

CHRI 2018

**GUIDE FOR
PRISON OFFICERS
REFUGEES & ASYLUM SEEKERS**



CHRI

Commonwealth Human Rights Initiative
working for the practical realisation of human rights in
the countries of the Commonwealth

What is the difference between an asylum seeker and a refugee?

The 1951 United Nations Convention Relating to the Status of Refugees (hereinafter referred to as the Refugee Convention) defines a refugee as a person who, owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside his/her country of origin and is unable or, owing to such fear, is unwilling to avail himself/herself of the protection of his/her country of origin.

Thus, an asylum seeker is a person who has sought protection as a refugee, but whose claim for refugee status has not yet been assessed. When a person flees his/her country for fear of persecution and seeks sanctuary in another country, he/she applies for asylum.

International refugee law regards the asylum-seeker as a 'presumptive refugee'. A bona fide asylum seeker is to be given the benefit of doubt and afforded all the rights of a refugee until his refugee claim is conclusively rejected by a competent authority.

Is there a criterion for being categorised as a refugee?

In order to be categorised as a refugee, a person must fulfil the following criteria:

- i. There must exist a fear of persecution or human rights violations against the person in his/her country of origin.
- ii. The fear of persecution must be well-founded, i.e., it must have an objective and subjective basis.
- iii. The persecution must be for reasons of
 - (a) Race,
 - (b) Religion,
 - (c) Nationality,
 - (d) Membership of a particular social group, or
 - (e) Political opinion.
- iv. The person must be outside his/her country of origin or habitual residence.
- v. The person is unable or, owing to such fear, is unwilling to avail himself/herself of the protection of his/her country of origin.

Are asylum seekers 'illegal'?

According to Article 14 of the Universal Declaration of Human Rights (1948), everyone has the right to seek asylum and the Refugee Convention further prohibits states from imposing penalties on those entering 'illegally' who come directly from a territory where their life or freedom is threatened.

Thus, if any person is a refugee or an asylum seeker, they should not be arrested, tried or convicted for

merely having entered without valid travel documents, without first getting the opportunity to approach the appropriate authorities and have the merit of their requests prima facie evaluated by such authority.

What difference does it make if the applicant is a refugee or an asylum-seeker and not an economic migrant?

Refugees and asylum seekers cannot be treated on the same footing as economic migrants. Refugees are persons fleeing an armed conflict or from regime of grave human rights violations or persecution. Their situation is often so perilous and intolerable that they cross national borders to seek safety from other States, through UNHCR, and other humanitarian organisations.

International migrants choose to change his/her country of usual residence, irrespective of the reason for migration. They move to a foreign country for a certain length of time not to be confused with short-term visitors such as tourists and traders. Migrants are fundamentally different from refugees and, thus, are treated very differently under international law.

Article 31 of the Refugee Convention forbids the imposition of penalties on refugees, on account of their illegal entry or presence, on refugees. The rationale behind this provision is that a refugee may have good cause for illegal entry especially since he apprehends serious threats in his home country. Often, on account of the persecution faced by them in their country of origin refugees and asylum seekers are unable to obtain genuine identity and travel documents which renders it impossible for them to travel to another country legally.

Article 33 of the Refugee Convention puts forward what has become known as the principle of *non-refoulement*. It forbids the State from expelling or returning a refugee to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

How can I tell if the applicant is a refugee or an asylum-seeker and not an economic migrant?

Communicate with the person well in advance. If s/he is a foreign national who is being tried under the Foreigners Act, you should never assume that s/he is an economic migrant unless they tell you so. It is imperative to quiz s/he as to why they left their country and whether they are willing and able to return.

Are there any duties of refugees?

As per Article 2 of the Refugee Convention every refugee has a duty to conform to the laws and regulations of the country in which he finds himself/herself.

Does the Refugee Convention apply to India?

