



SRI LANKA AND ASYLUM SEEKERS

A country guidance paper for refugee supporters

Prepared for Blue Mountains Refugee Support Group www.bmrsg.org.au

NSW Australia, by Gillian Appleton, 29 July 2013 (with corrigendum July 2014)

Introduction

This paper replaces an earlier BMRSG country guidance on Sri Lanka. It is intended to assist people supporting Sri Lankans, particularly Tamils, seeking asylum in Australia (and elsewhere). It aims to identify recent (to mid-2013) reliable information on the political situation in Sri Lanka, and on the prospects for asylum seekers who might return to that country, whether through deportation or by choice.

Key points which have emerged from research for this paper are

- the continued dominance of the Sinhalese majority under the authoritarian regime of Mahinda Rajapaksa;
- continuing violations of human rights since the end of the civil war in 2009, including arbitrary arrests, disappearances, detention without charge, and torture, with the application of repressive legislation in the name of preventing terrorism;
- evidence of an upsurge in attacks on religious minorities, particularly Muslims
- evidence that returning asylum seekers, particularly those with actual or perceived involvement with the Tamil Tigers, are subject to discrimination, assault, detention and torture.

Note: readers requiring a brief summary of the demographics and recent history of Sri Lanka are referred to the Appendix (pp.22ff).



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Section 1: Current situation in Sri Lanka

Constraints on information gathering

Over time, attacks on foreign aid workers, denial of access to aid organisations, and harassment, intimidation and murders of journalists have made these groups circumspect about reporting what is actually happening in Sri Lanka¹. *Time* magazine described a culture which allows 'a near relentless siege on the nation's press'.² Reporters without Borders ranked Sri Lanka 162 out of 179 countries in its 2013 Press Freedom Index.

A 2010 study by the International Crisis Group (ICG), based on extensive primary sources, found that the threat for aid workers of being detained or forced out of the country had led many to keep quiet and avoid vigorous internal debate, undermining the quality of their work³.

More recently, the UK Foreign and Commonwealth Office's Country Update: Sri Lanka (31 March 2013)⁴ reported a number of incidents of intimidation of journalists, including an assassination attempt on a British/Sri Lankan journalist, the threatening and temporary detention of a BBC crew reporting on a Buddhist extremist rally, and three separate attacks on Tamil newspaper delivery staff.

In June 2013, the Sri Lanka Campaign for Peace and Justice, a global non-partisan movement, reported

The state owned television station - Independent Television News (ITN) - have been using their platform to attack human rights defenders. The targets of these attacks have included prominent heads of NGOs, lawyers, journalists, clergy, academics and activists in exile, the leader of the main opposition party, the United National Party (UNP), and smaller opposition parties.

Despite describing itself as a "public company under state jurisdiction", the state media is widely reputed to be under the control of the government, refusing to broadcast content critical of the Rajapaksa regime.⁵

Freedom House, in a statement issued in March 2013⁶, condemned

...the Sri Lankan government's smear campaign, which accused journalists and human rights advocates of being "traitors" for supporting a recent UN Human Rights Council (UNHRC) resolution calling for an investigation into the country's past human rights abuses. The campaign, broadcast over state television, accuses journalists of aiding the Tamil Tiger rebels and Sri Lankan minister Mervyn Silva publicly named individuals and threatened to break their limbs.

Intimidation has been ongoing since January 2012, but escalated after the adoption of the UNHRC resolution on March 22, which called for a credible investigation into atrocities committed during and after Sri Lanka's decades-long civil war. The deliberation and passage sparked anti-US and anti-resolution protests, and led to threats against well-known journalists and human rights defenders both within Sri Lanka and abroad.....The Free Media Movement, a local organization, said that some of the individuals identified in prior state broadcasts have been violently attacked.

On 17 June 2013, the Sri Lankan Ministry of Mass Media and Information officially proposed a Code of Media Ethics that would apply to print and electronic media, including the internet. Human Rights Watch described the language of the code as 'overbroad and vague' and said it that could have a severe and chilling effect on free speech.

Brad Adams, HRW Asia director commented: 'Sri Lankan journalists are already under enormous pressure not to be critical of the government, and the vagueness of this code will likely lead to greater self-censorship to avoid government retaliation'⁷.

Assaults on the Rule of Law

In November 2012, the government moved to impeach the Chief Justice Dr Shirani Bandaranayke, and in January 2013 the President signed a decree removing her from her post. More than 40 members of the International Commission of Jurists immediately condemned this action and described it as being 'in contravention of the Constitution, international human rights law and standards, including the right to a fair hearing, and the rule of law'⁸.

* See Appendix



The International Crisis Group's February 2013 *Sri Lanka's Authoritarian Turn: the Need for International Action*⁹, is a detailed recent report on the situation in Sri Lanka, based on interviews with diplomats, aid workers, journalists, and community and civil society activists. Its executive summary stated:

*Government attacks on the judiciary and political dissent have accelerated Sri Lanka's authoritarian turn and threaten long-term stability and peace. The government's politically motivated impeachment of the chief justice reveals both its intolerance of dissent and the weakness of the political opposition. By incapacitating the last institutional check on the executive, **the government has crossed a threshold into new and dangerous terrain, threatening prospects for the eventual peaceful transfer of power through free and fair elections.*** (our emphasis)

On the specific issue of pressure being placed on the Tamil minority, the ICG stated :

As the government makes explicit its hostility to meaningful power sharing between the centre and the Tamil-speaking north and east, Tamil identity and political power are being systematically undermined by the military-led political and economic transformation of the northern province.

Lawyers and human rights activists are frequent targets of government harassment. The International Federation for Human Rights, in a statement in February about the surveillance and intimidation of a well-known human rights lawyer, expressed

*... deep concern about those acts of surveillance and intimidation, which seem to be aimed at sanctioning Mr. Lakshan Dias' human rights activities. Reportedly, other lawyers who were involved in the campaign against impeachment of the 43rd Chief Justice of Sri Lanka also faced acts of surveillance, attempted abduction, shootings and threatening letters. The Observatory fears for Mr. Dias' physical and psychological integrity, and calls upon the Sri Lankan authorities to guarantee in all circumstances his physical and psychological integrity*¹⁰.

The ICG (op.cit) commented that Sri Lankans 'of all ethnicities who have struggled to preserve their democracy deserve stronger international support'. It urged a stronger UNHRC resolution in March, calling for 'concrete, time-bound actions to restore the rule of law, investigate rights abuses and alleged war crimes by government forces and the Liberation Tigers of Tamil Eelam (LTTE), and devolve power to Tamil and Muslim areas of the north and east'.

The March UN resolution noted with concern reports of continuing violations, including enforced disappearances, extra-judicial killings, torture, threats to the rule of law, religious discrimination and intimidation of civil society activities and journalists.

Critics viewed the resolution as having been watered down at the behest of the United States. Amnesty International said that while it successfully highlighted rights violations, it failed to establish an independent and international investigation into the conflict¹¹.

Evidence from NGOs and Government Reports

Despite the constraints, a range of reputable Sri Lankan and international aid and human rights organisations have gathered evidence about the situation in the country, a selection of which is summarised below.

