

EVALUATION REPORT

Sensitization of Officers of Correctional Homes on Human Rights and Refugee Protection¹

5th December, 2014

Methodology

The training was aimed at facilitating discussions and initiating a dialogue between the Officers of Correctional Homes, who primarily oversee the welfare of the prisoners lodged in the Correctional Homes, and the United Nations High Commissioner for Refugees (UNHCR) – the agency mandated to oversee the welfare of asylum seekers.

Such discussion was aimed at enhancing coordination between the Prison Administration and UNHCR to enable seamless flow and exchange of information, thereby expediting the release of asylum seekers in detention.

In brief, the training looked at the following aspects:

- ✓ Sensitization towards the problem of persecution of Rohingyas in Myanmar
- ✓ Imparting of appropriate knowledge with respect to displaced people, asylum law and international principles
- ✓ Timely identification of Asylum Seekers in Detention
- ✓ Enabling knowledgeable and informed interventions
- ✓ Formulation of a formal channel in order to direct the flow of asylum seekers to UNHCR

The training commenced with the valuable insights of Mr. Adhir Sharma, *IPS*, Additional Director General (Prisons), West Bengal. He encouraged the Officers to explore various channels through the medium of this training by which the detention of asylum seekers in West Bengal Correctional Homes could be reduced.

INTRODUCTION & PURPOSE

Commonwealth Human Rights Initiative (CHRI), in collaboration with United Nations High Commissioner for Refugees (UNHCR), organized a one day training programme for the Officers of various Correctional Homes in West Bengal on 'Human Rights & Refugee Protection'. It was held at the Regional Institute of Correctional Administration (RICA), Dum Dum, Kolkata on 5th December, 2014.

Owing to increasing persecution around India and in Asia, there has been a visible escalation in the population of asylum seekers in Indian Territory. West Bengal, being a border state, has also been witnessing an influx of asylum seekers. As most of them enter the territory illegally albeit fleeing persecution, they are arrested and detained in various correctional homes in West Bengal, mostly near the border. The issue becomes a problematic one when such persons remain in these Homes even beyond their mandated period of detention due to the lack of a uniform and dedicated policy regime to manage their stay in India.

The training is centered on empowering the Welfare Officers and Chief Controllers of West Bengal Correctional Homes regarding the basic framework of refugee laws and also provide them with a step by step guide on how to deal with cases of asylum seekers in detention, to facilitate early release of these persons.

¹ Prepared by Mrinal Sharma, Project Officer, Prison Reforms Programme, Commonwealth Human Rights Initiative, New Delhi. For more information please visit www.humanrightsinitiative.org.

Ms. *Ragini Trakroo Zutshi*, Senior Protection Officer and Ms. *Praveena Nair*, Protection Associate and Community Services Assistant with UNHCR formed the core panel and expounded the aforementioned aspects to the Officers with interventions from *Mrinal Sharma*, Project Officer; *Deepan Kumar Sarkar*, Consultant and *Madhurima Dhanuka*, Consultant with Commonwealth Human Rights Initiative (CHRI).

Description

The first session began with CHRI's introduction of its work in West Bengal followed by the purpose of the training, detailing on structure of the day's proceedings and the expected outcome.

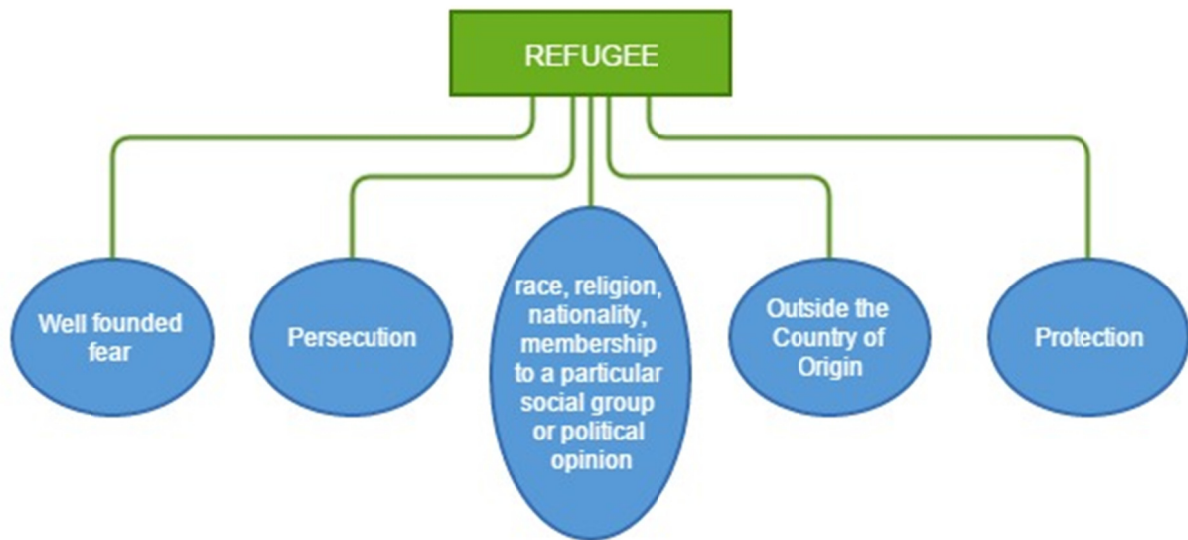
Picking up from there, UNHCR expounded further and introduced the legal framework for refugees as it exists today nationally and internationally. It introduced itself by explaining its origin, mandate and the persons of concern to them. It elaborated on the effect of World War II that rendered about 50 million people displaced across the globe and how such displacement continues till date, leading to the establishment of UNHCR. They described the category of people whose safety and protection are of particular interest to them. They are:

