counter-trafficking. Under Section 23, the State Government may, by notification in the Official Gazette, **make rules for carrying out the purposes of the Act.** Such rules may be formulated, notified and intimated to MWCD with a copy to MHA.
- 2.2. Under Section 13, the State Government may **appoint ‘Special Police Officers (SPOs)’** and the ‘Non-official advisory bodies’ to advise the SPOs for dealing with offences under the Act.
- 2.3. Under Section 21, the State Governments may set-up ‘Protective homes’ and ‘Corrective institutions’ for ensuring proper implementation of the provisions of the Act. **The information regarding these homes may be circulated to all Police Stations and officers dealing with the trafficking cases.**
- 2.4. Under Section 22-A, the State Government may, by notification in the Official Gazette, and after consultation with the **High Court, establish one or more Courts** for providing speedy trial of the offences under the Act.
- 2.5. It is generally noticed that sections 8 and 20 of ITPA, which focuses on the victims, are more often invoked as a result of which the victim is re-victimized and the exploiters are not punished. It is, therefore, advised that sections 3, 6 and 7 which pertains to pimps, brothel owners, clients who are actual perpetrators of the crimes need to be invoked rather than sections 8 and 20. **Law enforcement agencies need to adopt a victim centric approach in the investigations.**

3. **Implementation of Juvenile Justice Act (JJ Act), 2000:** Juvenile Justice Act provides comprehensive mechanism for care and protection of children including rehabilitation and social integration of children. Therefore, its implementation is essential to address trafficking of children. Following provisions of the Act are concerned with the Home Department/ Police and require action by the State Governments:
 - 3.1. Under Section 62-A, the State Government shall constitute 'Child Protection Units' for the State and districts to fulfill its responsibilities as stipulated under the Act.
 - 3.2. Under Section 63, in each police station, at least one police officer may be designated as the 'Juvenile or Child Welfare Officer' to handle a juvenile or child in coordination with the police.
 - 3.3. Under Section 68, the State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act.
4. **Implementation of Prohibition of Child Marriage Act (PCMA), 2006:** Prohibition of Child Marriage Act (PCMA) was enacted in 2006 repealing Child Marriage Restraint Act, 1929. It is reported that traffickers in some pockets in the country are exploiting evil custom of child marriage to target innocent girls for trafficking. Therefore, it is essential to implement the Act to address this modus operandi of traffickers.
 - 4.1. As per PCMA, State Governments under Section 19 (1), may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act.
 - 4.2. Under Section 16, the State Government may appoint 'Child Marriage Prohibition Officers' to fulfill the mandate as stipulated in the Act. State Governments may intimate the MWCD about the status of appointment of Prohibition Officers and Rules.
 - 4.3. The State Governments are to maintain MIS and send quarterly information on number of cases registered under PCMA and convictions.
 - 4.4. On receiving a complaint about child marriage, police are required to follow the procedure laid down in the Code of Criminal Procedure, 1973, which include registering an FIR and carrying out investigation.
 - 4.5. The offences under PCMA are cognizable and non-bailable, hence, immediate arrest of offenders is necessary.
 - 4.6. Extra vigilance should be maintained during festivals such as 'Akshya Trita' to ensure that no child marriage takes place.
5. **Capacity building of the State machinery:** Implementation of the legal provisions in relation to applicable Acts- CLPRA, BLSA, IPTA, JJA and IPC involves not only police but many other officials dealing with the Criminal Justice System - notably the executive magistrates, the labour officials, CWC members and in-charges of Homes. Therefore, the State government may initiate a time bound action plan to build the required capacity of the state investigation and prosecution machinery in this regard. Some of the key areas identified for capacity building are listed below.
 - 5.1. Identification of victims of trafficking for the purpose of commercial sexual exploitation, child/bonded/forced labour and for illegal organ removal.
 - 5.2. Recognition of all applicable legal provisions of the law to a case of trafficking (not just one Act or two) by law enforcement machinery.

- 5.3. Understanding of legal and administrative provisions for inter-state and cross border investigation.
- 5.4. Understanding of legal provisions for closure of places of exploitation.
- 5.5. Understanding of legal provisions for confiscation of proceeds of crime.
- 5.6. Understanding of the mechanism in place for victim support and assistance.
- 5.7. Integrated actions on prosecution, prevention and protection by building linkages with other Government departments and agencies, including NGOs.
- 5.8. For capacity building the Bureau of Police Research and Development (BPR&D) (www.bprd.gov.in), at the behest of MHA, has prepared a **training manual on Human Trafficking Handbook for Investigators** and this has been circulated to the States for use in the police Training Institutes. All the training materials have also been uploaded on BPR&D website. BPR&D has already translated the training material in Hindi, Telugu and Marathi languages. 12 Resource Books on 'Training and Investigation on Anti-Human Trafficking' prepared as a result of pilot project between MHA and UNODC (www.unodc.org/india/ind_s16.html) have also been uploaded on BPR&D website. These resource materials should be used by State Governments for the capacity building of all agencies involved in prevention of human trafficking.
- 5.9. Also MWCD, in collaboration with National Institute of Public Co-operation and Child Development (NIPCCD) and UNICEF, has developed manuals for training of stakeholders such as 'Judicial Handbook on Combating Trafficking of Women and Children for Commercial Sexual Exploitation', 'Manual for Medical Officers for dealing with Child Victims of Trafficking and Commercial Sexual Exploitation', counseling services for Child survivors of trafficking', Counseling services for Child survivors of trafficking'. Social workers.
- 5.10. States may organize training/workshops/awareness campaign to sensitize their SHOs/Dy. SP/ACP and other law enforcement agencies towards the crime, safety and security of women and children.
- 5.11. The **Compendium of Best Practices in handling cases of human trafficking** (www.unodc.org/india/ind_s16.html) has already been circulated to all the State Governments and UT Administrations for information and appropriate use.

6. Prevention of Trafficking:

- 6.1. It has been noticed that people, especially women and children are vulnerable to trafficking during 'distress migration' and from 'disaster prone areas'- such as during floods, earthquakes, crop failures, riots, terrorist activities etc. Therefore, it is important to establish extra vigilance in this regard around transit points and at borders- inter-district/inter-state and international.
- 6.2. Police should work closely with immigration authorities, Border Security Force (BSF), Railways and other transport authorities, provincial/ territorial and municipal agencies, with Social Services, child welfare authorities and with any NGOs involved in service delivery for spotting and rescuing the victims.
- 6.3. Effective patrolling and vigil at locations prone to trafficking such as highways, dhabas, railway stations and bus stations for suspicious movement of traffickers and victims and monitoring, through involvement of village community, the suspicious/ unnecessary movements of strangers in the villages.