India is not a signatory to Refugee Convention or its 1967 Protocol and therefore the Convention itself is not legally binding on India. Over the period of time, certain provisions of the Refugee Convention has attained customary status under Customary International Law which is binding on India. In absence of any specific legal regime, refugees are still governed by the Foreigners Act, 1946.

The Foreigners Act does not distinguish between refugees and illegal immigrants, nor does it define refugees as a specific category needing humanitarian protection. This does not imply that India has no policy on refugees. In the absence of any legislation on the subject, refugee policy is based on ad hoc and undefined administrative measures.

Despite not being a signatory to the Refugee Convention, India continues to host a large population of refugees. The Government of India allows UNHCR recognised refugees to apply for visas. Refugees and asylum seekers have also been provided access to basic government services such as health care and education as well as to law-enforcement and justice systems. India has also been a member of the executive committee (ExCom) of the UNHCR since 1995.

Thus, the general principles of refugee protection are very much applicable to India.

Who is the Competent Authority for granting refugee status in India?

In India there is no specific legal regime for refugees. The Central Government grants asylum and provides assistance in case of certain refugee populations (such as Tibetans and Sri Lankans). In all other cases, United Nations High Commissioner for Refugees (UNHCR) conducts registration and Refugee Status Determination (RSD). The Government of India also has policies in place for granting stay visas to refugees recognised by UNHCR.

UNHCR was established on December 14, 1950 by the UN General Assembly. UNHCR's core mandate is to lead and co-ordinate international action to protect refugees and asylum seekers and resolve refugee problems worldwide in consonance with the Refugee Convention.

Are Rohingyas considered as asylum seekers? Why?

Yes. The Rohingya are an ethnic minority of Myanmar who live in the western state of Rakhine (also known as Arakan). They do not find mention in that country's official listing of 135 ethnic communities, and are thus not recognised as citizens by Myanmar. Government agencies force them to seek permission prior to getting married, seeking employment, availing health services and even for recording births. The permissions usually cost them large sums of bribe money.

Over half a million Rohingya refugees have fled violence in Myanmar.¹ The latest exodus began on 25 August 2017, when violence broke out in Myanmar's Rakhine State. There were fierce clashes between

security forces and Rohingya militants which left hundreds dead and huge settlements brought to the ground. Hundreds of thousands have fled over the border into Bangladesh, as the military intensified its clampdown on the minority group. Many of those who crossed over are women and children, including newborn babies.

International human rights groups and the UN have reported wide-scale human rights violations against the Rohingyas, including extrajudicial killings, gang rapes, arsons and other violence.

How can they be identified?

Muslims in Myanmar, most of who are Sunni, constitute at least 4 per cent of the country's entire population, with the largest concentration in the north of Rakhine State, especially around Maungdaw, Buthidaung, Rathedaung, Akyab and Kyauktaw.

The majority of Muslims in Rakhine State refer to themselves as 'Rohingya': their language (Rohingya) is derived from Bengali and is similar to the dialect spoken in nearby Chittagong, Bangladesh. Rohingyas consider themselves to be indigenous to the region, having lived there for the past 12 centuries. However, the Myanmar government and Buddhist right wing nationalists view them as outsiders.

Various identification tests:

- 1. Geographical Description** - The Rakhine region where Rohingyas generally lived consists of four major districts viz. Sittwe, Maung daw, Kyauktaw and Thandwe. It has 17 Townships: Maungdaw, Buthidawng, Rathidawng, Sittwe, Kyauktaw are the major ones.
- 2. Religion** - Rohingyas are Sunni Muslim who follow the Hanafi sect.
- 3. Language** - They speak Rohingya/Ansolik. It is mostly Chittagong Bengali mixed with Urdu, Arabic, English and Burmese. The International Organisation for Standardisation (ISO) has recognised the language, but Rohingya has no script of its own.
- 4. Features** - Their features are distinct from the Myanmarese people of the Mongoloid race and are rather similar to Bengalis.
- 5. Education** - They have a low education rate² and the school dropout rate among children is very high. They have few schools in villages and most colleges and universities³ are in Sittwe. It is compulsory to study Burmese.
- 6. Occupation** - They generally take up fishing and farming and unskilled labor with no scope of employment in government services. Few of them teach in local schools.
- 7. House** - They generally have round shaped houses made of bamboo wall, mud floor and hatch (saun leaf) roof, having bamboo fences all around.