International Crisis Group (ICG)

In its February 2013 report¹², the ICG noted that despite government claims of implementation of its Lessons Learned and Reconciliation Commission[†] recommendations, there had been no meaningful progress in Sri Lanka on the most critical issues. In its executive summary the ICG listed these as follows:

- the government has conducted no credible investigations into allegations of war crimes, disappearances or other serious human rights violations;
- rather than establish independent institutions for oversight and investigation, the government has in effect removed the last remnants of judicial independence through the impeachment of the chief justice;
- there has been no progress toward a lasting and fair constitutional settlement of the ethnic conflict through devolution of power;

[†] See Appendix



- the military still controls virtually all aspects of life in the north, intimidating and sidelining the civilian administration;
- more than 90,000 people remain displaced in the north and east, amid continued land seizures by the military, with no effective right of appeal and no fair process for handling land disputes;
- government security forces have broken up peaceful Tamil protests in the north, detained students on questionable charges of working with the Liberation Tigers of Tamil Eelam (LTTE) and actively harassed Tamil politicians;
- the government has responded with force to protest and dissent in the south, too, deploying troops to prevent the newly impeached chief justice and supporters from visiting the Supreme Court while pro-government groups attacked lawyers protesting the impeachment.

The ICG noted that serious human rights abuses continue throughout the country, including regular kidnappings and killing of political opponents and that 'Tamil identity and political and economic power in the north and east are under unprecedented threat'.

Government policies increasingly appear designed to achieve a goal long sought by extreme Sinhala nationalists: to eliminate the ability of Tamils to claim the north and east as their area of historical habitation where they have a right to some considerable degree of self-rule.

US Department of State

The US Department of State in its latest Country Report on Human Rights Practices: Sri Lanka 2012¹³ identified these major human rights problems:

- attacks on and harassment of civil society activists, persons viewed as LTTE sympathizers, and journalists by persons allegedly tied to the government, creating an environment of fear and self-censorship;
- involuntary disappearances as well as a lack of accountability for thousands who disappeared in previous years; and
- widespread impunity for a broad range of human rights abuses, particularly involving police torture, and attacks on media institutions and the judiciary.

Other serious human rights problems included unlawful killings by security forces and government-allied paramilitary groups, often in predominantly Tamil areas; torture and abuse of detainees by police and security forces; poor prison conditions; and arbitrary arrest and detention by authorities. Lengthy pretrial detention was a problem. Denial of fair public trial remained a problem, and during the year there were coordinated moves by the government to undermine the independence of the judiciary There were restrictions on freedom of speech, press, assembly, association, and movement. While citizens generally were able to travel almost anywhere in the island, there continued to be police and military checkpoints in the north, and de facto high-security zones and other areas remained off limits to citizens.....

Discrimination against persons with disabilities and against the ethnic Tamil minority continued, and a disproportionate number of victims of human rights violations were Tamils....

The government prosecuted a very small number of officials implicated in human rights abuses but had yet to hold anyone accountable for alleged violations of international humanitarian law and international human rights law that occurred during the conflict that ended in 2009

Human Rights Watch

In February 2013, Human Rights Watch (HRW) released 'We Will Teach You a Lesson', a 141-page report¹⁴ stating that Sri Lankan security forces have been using rape and other forms of sexual violence as a form of torture of suspected members or supporters of the LTTE.

The report documents 75 cases of rape against women and men in state custody between 2006 and 2012 —31 of men, 41 of women, and 3 of boys under age 18—which the evidence strongly suggests were perpetrated by members of the state security forces. The information is based on in-depth interviews conducted over a 12-month period with former detainees in Australia, the United Kingdom,



Germany, India, Malaysia, and Indonesia. HRW noted that new cases continue to be reported. (p.2)

A 29 year-old Tamil man, 29, arrested by Sri Lankan police in April 2012, told HRW:

The police officials accused me of being an LTTE [Liberation Tigers of Tamil Eelam] member and returning to Sri Lanka from abroad to revive the LTTE. They blindfolded me and pushed me into a jeep. They kept asking me the same questions, about which other LTTE members I worked with, my activities abroad. I kept refusing to answer. I was beaten up with several objects, burned with cigarettes, suspended from the ceiling, sexually abused, and raped. I was raped by different people for three nights—it was dark so I couldn't tell their faces. (p.1)

Brad Adams, HRW's Asia director, referred to 'untold numbers of rapes' and stated: 'These are not just wartime atrocities but continue to the present, putting every Tamil man and woman arrested for suspected LTTE involvement at serious risk'. Many of the cases involved an individual being abducted from their house by unidentified men, taken to a detention centre and violently interrogated and often, raped.

The report stated:

Several factors suggest that the use of sexual violence was not just a local occurrence or the action of rogue security force personnel, but a practice that was known or that should have been known by senior officials. In many cases documented by Human Rights Watch, the victims knew the security establishment to which one or more of the perpetrators belonged, and also identified camps and detention sites where the abuse occurred. (p.4)

Sri Lanka Campaign for Peace and Justice

A report of this organisation dated March 2013¹⁵, **Tamil Political Prisoners in Sri Lanka**, draws attention to the fact that Sri Lankan law permits 'preventive' detention, notably under the Prevention of Terrorism Act under which people can be arrested without charge and detained for up to 18 months, and the Emergency Regulations which 'are often applied in succession to prolong the administrative detention of suspects' (p.9).

The report states (p.8):

The rights of all prisoners in Sri Lanka are regularly violated. However, political prisoners who are Tamil, the largest ethnic minority group in the country, have been at the receiving end of some of the most severe forms of abuse. Since the [beginning of the civil war] tens of thousands of Tamils suspected of links with the LTTE have been arrested and detained in prisons, detention camps and police custody. Several Sinhalese people have been arrested for the same reasons and some of them have also faced abuse and ill treatment.

As well as detention without charge, the Campaign report notes many 'flaws' in the prison system, including transfer from prison to prison, torture, limited access to families and lack of information from authorities, denial of access to bodies, and lack of judicial discretion.

The treatment of political prisoners, as well as other human rights abuses, has been largely unnoticed by the outside world. Fred Carver, Campaign director, said:

The report is an important reminder that....torture, arbitrary imprisonment and other human rights abuses continue on a large scale in Sri Lanka.

This is particularly important in the light of continuing attempts by the UK Government to deport Tamil asylum seekers, despite clear evidence – to which this report contributes – that those, such as returnees, who are identified by the regime as troublemakers are under considerable risk of falling victim to the worst kinds of rights violations: torture, murder, rape and arbitrary detention.

Asian Legal Resource Centre

In June 2012 ACAT-France (Christian Action for the Abolition of Torture), in collaboration with the Asian Legal Resource Centre, released a report¹⁶ providing a devastating overview of the phenomenon of torture in Sri Lanka. It found that three years after the end of the civil war 'the use of torture and ill-treatment remains widespread and routine', with general impunity for the instigators.

Torture is used by security forces across the country to extract information, obtain false confessions to close criminal cases or extort money or favours. Furthermore, the situation is worrying for those suspected of having ties with the



LTTE. They are arrested and detained, sometimes in secret, for an unlimited period without access to a lawyer or their families. The use of cruel and degrading treatment is also frequent in prisons and seems to act as a form of detention management.

Victims and witnesses are subjected to intimidation and reprisals. Some have been killed or have disappeared after being kidnapped. In February 2012, a man was kidnapped in front of his wife and children in broad daylight by men armed with assault rifles. He had complained to the Supreme Court after 28 months of arbitrary detention and torture and was supposed to testify two days later before the Court, implicating senior police officers. He has not been seen since. Against this background, **many people prefer to remain silent, considering that it is dangerous and pointless to complain** (our emphasis).