- ✓ Asylum-seekers
- ✓ Refugees
- ✓ Stateless persons
- ✓ Internally Displaced Persons
- ✓ Returnees

Focusing on the context of the training, UNHCR explained the legal framework of Refugees. According to the 1951 Convention relating to the Status of Refugee, a refugee is any person who:

“owing to **well-founded fear** of being **persecuted** for **reasons** of race, religion, nationality, membership to a particular social group or political opinion, is **outside** the country of origin of his nationality and is unable or owing to such fear, is unwilling to avail himself of **protection** of that country”

It prompted the participants to concentrate on five important pointers that cumulatively form the criteria for being termed as a 'Refugee' which has been explained diagrammatically below.



UNHCR further explained that within the criteria of persecution, its mandate is restricted to only 5 reasons for persecution viz.



Only when any or all of the above mentioned qualifications are met, a person can be granted the status of a refugee. UNHCR emphasized that it was imperative that the Officers have a clear understanding of who qualifies as a refugee in order to distinguish between genuine and fake claims of an asylum seeker.

To elucidate the five reasons, UNHCR cited historical examples of the 1970 crisis of Ugandan Indians, Afghan & Sikhs in Afghanistan during the Najibullah Government etc. They further clarified that a person who may have left his own country voluntarily may also become a potential refugee if subsequently such a situation arises in his country which prevents his return or if he were to return he may face persecution on the grounds discussed above.

The agents of persecution could be:

1. State Actors – Ruling Government
2. Non-State Agents – These could be of two kinds – under the protection of the state and outside the control of the state

UNHCR undertook the effort to explain the exceptions to the definitions. They explained that any person with respect to whom there are serious reasons for believing that,

- o s/he has committed a crime against peace, a war crime or a crime against humanity, or

- s/he has committed a serious non-political crime outside the country of refuge prior to being admitted to that country as a refugee, or
- s/he has been found guilty of acts contrary to the purpose of the United Nations,

were not to be considered for the grant of refugee status.

Moving on, UNHCR explained the procedure it undertakes to determine whether someone is a refugee or not, usually known as Refugee Status Determination (RSD). However, it clarified that primarily it is the duty of the State to give national protection and to conduct the eligibility process. But when the State is unable to comply then UNHCR takes over the task and undertakes the responsibility of providing protection to such persons.

The States that have not yet ratified the 1951 or 1967 convention on refugees generally are unable to provide protection to asylum seekers. The States that have ratified the Convention form Immigration Tribunals to look into the claim of any asylum seeker and adjudicate as per the due process of law. Therefore in absence of any such regime in India, primarily UNHCR works for their protection.

What happens in India?