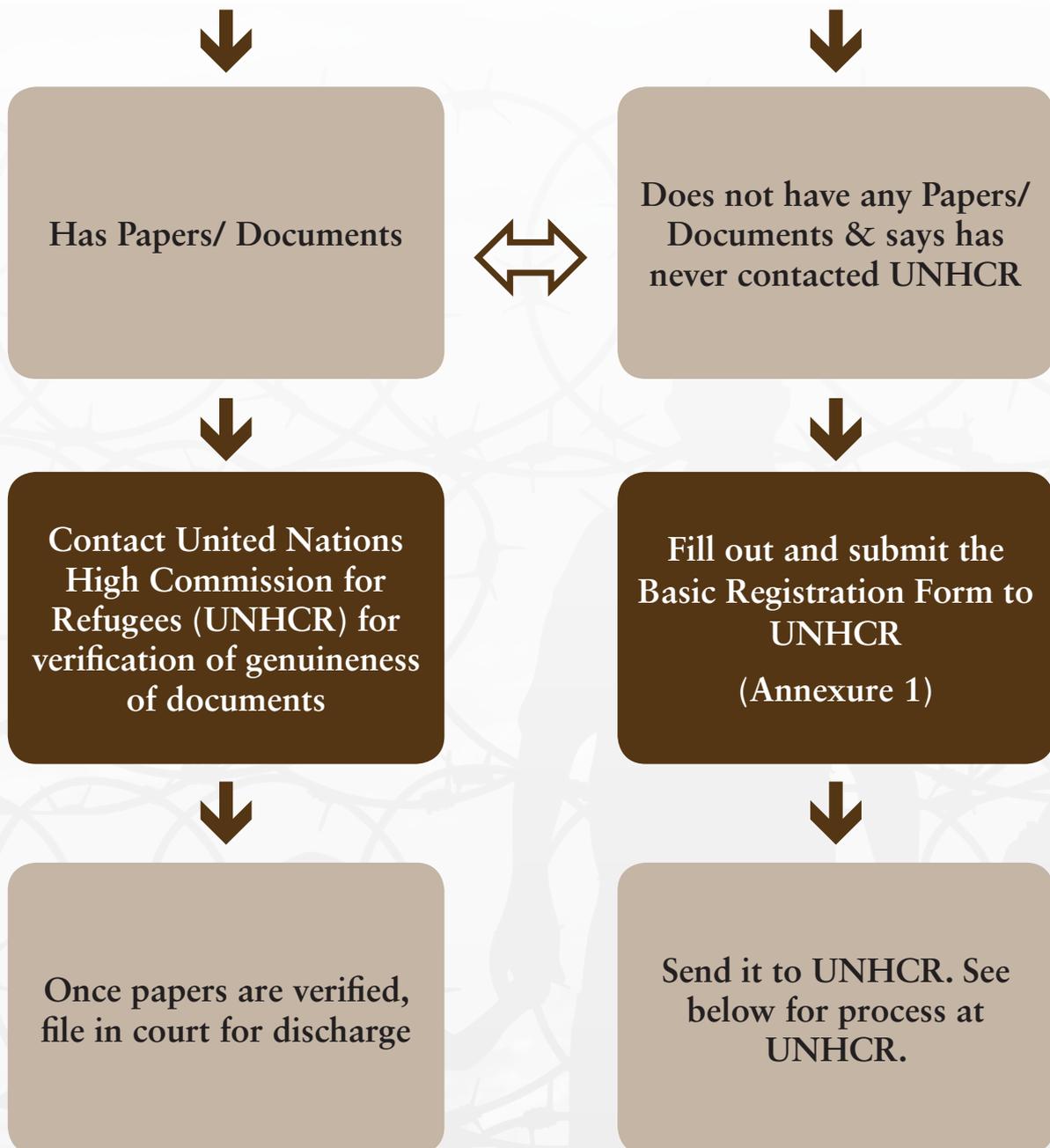
1 Statistics on UNHCR, January 2018.

