

Durable Solutions for Sri Lankan Tamil refugees

(Report of an I-TRAN mission March and April 2018)

by David Matas

Introduction

Sam Ratna and I, for the NGO I-TRAN (International Tamil Refugee Assistance Network), visited four countries in Asia with substantial Sri Lankan Tamil refugee populations in March and April 2018. We attempted to identify and promote durable solutions for Sri Lankan Tamil refugees.

In Malaysia, we went to Kuala Lumpur. We met there the UNHCR, the Canadian High Commission and, with local refugee lawyer Maha Ramakrishnan, an assembly of about 500 refugees.

In Indonesia, we went to Medan and Jakarta. In Medan, we met about two dozen refugees living in community housing and the Jesuit Refugee Service. In Jakarta, we met with the UNHCR and the Jesuit Refugee Service.

In Thailand, we went to Bangkok. In Bangkok, we met with the Canadian embassy, the South Asia regional office of the UNHCR, the Jesuit Refugee Service and a family of Sri Lankan Tamil refugees.

In India, we went to Chennai and New Delhi. In Chennai, we met with the local office of the UNHCR, the NGO Agaram, the academic Era Elamparithi, one refugee from outside the camps, and three refugees who came to visit us from the camps. In New Delhi, we met with the UNHCR, the Commonwealth Human Rights Initiative, and TGTE (Transnational Government of Tamil Eelam) Senator Satya Sivaratnam.

General Observations

The displacement of Sri Lankan Tamils is a never-ending problem. The displacement began with the civil war in 1983 and continues to this day, even though the civil war ended in 2009.

Many Sri Lankan Tamils who fled got legal status elsewhere. Many others were not so lucky. They and their descendants remain, years and decades after they fled, in a situation of prolonged uncertainty.

The global refugee protection system promotes durable solutions - repatriation, resettlement or local integration. The reality for hundreds of thousands of this population is that what is durable is the absence of a solution. Neither repatriation nor resettlement nor local integration is available to them.

How do we deal with this situation? How do we remedy the plight of this population? Those are questions our NGO I-TRAN mission attempted to answer. While each country we visited presents its own particular obstacles, there are some general comments which can be made.

Repatriation

1) The situation in Sri Lanka which caused the refugees to flee has stabilized at a point where return is not a viable option for many. Because the civil war has ended, in theory those who fled simply to avoid the crossfire could go back. Even for them, return is not that simple because of the large-scale appropriation of private property by the military.

Now that the war is over, appropriated land should be returned to their owners. Seizure of land without compensation violates the right not to be arbitrarily deprived of property, a

right set out in the Universal Declaration of Human Rights¹.

2) People whose property has been seized have been offered neither restitution nor compensation. There is in Sri Lanka a large internally displaced destitute population. At the end of 2016, there still remained almost 44,000 internally displaced by the conflict, which had then ended over seven years earlier². Those without assets either in Sri Lanka or abroad would become on return, instead of externally displaced refugees, internally displaced refugees, not a tempting option.

A January 2018 NGO report about the situation in Sri Lanka states:

"Large permanent army camps take up arable land near towns and villages. ... No compensation has been paid. ... Hundreds of thousands of Tamils were forced to vacate their land because of the conflict and after the war ended many were prevented from returning, because the areas were deemed high security zones ...³

3) Those whose property has been seized should be given compensation for the property if the property, for whatever reason, needs to remain in the hands of the state. Aside from meeting the requirement to respect property rights, that compensation would make return viable which for many otherwise would not be viable.

4) Even if property is returned or compensation paid for it, there will have been a substantial period during which the rightful owners of that property would have been

¹ Article 17

² Sri Lanka: Figures analysis

<http://www.internal-displacement.org/assets/country-profiles/LKA-Sri-Lanka-Figures-Analysis.pdf>

³ "Information Report: Sri Lanka" Second Edition, January 2018 Dr Lionel Bopage, Michael Cooke, Fr Pan Jordan OP, A. Ratnakanthan, Chris Slee & Nalliah Suriyakumaran

deprived of that property. For many, that property was the sole source of their income. Without that property, they were deprived of income. Whether property is returned or compensation paid for it, there should also be compensation for the loss of use of the property from the time it was seized until the time it was returned or compensation paid for it.

5) The Government of Sri Lanka, though officially taking a stand in favour of repatriation⁴, practically undermines it. Deprivation of property without compensation persists. Human rights violations against this population continue.

One striking way that shows this lack of respect for human rights is the impunity given to the Government perpetrators of crimes against humanity inflicted on the Tamil people in general and of the Mullivaikkal massacre in particular. At the end of the civil war, tens of thousands of innocent Tamil civilians were massacred by the Sri Lankan military, on May 18th, 2009 at Mullivaikkal.

According to a United Nations report, there were as many as 40,000 civilian victims⁵. Private estimates range far higher. Sri Lankan Tamils abroad are not going to feel welcome at home as long as their murderers live with impunity in their midst.

6) The United Nations Human Rights Council in September 2015 requested a

⁴ Government welcomes refugee repatriation from India

<http://www.irinnews.org/report/96203/sri-lanka-government-welcomes-refugee-repatriation-india>

⁵ "Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka" March 31, 2011

http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf

comprehensive report from United Nations High Commissioner for Human Rights Zeid Ra'ad Al Hussein on reconciliation, accountability and human rights in Sri Lanka which he produced in February 2017⁶. The Council then in March 2017 asked for an update which the Commissioner produced in January 2018⁷. The Council requested from the Commissioner a further comprehensive report which the Council decided it would discuss in its session of March 2019.