The Specific Situation of Women

Human rights organisations have described the situation for women in Sri Lanka, particularly in the northern areas of Tamil concentration, as an area of grave concern, with implications for any female asylum seekers who might be returned to the country.

In 2010 the UN High Commissioner for Refugees noted that despite the end of hostilities, there were 'incidents of sexual and gender based violence against women and girls in former conflict areas. Incidents of rape, including at the hands of the military, have been reported in the north, where a large number of female-headed households are among families being resettled'¹⁷.

The ICG report **Sri Lanka: Women's Insecurity in the North and East**¹⁸ reported women's 'desperate lack of security'.

The heavily militarised and centralised control of the north and east - with almost exclusively male, Sinhalese security forces - raises particular problems for women there in terms of their safety, sense of security and ability to access assistance.The international community has failed to appreciate and respond effectively to the challenges faced by women and girls in the former war zone.

The US Department of State in its country report on Sri Lanka 2012:

*There were a number of credible reports of sexual violence against women where the alleged perpetrators were armed forces personnel, police officers, army deserters, or members of militant groups. A number of women did not lodge official complaints due to fear of retaliation.*¹⁹

In the Sri Lanka section of its Freedom in the World Report 2013²⁰, Freedom House confirmed that violence against women remained endemic.

Rape and domestic violence remain serious problems, with hundreds of complaints reported annually; existing laws are weakly enforced. Violence against women increased along with the general fighting in the civil conflict, and has also affected female prisoners and interned IDPs. The entrenchment of the army in the north and east has increased the risk of harassment and sexual abuse for female civilians (many of whom are widows) in those areas.

Human Rights Watch quotes²¹ a 34-year-old Tamil woman detained by the army in Trincomalee

They asked all six of us if we had any links with the LTTE. I did not want to lie and get caught so I told them that I had worked for the LTTE. I was taken to Veppankulam camp in Vavuniya. I was questioned and tortured by Sri Lankan army personnel and some were in uniform. I was raped many times. I cannot recall how many times. I was kept in detention for 15 days. Finally, I agreed to sign papers and admit that I was a full member of the LTTE. I just wanted the rapes and torture to stop.

Religious Minorities

In its 2013 report on Sri Lanka²², the ICG noted an upsurge in attacks by militant Buddhists on Muslim religious sites and businesses, which the government had done little to discourage. In March, Minority Rights Group International (MRGI) reported²³ that over the previous year, there had been 'an unprecedented level of violent attacks, demonstrations and hate speech targeting Sri Lanka's eight per cent Muslim population'. These attacks were mainly carried out by Buddhist fundamentalist groups and 'have left the country's second largest minority community... feeling afraid and vulnerable'.

MRGI had received reports of problems faced by other religious communities. It noted that government response had been limited and police inaction had allowed violence to take place.

In February 2013, 63 civil society organisations in Sri Lanka endorsed a statement on Anti Muslim Rhetoric and Attacks which began by noting 'an increased outpouring of virulent anti-Muslim sentiment by



persons claiming to speak for all Sinhala Buddhists’.

Organized groups led by Buddhist monks have held public meetings, distributed pamphlets, and made press statements. Articles in mainstream Sinhala and English newspapers have propagated ethnic and religious hatred. In addition, there have been hate campaigns via SMS, email, and face book.

The statement urged the need to ‘foreground our common humanity rather than the differences spawned by a long and difficult war, [and] not permit the baser elements of our society to be our only voices’.²⁴

The US State Department’s Bureau of Democracy, Human Rights and Labor 2012 Report on religious freedom²⁵ noted:

Although the government publicly endorsed religious freedom, in practice there were problems in some areas. Authorities were reluctant to investigate or prosecute those responsible for attacks on churches, Hindu temples, or mosques.

While efforts to pass anti-conversion legislation reportedly declined, some Christian groups occasionally complained that the government tacitly condoned harassment and violence aimed at them. Police generally provided protection for these groups at their request. In some cases, the police response was inadequate and local police officials reportedly were reluctant to take legal action against individuals involved in the attacks.

Other Key Challenges

Restrictions on Daily Life

A Joint Civil Society Submission²⁶ to the UN Universal Periodic Review published by the Law and Society Trust, a not-for-profit organization based in Colombo engaged in human rights documentation, legal research and advocacy, listed some of the challenges faced by returnees. These include

- difficulties finding accommodation, employment, family, and documentation
- lack of a National Identity Card which could mean re-arrest, detention and torture
- lack of any programs or policies to help them reintegrate into society, which leaves them vulnerable to abduction and extortion by armed groups

Attitudes to returnees are hostile, with others seeing them as traitors and people who brought Sri Lanka into disrepute. Systematic media attacks characterize the Tamil diaspora community as being LTTE mouthpieces and supporters.

An expert panel of Indian and Malaysian representatives which undertook a fact-finding mission in Sri Lanka reported in detail evidence of the situation on the ground²⁷. It found ‘most disturbing’ the level of control wielded by the military over the private lives of communities in the North and East. Families must inform the army of any guests they receive, their relationship, and the reason and duration of their visit. Any family celebration or event requires prior permission from the nearest police post. Anyone entering a village is required to register with the local army office, and the army must be informed even of community activities like sporting events.

Language and Culture

Language difficulties remain problematic for Tamils proceeding through any judicial processes. As long ago as 2000, the International Commission of Jurists reported²⁸ that – particularly in Colombo – Tamil lawyers and their clients face a lack of interpreters, judges who do not speak Tamil, and relevant legislation and law publications are not available in Tamil. Freedom House recently stated that ‘(l)egislation that replaced English with Sinhala as the official language in 1956 continues to disadvantage Tamils and other non-Sinhala speakers’²⁹.

In a statement of 16 March 2012³⁰ announcing its two latest reports on Sri Lanka (*Sri Lanka’s North I: The Denial of Minority Rights* and *Sri Lanka’s North II: Rebuilding under the Military*) the ICG claimed that ‘de facto military rule and various forms of government-sponsored “Sinhalisation” of the Tamil-majority region are impeding international humanitarian efforts, reigniting a sense of grievance among Tamils, and weakening chances for a real political settlement to devolve power.’

(I)nstead of providing the almost entirely Tamil-speaking north with a peace dividend, militarisation and government reconstruction efforts have dotted the region’s roads with Sinhala language sign-boards, streets newly renamed in Sinhala, monuments to Sinhala war heroes, and even a war museum and battlefields that are open only to



Sinhalese. The slow but steady movement of Sinhalese settlers along the southern edges of the province, with military and central government support and sometimes onto land previously farmed or occupied by Tamils, is particularly worrying.

Appropriation of Land

Freedom House wrote in its 2013 Freedom in the World Report about concern among observers

....that government appropriation of land in the north and east as part of economic development projects or 'high security zones' has impinged on freedom of movement and the ability of local people to return to their property, and that the land will be allotted to southerners or on politically motivated grounds. The military has expanded its economic activities in the north and east, running shops and growing agricultural produce for sale in the south, while local businesspeople are pushed out of the market³¹.

Peoples' Alliance for Right to Land (PARL) Sri Lanka – a network of civil society organisations and individuals campaigning on issues of land-grabs and landlessness across Sri Lanka – in a statement in March 2013³² highlighted through selected case-studies from the North and East, the lack of respect for the final recommendations of the Lessons Learned and Reconciliation Commission (LLRC) on issues of land in the context of return and resettlement. The case studies quoted involve the displacement and loss of land of thousands of Tamils, cutting people off from their livelihoods.