2 <https://www.voanews.com/a/myanmar-rohingya-children-losing-future-without-education/3203595.html>; 60 % have never even been to school because their families are too poor and an estimated 80 % of Rohingya are illiterate.

3 3 of the 7 Universities in the Rakhine State are in Sittwe.

What is the process for applying for asylum for a person in custody

Apprehended by the Border Security Force (BSF), handed over to the nearest Police Station, charged under S. 14 Foreigners Act, 1946 and remanded to judicial custody



Procedure for seeking asylum through UNHCR office in New Delhi

Registration with UNHCR

- UNHCR registers the applicant and issues him/her Under Consideration Certificate (UCC) and Refugee Status Determination (RSD) appointment letter.
- Applicant is recognised as an asylum seeker.

UNHCR conducts Refugee Status Determination (RSD) Interviews.

If recognised as a refugee, UNHCR issues a refugee identity card.

Decision of appeal.

If rejected, notifications of rejection decision is issued by UNHCR along with a blank appeal form.

The applicant has 30 days to file an appeal with UNHCR.

Under Consideration Certificate (UCC) is extended after submission of appeal. Recognition of asylum seeker status of applicant continues till decision of appeal.

If recognised as a refugee, UNHCR issues a refugee identity card.

Decision of appeal.

If rejected on appeal, UNHCR issues rejection on appeal letter to the applicant. Recognition of applicant's asylum seeker status ceases and applicant ceases to be a person of concern. Applicant returns UCC to UNHCR.

Reopening requests may be made after rejection on appeal. Reopening is not a right. UNHCR will consider the requests at its discretion. Repeat requests for reopening shall not be considered.

Annexure 1

BASIC BIO DATA FOR APPLICANTS IN DETENTION

1. Date of Arrival :
2. Estimated Date of Arrival : Yes/No :
3. Full Name :
4. Other name :
5. Family name :
6. Father's name :
7. Mother's name :
8. Sex :
9. Country and place of birth :
10. Date of birth :
11. Estimated Date of Birth: Yes/No :
12. Country of Origin :
13. Citizenship :
14. Close family members (Parents, Siblings, Wife and Children) including Missing/Deceased :

Name	Relation	DOB/ Age	Country Of Residence	Country of Birth	Place of Birth	Marital Status	Status in Country (PRS/ ASY/ Refugee/ Citizen/ OTH)

15. Address of last place of residence in the home country:
16. Marital Status :
17. In a polygamous relationship: Yes/No :
18. Religion :
19. Ethnicity :
20. Level of education :
21. Occupation :
22. Name of detention center :
23. Duration in Detention:
24. Under Trial/Undergoing Sentence/Sentence Completed (please tick as applicable)
25. Specific Needs :
26. Contact Information :
27. For ASR and refugee status kindly note the registration No.

