

**NATIONAL HUMAN RIGHTS COMMISSION**  
**PRP&P, SRO UNIT**

**MINUTES OF THE MEETING CONDUCTED ON THE COMPLAINT MADE**  
**BY AN AFGHAN REFUGEE**

A meeting was conducted on the rights of the Refugees with respect to a complaint made by an Afghani Refugee on 17<sup>th</sup> December, 2019 in the Commission. **The meeting was chaired by Hon'ble Member, Dr. D.M. Mulay** and was attended by various stakeholders including UNHCR, MHA, MEA and FRRO along with other senior NHRC officials (List of participants is annexed).

At the outset, **Shri Surajit Dey, Registrar (Law), NHRC** welcomed all the delegates and explained that the Commission deals with Refugee rights only on complaint basis, from Human Rights perspective, by asking for reports from concerned authorities. He then requested Shri D.M Mulay to elaborate on the issue.

**2. Hon'ble Member, Dr. D.M. Mulay** stated that there is an ambiguity in the Commission on the present subject especially since it's a very sensitive issue. He then informed the delegates that periodically, there are complaints received from Afghani refugees with respect to lack of benefits which include existential issues pertaining to identity documents, basic facilities such as school education to children, job opportunities, food, medical facilities etc. **Dr. D.M. Mulay** requested the other stakeholders to shed some light on the response that could be given to such complainants since they are suffering here. He stated that the Commission would not be involved in the policy framework since that is not the mandate of the Commission at this stage but would like to know the current situation, and if there is any reasonable response that could be given to these

persons. He also clarified that the Commission is not seeking change in policies or new policies from UNHCR either and are instead expecting to be informed of the policy and framework of UNHCR.

**3.** After the initial introductions, **Ms. Yukiko Koyama, Senior Protection Officer, UNHCR**, initiated the discussion by briefly explaining the functioning of UNHCR especially with respect to the Afghan asylum seekers and refugees in India. She explained that UNHCR India conducts registration and Refugee Status Determination for asylum seekers coming from different countries and elaborated that in India they have around 15000 Afghans who are registered with UNHCR. She briefly explained the difference between Asylum seekers and the refugees by stating that the refugees are those who fall under the definition of "Refugee" under the UN Refugee Convention and the asylum seekers are the people who are still waiting for the decision by the UNHCR. She elaborated on the procedure followed by UNHCR to grant a refugee status which involves individual investigation for each of the refugee which could be a lengthy procedure since it needs an objective assessment. It was stated that there are always considerable number of applications pending for decision.

**4.** **Ms. Yukiko Koyama** also explained that UNHCR issues "REFUGEE CARDS" for recognized refugees which is valid for two years; and the asylum seekers whose status is still pending receive the "UNDER CONSIDERATION" certificate which is renewable. She elaborated that the asylum seekers whose applications are rejected can appeal the rejection twice but if they are rejected on appeal, their cases are closed.

**5.** **Ms Yukiko** also clarified that UNHCR document is not a legal document and is not replacing the Indian visa rather it is just a proof that UNHCR is aware of the individual being present in the country. She also addressed the various problems faced by refugees which include difficulty in accessing services especially with respect to education, health, opening a bank account etc which UNHCR is aware of, but reiterated that the UNHCR Refugee card is not a

Government issued document which is why sometimes the refugees have difficulty in accessing national services. She explained that UNHCR facilitates Asylum seekers and refugee to access the national services and apply for Long Term Visas (LTVs) which would make it easier to access various services.

**6. Ragini Zutshi, Associate Protection Officer, UNHCR** acknowledged the various socio-economic issues faced by refugees which UNHCR is also aware of. She explained that there are various factors which contribute to and aggravate the issues and therefore there is a need for all the stakeholders to work together and complement each other otherwise it's not possible to make a positive change in the refugees' lives globally. She pointed out that this is also positive for the host country since the interests of the State and the interest of the people can be reconciled. She shed light on the fact that in India, it is beneficial for the refugees if they are registered with some Government authority like the FRRO office since that way authorities have a data of the number of refugees and those refugees can get a Visa. She reflected that increasing digitalization is also causing a few hassles because the policy right now does not include refugees and by default they get excluded from availing services which creates a bit of a problem. For example, under RTE, children might get admission but if they don't have a visa, they are not able to get aadhar, and without aadhar, it's not possible to open a bank account which leads to parents not being able to purchase school uniforms or books and hence, registration in school becomes a problem despite having a positive law since it does not reach the most vulnerable people. She also gave example that in some States, registration of birth is an issue despite it being a Government priority to register every child born in India but some State systems ask for aadhar of the parents so by default, children don't get birth certificates.