- 6.4. Pro-active policing through information exchange with representatives from the local Government, community, NGOs with a view to raise awareness and garner active support of the community.
- 6.5. Periodical checks on transporters to prevent physical transportation of the trafficked persons.
- 6.6. Prevention at the demand area by understanding/ addressing new forms of demand. For example, placement agencies providing domestic child labourers.
- 6.7. Facilitating inter-State collaboration by sharing data on missing children/ kidnappings and suspected offenders. Development of victim and offender profiles on an inter-agency basis.
- 6.8. Sensitization programmes/workshops for police officers/railway police force and prosecutors on various legislations mentioned above in relation to trafficking. State nodal officers may hold periodical meetings to review and monitor the efforts taken to prevent and combat the crime of trafficking.
- 6.9. In case of child trafficking, following provisions also need to be kept in view:-
 - 6.9.1. Identification of children at risk, (e.g. following raids on off-street sites, responding to referrals from other agencies, NGO or members of the public, following up reports of missing children).
 - 6.9.2. Report instances of children in need of protection to relevant child protection agencies. For this purpose the Police Stations could be sensitized.
 - 6.9.3. The development of victim profiling with other agencies.
 - 6.9.4. Undertaking joint interviews with social workers of children identified as victims or potential victims to assess risk and assist in the development of protection plans.
 - 6.9.5. Carry out checks on sponsors and people who claim to be the relatives of children identified as being at risk of trafficking.
 - 6.9.6. Participating in local child protection networks with related organizations (immigration, social services, NGOs, health, education) to develop joint approaches to the issue at local level and contribute to wider forums as appropriate.
 - 6.9.7. If children disappear, initiate missing person's procedures, investigate circumstances and circulate information/ undertake investigations, linking with other agencies as required.
 - 6.9.8. Ministry of Labour & Employment has developed a detailed protocol for prevention, rescue, repatriation, rehabilitation and reintegration of migrant and trafficked child labour. The protocol has been issued to all State Governments for implementation.

7. Investigation & Prosecution:

- 7.1. Standard operating procedures for Investigation have been developed under the pilot project between MHA and UNODC as mention in para 5.8 above, which can be used for effective investigation in trafficking related crimes.
- 7.2. One of the effective means of securing better conviction rates of perpetrators of crime

of trafficking is to base the case on documentary, forensic and material evidence. At present, most of the time, the victim is being used as a witness and more often than not, he/she can easily be intimidated. State Governments are advised to encourage the law enforcement agencies to build full proof investigation against the traffickers, so that, convictions can be guaranteed.

7.3. Use of fast track courts and video conferencing to the extent possible.

8. Rescue and Rehabilitation

8.1. Police should work with other agencies and stakeholders to ensure that those who are rescued or who choose to return are not re-trafficked; this should include a risk assessment of the danger to returning victims (child care authorities would prepare risk assessment for children).

8.2. Identifying support services and referring victims/ potential victims to specialist NGO's and safe accommodation, where these are available. The Ministry of Women and Child Development runs short stay homes Swadhar shelter homes for women in difficult circumstances (wcd.nic.in/Comscheme.doc). These cater to trafficked women/girls rescued or runaway from brothels or victims of sexual crimes who are disowned by family or who do not want to go back to respective family for various reasons. The schemes provide for shelter, food, clothing for women and children below the age of 18 years, counseling, clinical, medical, legal and other support, training and economic rehabilitation and helpline facilities.

8.3. A new scheme - UJJAWALA (wcd.nic.in/Comscheme.doc) – a comprehensive scheme for prevention of trafficking, rescue, rehabilitation, reintegration and repatriation of the victims of commercial sexual exploitation has been launched on 04.12.2007 by the Ministry of women and Child Development which should be effectively used by the State Governments.

9. MHA has already established an Anti Trafficking Cell (ATC) under the Director (SR) which deals with the following major subject matters:

9.1. All matters pertaining to the criminal aspect of trafficking in human beings especially of women and children, which is the fastest growing organised crime and an area of concern.

9.2. To act as the Nodal cell for dealing with the criminal aspect of Human Trafficking in India, hold regular meetings of all States and UTs, communicating various decisions and follow up on action taken by the State Governments.

9.3. To interface with other Ministries like MWCD, MSJE, MEA, MOIA, MOLE, MOL, MOT and NCRB regarding the criminal aspect of human trafficking.

9.4. All matters relating to the UNODC, UNIFEM, their meetings, conferences, conventions, reports etc. in the context of the criminal aspect of Human Trafficking.

10. The Anti Trafficking Nodal Cell of MHA has developed an MIS proforma for the monitoring of the action taken by various State Governments regarding the criminal aspect of human trafficking as well as crime against women. The State Governments are requested to send quarterly information on 1st January, 1st April, 1st July and 1st October of the year in the prescribed proforma.

11. You are requested to issue suitable directions to all concerned under intimation to this Ministry. It is further requested that action taken in this regard may be regularly / periodically

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reviewed by the State Governments and UT administrations and a report indicating the present status sent to this Ministry within a month.

12. This advisory is being issued in consultation with the Ministry of Women and Child Development and Ministry of Labour and Employment.

The receipt of this letter may kindly be acknowledged immediately.

Yours faithfully,

-Sd-

(Nirmaljeet Singh Kalsi)
Joint Secretary to the Government of India
Ministry of Home Affairs, North Block
New Delhi - 110001
Tel. No. 23092630

To,
The Chief Secretaries &
The Principal Secretary / Secretary (Home)
All State Governments and Union Territory Administrations – for information and necessary action.

Copy for information and necessary action to:

- i. The DGs / IGs (In-charge of Prisons)/ - All State Governments / UTs for information and necessary action.
- ii. Ministry of Women and Child Development (Mrs. Manjula Krishnan, Advisor & Joint Secretary, MWCD, Ms. P. Bolena, Joint Secretary) Shastri Bhawan, New Delhi.
- iii. Ministry of Labour (Shri S.K. Dev Verman, Jt. Secy.), Shram Shakti Bhavan, New Delhi.
- iv. Ministry of Social Justice and Empowerment (Sh. D.V.S. Ranga, Joint Secretary), Shastri Bhawan, New Delhi.
- v. Ministry of Overseas Indian Affairs (Shri G. Gurucharan, Jt. Secy.), New Delhi.
- vi. Ministry of External Affairs, (Joint Secretary SAARC and Joint Secretary UNES) South Block, New Delhi.
- vii. Chairperson, National Commission for Women, 4, Deen Dayal Upadhyaya Marg, New Delhi-110 002.
- viii. Chairperson, National Commission for Protection of Child Rights, 5th Floor, Chandralok Building, Janpath, New Delhi-110 001.
- ix. Chairperson, National Human Rights Commission, Copernicus Marg, New Delhi.
- x. Director General, NCRB, RK Puram, New Delhi.
- xi. Director General, BPR&D, New Delhi.
- xii. Director General Border Security Force, New Delhi
- xiii. Director, CBI, New Delhi.
- xiv. JS (UT)/ JS (NE) /JS (K), MHA, North Block, New Delhi.
- xv. Under Secretary (Parliament), MHA, North Block, New Delhi.