PARL called for urgent action to protect the rights of marginalised and vulnerable communities in the North and East, and speedy implementation of all LLRC recommendations towards ensuring 'justice, equity, accountability and reconciliation for all Sri Lankans'.

It noted that the LLRC in its final report observed that the 'displacement of persons as well as loss of land and homes were major conflict related outcomes, and affected all communities throughout the period'. *The LLRC concluded that 'measures and policies ensuring legitimate land rights, especially among the returning IDPs, would contribute significantly to restoring normalcy and promoting reconciliation'.*

Earlier, in 2012, the Asian Forum for Human Rights and Development (FORUM-ASIA), in association with three Sri Lankan non-governmental organisations, made a submission to the United Nations Human Rights Council drawing attention to 'the alarming trend violations of the rights to adequate housing, land and property in post-war Sri Lanka'.

The government of Sri Lanka's push for "development" is playing out in the form of forcible acquisition of land by State and private actors, including foreign corporations, displacing thousands of vulnerable people across the island. These actions undermine efforts towards reconciliation and recovery after almost three decades of war as they are only further alienating, marginalising and disenfranchising communities of farmers and fisher-folk.³³



Section 2: Prospects for Returned Asylum Seekers

Australia and Sri Lankan Asylum Seekers

On 13 August 2012 the Australian government announced that Irregular Maritime Arrivals (known as IMAs) would be liable for transfer to Manus Island or Nauru, and long delays in processing. By January 2013, a total of 935 Sri Lankan refugees had returned to Sri Lanka, voluntarily or involuntarily, the majority of whom were reportedly Sinhalese. By July, this number had risen to 1285.

Refugee support groups and lawyers have noted the Department's failure to conduct more than rudimentary processes before deportation, putting Australia in breach of its intentional obligations, and have argued that at least some of the deportees have genuine fears of persecution based on past political activity³⁴.

An Immigration Department spokesperson, quoted in December 2012:

Since May 2012 there has been an increasing number of people outlining that their reasons for coming to Australia were based on economic concerns. The process and then removal of people who make economic claims or who otherwise make unfounded claims for protection is consistent with Australia's obligations³⁵.

As Australia neared an election in 2013, the government returned to the theme of economic migration. Following the advent of the second Rudd government in July, Foreign Minister Bob Carr asserted that recent arrivals were not fleeing persecution at all but were economic migrants. This had led the government to conclude that 'we need a tougher, more hard-edged assessment'³⁶.

The government proceeded to question the continued relevance of the 1951 UN Refugee Convention, which specifies that the reasons people may claim protection are limited to their prospects of harm from race, nationality, religion, political opinion, or membership of a distinct social group. In other words, a person's economic circumstances are excluded, though the last of these reasons could, and in the case of Tamils, does, materially affect these circumstances.

As critics have pointed out, the great majority of the immigrants from Europe over the decades since the end of the Second World War would have fitted the description 'economic' migrants. Using it dismissively ignores that many are fleeing situations in their home countries – for example, the war in Afghanistan or economic sanctions of Iran - in which Australia has been an active participant.

Some returned asylum seekers interviewed by the SMH's Ben Doherty³⁷ freely admitted that their reasons for travelling to Australia were purely economic, being unable to make enough money to feed their families. Paying people smugglers who falsely claimed there were good jobs in Australia simply compounded their problems on their return, leaving them in extreme debt.

In an article in *The Conversation*³⁸, three academic experts pointed out that 'there has always been economic emigration from Sri Lanka, and many citizens left the country to escape the seemingly never-ending conflict. In fact, there are around the world about two million Sri Lankan expatriates who send back payments to their home country amounting to about 7% of GDP'.

The recent surge of Sri Lankan boat people is unprecedented, with more than more than 6,500 arriving in Australia in 2012 compared with 211 in 2011. Department of Immigration statistics state that 5215 of the 2012 arrivals were Tamils and 1027 Sinhalese.

In early 2011, IRIN, the news service of the UN Office for the Coordination of Humanitarian Affairs, reported that internationally, the number of Sri Lankan refugees wanting to return home since 2009 was increasing significantly, from 843 in 2009 to 2054 in 2010. Most of these came from refugee camps in Tamil Nadu, India. Another 2572 returned of their own accord³⁹.

But by September 2012, this situation had been significantly reversed, and the numbers returning home had declined markedly. Most Sri Lankan refugees in India told the UN 'they would rather not return, citing economic hardship and concern over human rights abuses'. On the latter, people mentioned continued abuses in the north of the country, including violence and intimidation by the military; a judicial system



that denied them basic constitutional rights; and the government's failure to account for the many thousands of people still missing in the aftermath of the war. Reported illegal land-grabbing in former Tamil areas was another disincentive to returning⁴⁰.

In September 2012, IRIN reported⁴¹ that refugees also mentioned the government's inability to account for thousands of people still missing in the aftermath of the war which left tens of thousands dead. IRIN stated: 'The Working Group on Enforced or Involuntary Disappearances of the UN Office for the High Commissioner for Human Rights has recorded more than 5,000 reported cases of wartime-related disappearance in the country, not counting those who went missing in the final stages of the conflict from 2008 to 2009'. IRIN quotes a 49-year-old resident of one of Tamil Nadu's refugee camps:

The reason no international NGOs or media are allowed in most Tamil areas is because there are still human rights violations... We hear of constant intimidation by the military and also violence. We fled a judicial system that failed us and did not allow us our most basic constitutional rights. Nothing has changed.

All evidence suggests that Tamils are the ethnic group at most risk since the cessation of outright hostilities. But there is recent evidence that Sri Lankans who have left their country for any reason, including free citizens and asylum seekers, are at risk of serious human rights abuses when they return. And there is a growing reluctance on the part of Tamils living elsewhere, even those in overcrowded refugee camps in India, to return to Sri Lanka.

In an article published on 21 May 2013, the Institute of Peace and Conflict Studies⁴² noted that even though the post-war task of rehabilitation of internally displaced persons was complete, there was 'no sign of the refugees returning home'.

The Institute recorded that as of 31 March 2013, 19,658 families consisting of 66,198 refugees were staying in 112 camps located in 26 districts of the Tamil Nadu. In addition, there were 13,288 families consisting of 34,826 refugees staying outside the camps. Despite being given travel documents, personal papers, free air tickets to Colombo and modest financial assistance from the UNHRC, only 11,500 people had returned to Sri Lanka. The Institute comments:

The tragedy of the situation is that many refugees have fallen prey to touts; they try to migrate to Australia after paying huge amounts to human traffickers. Indeed, many have lost their lives in the perilous journey between India and [Christmas] Island.

In 2013, the cost of Australia's 'border protection' and detention programs was running at \$8bn⁴³, as yet tougher policy initiatives by the Gillard government, such as the modified 'Pacific solution' and the 'no advantage' rule which left many hundreds of refugees unprocessed, did nothing to stem the tide. The academics writing in **The Conversation** concluded:

It seems obvious that the best way to address the problem would be to remove the reasons for people to take flight in the first place. However, these reasons are complex and the usual simplistic explanations are not enough. While some boat people are undoubtedly fleeing direct threats of physical violence this does not apply to everyone. Similarly, to label all as "economic" migrants is mistaken. Some are political refugees and a significant proportion — some estimates say up to 20% — are of Sinhala ethnicity. It is also obviously inadequate to blame the phenomenon on "people smugglers": after all, their trade depends on demand.