The report and update from the Commissioner about reconciliation, accountability and human rights have been bleak. They give no hope for an immediate durable solution in Sri Lanka for Tamil refugees who are considering return.

The UN Human Rights Council needs to be continuously engaged in the subject matter until there is a satisfactory resolution of the crisis. The Council in March 2019 should both make recommendations to improve the human rights situation in Sri Lanka and continue to ask for reports on reconciliation, accountability and human rights in Sri Lanka until there is reconciliation, accountability and meaningful respect for human rights in Sri Lanka.

7) As bad as the situation is on the home front, they may well get worse. Deterioration appears as likely as improvement. The charge by the lead opposition party against the Government of Sri Lanka is not that the government is treating its Tamils too poorly. It is rather that it is treating its Tamils too well⁸. Future elections hold out the prospect of a

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http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session34/Documents/A_534_20_EN.docx

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<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/018/53/PDF/G1801853.pdf?OpenElement>

⁸ "Sri Lanka's former strongman calls for snap elections" The Associated Press, February 12, 2018

government which would aggravate mistreatment of its Tamil population.

8) The genesis of the civil war was the prolonged, pervasive, systematic discriminatory treatment of the minority Tamil population by the majority Sinhalese population. The civil war was an armed rebellion against this mistreatment, an attempt to assert the right to self-determination through force of arms. The war ended badly for the Tamils, not just because they lost, but what was even more grave, the massive violations of human rights which accompanied its termination.

9) The Tamils for decades during the civil war formed a *de facto* separate state in the north and east of the island of Sri Lanka. This *de facto* separate state was governed by the Tamil rebel leadership, the LTTE, the Liberation Tigers of Tamil Eelam. Many of the population of that territory performed government functions for this *de facto* separate state. Tens of thousands who survived the massacre at the end of the civil war were arbitrarily detained and mistreated.

10) During the civil war, Tamil Eelam was an enclave, albeit embattled, against the depredations of the Sri Lankan Army. With the end of the civil war, that enclave disappeared, making matters worse for those who had been protected by it. The end of

<http://abcnews.go.com/amp/International/wireStory/sri-lanka-strongmans-party-makes-strong-showing-polls-53011636>

Shihar Aneez "Sri Lanka anti-corruption chief quits after president's criticism" Reuters, October 17, 2016

<https://www.reuters.com/article/us-sri-lanka-corruption-probe/sri-lanka-anti-corruption-chief-quits-after-presidents-criticism-idUSKBN12H2FO>

"Sri Lanka's Transition to Nowhere" Crisis Group 16 May 2017

<https://www.crisisgroup.org/asia/south-asia/sri-lanka/286-sri-lanka-s-transition-nowhere>

the civil war generated a whole new outpouring of refugees.

11) The expression of the right to self-determination for the Tamil population no longer exists in Sri Lanka not just as a military option; it also no longer exists as a peaceful option. The Government of Sri Lanka, in August 1983, shortly after the civil war began in July 1983, rammed through an amendment to the constitution which prohibits even the peaceful expression of the view that there should be a separate state of Tamil Eelam⁹. This amendment is now a subject of a petition for which I am counsel to the United Nations Human Rights Committee established under the International Covenant on Civil and Political Rights.

12) The Parliament of the Indian state of Tamil Nadu in March 2013 passed a resolution calling for a referendum in Sri Lanka on whether there should be an independent state of Tamil Eelam. According to the resolution, displaced Sri Lankan Tamils around the world should be allowed to vote¹⁰.

13) The possibility of a referendum would have a healthy impact on the situation of Tamils in Sri Lanka no matter whether there is a referendum, and, if there is, no matter what the outcome. The very possibility of a referendum would encourage those of the Sinhalese majority who want to keep Tamil Eelam in Sri Lanka to make the Tamil minority feel welcome in Sri Lanka. The current dynamic of discrimination and repression would be undermined.

14) The possibility of a referendum would also lead to increased voluntary repatriation of

⁹ <http://tamilnation.co/srilankalaws/83sixthamendment.htm>

<http://www.tamilguardian.com/content/tamil-nadu-assembly-adopts-resolution-seeking-eelam-referendum?articleid=7427>

Sri Lankan Tamils to Sri Lanka. Even if displaced Tamils outside of Sri Lanka could vote in the referendum, the very existence of the possibility of a referendum would signal that the discrimination and repression against Tamils in Sri Lanka were ending. Return would also allow Tamils to participate more actively in the run-up to a referendum than they could abroad.

15) Traditional resettlement countries should be pressing the Government of Sri Lanka to improve the human rights situation there. The presence in these countries of Sri Lankan Tamil refugees who have fled human rights violations in Sri Lanka gives these countries an effective answer to any objections the Government of Sri Lanka might have that how they go about respecting human rights is an internal matter only.

Local integration

1) None of the countries we visited on our Mission are signatories to the Refugee Convention. They do not have refugee determination systems.

2) The Convention obligates states parties in a wide variety of ways to help refugees. Some of the Convention obligations and, in particular, the obligation against *non-refoulement*, the obligation not to return a refugee to the country of danger fled, are part of customary international law, binding on all states, whether party to the Convention or not.