-Sd-

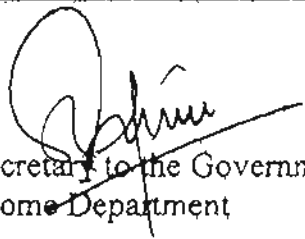
(Nirmaljeet Singh Kalsi)
Joint Secretary to the Govt. of India

Legislative Assembly Budget Session 2017REGARDING: Foreigners

Un-starred A.Q. NO. 669 : Shri Rajesh Gupta, Hon'ble MLA, will the Government please state:-

QUESTION	REPLY																			
a) the number of Foreigners including Rohingyas, Burmese, Bangladeshis staying in the State in 2008, 2014 and as of now alongwith their residential details;	<p>a) As on 06.01.2017, 322 foreigners besides 13433 Burmese/Tibetans are staying in the Jammu and Kashmir State. The details of Burmees/Bangladeshis/Tibetans, are given as under:-</p> <table border="1"> <thead> <tr> <th rowspan="2">Country</th> <th colspan="3">Year-wise No. of foreigners</th> </tr> <tr> <th>2008</th> <th>2014</th> <th>2016</th> </tr> </thead> <tbody> <tr> <td>Burmees Myanmar</td> <td>-</td> <td>5107</td> <td>5743</td> </tr> <tr> <td>Tibetan</td> <td>7093</td> <td>7453</td> <td>7690</td> </tr> <tr> <td>Total</td> <td>7093</td> <td>12560</td> <td>13433</td> </tr> </tbody> </table> <p>The details of residential address/places is given in Annexure "A".</p>	Country	Year-wise No. of foreigners			2008	2014	2016	Burmees Myanmar	-	5107	5743	Tibetan	7093	7453	7690	Total	7093	12560	13433
Country	Year-wise No. of foreigners																			
	2008	2014	2016																	
Burmees Myanmar	-	5107	5743																	
Tibetan	7093	7453	7690																	
Total	7093	12560	13433																	
b) the elements who have guided such foreigners to come from thousands of miles to Jammu and the persons/organisations supporting their stay in Jammu as also the source of funding for Madarsas being run for them;	<p>b) They have entered in the State on their own. The Rohingyas/Burmese have been staying in Districts of Jammu and Samba and the Tibetans are staying in Ladakh region.</p> <p>Some NGOs namely "Sakhawat" run by Mohammad-ul-Umar of Srinagar, alongwith Dr. Rashid S/o Kh. Ghulam Mohammad R/o Vidhata Nagar Bathandi Jammu, S.R. Institute of Development, based at Rambagh, Srinagar, Delhi based NGO namely "DAJI" run by Mr. Ravi Hemadri (Director) and "Save the Children" run by Smt. Neha Gandotra are helping the Rohingyas in cash and kind from time to time. However, strict surveillance is being kept on the activities of these foreigners and the organisation extending helping to them.</p>																			
c) whether any of such foreigners have been found involved in militancy and other crimes; if so, the details thereof;	<p>c). <u>No Rohingyas (Burmese) has been found involved in militancy related incidents. 17 FIRs have been registered against 38 Rohingyas for various offences, including those relating to illegal border crossing as per the details at Annexure-"B".</u></p>																			

d) the measures taken for their deportation;	d) Since a good number of these foreigners are holding Registration Certificates/Identity Certificates issued by TR FRO ITBF/RPO, New Delhi or UNHRC Cards, initiation of deportation proceedings may not be appropriate as per International Law.
e) the number of ultras who have returned from Pakistan and PoK alongwith their families since implementation of Rehabilitation Scheme for such persons and legal status of their families including Ladies and Children; and	e) The Rehabilitation Policy of 2010 recognizes four routes for return of the ex-militants. The routes are JCP Wagah/Attari, Salamabad/Chakkan-da-Bagh Crossing on the Line of Control and through the Indira Gandhi International Airport, New Delhi. Since the inception of this policy, no youth has been able to return via the approved routes due to inexplicable reasons/difficulties. However, the youth have been returning to the State alongwith their families (wives/children) via Nepal and Bangladesh which are not approved routes under the aforesaid policy. As per the details furnished by CID, 377 ex-militants alongwith their 864 family members have returned via Nepal route and Bangladesh since 2010. Since, these youth have not returned via the approved routes, they are not entitled to any benefit available under the Policy of 2010.
f) the estimated number of State ultras still in camping/residing in Pakistan/POK?	f) Reportedly 4088 missing persons/terrorists are still in Pakistan/PoK.



Under Secretary to the Government
Home Department

Sd/-
Minister-In-Charge (Home)

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Annexure "A"
 4/5 AA No.
 669

List of foreigners/Pak nationals who are registered in J&K as on 31/12/2016

S.No	Name of District	Total No of Foreigners/Pak Nationals
1.	Srinagar	109
2.	Budgam	7
3.	Ganderbal	8
4.	Baramulla	28
5.	Kupwara	8
6.	Bandipora	9
7.	Anantnag	3
8.	Pulwama	7
9.	Shopian	4
10.	Jammu	59
11.	Samba	1
12.	Kathua	4
13.	Udhampur	2
14.	Ramban	29
15.	Kishtwar	2
16.	Poonch	16
17.	Rajouri	24
18.	Reasi	1
19.	Doda	1
Total		322

**CRIMINAL INVESTIGATION DEPARTMENT
JAMMU & KASHMIR GOVERNMENT-JAMMU**

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Annexure "B"
to Cm-st. A.D. 2
669 (P-1)

DETAILS OF ROHINGYAS (BURMESE) INVOLVED IN CRIMINAL CASES IN THE STATE OF J&K

S.No.	District	Full Particulars of foreigner	Nationality	Involved in case FIR No.	Police Station	Present Status of the case
01	Jammu	Abdul Bassi @ Mohd. Munna S/o Mohd Lal Mian R/o Barma A/P Narwal Jammu	Burmese	96/2011 U/S 376 RPC	Bahu Fort Jammu	Challaned on 08-04-2011
02		Salem-ul-Din S/o Ab. Hamid R/o Mangla Tehsil Memdu Barma	Burmese	94/2012 U/S 14.F Act, 3/5 IPA	Bahu Fort Jammu	Challaned on 04-07-2012
03		Rehmat Dah S/o Halia Mian R/o Dullapora Burma (Mohanmorie)	Burmese	58/2013 U/S 3/6 PP Act, 14/F Act	Gandhi Nagar Jammu	Challan produced in the Court of Law
04		Marshad Ullah S/o Abbu Sayeed Sajad Malik R/o Ayam Lamba (Burme)	Burmese	97/2013 U/S 14/F Act, 2/3 PP entry to India	Bahu Fort Jammu	Challan produced in the Court of Law
05		1. Noor Ul din S/o Qadir Hussain 2. Saif ul Aslam S/o Abu Zahir R/o Toda Distt. Axe Country Burma	Burmese	142/2013 U/S 14-A Foreign Act	Bahu Fort Jammu	Challan produced in the Court of Law
06		1. Mohd Saleem S/o Skinder R/o Jitty Distt. Akab Burma 2. Shabir Ahmed S/o Noor Ahmad 3. Noor ul Amin S/o Sayed Ahmed R/o Nakura Distt Akab Burma	Burmese	150/2013 U/S 14-A Foreign Act	Bahu Fort Jammu	Challan produced in the Court of Law
07		Mohd Rafiq S/o Salamat Ullah R/o Burma A/P Panama Chowk Jammu	Burmese	85/2013 U/S 298-B RPC	Domana Jammu	Challaned on 24-03-2015
08		Shabi Alam S/o Mohd Kalu R/o Faqir Bazar A/P Bus Stand Jammu	Burmese	15/2014 U/S 376/343 RPC	Bus Stand Jammu	Challaned on 26-04-2014
09		Zakia S/o Kasem Mir R/o Mahipora Burma	Burmese	211/2014 U/S 14/F Act	R. S Pura Jammu	Challaned on 19-11-2014
10		1. Mohd. Tahir S/o Lal Mian 2. Mohd Rafiq S/o Mohd Tahir R/o Burma A/P. Narwal Jammu	Burmese	58/2016 U/S 3/7 E.C Act	Bahu Fort Jammu	Challaned on 06-12-2016
11		1. Abdul Karim 2. Abdul Hamid Sons of Zahir Ahmed R/o Burma A/P Bhandi Jammu	Burmese	201/2016 U/S 341/323 RPC	Bahu Fort Jammu	Challaned on 28-10-2016
12	Semba	Hilal Ul-din S/o Umar Ali R/o Jhunk District Kakri Bazar Bangladesh	Bangladesh	132/2004 U/S 3/6 IPA	Bar Brahmana	Challan of the case has been produced in the Honble