Treatment of Returned Asylum Seekers: Key Documents

(This section of the July 2104 paper has been slightly amended)

United Kingdom: Tribunal Ruling on Appeals by Tamil refugees against deportation

The Upper Tribunal Immigration and Asylum Chamber is a superior court of record and forms part of the Tribunals Service, an executive agency of the UK Ministry of Justice. Its purpose is to hear and decide appeals against decisions made by the First-tier Tribunal in matters of immigration, asylum and nationality. Appeals are heard by one or more Senior or Designated Immigration Judges who are sometimes accompanied by non-legal members of the Tribunal. Immigration Judges and non-legal members are appointed by the Lord Chancellor and together they form an independent judicial body.



In early 2013, the Tribunal ruled that a group of Tamils who had failed in their bid for asylum could not be sent back to Sri Lanka, pending an assessment of the risk they might face on their return⁴⁴. The court ruled that it would be wrong to deport them when an immigration tribunal was in the process of updating its country guidance for Sri Lanka.

The Tribunal's full decision was published on 3 July 2013⁴⁵. The Tribunal stated that it had 'had access to a wide range of oral and written documents and expertise to assist [it] in re-assessing who is at risk today if returned to Sri Lanka. It heard from 'many highly qualified witnesses with knowledge of circumstances in Sri Lanka now and of events since May 2009, and [received] over 5000 pages of documentary evidence, in written and electronic form'. This document constitutes the most detailed evidence and analysis currently available of the situation facing Tamils returned voluntarily or forcibly to Sri Lanka.

The Tribunal's analysis of the evidence concluded that the Sri Lankan government 'is determined to ensure that Tamil separatism and the conflict it brought never recur. The government's intention is being carried into effect by an intensive militarisation and Sinhalisation of former Tamil areas, "rehabilitation" of 11,000 former LTTE cadres, and intelligence-led monitoring and supervision of Tamil activities, both within Sri Lanka and in the diaspora'.

The Tribunal also found that the [Sri Lankan] government's current aim is 'to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state enshrined in the Sri Lankan Constitution in 1983, which prohibits the 'violation of territorial integrity' of Sri Lanka'.

Evidence presented to the court included a report by Freedom from Torture (qv below), and the HRW report '*We Will Teach You a Lesson*' (qv)⁴⁶. The Court also heard that between the end of the island's civil war in 2009 and September 2012, 15 failed asylum seekers who managed to find their way back to Britain had subsequently won refugee status after giving evidence to officials saying they were tortured in Sri Lanka.

Key Points from the Tribunal's Determination

The Court's determination is worth quoting in full. It replaces all previous UK country guidance on Sri Lanka.

The Court found (at p.2):

4. If a person is detained by the Sri Lankan security services there remains a real risk of ill-treatment or harm requiring international protection.

5. Internal relocation is not an option within Sri Lanka for a person at real risk from the Sri Lankan authorities, since the government now controls the whole of Sri Lanka and Tamils are required to return to a named address after passing through the airport.

6. There are no detention facilities at the airport. Only those whose names appear on a "stop" list will be detained from the airport. Any risk for those in whom the Sri Lankan authorities are or become interested exists not at the airport, but after arrival in their home area, where their arrival will be verified by the CID or police within a few days.

7. The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are:

(a) Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka.

(b) Journalists (whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan government, in particular its human rights record, or who are associated with publications critical of the Sri Lankan government. (c) Individuals who have given evidence to the Lessons Learned and Reconciliation Commission implicating the Sri Lankan security forces, armed forces or the Sri Lankan authorities in alleged war crimes. Among those who may have witnessed war crimes during the conflict, particularly in the No-Fire Zones in May 2009, only those who have already identified themselves by giving such evidence would be known to the Sri



Lankan authorities and therefore only they are at real risk of adverse attention or persecution on return as potential or actual war crimes witnesses.

(d) A person whose name appears on a computerised “stop” list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a “stop” list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant.

(8) The Sri Lankan authorities’ approach is based on sophisticated intelligence, both as to activities within Sri Lanka and in the diaspora. The Sri Lankan authorities know that many Sri Lankan Tamils travelled abroad as economic migrants and also that everyone in the Northern Province had some level of involvement with the LTTE during the civil war. In post-conflict Sri Lanka, an individual’s past history will be relevant only to the extent that it is perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan state or the Sri Lankan Government.

(9) The authorities maintain a computerised intelligence-led “watch” list. A person whose name appears on a “watch” list is not reasonably likely to be detained at the airport but will be monitored by the security services after his or her return. If that monitoring does not indicate that such a person is a Tamil activist working to destabilise the unitary Sri Lankan state or revive the internal armed conflict, the individual in question is not, in general, reasonably likely to be detained by the security forces. That will be a question of fact in each case, dependent on any diaspora activities carried out by such an individual.

Responding to the Court’s decision, the UN Committee Against Torture was highly critical of the UK Government’s record on Sri Lankan asylum seekers, recommending that the country

....observes the safeguards ensuring respect for the principle of non-refoulement, including consideration of whether there are substantial grounds indicating that the asylum-seeker might be in danger of torture or ill-treatment upon deportation. The Committee calls upon the State party to submit situations covered by article 3 of the [UN Refugee] Convention to a thorough risk assessment, notably by taking into consideration evidence from Sri Lankans whose post removal torture claim were found credible, and revise its country guidance accordingly.⁴⁷

Freedom from Torture

Freedom from Torture (FFT) compiled a comprehensive and compelling report⁴⁸ based on forensic documentation by FFT’s Medico-Legal Report Service of 24 Sri Lankan Tamil victims of torture who managed to escape and return to the United Kingdom. Among these were people who had valid UK visas and returned voluntarily to Sri Lanka, usually for family reasons. The period covered was from 2010 to 2012.

FFT reported that in the cases of torture they had documented ‘Sri Lankan Tamils who in the past had an actual or perceived association *at any level* with the LTTE but were able to leave Sri Lanka safely now face risk of torture on return’ (our emphasis).

(Tamils Against Genocide[†] has noted that ‘as a popular social movement the LTTE was integrated within many aspects of Tamil society, particularly in the period when the LTTE controlled their own de facto state....Nearly every family would be likely to have some tie to the movement either through bloodlines or their own engagement in legitimate or illegitimate activities.’⁴⁹)

Some post-arrival arrests/abductions took place in the family home, one at the airport, and some at police stations or checkpoints. The length of detention was an average of 11 days, though one person was detained for 10 months. Perceived or actual involvement with the LTTE appeared to be the reason. Accounts of burnings with hot irons, rape, sexual abuse and long periods of solitary confinement have been commonplace in the testimony of FFT clients.

FFT, which received referrals to help 334 survivors of torture from Sri Lanka in the previous two years (the highest rate since the group was founded in 1985), expressed ‘grave concern’ that individuals forcibly returned to Sri Lanka may face serious risks on their return, and that any torture survivors among them will not have access to adequate rehabilitation services.

[†] An international non-profit, non-government human rights organization devoted to advocacy, research and litigation against genocide and its accompanying human rights violations. Incorporated in 2008 in the United States. TAG has grown to become a global network of academics, lawyers, professionals, students, concerned individuals and other partners in North America and Europe who work for the cause of justice for the Tamil speaking people in Sri Lanka and against genocide anywhere



'The survivors we work with have fled the most unimaginable horror in Sri Lanka. They are at serious risk of their trauma being compounded if they are returned to the very State responsible for their torture, where they would not have access to the rehabilitative services they desperately need', Keith Best, Freedom from Torture's CEO, stated.