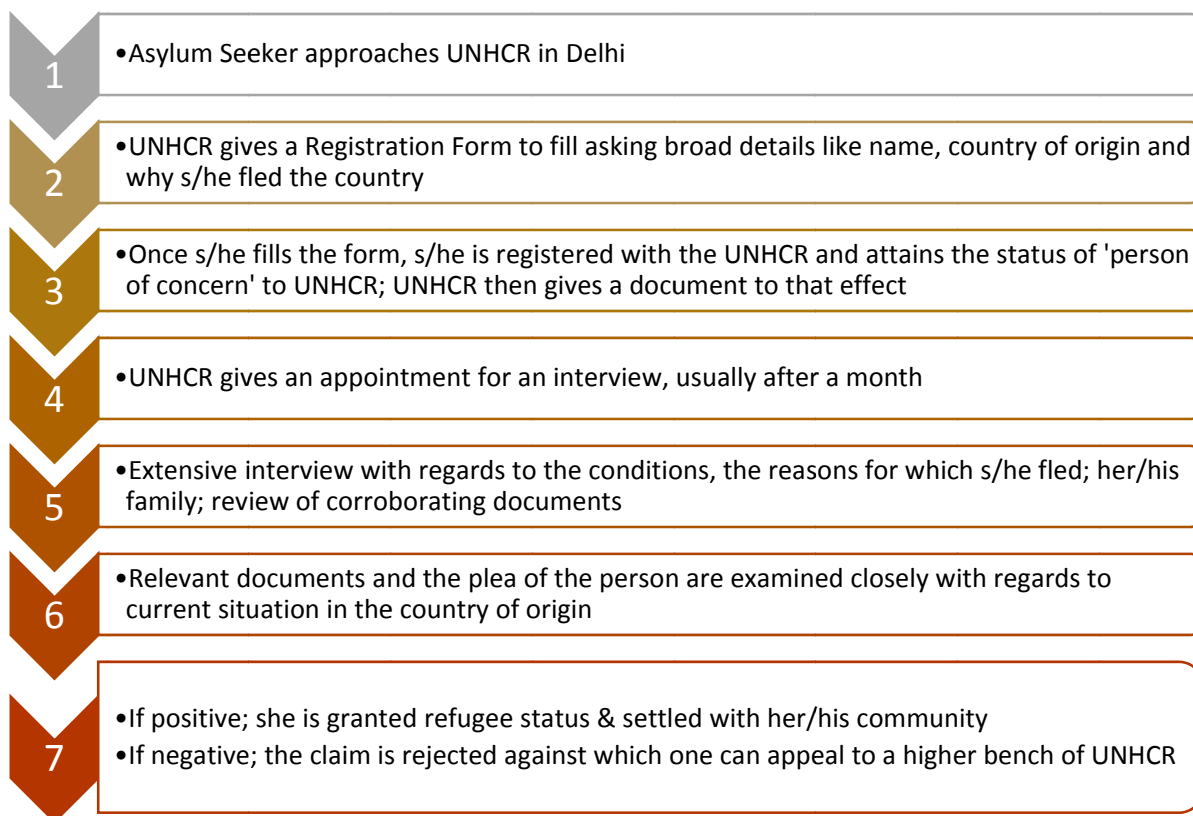
India is not a signatory to the two core conventions related to the determination of the status of Refugees. It does not have a national legal regime to manage the refugee population and provide them protection, although it is a signatory to the Convention on Non-Refoulement which stipulates that one can't be forcibly sent back to the country where he/she is facing or likely to face persecution. This naturally results in a chaotic situation with no system in place to cater to the population of asylum seekers other than the Foreigners Act, 1946 that does not differentiate between an illegal migrant, asylum seeker and an inadvertent border crosser.

However, the Indian judiciary has been humane towards the condition of asylum seekers and has more often than not decided in favour of the asylum seeker. This has considerably filled up the gaps and lacunae in law. The Supreme Court in the case of *Vishakha and Ors. Vs. State of Rajasthan*² ruled in favour of harmonious construction of international and domestic law when it is consistent with fundamental rights and in conformity with the provisions of Indian Constitution.

In the Indian context, UNHCR undertakes a quasi-judicial process for determining every claim. There is a complete screening of such person's claim regarding his/her background, facts, and the fear of persecution that s/he claims to bear in the event of a return to the country his/her origin. However, the entire procedure is conducted with a humanitarian intent. In case of rejection of such claim, the asylum seekers have a right to appeal albeit with a higher authority at UNHCR.

The process can be divided into various steps, as mentioned below:

² JT 1997 (7) SC 384



The detention of asylum seekers hampers the presentation of their case to the UNHCR which is the first step in the entire process, thereby jeopardizing their right to fair trial. UNHCR further elucidated as to how an asylum seeker should not be punished merely for illegally entering India as many such entries, such as that of *Rohingyas* are for valid reasons.

Rohingya is a Muslim ethnic minority in the Buddhist majority Myanmar. *Rohingyas* do not find a mention in the 135 ethnic communities of Myanmar, which renders them stateless. They need permission for marriage, procreation, employment, health services and acquisition of all other basic survival needs. The permissions usually entail fees which go up to thousands and lacs considering the weak currency of Myanmar (Kyat). In absence of any kind of rights, freedom, employment and livelihood they are forced to flee the country by legal or illegal means.