Amraam # B' 4/5 AQ: 669 CP-2) 208

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					Munsif Court Jammu on 06-10-2004. Later he push back on 01.09.2005	
13		Khalid Parvez @ Javed @ Mohinder S/o Mohd Ali R/o O AKhalspur Shakergamh Pakistan	Pakistan	48/2006 U/S 363/368 R/Pc, 3. A.E.D	Bari Brahmana	Challan produced in the Court of Law on 03- 08-2007
14		1. Sikander Ahmed S/o Mohd Ikhlq Mullah R/o Serl Wari Distt. Faridpur Bangladesh. 2. Sikander Ali S/O Tahib Ali R/O Chak Daram Distt. Faridpur Bangladesh. 3. Mohd Jahangir Alum S/O Raju Milan R/o Aftarpur Distt. Sitarganj Bangladesh 4. Mohd Hussain S/o Asrar Din R/o Bara Distt Faridpur Bangladesh 5. Mohd Amin S/o Jaffer R/o Rajar Kul Distt. Mandu Bangladesh 6. Mohd Hussain S/o Sulman R/o Bahawara Distt. Mandu Bangladesh 7. Akhtar Abdul Hussain S/o Abdul Haq R/o Buchi Dang Distt. Mandu Bangladesh 8. Mohd Riyaz S/o Shamshoor Alaum R/o Buchi Dang Distt. Mandu Bangladesh 9. Noor Qadar S/o Manzoor Ahmed R/o Buch Dang Distt. Mandu Bangladesh	Bangladesh	42/2007 U/S 14 F.S Act	Bari Brahmana	Challan produced in the Court of Law on 01.06.2007 and push back on 24.09.2007
15		1. Abdul Jalif S/o Altaf Mlayen R/o Filler Bazar Burma A/P Narwal Jammu 2. Bashir Ahmad S/o Jalal Ahmed R/o Burma A/P Narwal Jammu 3. Shamshoo S/o Bashir Ahmed R/o Burma A/P Narwal Jammu 4. Mori John D/o Bashir Ahmed Rainobase Burma 5. Anwara Begum D/o Bashir Ahmed R/o Naga Raag Chowk Vill Moung Burma	Burmese	14/2012 U/S 3 IPA, 14 F	Dachan Kishtwar	Challan produced in the Court of J.M Ist Class

TRUE COPY

**SUPPORTING DOCUMENTS TO BE SUBMITTED ONLINE FOR
OBTAINING SERVICE(S) FROM FRROs/ FROs**

S.No.	Visa Type	Mandatory documents required	Help (Refer mandatory documents listed in column to the left)
I. FRESH REGISTRATION			
1	Medical Visa	<ol style="list-style-type: none"> 1. Photo 2. Passport & Visa 3. Residence Proof 4. Medical Certificate 	<ol style="list-style-type: none"> 1. Applicant's Photo 2. Photo Page, Page indicating validity, Page bearing arrival Stamp of Indian Immigration, Visa with endorsement 3. Form C copy from Hotel or Lodge/ Electricity bill / Landline Telephone / Municipal Bill of the landlord in case of staying in a house of a relative or friend along with a letter and photo-id card of the landlord. In case of rented accommodation copy of the Lease and License agreement (1st and last page & page containing its validity) 4. Letter from recognized/ reputed hospital where treatment is being taken.
2	Medical Attendant Visa	<ol style="list-style-type: none"> 1. Photo 2. Passport & Visa 3. Residence Proof 4. Medical Certificate 5. Passport & Visa page of Medical Visa holder 	<ol style="list-style-type: none"> 1. Applicant's Photo 2. Photo Page, Page indicating validity, Page bearing arrival Stamp of Indian Immigration, Visa with endorsement 3. Form C copy from Hotel or Lodge/ Electricity bill / Landline Telephone / Municipal Bill of the landlord in case of staying in a house of a relative or friend along with a letter and photo-id card of the landlord. In case of rented accommodation copy of the Lease and License agreement (1st and last page & page containing its validity) 4. Letter from recognized/ reputed hospital where treatment is being taken 5. Copies of Passport and Visa page of the Medical Visa holder
3(i)	Student Visa (Provisional Registration)	<ol style="list-style-type: none"> 1. Photo 2. Passport & Visa 3. Residence Proof 4. Bonafide certificate 5. NOC 	<ol style="list-style-type: none"> 1. Applicant's Photo 2. Photo Page, Page indicating validity, Page bearing arrival Stamp of Indian Immigration, Visa with endorsement 3. Provisional address issued by the Head of Department or Principal or the Director of the International Studies Centre of the University/ Educational Institution concerned

				<p>10. Copy of no dues certificate from ART clinic where child is born.</p> <p>11. Certificate from the ART clinic concerned confirming that the child/ children have been duly taken custody by the foreigners and that liabilities towards the Indian surrogate mother have been fully discharged as per the agreement</p> <p>12. Copy of embryology letter from ART clinic</p> <p>13. Undertaking from the commissioning Parents that they would take care of the child/ children born through surrogacy</p> <p>14. Birth Certificate(s) of the surrogate child/ children</p>
6	Passport surrender (Indian Passport)	New visa	<ol style="list-style-type: none"> 1. Photo 2. Passport 3. Residence Proof 4. Surrender certificate 	<ol style="list-style-type: none"> 1. Applicant's Photo 2. Copy of foreign passport (Photo Page, Page indicating validity) 3. Form C copy from Hotel or Lodge/ Electricity bill / Landline Telephone / Municipal Bill of the landlord in case of staying in a house of a relative or friend along with a letter and photo-id card of the landlord. In case of rented accommodation copy of the Lease and License agreement (1st and last page & page containing its validity) 4. Indian passport surrender certificate
7	Foreign nationals claiming to be refugees	Registration	<ol style="list-style-type: none"> 1. Photo 2. Certificate 3. Residence Proof 	<ol style="list-style-type: none"> 1. Applicant's Photo 2. Relevant documents issued by any authorized agency nominated by Government of India 3. Form C copy from Hotel or Lodge/ Electricity bill /