Where	Date of registration	Status Obtain	Remarks

28. Names of family members in detention (if any):
29. Documents – list them :

Country	From (D/M/Y)	To (D/M/Y)	Address

30. Time Spent in any other country prior to entering India : Yes/No, Name of country :
31. Comments(if any) :
32. Date of form filling: Undertaking to be signed/thumb print:
Name of Registration Officer and signature:

Annexure 2

PRISONER'S PETITION

From: _____ s/o _____

Date of Admission: _____

Case Ref No. _____

Under sections: _____

To,
DG Prisons/SLSA/DLSA/SDLSC
(Address)

Dated:

Through,
The Superintendent,
_____ Prison

Ref- Application for informing the DG Prisons/SLSA/DLSA/SDLSC regarding the claim of being an asylum seeker

Ld. Sir,

I, son/daughter of _____, am an undertrial/convict prisoner charged/convicted u/s _____ in _____ court (Case ref no. _____) and currently detained in _____ Prison since _____. My next date of hearing/date of release is on _____.

However, I would like to seek asylum in India as I fear persecution on religious/political/other grounds if I return to my home country in _____ region, _____ (country).

I would be grateful if you could assist in processing my claim for asylum & share my details with concerned authorities including the Ministry of Home Affairs & United Nations High Commissioner for Refugees (UNHCR) in New Delhi so that they may consider my request and take appropriate action.

Regards,

(Name)
Under Trial/Convict Prisoner,
_____ Prison

Signed: _____

L.T.I. / Signature Attested By _____

Person/Welfare-Officer

_____ Person

No.: _____ /W.O Dated: _____

Counter Signed and Forwarded By
Superintendent
_____ Prison



CHRI Programmes

CHRI believes that the Commonwealth and its member countries must be held to high standards and functional mechanisms for accountability and participation. This is essential if human rights, genuine democracy and development are to become a reality in people's lives. CHRI furthers this belief through strategic initiatives and advocacy on human rights, access to justice and access to information. It does so through research, publications, workshops, information dissemination and advocacy. It has three principal programmes:

1. Access to Justice

Police Reforms: In too many countries the police are seen as an oppressive instrument of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that the police act as upholders of the rule of law rather than as instruments of the current regime. In India, CHRI's programme aims at mobilising public support for police reform. In South Asia, CHRI works to strengthen civil society engagement on police reforms. In East Africa and Ghana, CHRI is examining police accountability issues and political interference.

Prison Reforms: CHRI's work is focused on increasing transparency of a traditionally closed system and exposing malpractices. A major area is focussed on highlighting failures of the legal system that result in terrible overcrowding and unconscionably long pre-trial detention and prison overstay, and engaging in interventions to ease this. Another area of concentration is aimed at reviving the prison oversight systems that have completely failed. We believe that attention to these areas will bring improvements to the administration of prisons as well as have a knock-on effect on the administration of justice overall.

2. Access to Information

CHRI is acknowledged as one of the main organisations working to promote Access to Information across the Commonwealth. It encourages countries to pass and implement effective Right to Information laws. It routinely assists in the development of legislation and has been particularly successful in promoting Right to Information laws and practices in India, Sri Lanka, Afghanistan, Bangladesh and Ghana. In the latter CHRI's is the Secretariat for the RTI civil society coalition. CHRI regularly critiques new legislation and intervenes to bring best practices into governments and civil society knowledge both at a time when laws are being drafted and when they are first being implemented. Its experience of working in hostile environments as well as culturally varied jurisdictions allows CHRI to bring valuable insights into countries seeking to evolve and implement new laws on right to information. In Ghana, for instance it has been promoting knowledge about the value of Access to Information which is guaranteed by law while at the same time pushing for introduction of an effective and progressive law.

3. Strategic Initiatives Programme

CHRI monitors commonwealth member states' compliance with human rights obligations and advocates around human rights exigencies where such obligations are breached. CHRI strategically engages with regional and international bodies including the Commonwealth Ministerial Action Group, the UN and the African Commission for Human and People's Rights. Ongoing strategic initiatives include: advocating for and monitoring the Commonwealth's reform; reviewing Commonwealth countries' human rights promises at the UN Human Rights Council, the Universal Periodic Review; advocating for the protection of human rights defenders and civil society space; and monitoring the performance of National Human Rights Institutions in the Commonwealth while advocating for their strengthening.



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