Many other provisions of the Convention, which assert a long list of specific rights for refugees which relate to local integration within the country of claim, do not apply to states not party to the Convention. In reality, in the region, these specific rights are mostly not respected.

3) Despite the general commitments in the New York Declaration for Refugees and

Migrants about local integration, the day to day reality is that these commitments are not being realized. All states in the region which the Mission visited, in a wide variety of different and specific ways, make lives difficult for refugees.

The situation is bad and improving only slowly. This Mission by I-TRAN is one of several by I-TRAN over the past few years. What I-TRAN could see, from the perspective of a sequence of visits, was a prolongation of the problems which beset this population, and, in terms of specifics, only marginal improvements.

4) Traditional resettlement countries, in addition to their resettlement contributions, need to bring to countries in the region their concerns about difficulties in local integration Sri Lankan Tamil refugees and other populations face and the need to advance it. Because Sam Ratna and I are both Canadians, we approached Canadian embassies and High Commissions in the region about these matters. The Government of Canada representatives we met were sympathetic and supportive to our approach. However, our intent was not just that Canada engage in these efforts, but that all traditional resettlement countries do so.

The UNHCR certainly advocates on behalf of refugees with local governments. However, they do not have the same diplomatic weight as governments. Governments need to work in tandem with the UNHCR rather than defer to the UNHCR for the promotion of refugee concerns and interests.

5) One practical way that governments like Canada can promote local integration in the countries in Asia where refugees are found is tied projects. Whenever a foreign government provides a grant, offers a loan, or joins in a project in the region, one component of the foreign participation should be refugee employment.

Government contracts typically have provisions directed to remedying the situation of disadvantaged minorities. Those sorts of provisions should be inserted in contracts involving foreign government participation in the region in order to benefit refugees.

Resettlement

1) The lead Tamil force in the civil war, the LTTE, has been designated as a terrorist organization by many countries, including many resettlement countries. This designation puts a large component of the refugee population from Sri Lanka in a Catch 22.

Those not associated in the past with the LTTE are mostly now not at risk on return to Sri Lanka, though they may have other reasons for not going back - such as the seizure of their property without restitution or compensation and no other assets with which to support themselves on return. Those at risk because of past association with the LTTE will mostly not be resettled. They are both included and excluded, included in the Refugee Convention definition of risk because of a well-founded fear of persecution, but excluded from the protection the Convention offers because there are serious reasons for considering that the refugee has been complicit in an act contrary to the purposes and principles of the United Nations¹¹.

The Office of the United Nations High Commissioner for Refugees does not exclude many. It recognizes many of these people as refugees on the basis that their involvement in the LTTE was not high level. Resettlement countries are often not so understanding. The UNHCR says that the displaced are refugees, but most resettlement countries do not, for the very reason that the UNHCR finds them to be refugees, their past association with the LTTE.

2) The United States, under the Trump administration, has cut down substantially on

¹¹ Refugee Convention Article 1F(c)

refugee resettlement places. In the last year of the Obama administration, the US Government capped refugee resettlement for the fiscal year October 1, 2016 to September 30, 2017 at 110,000. In the first year of the Trump administration, the US government capped refugee resettlement for the fiscal year October 1, 2017 to September 30, 2018 at 45,000, less than half the year previous. The cap of 45,000 was the lowest figure a US administration had set in over thirty years¹².

Moreover, actual resettlement under the Trump administration is far below the targets. According to an estimate of the International Rescue Committee made in January 2018, the US Government was on a pace to resettle 21,292 refugees by September 30, 2018, less than half of its already small target¹³.

3) According to the Office of the United Nations High Commissioner for Refugees, there were, in 2016, 65.6 million forcibly displaced persons, more than the population of the United Kingdom. This total included 40.3 million people uprooted within the borders of their own countries, 2.8 million seeking asylum globally, and 22.5 million seeking safety across international borders as refugees. This number for refugees was the highest since UNHCR was founded in 1950¹⁴. The unprecedented number of refugees has put

¹² Oliver Laughland "Donald Trump caps refugee admissions in 2018 to historic low" The Guardian, 28 Sep 2017,

<https://www.theguardian.com/us-news/2017/sep/27/donald-trump-caps-refugee-admissions-2018-historic-low>

¹³ Alan Yuhas "Trump administration set to admit far fewer refugees than plan allows for" The Guardian, 26 Jan 2018,

<https://www.theguardian.com/us-news/2018/jan/26/trump-administration-refugees-resettlement>

unprecedented pressure on available resettlement places

4) When the Syrian regime of Bashar al-Assad drops barrel bombs or poison gas on his own population or the military in Burma/Myanmar attacks and razes Rohingya villages and does nothing to prevent hate driven civilians from doing the same, the impact is not just on these target populations, as horrific as it is; it is felt worldwide on all refugee populations.

Media reports focus on immediate acute disasters rather than on long-term chronic problems. The world's attention is drawn to immediate refugee crises. Long-term problems, like those of the Sri Lankan Tamil refugees, are, by comparison, forgotten.

New disasters drive old ones out of the news and out of people's memories. People remember what happened yesterday. They forget what happened thirty five years ago, (when the civil war in Sri Lanka started) or nine years ago (when the civil war ended) even if its effects are still being felt today.