				Landline Telephone / Municipal Bill of the landlord in case of staying in a house of a relative or friend along with a letter and photo-id card of the landlord. In case of rented accommodation copy of the Lease and License agreement (1 st and last page & page containing its validity)
8	Foreign nationals claiming to be refugees	Registration Extension	1. Photo 2. Certificate 3. Residence Proof 4. RC/ RP	1. Applicant's Photo 2. Relevant documents issued by any authorized agency nominated by Government of India 3. Form C copy from Hotel or Lodge/ Electricity bill / Landline Telephone / Municipal Bill of the landlord in case of staying in a house of a relative or friend along with a letter and photo-id card of the landlord. In case of rented accommodation copy of the Lease and License agreement (1 st and last page & page containing its validity) 4. Registration Certificate/ Residential Permit

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Annexure Z D
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Addressing Security Concerns without Undermining Refugee Protection*

- UNHCR's perspective -

A. Introduction

1. Security considerations have been permeating policy responses on a wide range of issues for more than a decade. Since 11 September 2001, concerns about threats to security emanating from international terrorism have intensified as a result of further high profile attacks and developments in many regions of the world. At times, possible linkages between international terrorism and movements of people have been alluded to. Fears that asylum-seekers and refugees would pose a threat to the host country have been fuelled by xenophobic rhetoric aimed at shoring up support for restrictive policies in the area of asylum.
2. In UNHCR's view, security and protection are not mutually exclusive. Giving primacy to a security focus at the expense of protection has failed to bring about desired results. It is, however, possible to ensure that those forced to leave their homes due to persecution, conflict and insecurity have access to international protection, while at the same time preserving the integrity of asylum channels.
3. UNHCR shares the legitimate concern of States to ensure that there should be no avenue for those supporting or committing terrorists acts to secure access to territory, whether to find a safe haven, avoid prosecution, or to carry out further attacks. An effective response to possible security threats cannot, however, come from measures seeking to restrict the movement of refugees and migrants and further limit access. This simply diverts refugee and migrant movements along other routes, aggravates their situation, and contributes to the flourishing business of smugglers and traffickers.
4. Instead, UNHCR calls for an integrated response that focuses on addressing asylum and migration flows, thereby enabling States to identify those entering their territory and respond to protection as well as security concerns in line with their obligations under international law. Appropriate mechanisms need to be in place in the field of asylum as in other areas.
5. The observations that follow are offered against this background, with a view to ensuring that counter-terrorism measures comply with the various aspects of international law, notably international human rights law, refugee law, and humanitarian law.

* This Note supersedes the earlier version issued in November 2001 under the title "Addressing Security Concerns without Undermining Refugee Protection – UNHCR's Perspective, Rev.1".

B. General

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6. UNHCR's main concern is twofold: that asylum-seekers and refugees may be victimized as a result of public prejudice and unduly restrictive legislative or administrative measures, and that carefully built refugee protection standards may be eroded. Current anxieties about international terrorism risk fuelling the perception of those seeking to reach safety as a threat to security. This can lead to heightened levels of fear and xenophobia manifesting themselves in hostile attitudes towards, and even physical attacks against, asylum-seekers and refugees. Such fears and anxieties can reinforce a growing trend toward the erection of barriers to keep out perceived dangers. In such a context, asylum-seekers have a difficult time in a number of States, either accessing procedures or overcoming presumptions about the validity of their claims, which stem from their ethnicity, or their mode of arrival. The fact that asylum-seekers have arrived irregularly does not vitiate the basis of their claim.

7. Any discussion on security safeguards should start by acknowledging that refugees are themselves escaping persecution and violence, including terrorist acts. Another starting point is that the international refugee instruments do not provide a safe haven to terrorists and do not protect them from criminal prosecution. On the contrary, they render the identification of persons engaged in terrorist activities possible and necessary, foresee their exclusion from refugee status and do not shield them against criminal prosecution, nor do they prevent extradition or expulsion.

8. UNHCR's overall conclusion is that dealing with the terrorist threat in the context of asylum does not necessitate amendment of the principles on which refugee protection is based, but requires a comprehensive and coordinated approach to addressing situations of mixed movements of refugees, migrants and others, with proper security and protection safeguards built in.

C. Admission/Access to refugee status determination

9. UNHCR appreciates that States may wish to strengthen border controls as one way of identifying security threats at the point of entry. Enhanced cooperation between border guards, intelligence services and immigration and asylum authorities of the State concerned, other States along travel routes and organizations such as INTERPOL, Europol and Frontex, as well as the use of systems such as Eurodac, could assist in the early identification of terrorist suspects. Increased security checks, including through the use of biometrics such as fingerprints, iris scans and/or facial characteristics, are reasonable measures, provided they are conducted in line with data protection principles and other relevant human rights standards. Proper screening measures are valid, if conducted in conformity with the principles of necessity, proportionality and non-discrimination, and subject to judicial control. Profiling based solely on a person's assumed nationality, race, religion or ethnicity would, in UNHCR's view, be discriminatory and inappropriate.

10. UNHCR continues to work with States to develop and implement protection-sensitive border management systems. Some years ago, UNHCR developed a *10 Point Plan on Refugee Protection and Mixed Migration*, which provides practical suggestions for management strategies and entry systems. At its core lie measures to

ensure that refugees and asylum-seekers (and others with specific needs) travelling irregularly are identified, protected against *refoulement* and given access to asylum procedures. A robust capacity to receive, assist, register and screen arrivals supports counter-terrorism and security measures by enabling States to make distinctions between different categories among the arrivals as well as allowing for the early identification of people who may constitute a security risk.¹

11. The summary rejection of asylum-seekers at borders or points of entry may amount to *refoulement*. All persons have the right to seek asylum. An application for asylum must be determined on its own merits, and not against negative and discriminatory presumptions deriving from the ethnic origin or religious faith of the claimant.

12. The refugee definition, properly applied, should lead to either non-inclusion or exclusion of those responsible for serious criminal, including terrorist, acts. Since issues of exclusion are often complex, UNHCR continues to advocate that they should continue to be dealt with in the regular asylum procedure, which allows for a full factual and legal assessment in the individual case by qualified personnel.

13. Where there is a reasonable possibility that exclusion issues may arise in the case of an individual pursuing an asylum claim, States have an evident interest in expedient decision making processes. In such cases UNHCR continues to support a proper factual and legal assessment, but believes this could be accomplished through prioritized and expedited consideration of the claim by a specialized "exclusion unit" within the refugee status determination process. Such a unit would have expertise in relevant areas of refugee law and criminal law, specialist knowledge of terrorist organizations, and clear communication links with intelligence services and criminal enforcement agencies. Specialist expertise and clearly focused resources would enable prompt and quality decision making. UNHCR promotes the redesign of the asylum process to accommodate the setting up and operating of such a unit.