Fairfax Media

A Sydney Morning Herald investigative report by ben Doherty 'Asylum Seekers Return to Living Hell' (July 2012)⁵⁰ described the experience of three returning asylum seekers, two of whom were arrested at Colombo airport and one at his home. The brothers had been in jail for over two years, their only 'crime' being to have joined an opposition party and then, after persecution, chosen to leave the country.

The third refugee was tortured by the SIS (State Intelligence Service): kicked in the head, hung upside down and hit with batons from 11am to 3pm. Two men given similar treatment next to him died.

A subsequent Doherty report⁵¹, claimed 'not all returnees are jailed, but most are'. Doherty wrote that all of the 50 men returned a week earlier (32 Tamils and 12 Sinhalese) had been imprisoned. Some claimed that 'they were granted just one five-minute interview to make their case and that Australia knowingly returned them to danger'.

The report states that asylum seekers intercepted by Sri Lankan authorities face the same charge as returnees, but even harsher treatment, spending months in prison and regular derisory court appearances.

Another SMH report⁵² in March drew on firsthand interviews with returnees, revealing fears of abduction, stigma, threats on life or harm to family, visits from armed men in the night.

(The US State Department⁵³ described prison conditions in Sri Lanka as poor and said they did not meet international standards due to overcrowding and the lack of sanitary facilities.

In many cases prisoners reportedly slept on concrete floors and often lacked natural light or sufficient ventilation.....

According to prison officials and civil society sources, prisons designed for approximately 11,000 inmates held an estimated 32,000 prisoners. More than 13,000 of these prisoners either were awaiting or undergoing trial. There were approximately 1,400 female prisoners.)

Human Rights Watch

Human Rights Watch in its February 2013 report⁵⁴ stated that Sri Lankan security forces have been using rape and other forms of sexual violence as a form of torture of suspected members or supporters of the LTTE.

The report, which is mandatory reading for anyone supporting asylum seekers under threat of deportation, provides detailed accounts of 75 cases of alleged rape and sexual abuse in both official and secret detention centres throughout Sri Lanka between 2006 and 2011. HRW documented cases of both men and women being raped on multiple days, often by several people. The army, the police and pro-government paramilitary groups participated.

HRW Deputy Director Asia, Elaine Pearson, quoted in the July SMH report, said that HRW had documented at least 13 cases of Tamils who have been returned to Sri Lanka and have faced arbitrary arrest, torture, and in some cases rape by government officials.

In a media release⁵⁵ detailing torture of two Tamils – a man and a woman – who had been forcibly returned to Sri Lanka, HRW's London Director David Mepham commented: 'Given we were only able to interview a very small number of Tamils – those who had managed to escape and find their way back to the UK – it is reasonable to assume that the problem of torture facing those returned to Sri Lanka is more widespread.' He said that 'in its haste to be tough on failed asylum seekers, the British Government is turning a blind eye to compelling evidence that Tamils deported to Sri Lanka risk torture on arrival'.

Typical of the accounts HRW was able to collect was that of KP, who told HRW 'he was picked up by security personnel in a white van in the northern town of Vavuniya in August 2011, and detained for 10



days in a “small, dirty room.” The 31-year-old said that he was beaten, burned with lit cigarettes, and sexually abused until he confessed that he had supported the LTTE while studying abroad.’

Commenting on the HRW report, the then Australian Immigration Minister O’Connor said on SBS television (28 February 2013) that the federal government does not return asylum seekers without assessing any claims for protection against up-to-date country information. (See Section 3 for more on the issue of information).

Other Reports

The Law Society and Trust, a non-profit organisation based in Colombo, in a joint submission⁵⁶ prepared with other organisations documenting Sri Lankan human rights for the Research Directorate of the Immigration and Refugee Board of Canada, wrote:

[I]mmigration authorities are alerted about the impending arrival of those who are deported or who are ‘returned’ as a result of failed asylum processes. They are also identifiable by the fact that they travel on temporary travel documents. These individuals are taken out of immigration queues and subjected to special questioning by the Police, and by members of the Terrorist Investigation Department [TID]. They are almost always detained, sometimes for a few hours, and sometimes for months, until security clearance is obtained. In situations in which most families of the deported/returned persons have been displaced due to the war, are not contactable by telephone, and in which Police records that could attest to their legitimate address and non-involvement in criminal or terrorist activity have often been misplaced due to the constant cycles of displacement undergone by the entire community of the North and East in the past years, obtaining the required security clearance may take months. If there is no family member to follow up, this may lead to indefinite detention.

The same paper recorded an interview with a US academic conducting research into Sri Lanka, who stated that information from sources in the country was that the government had placed former Tamil Tigers who were working for the security forces at the airport to screen people arriving.

If you are a Tamil and have any connection to the Tamil causes, it is very likely that you would be screened at the airport and taken into police custody. It is very hard for anyone that has a connection with the Tamil Tigers to go back to Sri Lanka.⁵⁷



Section 3. The Decision-Making Process in Australia

The Political Environment

In December 2012 Australia's Foreign Minister Bob Carr, having visited Sri Lanka and met with President Rajapaksa, stated his belief that it was safe to return Tamil refugees to Sri Lanka. He stated that the LLRC – the commission the UN regarded as a failure - was the 'best instrument' to resolve any issues⁵⁸.

Many human rights, educational and legal organisations called on the Commonwealth to relocate its November 2013 Heads of Government Meeting (CHOGM), scheduled to take place in Colombo, or at least to downgrade their representation. Canada's Prime Minister stated he would not attend unless the Sri Lankan Government made significant progress on human rights and judicial independence⁵⁹. Foreign Minister Carr announced in May that he would be attending and said that he had 'seen no evidence of abuse'. He said people (unspecified) in the north had told him of former Tamil Tigers being employed and reintegrated into the community⁶⁰.

Early in 2013, Deputy Opposition leader Julie Bishop, Coalition Immigration spokesperson Scott Morrison, and Customs spokesperson Michael Keenan visited Sri Lanka. In **New Matilda**, veteran journalist Trevor Grant reported⁶¹:

Bishop stated that she saw or heard no evidence of the persecution of Tamils during her visit with Tamil MPs and others in the north....Morrison told a press conference upon his return [that] people who talked about the persecution of Tamils were talking in the past. He said things had changed markedly since the days of white van disappearances and torture chambers.

The three politicians had a 90-minute meeting with Tamil National Alliance MP Sivagnanam Sritharan, who later said that he had told them that Sri Lankan intelligence officers had raided his office two weeks earlier and jailed two of his staff members, who remained in prison.

'The Australians asked us why Tamil refugees are choosing to come to Australia. We made it very clear that our people do not have peace. They live in fear', Sritharan said.

'Even for me as a politician I am facing challenges to exercise my rights. Therefore it is very difficult for an average Tamil to live here, hence they choose to go to Australia, a country that will save lives, that respects human rights'.

Grant commented: 'They appeared determined to find the facts to fit their story, which is that all Tamil and Sinhalese refugees are economic migrants, not desperate people fleeing from danger.'

The Department of Immigration's Country Guidance Note for Sri Lanka issued in November 2010 has not been updated since that time. In July 2013 it was reported that the unit within the Refugee Review Tribunal which had provided advice on conditions in refugee source countries had been closed. The staff of this unit were transferred to the Department of Immigration on 1 July.