In the result, there are more refugees than ever competing for markedly fewer resettlement places than there were just a couple of years ago. As well, the distribution of those places is inequitable. Aside from the Catch 22 problem the Sri Lankan Tamil refugees face because of their actual or presumed association with the LTTE, the very long-standing nature of their problems works against them.

5) A vehicle for resettlement which is under-utilized is private sponsorship. In Canada, private sponsorship is limited by the numerical caps placed on sponsorship agreement holders. In other countries, private sponsorship does not exist or is limited in various ways.

<http://www.unhcr.org/afr/news/stories/2017/6/5941561f4/forced-displacement-worldwide-its-highest-decades.html>

6) The Office of the United Nations High Commissioner for Refugees works diligently for local integration of refugees in countries where the refugees happen to be, whether those countries are signatories to the Refugee Convention or not. When it comes to resettlement, the matter is different. The UNHCR does not promote resettlement to Refugee Convention non-signatory states. In our view, with appropriate conditions, it should.

Mauritius, for instance, is a state with a significant local Tamil population, 115,000 out of a total population of 1.3 million, but is not a signatory to the Refugee Convention. Because it is not a signatory, the resettlement potential for Sri Lankan Tamil refugees in Mauritius has been largely unexplored. An effort should be made to promote resettlement to Mauritius and other non-signatory states.

Country observations

Malaysia

Malaysia, in light of its significant local Tamil population, and its economic development, would seem an obvious candidate as a country which would offer local integration to its Tamil refugee population. However, the government in place when the Mission visited had shown no inclination towards this solution. The Malaysian Indian Congress, which is largely Tamil and was part of the then governing coalition, has itself not adopted local integration of this population as a policy.

The recently elected new government, as part of its political platform, has said that it would ensure that refugees had the legal right to work and that their labour rights would be at a par with locals. The platform also promised that Malaysia would ratify the Refugee Convention. One can hope that these components of its platform will be implemented.

i) Health insurance

The situation of health insurance is an example of the gradually built halfway house in which refugees find themselves. Refugees at one time found themselves without insurance. They then had insurance offered by Tune, arranged through Office of the United Nations High Commissioner for Refugees (UNHCR). With Tune, refugees had to pay for healthcare and were then reimbursed. But reimbursement was subject to delays. So, the UNHCR and refugees switched to another insurance scheme Refugee Medical Insurance, with the acronym REMEDI, in which the insurer pays the health costs directly to the health provider. The refugees are not out of pocket, even temporarily. Premiums are 38 to 43 US dollars per year.

There remain nonetheless gaps in coverage. REMEDI covers hospital costs, but not out-patient costs. It does not cover childbirth. It will not cover anyone over 65. Coverage is limited to treatments up to 3,750 US dollars, room and board for up to 25 days and intensive care for up to 12 days¹⁵.

As an insurance scheme, it does not work that well, because, generally, those with medical problems paid for the insurance and those without them did not. At the time of the launch of the program, there were 154,148 UNHCR card holders eligible for the insurance scheme. In the first year from July 2014, 19,618 refugees or less than 13% paid for insurance and were covered by the program.

This limited enrolment caused problems at both ends. The insurer has been suffering losses because of the low level of coverage. And those with unexpected illnesses or accidents have not been covered.

¹⁵ Global Report on Migration, REMEDI - Refugee Medical Insurance, Malaysia, by Eimear McNamara, July 12, 2016

The UNHCR reported that, because of the low enrolment concentrated in the high risk, REMEDI was incurring losses and was considering to stop the scheme. The UNHCR urged all partners to promote the scheme and get refugees to enrol. The UNHCR negotiated with REMEDI to give the UNHCR till the end of 2018 to double the number of enrolments.

The UNHCR in October 2016 announced arrangements with Qualitas, a network of 72 private clinics across Malaysia, to provide primary health care to refugees at subsidised, low cost. Refugees have no legal status in Malaysia, even when they are recognized as refugees by the UNHCR and have UNHCR identity documents. They are consequently reluctant to move around Malaysia, a matter discussed below. Having access to a primary health care clinic near where they live makes it easier for refugees to reach medical help¹⁶.

ii) Identity cards

The Government of Malaysia has not granted status to those who have UNHCR identity cards. This has caused a host of problems, detailed in the previous mission report for January 2017¹⁷.

In order to overcome concerns of the Government of Malaysia, the UNHCR has issued identity cards with enhanced security features and has developed a mobile app which allows

¹⁶ <http://qualitas.com.my/tag/unhcr/>

<http://www.unhcr.org/en-us/news/latest/2016/10/5912711d7/unhcr-qualitas-launch-affordable-healthcare-project-for-refugees.html>

<http://i-tran.ca/documents/reports-files/Report%20on%20the%20I-Tran%20Mission%20to%20%20%20Malaysia%20and%20India,%20Jan%20and%20Feb%202017.pdf>

verification of those identity cards on the spot through the internet¹⁸. This development has diminished the number of arbitrary police arrests of refugees and shakedowns, but has not eliminated them entirely.

The previous Government of Malaysia, in the past year, had developed its own identity card system for refugees, a system which appears to duplicate the UNHCR card system. The interest of refugees in obtaining this card is small. A few hundred out of 150,000 refugees have obtained the card. Refugees are fearful that the information that the Government of Malaysia obtains from its identity card system would be used to round up and deport the refugees.