14. If an asylum-seeker is wanted by national courts in the country of asylum, the examination of the claim could be deferred pending the completion of criminal procedures. In cases involving an extradition request from the country of origin, asylum and extradition procedures may be conducted in parallel but the determination of the refugee claim needs to precede the decision on extradition. An asylum-seeker may, however, be extradited to a country other than the country of origin, provided there is no risk of persecution and access to a refugee status determination procedure is guaranteed. In this context, UNHCR recalls the obligation of States to bring terrorists to justice as asserted in SCR 1373 of 28 September 2001 and reaffirmed most recently in SCR 2178 of 24 September 2014.

15. In humanitarian crises, including large-scale influxes and complex or mixed cross-border population movements where existing responses are not suited or adequate, temporary protection or stay arrangements may be implemented as an

¹ For more information, please see UNHCR, *Refugee Protection and Mixed Migration: The 10-Point Plan in action*, February 2011: <http://www.refworld.org/docid/4d9430ea2.html>

appropriate multilateral response to ensure protection against *refoulement* and appropriate treatment for those in need of international protection. Reception arrangements in such situations require proper systems for the identification, registration and documentation of beneficiaries, including identity and security screening.²

D. Restrictions on the movement of asylum-seekers

16. The 1951 Convention relating to the Status of Refugees and its 1967 Protocol (hereinafter "1951 Refugee Convention") as well as human rights law do not preclude restrictions on the movement of asylum-seekers, including detention, albeit as the exception rather than the rule, if necessary in circumstances prescribed by law and subject to due process safeguards. Detention would justifiably be deemed necessary, where there are solid reasons for suspecting links with terrorism in the individual case.³ Policies which apply automatic detention of all asylum-seekers entering irregularly or coming from particular countries, as are being implemented and/or considered in a number of States in response to the resurgence of fears about terrorism, are not supported by UNHCR. They would, in UNHCR's view, contradict long established standards on detention agreed by States, and could be seen as an arbitrary, even discriminatory response which could then come into conflict with international legal norms.

E. Sharing of data on asylum-seekers

17. UNHCR recognizes that the sharing of data between States is crucial, provided it is done in line with established principles and standards of data protection, and with due consideration for what is permissible under international refugee law and international human rights law.⁴ States should thus take into account, *inter alia*, the well-established principle that information on asylum-seekers should not be shared with the country of origin. This could endanger the safety of the asylum-seeker and/or family members remaining in the country of origin. Best State practice indeed incorporates a strict confidentiality policy. Should it exceptionally be deemed necessary to contact the authorities in the country of origin, in case there is suspicion of terrorist involvement and the required information may only be obtained from these authorities, there should be no disclosure of the fact that the individual has applied for asylum.

F. Exclusion from refugee status

18. Those responsible for serious crimes are legally excluded from refugee status by virtue of the terms of the international refugee instruments. UNHCR encourages

² For more information, please see UNHCR, *Guidelines on Temporary Protection or Stay Arrangements*, February 2014: <http://www.refworld.org/docid/52fba2404.html>

³ For more information, please see UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012: <http://www.refworld.org/docid/503489533b8.html>

⁴ For more information, please see UNHCR, *Policy on the Protection of Personal Data of Persons of Concern to UNHCR*, May 2015: <http://www.refworld.org/docid/55643c1d4.html>

States to use the exclusion clauses rigorously, albeit appropriately.⁵ It also encourages States which have not already done so, to incorporate the exclusion clauses of the 1951 Refugee Convention into national legislation. This is consistent not only with the dictates of refugee law, but also with Security Council resolutions which call on States not to provide refuge to terrorists, in particular SCR 1373 (2001) and SCR 1624 of 14 September 2005 which call for appropriate measures with regard to asylum-seekers. As affirmed in these and numerous other resolutions adopted by the Security Council and the General Assembly, however, such measures need to conform to international law, including international human rights law, refugee law and humanitarian law.

19. The crimes to which article 1F(a) of the 1951 Refugee Convention refers – crimes against peace, war crimes and crimes against humanity – are those so defined in international instruments and are to be interpreted in the light of a number of evolving sources of international criminal law. Crimes which, in peacetime, would be properly qualified as acts of terrorism, will generally meet the definition of war crimes if committed in the context of an armed conflict. Under certain circumstances, such acts may also constitute crimes against humanity.

20. Article 1F(c) concerns acts contrary to the purposes and principles of the United Nations. Many of the acts within the scope of this provision may only be committed by persons acting on behalf of States or quasi-States, because the United Nations' purposes and principles are intended to be a guide for States in their relations with each other. However, acts which are properly considered to be of a terrorist nature, and which, given their gravity and nature, are capable of affecting international peace and security or friendly relations between States, may also fall within the scope of this exclusion ground. UNHCR accepts that individuals who are not holding a position of authority within a State may be excluded based on article 1F(c) provided it is established that they incurred individual responsibility for the acts in question.

21. Notwithstanding the above, article 1F(b) remains a central provision. This exclusion clause refers to "serious non-political crimes" (committed outside the country of refuge prior to admission), but this would generally encompass acts prohibited under relevant international conventions and protocols pertaining to terrorism, notwithstanding any political motives behind such acts. In line with approaches developed in the extradition context, which are relevant also in the context of exclusion, violent acts of terrorism are likely to fail the predominance and proportionality tests used in many jurisdictions to determine the political character of an offence.

22. In view of the seriousness of the issues and the consequences of an incorrect decision, the application of any exclusion clause should continue to be individually assessed, based on available evidence, and conform to basic standards of fairness and

⁵ For more information, please see UNHCR, *Guidelines on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003; <http://www.refworld.org/docid/3f5857684.html> and its accompanying *Background Note*: <http://www.refworld.org/docid/3f5857d24.html>

justice. As mentioned earlier, this assessment should be located within the refugee status determination process, albeit taking place in specially tailored procedures for exclusion.

23. The assessment should also, in UNHCR's view, be sensitive to certain additional considerations. Firstly, in determining whether exclusion is justified, it is not sufficient to rely on the designation as "terrorist" of a particular crime, person or group. Rather than focusing on the label, it is necessary to determine whether the acts in question constitute crimes within the scope of article 1F. Secondly, exclusion requires a determination that the person concerned incurred individual liability for the acts in question, be it as a perpetrator or through his or her participation in the commission of these acts by another person. Thirdly, even though exclusion proceedings do not equate with a full criminal trial, the standard of proof ("serious reasons for considering") has to be a higher threshold than a mere suspicion and, in UNHCR's view, should be more than the balance of probabilities.

24. Where there is sufficient proof that an asylum-seeker belongs to an extremist group involved in the commission of serious crimes, including those considered to be of a terrorist nature, the information available about this group may support a finding that anyone who voluntarily becomes, or remains, a member may be considered to have incurred individual responsibility for the crimes in question. In asylum procedures, this may give rise to a rebuttable presumption of individual liability in such cases, resulting in the burden of proof shifting to the asylum-seeker. The position of the individual in the organization concerned, including the voluntariness of his or her membership, as well as the fragmentation of certain groups would nevertheless be examined and taken into account in reaching a determination on exclusion.