The implications of this move for the independence of the RRT, and thus for refugees, are cause for concern, as it is possible that the unit will be compelled to rely to a significant extent on advice from the Foreign Affairs Department (under Minister Carr). A spokesman for the Department said 'tribunal members would have access to country of origin information from a wide range of sources, including the UN Refugee Agency and the US State Department'⁶².

The process of research for this paper has shown that it is difficult to find reliable and up to date information which is not coloured by political pressures in both Sri Lanka and Australia. Staff within the Department may have little incentive to cast the net wider for information, or to maintain a disinterested approach to information-gathering, in a political climate which is hardly conducive to asylum seekers receiving a fair or sympathetic hearing.



Information-Gathering and the Role of ASIO

It is not possible to ascertain - except in the broadest terms - how and where ASIO obtains the information on which it bases its assessments. On its website ASIO states that in accordance with its Act:

...ASIO may cooperate with the agencies of other countries in order to carry out its functions. In this context, and with the approval of the Attorney-General, ASIO may communicate with the security and intelligence authorities of a range of countries. Developments in the regional and global security environment have implications for Australia's national security, so these international relationships form an important part in ASIO's counter-terrorism efforts.....

Consistent with ASIO's role as an intelligence agency, [Security Assessments] are a means by which ASIO provides advice to relevant decision makers [e.g Department of Immigration]. Security Assessments only consider factors related to security as defined in the ASIO Act, which in practice is usually terrorism, other forms of politically motivated violence, espionage and foreign interference and threats to Australia's territorial and border integrity. ASIO security assessments are not the same as police criminal or character checks, and factors such as criminal history, dishonesty or deceit are only relevant to ASIO's advice if they have a bearing on national security considerations.⁶³

Given that the Sri Lankan government is hostile to those who have left, particularly if they have LTTE connections - however tenuous - it seems unlikely that the government would pass on any information less than critical of an individual asylum seeker.

In October 2012 Justice Margaret Stone was asked to conduct an independent review of the secret intelligence used by ASIO to justify the adverse security assessments which have been used to keep some refugees in indefinite detention without any right of appeal, and to deny them knowledge of the details of their assessments.

Over 50 refugees, most of them Tamils, were, at the time of writing, living in limbo as a result of having failed to pass the scrutiny of ASIO. They have been recognised as having a well-founded fear of persecution in their country, but are not permitted Australian visas, and no other country has been willing to offer them a home.

Since the review was established, 55 refugees have been provided with summaries of the allegations against them, but these are so broad as to offer no significant insight into their assessments.

The Stone review is regarded as their only chance of release, though concern has been expressed that ASIO is under no compulsion to accept the recommendations of the review. Should ASIO reject the findings, the refugees will remain in indefinite limbo⁶⁴.

Refugee advocates and support groups are aware of situations where asylum seekers have sought documentary evidence of their past activities from inside their home countries in an attempt to exonerate themselves, but there is little evidence that this has been seriously considered by authorities in Australia.

The Stone review revealed in July that a secret internal review has upheld an ASIO decision to brand a Tamil refugee as a threat despite ASIO admitting that it had lost crucial (If questionable) evidence.

The review conceded that ASIO had relied on an unsigned, untranslated summary of the man's refugee claim that would have 'little evidentiary weight' in court, even though the Australian Government uses the ASIO finding to justify locking him in indefinite detention.

The refugee disputed the summary as a mistranslation of a UNHRC record of an interview in which he allegedly claimed to have been press-ganged into the LTTE. Ms Stone nevertheless upheld the ASIO assessment⁶⁵.

Calls for Halt to Deportations

Human rights organisations in Australia and the UK have called for a halt on deportations to Sri Lanka.

In Australia, in a 2012 letter⁶⁶ to Deputy Opposition Leader Julie Bishop, the Human Rights Law Centre wrote that her proposal of immediate deportation without processing

- would expose at least some asylum seekers to a real risk of torture, persecution or other flagrant human rights violations and therefore violate Australia's non-refoulement obligations under international law;



- would be incompatible with the Convention on the Elimination of Racial Discrimination and Australia's own Racial Discrimination Act;
- is not supported by the substantial credible evidence which shows that arbitrary arrests, detention, disappearances and even torture and extrajudicial killings remain widespread in Sri Lanka; and
- is not supported by the rate at which asylum seekers from Sri Lanka are currently accepted to have valid refugee claims by Australia.

A Department of Immigration media release in July 2013⁶⁷ announced the return of 15 Sri Lankan asylum seekers to Colombo, taking the total number of Sri Lankans sent home to that date, to 1285 – 1072 of them involuntarily - since August 2012.

A Departmental spokesman said that 'returning the group to Sri Lanka sends a powerful message.

'When people arrive in Australia without authorisation, any claims they make for their reasons to travel to Australia are assessed by the department.

'If these claims are not covered by Australia's international obligations, they will be returned to their homeland wherever possible'.

Conclusion

The evidence summarised in this report, drawn from a wide range of sources, substantiates the calls of major human rights organisations for governments, including the Australian Government, to cease deporting Tamil asylum seekers until the situation in Sri Lanka can be shown to have significantly improved.

The civil war may long be over but Sri Lankan Tamils continue to face significant problems in their country. The suggestion that because outright hostilities have ceased asylum seekers are not in danger should they be returned is open to serious question. Women and anyone with the slightest LTTE connections are particularly at risk.

The dismissive claim by politicians that a majority of asylum seekers come for economic reasons is specious. 'Economic' reasons could encompass such pressures as having one's land confiscated, one's business destroyed, loss of livelihood and extreme poverty, merely for belonging to a particular ethnic or religious minority.

While Tamils are the group most at risk, there is evidence that other minorities such as religious groups could be compromised as a result of sectarian or racist violence and discrimination, and might seek to escape from Sri Lanka.

There is demonstrable risk that returned asylum seekers will be subjected to treatment ranging from lengthy detention to torture and even death. Retribution can result from the mere fact of having fled the country, not only from being associated with the losing side in the civil war.

All Sri Lankans seeking protection in Australia should be informed of their rights as refugees and properly processed before there can be any possibility of deportation.

The changed policies on asylum seekers announced by the Rudd Government in July 2013 were aimed at ending the processing of all future IMAs on Australian soil, with immediate effect. Perhaps the only potential positive that could emerge from this latest highly political move was that the large backlog of visa applications from Sri Lankan refugees who arrived after 13 August 2012 can now be processed.



APPENDIX: Sri Lanka: Background and Recent History

Demographics

Sri Lanka's population is 20.8m⁶⁸, roughly comparable to Australia's but contained in a tiny area: 65,000 sq km.

The predominant ethnic group – Sinhalese – is estimated to make up 74% of the population, with Sri Lankan Tamils (living primarily in the north and east of the country) about 13%, the largest ethnic minority; there is an indeterminate percentage of Tamils of Indian origin - 'tea Tamils' (brought in by the British colonists in late C19th as plantation labourers but partly repatriated in the 1940s), living mainly in the south; and Sri Lankan Moors comprise 7%.

According to the US State Department's International Freedom of Religion Report 2012:

[A]pproximately 70% of the population is Buddhist, 15% Hindu, 8% Christian, and 7% Muslim. Christians tend to be concentrated in the west, Muslims populate the east, and the north is predominantly Hindu.

Most members of the Sinhalese community are Buddhists, while most Tamils are Hindus. The Muslims are predominantly Sunnis, with a small minority of Shia⁶⁹.

In this paper 'Tamils' will be used to refer primarily to the Sri Lankan Tamils, who have been at the centre of the country's longstanding ethnic unrest.