The previous Government of Malaysia had asked the UNHCR to hand over to the Government the database of information the UNHCR has collected to issue its identity cards. The UNHCR has said that, in principle, it would be willing to do so, subject to an agreement of the Government of Malaysia on data protection and privacy. To date, there has been no such agreement¹⁹.

The post-election Government of Malaysia, as part of its election manifesto, stated that it would legitimize the status of those who hold UNHCR cards²⁰. Whether this means that the old Government's separate registration program will be dropped remains to be seen.

As well, the manifesto committed the Government to signing and ratifying the UN Refugee

¹⁸ https://www.youtube.com/watch?v=ekIK_JZXebg

¹⁹ "Refugees in Malaysia: Malaysian government creates own refugee database" 2017-09-30
https://news.cgtn.com/news/3d67444f31494464776c6d636a4e6e62684a4856/share_p.html

²⁰ <http://pakatanharapan.com.my/diymanifesto>

Convention. That Convention obligates states parties to issue identity papers to any refugee who does not possess a valid travel document²¹ and to issue travel documents to refugees in their territory who are unable to obtain a travel document from the country of nationality²².

iii) Work

With the old Government, there had been no real progress on the work front since the date of our last mission, other than a pilot project which did not apply to the Sri Lankan Tamil refugee population. It applied only to a small group of Rohingyas, three hundred in all. The pilot project began March 1, 2017 and was scheduled to run three years²³. The limited nature and long-term of the pilot project opened up only a small window of hope for the possibility of regularisation of work status for the refugee population of Malaysia.

The new Government, in its election manifesto, raised expectations. The manifesto stated that those with UNHCR cards would have a legal right to work and that labour rights would be at par with locals.

²¹ Article 27

²² Article 28

<https://reliefweb.int/report/malaysia/unhcr-lauds-government-work-scheme-refugees>

<https://www.channelnewsasia.com/news/asia/rohingya-refugees-to-be-allowed-to-work-in-malaysia-from-march-7538444>

<https://www.aa.com.tr/en/asia-pacific/malaysia-begins-pilot-job-project-for-rohingya-refugees/685382>

<http://www.thesundaily.my/news/2148173>

The Refugee Convention, which the manifesto indicated that the Government would ratify, itself has a number of worker rights. It gives refugees the same rights as foreign workers on work visas²⁴. It further gives refugees the same labour rights as nationals²⁵.

iv) Education

Malaysia is a signatory to the Convention on the Rights of the Child, but with a couple of reservations which impact adversely on refugees. In particular, Malaysia has expressed a reservation to the Convention obligations to register every child after birth²⁶ and the right to free primary education²⁷. The reservation is that those provisions are applicable only if they are in conformity with the Constitution, national laws and national policies of the Government of Malaysia.

These two provisions and their reservations are linked. Schools will not enrol children who have no identity documentation. Refugee parents are reluctant to register their children at birth for fear of arrest and detention because the parents themselves do not have Malaysian identity documents. The result is the denial of primary education to refugee children.

The gap is filled partly with community learning centres, partially funded by the UNHCR. The UNHCR subsidises 128 community learning centres. But only about 30% of school-age children are enrolled in these centres.

Some refugees have the funds to pay for private schools for their children. But most do

²⁴ Articles 17 to 19

²⁵ Article 24

²⁶ Article 7

²⁷ Article 28(1)(a)

not.

The new Government has nothing in its manifesto about education of refugee children. Nor does it commit to removing the reservations of Malaysia to the Convention on the Rights of the Child. Nonetheless, the commitment to recognize UNHCR registration may itself solve the education problem. Since the obstacle to education of refugee children is the absence of Malaysian Government identity documentation, the simple acceptance of UNHCR documentation to fill that gap may remove that obstacle.

v) Resettlement

While we were in Kuala Lumpur, we addressed a public meeting of refugees. Almost five hundred people showed up. 457 signed a petition, attached to this report, asking for resettlement in Canada. The petition is an indication of the failure of both repatriation to Sri Lanka and local integration in Malaysia as durable solutions for this population.

Indonesia

The Government of Australia, the Government of Indonesia and the International Organization for Migration have a tripartite agreement by which the Government of Australia gives money through the Government of Indonesia to the International Organization for Migration (IOM) to provide a basic living allowance to refugees and asylum seekers. Though refugee determinations are done by the UNHCR, asylum seekers have to be referred by the Government of Indonesia to be eligible for IOM funding.

Refugees can not work legally in Indonesia. Moreover, since there is not a significant indigenous Tamil population in Indonesia, Sri Lankan Tamil refugees do not have the option of working without authorization for local Tamil employers that Sri Lankan Tamil refugees in

Malaysia have.

Refugees subsist through agency funding, primarily from the IOM. The Government of Malaysia has developed a practice of referring to the IOM refugees in detention. The law does not require this detention. But that sort of referral is common.

The reason is, to some extent practical. Detention involves a cost to the Government. Referring those in detention cuts down on the cost.

This referral system has created a perverse incentive to detention, noted in a previous mission report. Asylum seekers turn themselves in to be detained. Once detained, their conditions in detention are far from ideal.