**7. Ms. Ragini Zutshi** explained that in the past visa system worked well with UNHCR working in close collaboration with FRRO Delhi office where drives were conducted and many Afghans received visas but of late, many applications are

pending and very few have received extension. According to her, pendency and non extensions have led to refugees' stay becoming technically illegal and this leads to fear and makes them vulnerable to exploitation because they end up working in informal sectors with exploitative situations where they cannot even complain to police officials since they do not have visas. Since the passports have changed and computerized, the old handwritten passports are not accepted. Since they have fled out of fear from their countries, it's hard to have documentation especially with lack of financial resources making it almost impossible to get help from their own embassy who might not even be willing to assist on account of these people being refugees. All these barriers might make some people get into negative coping mechanisms which is not favourable and therefore the system and the stakeholders need to work together and see what possible work can be done which includes creating an enabling environment which could help solve socio-legal issues.

**8. Ms. Ragini Zutshi** also pointed out that UNHCR has been working to assist other Hindu and Sikh refugees from Afghanistan to apply for naturalization process since 2004 but due to long pendency of applications, some have lost interest and fallen from the system but there are still 700-800 applications which are pending. At this juncture, **Dr. D.M Mulay** enquired about the number of refugees from 15000 afghan refugees who are able to get into third country, to which Ms. Ragini replied that third country resettlement is not only for the Afghans but other refugees as well and from the total 29000 refugees, normally UNHCR receives a quota of 200-300 people from different countries. **Dr. D.M. Mulay** also asked about the nationality of the 29000 refugees to which **Ms Ragini Zutshi** answered that predominantly the refugees under UNHCR are from Afghan and the Rohingyas from Myanmar along with smaller number from Iran, Iraq, Syria, and Democratic Republic of Congo.

**Dr. D.M. Mulay** enquired whether UNHCR generally takes longer pending cases as priority to which **Ms. Ragini Zutshi** replied that it could also be based on

vulnerability since the last two years the number of refugees have increased without an increase in financial and human resources of UNHCR. She further elaborated that UNHCR also has an AGDM approach (Age, Gender, Diversity Mainstreaming approach) where they screen for cases that are vulnerable and those cases are fast-tracked.

**9. Shri Srinivas Kamath, Deputy Registrar (Law), NHRC** asked UNHCR whether they assist refugees in their application for Long Term Visas (LTVs) to which **Ms. Ragini Zutshi** replied in affirmation and informed that UNHCR also writes letters to concerned Government authorities about the refugees.

**10. Shri Deepak Mittal, Joint Secretary, Ministry of External Affairs (MEA),** at the outset clarified that India is not a signatory to the UN Refugee Convention, 1951 and the Protocol, 1967 therefore, anybody coming to India from abroad technically becomes a foreign resident and therefore is governed by the Citizenship Act and the Passport Act which comes under the domain of MHA. He further explained that whenever they come across cases relating to Long Term Visa (LTVs) they consult the MHA when it is required.

**11. Shri Pramod Kumar, Director (F), Ministry of Home Affairs (MHA),** elaborated that as we are not signatory to the UN Convention of 1951 and 1967 Protocol thereof, we do not recognize the ID card and Refugee status granted by the UNHCR. He further highlighted the fact that, the possession of such cards does not absolve the foreigner from legal requirements under the Foreigners Act 1946 and Passport (Entry into India) Act, 1920 and rules and orders made thereunder. He also informed that, Government of India had issued SOP to be followed by all concerned agencies while dealing with foreign nationals who claim to be refugees in 2011 which was further revised in 2019 precisely on 20<sup>th</sup> March 2019. He mentioned that, as per said Standard Operating Procedures (SOP) Long Term Visa (LTV) is granted to foreign nationals on case to case basis. He further added, that in a certain case, if it is decided that the case is not fit to be granted LTV or that LTV cannot be renewed, there is a provision for

considering all possible alternatives including deportation to the home country or to a third country after suitable consultations.

