



Analysis of International Refugee Laws and Refugee Protection Framework in Sri Lanka: Challenges and Opportunities

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Abstract

This paper offers a unique and elaborate epistemological understanding of the international refugee law structure as well as the status quo of Sri Lanka on refugee related aspects. Paper examines the historical background on international refugee laws and its importance most notably the 1951 Refugee Convention and its 1967 Protocol, the OAU Convention and the Cartagena Declaration. This paper reviews the procedural safeguards with regards to the determination of refugee status, using the previous jurisprudence of the Treaty Bodies as a means for changes in Sri Lanka's system. References are made with the EU's Dublin Regulation through the proposed structured approach to the refugee claiming process and the adjudication possibilities for Sri Lanka to learn from the Dublin Regulation are suggested. The issues raised include armed conflict, terrorism, and the role of refugees in the modern world as well as changes in the factors affecting migration. Based on this, the paper establishes an assessment of possible recommendations on lucrative legal and procedural developments on refugee protection in Sri Lanka, and the suggested measures for future improvements that aim not only at increasing the efficiency of the existing protection system but also at pursuing both neutral and compliance with global standards.

Keywords: *Refugees, Rights, Laws, Procedures*

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Introduction

Sri Lankan refugees are something usual, refugees in Sri Lanka that's not something that general public has an idea about. Focusing on the Sri Lankan context, there are considerable numbers of refugees, who seek the refugee status in Sri Lanka.¹ Being at the sharp end of varying conflicts and internal instability, Sri Lanka has been hit by waves of displacement fueled by both internal and external factors. However, the country has come along a long way in bringing laws in place and developing policies to deal with refugee issues. But despite those, questions remain about whether the current legal framework for refugees working in the country suffices or the level of protection given to refugees within its territory.

This article aims to explore the linking between the international refugee laws and the local legal status quo in Sri Lanka pertains to refugees. It aims at exposing the subtle ins and outs of both fields by showing how they are interdependent and how this interrelationship has implications for refugee care. The purpose of the article is to provide comparative approach to the explanation of the issue of Sri Lanka's legal system conforming to international requirements and its deviating areas that could be a hindrance during the process of refugee protection.

Prominent issues to be included are the overview of international refugee laws, synthesizing the rights and privileges expounded in the laws, down to a thorough analysis of the Sri Lankan refugee protection legal framework, with regard to local legislation, guidelines, and practices. The article also addresses the difficulties such as access to basic services, social inclusion, and civic rights experienced by refugees in Sri Lanka, culminating in policy recommendations and legal reforms as possible means to improve the state of refugee protection in the country.

¹ <https://groundviews.org/2024/06/20/sri-lanka-falls-short-in-its-responsibilities-towards-refugees-and-asylum-seekers/> <accessed on 25th May 2024>

International Refugee Laws

Historically, the League of Nations in the interwar period made some efforts to respond to the situation of refugees first, introducing the passport of Nansen for stateless persons.² However, the current system of refugee protection can be attributed to be formed post 1945 and officially the United Nations High Commissioner for Refugees (UNHCR) was mandated and launched in the year 1950 to take the leadership role in the global cooperation for protection of refugees and to provide global solution to refugee problems.³ In the past decades, such instruments as the 1969 OAU Convention on Refugee Problems in Africa and the 1984 Cartagena Declaration on Refugees have broadened the idea and the list of the means of protection for refugees conforming to regional peculiarities.

Apart from the above, following international refugee laws act as essential apparatus for preserving the people escaping persecution, conflict, and violence in their route to becoming refugees. In the first place, the legal system operates on the basis of the 1951 Refugee Convention and its 1967 Protocol that lays the foundation of legal procedures in the refugee rights and responsibilities.⁴

Definition and Scope

The main element of the international refugee laws is the definition of a refugee contained in the 1951 Refugee Convention. Under this definition, a refugee is a person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of their nationality and is unable or, owing to such fear, is unwilling to avail themselves of the protection

² David James Cantor, ‘*Reframing Relationships: Revisiting the Procedural Standards for Refugee Status Determination in Light of Recent Human Rights Treaty Body Jurisprudence*’, (34(1), *Refugee Survey Quarterly*, 2015) 79-111.