Even more bizarre than voluntary detention is the more recent phenomenon of refugees living in makeshift camps and engaging in sit-ins in front of the Kalidares detention centre in West Jakarta, protesting against the refusal of the Indonesian government to detain them. Detention for refugees means temporary accommodation and the prospect of subsistence funding by the IOM.

Australia had originally given money to Indonesia and the IOM as an incentive to both to keep refugees away from Australia. Australia has also been shipping off refugee arrivals to detention centres in nearby islands Nauru and Manus, although detention in Manus has now stopped. This trans-shipment has cut down the number of refugee arrivals in Australia to the point where Australia no longer feels the need to pay controlled subsistence to new arrivals in Indonesia to keep them there.

The IOM announced that Australia decided to cease automatic funding of refugees who

arrived after March 15, 2018²⁸. This cut off of funding has discouraged the Indonesian government from detaining for the purpose of referral to the IOM.

The resolution of the plight which refugees in Indonesia face is certainly not increased detention. It is not even continuation of past Australian levels of funding to the IOM. It is rather the prospect of local integration.

The numbers of refugees in Indonesia is small compared to the total population of Indonesia. As of December 31, 2016, there were 14,405 refugees and asylum seekers in Indonesia, including 343 refugees and 197 asylum seekers from Sri Lanka²⁹. The population of Indonesia in 2016 was 261.1 million.

A presidential decree of 2016 requires the state to provide shelter to refugees³⁰. Refugees are defined to include both asylum seekers and those recognized by the UNHCR as refugees.

Shelters are supposed to be near health care and religious facilities. The decree allows for, but does not require, the IOM to provide basic necessities to refugees. Basic necessities

²⁸ Kate Lamb and Ben Doherty "On the streets with the desperate refugees who dream of being detained" 15 Apr 2018, The Guardian

<https://www.theguardian.com/world/2018/apr/15/on-the-streets-with-the-desperate-refugees-who-dream-of-being-detained>

²⁹ UNHCR Indonesia Fact Sheet, December 2016

³⁰ Regulation of the President of the Republic of Indonesia number 125 year 2016 concerning the Handling of Foreign Refugees

<http://www.refworld.org/docid/58aeec374.html>

are listed as clean water, food, drinks, and clothing, healthcare and hygiene, and religious facilities. Those living in shelters are subject to rules of conduct which are determined by local officials, shelter by shelter.

In light of the presidential decree, the protests outside Kalidares are surprising. They are vivid testimony to the fact that the decree has not been operationalized. Even if it were, it does not solve all local integration problems. The right of adults to work and children to go to school remain problems.

The IOM, as of end-August 2014, housed about 2,600 refugees in 42 community housing facilities³¹. The largest number – 18 - were in Medan. The Mission visited one of those facilities, an apartment block, which housed mostly Sri Lankans and Somalis and met with the Sri Lankan residents.

The housing was staffed by a Government of Indonesia security guard who refused to allow us to meet with the residents in the apartment block. So, we met with the residents in a nearby temple.

Residents are assigned to community housing. They do not choose the location; the IOM does.

The residents described the community housing as an open camp. They are not allowed to work. There is no privacy. The water is brown. The air is polluted and dusty. Health coverage exists, but is limited. Schooling for children is available but only if the parents pay and only in the Indonesian language.

The residents we interviewed either had come from India and left there because of Q

³¹ Alternatives to Detention IOM Indonesia Issue 4 September 2014

branch oppression, or came directly from Sri Lanka after the end of the civil war. Their destination was Australia, but they were stopped *en route*, or were not able to make it for because of logistical reasons - insufficient fuel or food or water or an unseaworthy boat. They all hoped for resettlement.

Thailand

In Thailand, there are few Sri Lankan Tamil refugees. Thailand, for Sri Lankan Tamil refugees, is a point of transit rather than a destination.

Unlike Malaysia, there is no substantial local Tamil speaking population. Unlike Indonesia, there is no funding available from IOM.

Generally, Thailand, like other countries in the region not parties to the Refugee Convention, is a harsh place for refugees and asylum seekers. Like Malaysia, Thailand has a labour shortage, which refugees could help meet if they were allowed to work.

Thailand is significant as a regional refugee centre. The regional office of the UNHCR for Southeast Asia is located in Bangkok. So, are the office of the NGO the Asia Pacific Refugee Rights Network, the Jesuit Refugee Service office for the Asia Pacific and the Regional Support Office for the Bali Process.

The Bali Process brings together states in the Southeast Asia region to address smuggling and trafficking of persons. The Process was a result of Australia's push for tougher border management. Australia initiated the process to multilateralise its policies on irregular migration by converting them into regional best practice guidelines³².

³² Emma Larking "Controlling Irregular Migration in the Asia-Pacific: Is Australia Acting against its Own Interests?" *Asia & the Pacific Policy Studies*, vol. 4, no. 1, pp. 85 - 103

The co-chairs of the Process are Australia and Indonesia. Canada is an observer country, but not a member. The US is a member.

The United Nations General Assembly in New York in September 2016 endorsed a declaration which asserted a wide variety of principles supportive of refugees. The resolution supported civil registration and documentation for refugees³³, education for refugee children³⁴, meeting basic refugee health needs,³⁵ and opening labour markets to refugees³⁶. The resolution passed by consensus, meaning that all states, including those states which are not parties to the Refugee Convention, including the states in the region which the Mission visited, supported or at least did not oppose the resolution.