25. UNHCR fully appreciates the need to tackle the financing and other forms of support of terrorist groups, in line with SCR 1373 (2001) and subsequent resolutions as well as the 1999 International Convention for the Suppression of the Financing of Terrorism. Providing funds to such groups would in principle amount to an excludable crime or give rise to individual responsibility for other crimes – this being said, the particulars of each case would need to be considered, as not all such acts may reach the gravity required to fall under article 1F. Depending on the particular circumstances, where the amounts are small and provided on a sporadic basis, for example, the offence may not reach the level of seriousness required.

26. If an exclusion clause applies, the individual cannot benefit from international refugee protection under the 1951 Refugee Convention. The excluded individual may still be protected against return to a country where he or she is at risk of ill-treatment by virtue of other international instruments. Where it is possible for the State concerned to exercise jurisdiction over the acts which gave rise to exclusion, UNHCR recommends the initiation of criminal proceedings.

G. Cancellation and revocation of refugee status

27. Generalized suspicions based on religious, ethnic or national origin or political affiliation do not justify a general review process, much less a re-opening of a final refugee status determination. Cancellation of refugee status – that is, a decision which

invalidates the initial recognition as a refugee – normally only follows evidence of fraud or misrepresentation regarding facts central to the refugee decision. This means that refugee status may be cancelled, if it emerges that the “inclusion” criteria were not met at the time, for example because the individual was fleeing legitimate prosecution rather than persecution, or if one of the exclusion clauses would have applied, had all the relevant facts been known. Revocation of refugee status would be appropriate if it is established, in procedures offering adequate safeguards, that there are serious reasons for considering that the person has committed acts within the scope of article 1F(a) or (c) of the 1951 Refugee Convention after recognition as a refugee.⁶

H. Expulsion, including to the country of origin

28. UNHCR is concerned that States may be inclined to expel groups or individuals based on religious, ethnic or national origin or political affiliation, on the mere assumption that they may be involved in terrorism. International refugee law, in particular article 33(2) of the 1951 Refugee Convention, does not prohibit the expulsion of recognized refugees, provided however that it is established in the individual case that the person constitutes a danger to the security or the community of the country of refuge. As this danger should outweigh the risks upon return, UNHCR notes that such expulsion decisions must be reached in accordance with due process of law which substantiates the security threat and allows the individual to provide any evidence which might counter the allegations.

29. Expulsion and exclusion are two different processes. Exclusion denies refugee status to persons considered undeserving because they have committed certain serious crimes or heinous acts, while at the same time preventing fugitives from escaping justice for such crimes. Exclusion protects the integrity of the institution of asylum. Expulsion aims to protect the country of refuge and hinges on the appreciation of a present or future threat. The threshold for returning refugees to their country of origin – as an exception to the *non-refoulement* principle – has to be particularly stringent.

I. Extradition

30. International refugee law does not preclude the extradition of recognized refugees or asylum-seekers. Extradition may, however, be granted only if the surrender of the wanted person to the requesting State is in conformity with the principle of *non-refoulement*. More specifically, article 33(1) of the 1951 Refugee Convention establishes a mandatory bar to the extradition of a refugee to his or her country of origin, except in the circumstances expressly provided for in article 33(2). A refugee may, however, be extradited to a country other than the country of origin, provided this would not expose him or her to a risk of persecution either in the country that requested the extradition or another country.

⁶ For more information, please see UNHCR, *Note on the Cancellation of Refugee Status*, 22 November 2004: <http://www.refworld.org/docid/41a5dfd94.html>

31. Asylum-seekers subject to an extradition request from the country of origin enjoy protection against *refoulement* pursuant to article 33(1) of the 1951 Refugee Convention while their claim is being considered, including at the appeals stage. In such cases, any information related to the extradition request will need to be considered, in light of all relevant circumstances. Asylum and extradition procedures may be conducted in parallel. The host State's obligations under international refugee law require, however, that the asylum claim be determined by a specialized body competent to assess eligibility for international protection, and that the determination on the asylum claim must precede the decision on the grant of extradition.

32. In case of a request for the extradition of an asylum-seeker from a country other than the country of origin, the asylum procedure may be suspended and the wanted person may be extradited, provided it is established that this would not give rise to a risk of persecution and arrangements are made to ensure that he or she will have access to a determination of the asylum claim in line with the standards required under the 1951 Refugee Convention after the completion of criminal proceedings. In cases where extradition may not proceed for reasons related to a risk of persecution or other kinds of serious harm upon surrender, prosecution in the country of asylum is, in UNHCR's view, the appropriate response, in line with the principle *aut dedere aut judicare* ("extradite or prosecute").⁷

J. Increasing criminal law enforcement

33. UNHCR would welcome the adoption of a comprehensive Convention on International Terrorism and of other international or regional instruments, to serve also as an agreed framework for national legislation. UNHCR has already provided comments on the draft Convention and several pieces of national legislation. The closure of jurisdictional loopholes and clarity about the definition of terrorist offences are important for combating terrorism effectively.

34. UNHCR appeals to governments, however, to ensure that the terms of international instruments and of domestic legislation do not imply any unwarranted linkages between asylum-seekers/refugees and terrorists. In addition, definitions need to be quite precise. If definitions are too broad and vague, there is a risk that the "terrorist" label could be abused by some for political ends, for example to criminalize activities of political opponents. This is a matter of concern to UNHCR. It could well lead to recriminations amounting to persecution.

K. The continuing importance of resettlement and other regular avenues to reach safety

35. As the number of forcibly displaced has reached 60 million worldwide, with many of them fleeing situations of protracted conflict and violence, continued support for resettlement is vital. UNHCR continues to seek diversification in the number of resettlement countries globally and to strengthen its programmes, from emergency

⁷ For more information, please see UNHCR, *Guidance Note on Extradition and International Refugee Protection*, April 2008: <http://www.refworld.org/docid/481ec7d92.html>

processing through to more systematic use of resettlement to address durable solutions needs of refugees. UNHCR also works with States to provide other safe pathways for admission, such as humanitarian admission, humanitarian visas, private sponsorship, family reunification, scholarships, medical evacuation, and labour mobility initiatives, which complement existing resettlement programmes and enable persons in need of international protection to reach safety.

36. In recent years, several countries have increased their commitments to offer resettlement or other forms of humanitarian admission, yet there are also signs that support for such programmes may decrease, particularly for certain groups. This would be counterproductive. In any case, UNHCR supports the enhancement of security screening, including the fingerprinting of candidates for resettlement and other forms of admission, to ensure the integrity of these processes.

37. In Europe, UNHCR has welcomed the adoption of the European Relocation and Resettlement schemes. These schemes incorporate security measures and checks, including proper registration. Together with UNHCR's global resettlement programme, family reunification, private sponsorship, and humanitarian and student visa schemes, they provide regular avenues which offer an alternative to irregular movement.

L. Combating racism and xenophobia

38. Equating asylum with a safe haven for terrorists is not only legally wrong, but it serves to vilify refugees in the public mind and promotes the singling out of persons of particular races, nationalities or religions for discrimination and hate-based harassment.

39. Recent security incidents in Europe and elsewhere have resulted in the emergence of uninformed and polarized discourse in some instances. The full application of the 1951 Refugee Convention and of immigration policies more generally represent key aspects of a wider response to current challenges in this area. As the Secretary-General of the United Nations also warned on 20 November 2015 after terrorist attacks in Beirut and in Paris, we must guard against "misplaced suspicions" about refugees and migrants who can help fight violent extremism, adding that such distortions and discrimination "only play into the hands of terrorists trying to sow divisions and fear."