The Civil War

A civil war focused on the north and east between Tamils and the dominant Sinhalese, effectively began in 1982. The Liberation Tigers of Tamil Eelam (LTTE – 'Tamil Tigers') became the most prominent Tamil group during the 26-year war, which came to an uneasy end in 2009, with accusations of atrocities, massacres and infringements of human rights on both sides.

A report by the University Teachers for Human Rights (Jaffna)⁷⁰, a leading Sri Lankan human rights group which has exposed abuses by both sides in the civil war, claimed that in the final months of the war, government forces carried out a politically-motivated massacre of surrendering Tamil fighters (since corroborated by other sources, including the BBC). But it also accused the LTTE of torture, murder, and the forced conscription of children, and claimed the rebel group was probably responsible for most of the civilian casualties in the final days of the war, including atrocities such as gunning down civilians who they believed were trying to escape, and throwing grenades into hiding places.

Initially, the cessation of major hostilities saw improved security conditions in the country and a decrease in the number of Sri Lankans seeking refuge in industrialised countries (2947 applications in January/June 2010 compared with 4573 in same period in 2009)⁷¹.

There have however been well-documented continuing human rights violations, particularly against Tamils or those thought to be associated with LTTE. Two paramilitary Tamil groups, TMVP and PLOTE, which worked *with* the government during the war against LTTE, continue to kill, extort and kidnap Tamils with impunity⁷², and their leaders hold high government positions. A third paramilitary group, Eelam People's Democratic Party (EPDP) is closely associated with the military and/or police. Its political wing holds several parliamentary seats. According to some humanitarian groups, the EPDP is 'the most visible, intimidating and powerful' paramilitary group in Sri Lanka⁷³.

The President, Mahinda Rajapaksa[§], was elected for a second six-year term in January 2010, in elections views by independent observers as questionable in terms of both breaches of electoral law and

* *The original Tamils generally did not mix with the 'tea Tamils' and looked down on them, but that that gradually changed. The 'tea Tamils' were not suspected of involvement with the Tigers until towards the end of the war, though they experienced incidental problems. They are more likely to speak Sinhalese as well as Tamil. The Tamils who come as asylum seekers are primarily original Tamils. (Information from confidential source).*

§ There appears to be a dynasty in the making: government is dominated by the president's family. One of his brothers is Defence Secretary and another is Minister of Economic Development, while a third brother is the speaker



associated human rights violations (ranging from harassment of journalists⁷⁴ and activists to killings in Tamil areas⁷⁵.)

The Lessons Learnt and Reconciliation Commission (LLRC)

In 2010 the government established the Lessons Learnt and Reconciliation Commission (LLRC), a mechanism described by Amnesty International as '*seriously flawed and far short of international standards on national commissions of inquiry*'. Amnesty, Human Rights Watch and the International Crisis Group declined an invitation to testify before the LLRC and the Commission's final report was widely criticised for not sufficiently investigating war crimes and crimes against humanity. Minority Rights Group International noted that it '*exonerates the government for the manner in which the military campaign was conducted during the period*'⁷⁶.

On 22 March 2012 the UN Human Rights Council (UNHRC) adopted a resolution calling on Sri Lanka to implement the recommendations and take additional steps towards justice, accountability and reconciliation. In April a UN expert panel assigned blame for war crimes to both sides and called for an international mechanism to ensure justice⁷⁷.

An action plan developed by the government in response to the UNHRC, reported the ICG in February 2013, 'ignored or rejected most of the LLRC's key proposals on governance and impunity for human rights violations, and watered down even its weak recommendations to investigate a small number of alleged war crimes. More than six months after its publication, the promises of the action plan remain largely unfulfilled'⁷⁸.

Some human rights organisations have expressed a hope that the growing popularity of Sri Lanka as a tourist destination may help to encourage a better human rights environment, though this seems unlikely without a major campaign to educate potential travellers about the situation in the country. Australia's Department of Foreign Affairs and Trade advises tourists to 'exercise a high degree of caution in Sri Lanka at this time because of the unpredictable security environment'⁷⁹. The UK Government warns against potential violence associated with demonstrations, and 'an underlying threat from terrorism'⁸⁰.

of parliament. A large number of other relatives, including the president's son, also serve in important political or diplomatic positions (US Dept of State, Country Report 2012: Sri Lanka)



ENDNOTES

- ¹ United States Department of State, Bureau of Democracy, Human Rights and Labor Country Reports on Human Rights Practices for 2012: Sri Lanka, p.19ff, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>
- ² 'Amid Abuse and Fear, Tamils Continue to Flee Sri Lanka', 15 April 2013, <http://world.time.com/2013/04/15/krista-sri-lanka-draft/>
- ³ Crisis Group Asia Briefing No99, Sri Lanka: a bitter peace, January 2010, pp.18-19
- ⁴ <http://fcohrdreport.readandcomment.com/human-rights-in-countries-of-concern/sri-lanka/quarterly-updates-sri-lanka/>
- ⁵ <http://blog.srilankacampaign.org/2013/06/the-state-medias-vicious-attacks-on.html> 6 June 2013
- ⁶ <http://www.freedomhouse.org/article/sri-lanka-targets-journalists-smear-campaign>, 23 March 2013
- ⁷ <http://www.hrw.org/news/2013/06/18/sri-lanka-proposed-media-code-threatens-free-speech>
- ⁸ Asian human Rights Commission, <http://www.humanrights.asia/resources/journals-magazines/article/2/1201/09/?searchterm=Sri%20Lanka>
- ⁹ International Crisis Group, Sri Lanka's Authoritarian Turn: The Need for International Action, Asia Report N°243, 20 February 2013
- ¹⁰ <http://www.fidh.org/Sri-Lanka-Acts-of-surveillance-and-12955>, 27 February 2013
- ¹¹ <http://www.bbc.co.uk/news/world-asia-21873551>
- ¹² International Crisis Group, op.cit
- ¹³ US State Department, Country Report, op.cit, Summary, p.1
- ¹⁴ <http://www.hrw.org/reports/2013/02/26/we-will-teach-you-lesson>
- ¹⁵ N.Sivathasan, Tamil Political Prisoners in Sri Lanka, <http://www.srilankacampaign.org/>
- ¹⁶ <http://www.humanrights.asia/news/alrc-news/ALRC-PRL-002-2012>
- ¹⁷ UNHRC Eligibility Guidelines For Assessing The International Protection Needs Of Asylum-Seekers From Sri Lanka, United Nations High Commissioner for Refugees (UNHRC) 5 July 2010, /EG/SLK/10/03
- ¹⁸ <http://www.crisisgroup.org/~media/Files/asia/south-asia/sril-anka/217%20Sri%20Lanka%20-%20Womens%20Insecurity%20in%20the%20North%20and%20East%20KO.pdf> 2011 (date accessed 9 January 2012, Executive Summary)
- ¹⁹ Op. cit p.8
- ²⁰ <http://www.freedomhouse.org/report/freedom-world/2013/sri-lanka>, unpaginated
- ²¹ HRW, op cit, We will teach you a lesson, p.1
- ²² ICG, op cit, p.4
- ²³ www.minorityrights.org/11808/briefing-papers/islamophobe-and-attacks-on-muslims-in-Sri-Lanka
- ²⁴ <http://www.colombotelegraph.com/index.php/csos-condemns-anti-muslim-rhetoric-and-attacks/> 15 Feb 2013
- ²⁵ <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm#wrapper>, Government Practices
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