Identification of a *Rohingya*

UNHCR explained in great detail the various identification tests which would enable the Welfare Officer of a Correctional Home to successfully conclude whether an inmate is a *Rohingya*. First and foremost, they are not considered the citizens of Myanmar and hence denied the pink nationality card which is usually granted to every citizen of Myanmar.

Geographical Description

The Rakhine region where *Rohingyas* generally belong to consists of four major districts viz. Sittwe, Maungdaw, Kyauktaw and Thandwe. It has 17 Townships with Maungdaw, Buthidawng, Rathidawng, Sittwe, Kyauktaw being the major ones.

Religion

Rohingyas are Sunni Muslim who follow the Hanafi sect. Their ethnicity is not always known to them.

Language

They speak Rohingya/Ansolik. It is mostly Bengali mixed with Urdu, Arabic, English and Burmese. Although International Organization for Standardization (ISO) has recognised the language, but, Rohingya language has no script so far.

Features

Their features are distinct from the Myanmarese people of the Mongoloid race and are quite similar to Indians.

Education

They have an extremely low education rate and the school dropout rate among children is very high. They have few schools in villages and most of the colleges and universities are in Sittwe. It is compulsory for them to study Burmese.

Occupation

They generally take up fishing and farming and unskilled labour with no scope of employment in government services. Extremely few of them teach in local schools.

House

They generally have round shaped houses made of bamboo wall, mud floor and hatch (*saun leaf*) roof, having bamboo fences all around.

Lexicon of Rohingyas

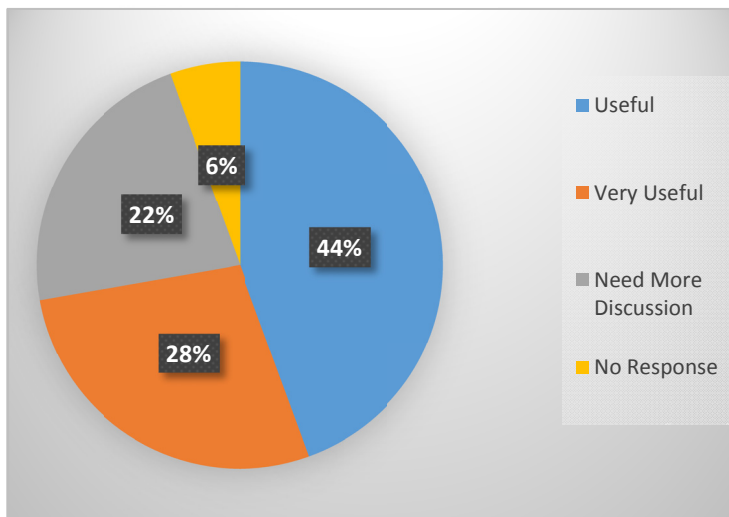
1. Mru May Myo – Head of a township
2. Goaing – Village Tracts
3. Appawung – Local Administration Board
4. Sengum – Announcer
5. Tabbe – Interpreter
6. *Ei Kepra* – Temporary Registration Card
7. *Ghar Sarang/ Sansar Habos* - Family List
8. *Taukanhsa* - Travel permit
9. *Lateguang/Ammin* - Marriage registration

Feedback

Participation & engagement- The training witnessed the participation of 21 Officers in total out of which 18 filled the feedback form that was circulated among them. The participants were actively engaged in the discussions and provided constructive and valuable feedback. 90% of the participants felt that their point of view was considered and that taken into account during the conduct of the sessions.



Content - Regarding workshop content, workshop design, result, they rated the sessions 4 out of 5 (average score). 72% found the reading material to be useful and 22% found it to be valuable (pictorial representation on the right).



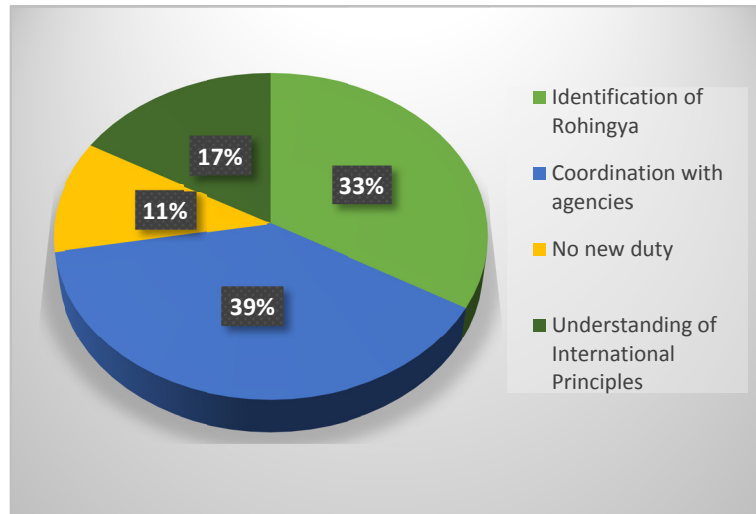
Usefulness - When asked about their reflection on the training in terms of its usefulness, 8 of them found it useful, 5 found it very useful, 4 thought that the topic needed more discussion and one did not respond to the question (pictorial representation on the left).