³ Erika Feller et al, *Refugee Protection in International Law: UNHCR’s Global Consultations on International Protection* (Cambridge University Press 2003) 62-84

⁴ James Hathaway, *The Rights of Refugees under International Law* (Cambridge University Press 2005) 150-178.

Rights and Protections

International refugee laws establish range of rights from the protection for individuals who are deemed as refugees by employing these approaches to the refugee crisis. People who fall into this category have the right to non-refoulement, which means that they cannot be returned by the states to any country where their lives and freedom are likely to be put in danger.⁶ Besides, the refugees are also guaranteed the elementary human rights such as the freedom to work and be able to study in school and given these fundamental health services.⁷ It is the legal framework that also determines for family unity and anti-bias, so that no discrimination is there, and all refugees are treated in a fair and dignified manner.

Principle of Non-Refoulement

Primarily in the international refugee laws, the principle of non-refoulement which is a clause in Article 33 of the Refugee Convention 1951, has been widely established. To this effect, the principle prohibits states from sending/turning refugee to those territories where their use of human life and freedom is endangered. The right not to be sent back, or non-refoulement, can be attributed to state commitments on the level of customary norm of international law, which are not dependent on the ratification of any particular treaties.⁸

Sri Lankan Legal Framework

The Sri Lankan refugee protection model comprises of national regulatory instruments and treaties, namely domestic laws, policies and international instruments. This segment dwells on the structure

⁵ Article 1 of the Refugee Convention 1951

⁶ Hugo Storey ‘*Armed Conflict in Asylum Law: The “War-Flaw”*’ (31(2) Refugee Survey Quarterly 2012) 1-33.

⁷ James C. Simeon, ‘*Complicity and Culpability and the Exclusion of Terrorists From Convention Refugee Status Post-9/11*’ (29(4) Refugee Survey Quarterly 2010) 104-135.

⁸ Guy S Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (3rd edn, Oxford University Press 2007) 245-269.

of Sri Lanka's solution to the issue of refugee protection.

The lack of laws that are specifically designed to accommodate refugees is one of the main inadequacies in Sri Lanka. In fact, it is the immigration general laws and the Immigrants and Emigrants Act No 20 of 1948 enacted by the Sri Lanka which can be related to refugee context comprise provisions to remove non-citizens out from Sri Lanka making contradictions to the Principle of Non-Refoulement and other obligatory aspects pertain to refugee protection. On the other hand Sri Lanka is not member of the 1951 Convention and its 1967 Protocol⁹, but it is party to other international human rights treaties that contain the refugee rights indirectly.

Policy and Practice

The Sri Lankan policy towards asylum seekers is largely oriented upon the balancing of hospitality and safety factors.¹⁰ Traditionally, there has been a practice of giving the asylum seekers a temporary shelter in the country, primarily during the regional issues.¹¹ Yet, on occasion, there have been instances of strict policies were about the imprisonment and detention of undocumented refugees and asylum seekers, and this has caused controversies and doubt about how well refugees are being protected.

Government Agencies

Ministry of Defence and the Department of Immigration and Emigration in Sri Lanka are ministerial departments which are mainly focusing on immigration and refugee-related issues. In addition, the UNHCR is also one of the prominent organizations providing protection and assistance to refugees and asylum seekers through a joint collaborative with the local authorities.

⁹ <https://www.unhcr.org/publications/basic-information-asylum-seekers-sri-lanka> <accessed on 25th May 2024>

¹⁰ Walter Kälin, 'The Global Compact on Refugees and the Involvement of Faith-Based Organizations in its Implementation' (32(2) Journal of Refugee Studies 2019) 169-186.

¹¹ Ibid (n6)

Refugee protection and challenges in Sri Lankan context

Sri Lanka right now has many issues when it comes to the protection of refugees. Absence of legislation of legal value and weakness of the institutional structures are pre-conditions of ineffective refugee protection and management. Besides that, the political instability and ethnic tensions in the country are some obstacles in passing adoption plan for the refugees as well as the asylum seekers at least those ones who are from the neighboring countries.