The Declaration committed states to work towards the adoption in 2018 of a Global Compact on refugees³⁷ as well as on migrants. The Bali process has stated that, in the context of the global compacts, the Bali Process "presents a useful framework for regional cooperation"³⁸.

doi: 10.1002/app5.166

<https://onlinelibrary.wiley.com/doi/epdf/10.1002/app5.166>

³³ Paragraph 71 and Annex I paragraph 5(f)

³⁴ Paragraph 81

³⁵ Paragraph 83

³⁶ Paragraph 84

³⁷ Annex I, paragraph 19

³⁸ Global Compacts on Refugees and Safe, Orderly and Regular Migration: The Bali Process experience

Whether a process designed to protect Australia from irregular migration can be turned into a refugee protection process remains to be seen. The moment may be opportune since the use of the islands of Manus earlier and Nauru for asylum seekers arriving to Australia by irregular means has lessened the need for Australia to use the Bali process to combat those arrivals. Also, it may be easier to use an already existing multilateral process, albeit one initially designed for a different purpose, than to create a new one.

Ideally, protection of refugees in the region should be multilateral. Differences in treatment of refugees in the region have led to movement of refugees from one country in the region to another, a movement which makes sense to the individuals on the move, but, overall, a pointless activity. Multilateralism could lead to uniformity of best practices and the end to this movement.

As well, a few countries in Southeast Asia already are Refugee Convention signatories - Cambodia, East Timor, and the Philippines. Their experience can be useful points of reference for other countries in the region debating whether to sign on to the Convention.

India

In India, the bulk of the refugee population does not want to return. Getting accurate figures is not easy because the Government of Tamil Nadu does not allow researchers or even the UNHCR access to the camps to do a comprehensive survey. From sampling, the estimate is that about 15 to 20% of the Sri Lankan Tamil refugees in India want to return. Of the camp refugees, 1,520 out of 66,000 returned in 2017. 330 returned by the end of March 2018.

The Government of Tamil Nadu has been promoting the development of a ferry service between India and Sri Lanka, stating the absence of a ferry service is an obstacle to

repatriation because refugees want to return with their belongings³⁹. Despite the need, there remains no ferry service. Why this is so is unclear. Funding would be required. We heard that international funding was available but declined by the Government of India.

Sri Lankan Tamil refugees leave India for other countries in the region for two main reasons. One is to escape the Q Branch, a security service of the Tamil Nadu government which is oppressive. The Tamil Nadu Police describe the Q Branch as an agency which

"closely watches the activities of Left Wing extremists and other militants and undertakes investigation of cases concerning these extremists." ⁴⁰

The formulation is questionable. Why does the mandate refer to left-wing extremists but not right-wing extremists? Why does it refer to militants but not terrorists? If we put these terminological questions aside and assume that the Q Branch is directed to watching and investigating terrorist threats, one can have no quarrel with the objective. But there is every objection to targeting Sri Lankan Tamil refugees as a specific object of surveillance and investigation by the Q Branch.

³⁹ Ekatha Ann John "Tamil Nadu pushes for ferry service with Sri Lanka" Times of India August 18, 2017

<https://timesofindia.indiatimes.com/city/chennai/tamil-nadu-pushes-for-ferry-service-with-sri-lanka/articleshow/60077635.cms>

⁴⁰ Home Department Tamil Nadu Police, Policy Note for 2005-2006

https://eservices.tnpolice.gov.in/CCTNSNICSDC/pdfs/policynote/home_police_2005_2006.pdf

Even if we accept that the LTTE was a terrorist organization, even if we accept that the LTTE was engaged in terrorist acts, even if we accept that the LTTE was responsible for the assassination of Rajiv Gandhi, all that does not justify the targeting of Sri Lankan Tamil refugees as a specific object of surveillance and investigation by the Q Branch. On the contrary, it is bigotry.

Prejudice often takes the form of blaming all members of a group for the misdeeds of some members of the group. That is what the Q Branch, the Tamil Police and the Tamil Nadu government are doing by their oppressive control measures imposed on the Sri Lankan Tamil refugee population. The Q Branch needs to focus on real terrorist threats and not a large population of helpless refugees.

The other main reason Sri Lankan Tamil refugees leave India for other countries in the region is to pursue the prospect of resettlement. Resettlement countries do not resettle Sri Lankan Tamil refugees from India. The UNHCR does not do refugee determinations for this population. Even though the UNHCR is present in India, their memorandum of understanding with the Government of India allows them only to promote return to Sri Lanka.

Resettlement countries also do not resettle from India. In principle, resettlement countries could make refugee determinations even though the UNHCR does not. However, those who may be determined to be refugees do not have travel documents. The International Committee of The Red Cross does issue travel documents under limited circumstances and some countries are willing to use the Red Cross travel document for resettlement. However, these travel documents are hard to get.

Sri Lankan Tamil refugees in India have no documentation from the Government of India other than a document from the Government of Tamil Nadu recognizing them as refugees.

These documents are given to refugees on arrival, without refugee determinations.

Yet, to function in India, they need more. Official documentation is necessary to obtain a birth certificate for children or marriage certificates.

For the Sri Lankan Tamil refugee population in India, yet another hurdle to resettlement is the view of resettlement countries that this population has a durable solution to their refugee situation in India. The limitations on their status are not sufficient to undercut the view that they have a durable solution where they are.