Learnings - Many Officers verbally conveyed to us that they weren't aware of UNHCR's mandate and the assistance they provide to asylum seekers and the training cleared many doubts that they had about the fate of asylum seekers

once they are released. This was also reasserted in the written feedback that we received from the Officers. Briefly, some of the important learnings that could be drawn are as follows:

1. Mandate of UNHCR
2. Difference between different kinds of displaced people
3. Five point criteria of identifying a Refugee
4. Identification of a genuine Rohingya
5. Introduction of agencies that could be approached for rehabilitating a Refugee
6. Importance and relevance of a 'Refugee Card' for an asylum seeker
7. Method to forward their case to UNHCR

New Skills – Out of the 18 participants, 6 Officers learnt the steps to identify a Rohingya, 7 learnt the method to coordinate with various agencies through the ADG (Prisons), West Bengal, 3 absorbed the understanding of International principles regarding refugees and statelessness, the rest 2 from Alipore and Dum Dum Correctional Homes admitted that they were already aware of the information and methods of identification due to their prior work with Rohingyas (pictorial representation on the right).



Further Areas of Training & Suggestions: Most of the participants suggested that trainings with every stakeholder of the process, namely the police, judiciary, legal aid authority and Correctional Home executives should be held for 3-5 days comprehensively. Few of them also suggested that trainings should be given on the existing government schemes, procedures and laws for the protection of children of asylums seekers.

They also were of the opinion that such trainings should be conducted more often and institutionalized as part of their training curriculum. The Officers raised many concerns such as language barriers they face with the Rohingyas and also the fact that they give address of places in Bangladesh and later change their statements. Regarding access to asylum procedures for the inmates, they stated that they would be supportive in forwarding a prisoner's petition for asylum seekers on their behalf, however, they would follow protocol and send it to the ADG's office.

Recommendations

About 97% of them suggested that similar trainings should be organized for Superintendents, Chief Controllers and Deputy Chief Controllers as well.

Some of the main recommendations that were made during the sessions include:

1. Owing to the information gap between the police, judiciary and prison authorities, UNHCR should bridge the gap by holding training sessions with representatives from various functionary bodies.
2. UNHCR should hold camps in areas like Bongaon, Basirhat, Berhampur, Balurghat, North and South Dinajpur, which have a high incidence of Rohingya population.
3. UNHCR to conduct such sessions at least every quarter and institutionalize the sessions as part of their training curriculum in RICA, Kolkata.
4. UNHCR to come up with a one page document on UNHCR's work and another one page document on background information on Rohingyas along with tips on how to identify them.
5. A sample letter to apply for asylum was also distributed by CHRI. However, a Welfare officer is not empowered to write to the UNHCR directly and the asylum application will have to be routed through the Inspector General, Correctional Services, West Bengal. After exploring the ideas of prisoner petitions, post cards and facilitation through Non-Governmental Organization, it was recommended that a system could be adopted at the administrative level for routing these applications to UNHCR in order to curb the detention of asylum seekers.
6. Empowering the legal aid lawyers in order to facilitate communication between UNHCR and the asylum seeking inmate.
7. Formulation of a step by step guideline to help them institutionalize the practice.
8. To explore possibilities of getting interpreters for correctional homes to improve communication with Rohingya inmates. Ideally, recognized refugees could be considered for interpretation work.

Overall the feedback was very positive and encouraging. It was clear that the participants were able absorb key concepts on refugee protection and asylum procedures in the Indian context. One is hopeful that they shall use the knowledge imparted during the training in their course of work

In the midst of large scale illegal migration into India, it is of immense importance to identify genuine asylum seekers from among them, and to prevent them from unnecessary incarceration and prosecution. For it is to seek asylum that they come, not to be subjected to the very fate they sought to avoid in the first place. For this, informed intervention is necessary and to ensure that one looks forward to further collaboration in the future on similar issues.