Those who seek asylum in Sri Lanka are confronted with a vast stream of issues that affect their wellness, safety, and the process through which they can revive their lives. The key difficulties refugees are faced with in their host country including the problems they encounter when seeking to access essential services, to the obstacles of their integration into the economic and social fabric of society and the legal protection they receive.

Access to Essential Services

Care of refugees in Sri Lanka is among the primary issues they face in that regard, ranging from limited access to vital services as healthcare, education and employment.¹² Although the institutions and the humanitarian organizations try to eliminate the gaps in the access to healthcare for the refugees including language barriers, requirement of documents and the unfamiliarity with the healthcare system, but the refugees may still carry on the unwanted challenges in that regard. Also, bureaucratic barriers to children in refugee camps and the discrimination against them result in a situation where the educational services are either discontinued or denied without the access to opportunities for learning and skill development. Besides, neither is a work opportunity for the refugees available much nor the economic freedom from relying on humanitarian assistance persists.

¹² Susan Kneebone, 'The International Refugee Law Framework: Protection Gaps and New Directions' (29(1) *International Journal of Refugee Law* 2017) 102-127.

Discrimination and Social Stigma

Sri Lankan refugees experience a lot of discrimination as well as prejudice and stigma which mostly spring from the prevailing misconceptions and cultural prejudices and also fuelled by the fear of foreign interference. Discriminatory practice shows in many ways. These include the limitation of access to the housing, employment and social services, while the occurrence of verbal harassment and abuse turns to be an all-too-common phenomenon.¹³ These forms of discrimination only worsen this situation by intensifying the, and, of refugees in the host community on the larger scale.

Legal Barriers and Administrative Challenges

The highest cases of obstacles to the refugees' protection and rights in Sri Lanka are due to legal hindrances and administrative issues. The lack of a particular refugee law makes refugees defenseless against the "arbitrary deportation and detention" as well as "refusal of initial rights." Administrative disputes in the asylum process, along with the existence of long delays for refugee status determination processes and their barriers in access to legal assistance, are among the obstacles that intensify the vulnerabilities of the refugees and thwart their chances of perseverance.¹⁴

Opportunities for Improvement

Even though there are problems related to refugees in Sri Lanka, there is a wonderful potential to strengthen the refugee protection system in the country and deliver the benefits to those who need it most. Amending laws, such as specifically setting up refugee legislation, and improving institutions will be the steps that the country is taking to meet the obligations of the country. Notably, establishing conversations and also with the UNHCR and other international organizations will lead to the development of stronger

¹³ Helene Lambert at el), *The Global Reach of European Refugee Law* (Cambridge University Press 2013) 54 - 58

¹⁴ Katy Long, 'When Refugees Stopped Being Migrants: Movement, Labour and Humanitarian Protection' (1(1) Migration Studies 2013) 4-26.

refugee safeguarding systems.

Refugee protection system in Sri Lanka is essentially a multifaceted approach with legal, political and humanitarian dimension mixing with each other. The country has served as home for fleeing foreigners for many years. However, it is required to introduce complete legal changes and better institutional capabilities in order to guarantee maximum performance and sustainability of the refugee population in the future.

International refugee laws emphasize the importance of giving appropriate judicial mechanisms by which refugees may be given remedies and justice in case of any rights violations. The counterpart of Sri Lankan law is not precise enough about surrounding appeals and grievance processes, thus the latter cannot be used by refugees as a tool to challenge the unfair decisions taken toward them, nor to seek help for their rights violation issues.¹⁵ In line with the opportunities for improvement following recommendations may be incorporated.

Enactment of Specific Refugee Legislation

One of the most significant issues for the prospect of change is the very lack of a specific law in Sri Lanka that deals with refugees. Through the designing of detailed refugee legal systems, the country can stipulate clearly the rights, responsibilities, and procedures for the protracted stay of refugees in line with the existing refugee laws. This will help to enhance the standard and reinforce the consistency of the application of the relevant refugee laws in the nation. The enactment of such laws will only have the effect of further reinforcing the legal basis for the operation and enforcement of relevant international conventions and recommendations.