40. Continued resolute leadership is called for at this particularly difficult time to de-dramatize and de-politicise the humanitarian challenges of protecting refugees and to provide a better understanding of refugees and the right to seek asylum.

UNHCR
Geneva, 17 December 2015

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DEPARTMENT OF REHABILITATION

**INFORMATION HANDBOOK
UNDER
RIGHT TO INFORMATION ACT 2005**

Director Of Rehabilitation

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OBJECTIVES AND ROLE OF REHABILITATION DEPARTMENT

2.1 Role of the Department

The Department of Rehabilitation deals with the relief and rehabilitation of repatriates from Burma, Vietnam and Sri Lanka and provision of relief assistance to Sri Lanka refugees. The rehabilitation assistance to the people of Indian origin from Burma and Vietnam has already been completed. The repatriation of people of Indian origin from Sri Lanka has been temporarily suspended since October 1984 due to ethnic violence erupted in Sri Lanka during 1983.

2.2 Refugees from Sri Lanka :

The Sri Lankan Government have identified that about 9.75 Lakh stateless persons are staying in Sri Lanka. They have to obtain either Indian citizenship or Sri Lankan citizenship. As per Indo-Sri Lanka Agreement 1964 and 1974, India and Sri Lanka have agreed to issue citizenship for about 6.00 lakh and 3.75 lakh of persons respectively.

2.3 Influx of Refugees in Phased Manner to India :

Period	Inflow
Phase - I (24.07.83 to 31.12.1987)	1,34,053
Phase - II (25.08.89 to 30.04.1991)	1,22,078
Phase - III (31.07.96 to 31.08.2003)	22,418
Phase - IV (12.01.06 to 04.01.2010)	24,527
Total	3,03,076

- Due to upsurge of ethnic violence in Sri Lanka during 1983, the en mass influx of Sri Lankan refugees commenced on 24.07.1983. These refugees, arrived in four phases, had been accommodated in various camps in Tamil Nadu.
- The refugees, who are willing to go back to Sri Lanka or to any other country of their choice at their own cost, are issued with "Exit Permits" by the respective District Collectors.

2.4 Total No. of Refugees in Tamil Nadu as on 04.01.2010

Category	Families	Persons
Camp Refugees	19,916	73,251
Non Camp Tamils	11,478	32,242
Total No of Ordinary Camps (in 26 districts)		113
Total No of Special Camps (sub-jail)		2

2.5 Antecedents of Refugees:

- Sri Lankan Tamils started arriving Tamil Nadu from 12.01.2006 onwards as fourth phase as refugees due to the same ethnic crisis. As on date (04.01.2010) 8,450 families consisting of 24,527 persons including 18,222 adults and 6,305 children have arrived at Rameswaram during the fourth phase. Officials of police and intelligence departments conduct enquiries at the Quarantine camp with newly arriving refugees.
- After ensuring that they do not belong to any militant groups/movement, they are permitted to stay in the regular camp at Mandapam.
- If it is known that they are associates of militant movements, it is then recommended to lodge them in the special camps situated at Poenamallee in Thiruvallur district and Chengalpattu in Kancheepuram district.

2.6 Non-Camp Registration:

- If some one of those who come by air, seek permission from the Director of Rehabilitation to stay with their relatives, it is referred by the Director of Rehabilitation to the police officer of the area in which they wish to stay, to register them.
- This category of Sri Lankan nationals will not be provided with any of the relief assistance that is provided to the refugees living in the camps.

2.7 Camp Admission:

- All the details of those who are cleared at the Quarantine camp for admission to regular camps are recorded in the computer and register at the Mandapam camp.
- The refugees are photographed and issued family identity card.
- Required clothing materials, mats, bed sheets and utensils with one month cash doles in advance are provided immediately to run a family along with a dwelling unit.

2.8 Two Permanent Transit Camps in Tamil Nadu :

District	Transit Camp	Population as on 04.01.2010	
		Families	Persons
Ramanathapuram	Mandapam	906	2,980
Tiruchirappalli	Kottapattu	454	1,498

2.9 Procedures followed in Mandapam Camp :

- Around 5,000 persons can be accommodated in Mandapam transit camp. The Sri Lankan Tamils who arrive from Sri Lanka, as a temporary arrangement, are initially accommodated in the Mandapam camp. Later they are sent to the 115 government-

2.12.2.7. Enhancement of Funeral Rites Expenses: The government had enhanced the expenditure of performing funeral rites of the deceased from the existing Rs. 500/- per adult and Rs. 300/- per child to Rs 2,500/- per deceased person (*GO.No.1227, Public (Rehabilitation-1) Department Dated: 10.12.09*). So far, families of 12 deceased persons were benefited under this scheme.

2.12.2.8. Free Bus Pass for Students Pursuing Studies in Arts, Science and Engineering Colleges : The government had further extended the scheme of providing free bus passes to all refugee students in camps pursuing studies in Arts, Science and Engineering Colleges in the state. So far, about 635 college students were benefited under this scheme.

2.12.2.9. Issue of Driving Licenses to the Refugees in the Camps: The Government had further relaxed the restrictions of issuing driving licenses to the genuine refugees who are staying in camps, so as to enable them to improve their living status. So far, 1216 persons were issued with driving licenses under this scheme.

2.12.3. Chief Minister's Relief Fund to Sri Lankan Refugees:

In case of a refugee's accidental death, his family heirs are given Rs. 15,000/- under the Chief Minister's Sri Lankan Refugees' Relief Fund. The required application should be sent to the Chief Minister's Special Cell, along with the recommendation of the District Collector (*G.O.No.131, General Rehabilitation Department, dated: 21-01-2000*).

2.13 Special Camps :

At present, two special camps are functioning at Poonamallee in Thiruvallur District and Chengalpattu in Kanchipuram District accommodating the Sri Lankan Tamils, who have come to the adverse notice of the Police. As on 30.11.2009 a total of 53 Sri Lankan Tamils are lodged in the special camps under section 3(2)e of the foreigners act, 1946 with a view to restrict their movements. As their movements are restricted, they are supplied with cooked food at the rate of Rs.45/- per adult and Rs.20/- per child, a day. All the basic amenities are provided in the camp.

2.14 Repatriation of Sri Lankan Refugees:

- Roughly 1.00 Lakh Refugees have been repatriated by Government with their willingness in Two phases (First phase- from 1987 To 1989 and Second phase from 1992 To 1995) through air and sea.
- About 1.00 Lakh Refugees had also left to Sri Lanka and the other countries of their choice on their own accord with valid travel document.
- On Their Own: The refugees who are willing to go back to Sri Lanka or to any other country of their choice at their own cost are issued with "Exit Permits" by the respective District Collectors.
- Refugees are also repatriated to Sri Lanka with the financial assistance of UNHCR. So far (upto 31.12.09), about 1,833 families consisting of 6,354 refugees had been voluntarily repatriated Sri Lanka.

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