The Government of Tamil Nadu provides subsidies to the Sri Lankan Tamil refugee population, which is more than they do for locals. However, it is subject to the requirement that they stay in the camps. The camps themselves are mostly in remote locations. The job opportunities for camp residents in these locations are limited. The camps have curfews and a regimen of rules which means that the residents are not free to lead their own lives as they see fit. Residents are free to move out of the camps. But, if they do so, they lose their subsidies.

Sri Lankan Tamil refugees do not have citizenship in India or an obvious path to citizenship. The Government of India introduced in July 2016 a proposed law in Parliament to provide a path to citizenship for listed refugee populations. But Sri Lankan Tamil refugees were not on the list. The Bill, over two years later, has yet to pass Parliament. There has been widespread concern over both who is included and who is excluded from the Bill. It now seems to be going nowhere.

Conclusion

The general observation from the perspective of these visits to Malaysia, Indonesia,

Thailand and India is that the road to improvement for the situation of Sri Lankan Tamil refugees lies through gradual change. Respect for human rights of this population in Sri Lanka which would allow for increased repatriation is unlikely to happen overnight but will, one can at least hope and work for, improve gradually over time.

Resettlement places are unlikely to be sufficient to allow for resettlement of the entirety of this population. But some will be resettled. Although the recent history of resettlement places generally is downward, more spots, nonetheless, can be found.

Local integration, the grant of full status to refugees where they are, is also unlikely to happen overnight anywhere. However, incidents of status have developed and can develop one by one over time.

For those working to improve the situation of these refugees, working for immediate realization of all three durable solutions is certainly worthwhile. But equally worthwhile is a focus on an incremental approach, advocating and helping to make the situation for this population, in its entirety and one by one, every day a little bit better than it was the day before.

Recommendations

Repatriation

- 1) Property seized by the Sri Lankan military during the civil war should be returned to their owners.

- 2) Compensation should be given to the owners for property seized by the Sri Lankan military during the civil war and not returned.

- 3) Compensation should be given to the owners for loss of use of property seized by the Sri Lankan military during the civil war from the time it was seized until the time it is returned or compensation paid for it.
- 4) Sri Lanka should repeal the provision of its constitution which prohibits encouragement of a separate state within the territory of Sri Lanka.
- 5) Sri Lanka should allow a referendum on whether there should be an independent state of Tamil Eelam, in which displaced Sri Lankan Tamils around the world should be allowed to vote.
- 6) The Government of Sri Lanka perpetrators of crimes against humanity inflicted on the Tamil people in general and of the Mullivaikkal massacre in particular should be brought to justice.
- 7) The UN Human Rights Council continue to ask the United Nations High Commissioner for Human Rights for reports on reconciliation, accountability and human rights in Sri Lanka until there is reconciliation, accountability and meaningful respect for human rights in Sri Lanka.
- 8) Traditional resettlement countries, as a component of bilateral relations, should be pressing the Government of Sri Lanka to improve the human rights situation in general and to bring to justice the perpetrators of the Mullivaikkal massacre in particular.

Local Integration

- 9) All states in the region should sign and ratify the Refugee Convention.

10) Traditional resettlement countries should bring to countries in the region their concerns about difficulties in local integration Sri Lankan Tamil refugees and other populations face and the need to advance it.

11) Whenever a foreign government provides a grant, offers a loan, or joins in a project in the region, one component of the foreign participation should be refugee employment.

Resettlement

12) Resettlement countries should accept UNHCR exclusion decisions in favour of Sri Lankan Tamil refugees.

13) Private sponsorship of refugees should be allowed. Where it is allowed, limitations on its use should be removed.

14) The UNHCR, subject to appropriate conditions, should make an effort to promote resettlement to non-signatory states to the Refugee Convention.

Malaysia

15) Refugees should enrol in the UNHCR organized health insurance plan.

16) The Government of Malaysia should recognize UNHCR issued identity cards as valid identity cards for Government of Malaysia purposes.

17) The Government of Malaysia should recognize the right to work of those with UNHCR cards. The labour rights of these workers should be at par with locals.

18) The Government of Malaysia should accept UNHCR identity cards as valid identity for the purpose of school enrolment.

Indonesia

19) The presidential decree on refugees should be operationalized.

20) Refugees should be allowed to work. Their children should be allowed to go to school.

21) Refugees should not have to be detained to become eligible for IOM support.

22) Refugees in IOM supported community housing should not be subject to curfew and movement restrictions.

The Bali Process

23) The Bali Process should be used

a) to promote signature and ratification of the Refugee Convention in the region,

b) to exchange best practices for reducing hardships of the refugee experience and supporting refugees, and

c) to cooperate in adopting and implementing the Global Compact on Refugees.

India

24) The Government of Tamil Nadu should remove the Q Branch from the Tamil Nadu refugee camps.

25) Subsidies given by the Government of Tamil Nadu to refugees in camps should be

portable. The subsidies should be available to the refugees whether they are living in the camps or not.

26) There should be a pathway to citizenship for Sri Lankan Tamil refugees in India.

27) The Government of Tamil Nadu should allow Sri Lankan Tamil refugees to fill government jobs.

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David Matas is an international human rights lawyer based in Winnipeg , Manitoba, Canada