Capacity-Building and Training

Highlighting the scope for developing the capacity, and function, of the government departments, legal professionals and frontline

¹⁵ Ibid (n6)

service providers is crucial to enhancing the refugee protection regime in Sri Lanka. Capacity-building programs is an example should include training programs, workshops on refugee rights, asylum procedures, and humanitarian principles truly fit the need as it equips relevant agencies with the knowledge and skills needed to, adequately, address the needs of the refugees.¹⁶ A crucial way to achieve this is by building trust and collaboration between governmental institutions, NGOs, international actors, and the community stakeholders to synergize efforts and improve delivery of services to refugees.

Promotion of Socio-Economic Integration

Designing platforms aimed at integration in the socio-economic environment is a significant factor to improve the independence and resistance of refugees in Sri Lanka. This goal can be accomplished by means of the regulations and programs that provide refugees with more options for education, vocational training, and employment which make it easier for them to become useful members of the local community and economy.¹⁷ Inclusion into education system can be done by including them in the educational plan and career training for capacity building, small business support and entrepreneurship activities can be added to facilitate refugees to rebuild their lives and get economic freedom.

International Cooperation and Partnerships

Working with the international organizations, donor agencies and regional partners are going to be issues which could be turned into special opportunities for making of a refugee protection more durable in Sri Lanka. Through an active collaboration with the UNHCR and other stakeholders, Sri Lanka will be able to access technical knowledge, financial resources, and the top-notch practices, which can serve as a leverage in spreading the proper

¹⁶ Ibid (n2)

¹⁷ Melanie Jacques, *Armed Conflict and Displacement: The Protection of Refugees and Displaced Persons under International Humanitarian Law* (Cambridge University Press, 2012) 77-81

refugee protection mechanisms. Global cooperation also offers mutual carriage and the distribution of burdens and responsibilities, making possible the adoption of more fair and sustainable solutions for asylum-seekers in Sri Lanka

Conclusion

The nature of international refugee laws, the refugee protection system in Sri Lanka, and what refugees are faced with as well as the opportunities they have to improve reveal both the progress made and the areas requiring improvement in order to have an effective protection and support to refugees in Sri Lanka.

It is recommended to get insights from instruments like Dublin Regulations to apply in Sri Lanka if not in the regional context. This legal instrument was adopted by the European Union (EU), and this regulation is systematically designed to identify which member state of the European Union is legally competent to process the asylum seeker's application. This system helps in eliminating the multiple applications issue whereby asylum seekers move around the world applying for asylum in different countries and provides them with protection in the first country they set foot in that is a member to the EU. The regulation receives high remarks with regard to procedural efficiencies, management of data, and integration of member states.

Thus, lessons could be learned from the Dublin system for Sri Lanka to have a more defined and coordinated approach in the examination of the refugee applications. Thus, Sri Lanka could enhance the asylum decision making, matters of data and information sharing and better protection of the refugee seekers by implementing similar efficient mechanisms.

Sri Lanka has demonstrated a tradition of refugee's civility by providing them with temporary abode and humanitarian assistance. The government of the country has significantly worked with International Organizations including the UNHCR to facilitate the

dispensing of humanitarian aid and protection services to those in the refugee and asylum seekers situations. Along with this, attempts to maintain the principle of non-refoulement, although with certain lapses, it is a manifestation of the will to uphold the refugee law in the Sri Lankan context.

Many issues such as the status of refugees still require solving in the country's refugee protection environment. The lack of specialized legislation for refugees and readiness of some state institutions to respond to the needs of refugees causes negative effects to their management and preservation. Discrimination in jobs, the loyalty barrier, and the lack of access to vital services increase the difficulties associated with refugees, thereby making their integration process challenging and their stay uncomfortable.

Concurrence of strategies by the authority of government, civil society organization and on international community is an original foundation for the problems posed of the refugees in Sri Lanka. It is essential to ensure that refugees' rights are observed in principle, non-refoulement policy and non-discrimination to be upheld and endeavor for well-formulated legal reforms and policy coverages. Since Sri Lanka is committed to the implementation of international regulations as well as the fulfillment of its aforementioned obligations under international law, the country can guarantee a bright future for the refugees within its borders.