**12. Shri Pramod Kumar** also stated that there is a special provision for grant of stay visa/ residential permit to Afghan nationals staying in India due to disturbed conditions in their country which is granted to Afghan nationals on a case to case basis on the grounds of well founded fear of persecution on account of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion in Afghanistan. He also added that, stay visa is granted initially for one year at a time with the approval of MHA by FRRO and extension of same visa /residential permit, if justified is granted by FRRO concerned for 1 year at a time for a maximum period of 5 years. He further informed that, extension of stay visa beyond five years again requires approval from the MHA.

**13. Shri Pramod Kumar**, further apprised that there is also a provision for grant of LTV to certain categories of Afghan Nationals coming to India on valid travel documents and seeking permanent settlement in India with a view to acquire Indian Citizenship;

Category A: The members of Minorities communities in Afghanistan namely Hindus, Sikhs, Budhists, Jains, Parsis and Christians.

Category B: Afghan nationals married to Indian Nationals in India and staying in India

Category C: Indian origin women holding Afghan nationality married to Afghan National and returning to India due to widow, divorce or other reasons.

Category D: Cases involving extreme compassion.

**14.** He explained that in these cases LTV is granted for 5 years at a time by MHA under Category A-C and for 1 year under Category D i.e., extreme compassion. He emphasized the fact that, afghan nationals on LTV are granted various facilities such as opening of NRO Bank accounts, issuance of PAN, card Aadhar card, to engage themselves in employment in private sector, to take admission

in schools colleges, universities, technical or professional institutions etc. and to engage in self employment, but this is restricted to those who come here on valid passport and who fall into the above four categories.

- 15. Dr. D.M. Muley**, enquired about the number of people who have obtained LTV amongst the 15000 Afghan refugees so far. To this **Ms. Ragini Zutshi**, clarified that technically, as per the abovementioned categories, in the year 2019 some Hindu Afghans have started getting 5 years visa and as per the UNHCR records around 150 people in total have received 5 years visa in 2019 so far which is very less compared to the previous times. She further mentioned that many applications are still pending with the FRRO.
- 16. Shri V. Ganesh Kumar, Under Secretary, Ministry of Home Affairs (MHA), Human Rights Wing** emphasized that the Stay Visa is the most pertinent document for any person coming to India. He further stated that, as far as LTV is concerned, if someone approaches through proper channel and once the LTV is granted, all the facilities are available for them automatically. He further clarified that if someone enters India without any valid documents then they are not considered for a Stay Visa.
- 17. Shri Surajit Dey**, briefly pointed out that the focus is on the human rights of the Afghani People who are facing the genuine problems for their survival in India.
- 18. Dr. D.M. Mulay**, concluded the meeting by thanking the delegates for the discussion and stated that the plight of refugees is something which all the stakeholders should take seriously and endeavor to do as much as possible within the confines of law.

## List of Participants

### **1. Ministry of Home Affairs**

- 1.1. Shri Pramod Kumar, Director (F)
- 1.2. Shri V. Ganesh Kumar, Under Secretary (HR Wing)
- 1.3. Shri Suhail Ahmed, ASO (HR-III Section)
- 1.4. Shri Ajay Kumar, AD/BOI

### **2. Ministry of External Affairs**

- 2.1. Shri Dipak Mittal, Joint Secretary
- 2.2. Shri Neerja Kumar, Under Secretary

### **3. United Nations High Commissioner for Refugees**

- 3.1. Ms. Yukiko Koyama, Senior Protection Officer
- 3.2. Ms. Ragini Trokroo Zutshi, Associate Protection Officer

### **4. National Human Rights Commission**

- 4.1. Dr. D. M. Mulay, Member
- 4.2. Shri Surajit Dey, Registrar (Law)
- 4.3. Shri S. Kammath, Deputy Registrar (Law)
- 4.4. Shri Arun Kumar Tewari, Section Officer
- 4.5. Ms. Mahak Acharya, Junior Legal Research Consultant
- 4.6. Ms. Alo Dutt, Junior Legal Research Consultant
- 4.7. Ms. Devosmita Bhattacharya, Junior Research Consultant
- 4.8. Ms. Tania Chatterjee, Junior Research Consultant