

## Update on the dangers facing Tamil Asylum Seekers upon their return to Sri Lanka

**Graeme Swincer OAM<sup>1</sup> for Blue Mountains Refugee Support Group, January 2019**

The Australian Government continues to demonstrate determination to return numbers of Tamil Asylum Seekers to Sri Lanka. This policy is clearly based on flawed information about the security situation related to the Tamil population. The Australian decision makers repeatedly reject the protection claims of Tamil asylum seekers based on the notion that since the end of the war in 2009 peace has been restored and Tamils are no longer in danger or subject to discrimination. The substance of this assertion has never been true, as demonstrated emphatically in the following information. In July 2018 the Blue Mountains Refugee Support Group published a summary report on this issue: “*Sri Lanka, Australia and Asylum Seekers Country Guidance Update July 2018*”<sup>2</sup>. This update reinforces that report and adds significant additional information.

### A. Summary of July 2018 report

The July 2018 report cited above highlighted on-going tensions and dangers in Sri Lanka, including further evidence of widespread torture and the failure of the Sri Lankan Government to protect human rights. It drew especially on reports from several international human rights bodies:

- the UN Human Rights Council<sup>3</sup> (on 21 March 2018);
- the UN Committee Against Torture<sup>4</sup> (in November 2016)
- Human Rights Watch<sup>5</sup> (on 20 June 2018), and
- Amnesty International<sup>6</sup> (on 9 December 2016).

These reports unanimously confirm the picture of continuing danger faced by the Tamil population and the failure of the Sri Lanka government to protect Tamils from severe injustices and inhuman treatment. The following points provide concise summaries of the information, much of it quoted or paraphrased from the original research paper.

- a. Despite a change of government in January 2015 under the new president, Maithripala Sirisena, the people of Sri Lanka are still struggling to rebuild the country’s democratic institutions and obtain justice for the crimes committed during the civil war, which ended in 2009. Along with others, the reports mentioned above note the slowness of the government in implementing the transitional justice mechanisms which were required by resolution 30/1 of the UN Human Rights Council, passed in 2015, namely:
  - a special court for alleged war crimes, with support from international practitioners;
  - a reparations tribunal to provide victims and survivors potential restitution;
  - an office for missing persons to investigate disappeared persons; and
  - a truth and reconciliation office.
- b. The UN Committee Against Torture and Amnesty International both note that torture by police remains a common practice and demand that Sri Lanka must take decisive action to stop torture and other ill-treatment.
- c. The UN Special Rapporteur on Torture reporting on his mission to Sri Lanka in April/May 2016, (published in December 2016), noted that in the North and East, anyone deemed to have had any link to LTTE during the conflict and political and human rights activists remain subject to extensive surveillance and intimidation by the military, intelligence and police forces. In addition, he found prison conditions were inhumane, characterized by very deficient infrastructure and pronounced overcrowding.
- d. Subsequently the UN Special Rapporteur on countering terrorism, Ben Emmerson QC, reporting on his mission to Sri Lanka in July 2017 (published in July 2018) said that “*None of*

<sup>1</sup> Retired agricultural scientist, international development programs coordinator, and cross cultural consultant, trainer and researcher.

<sup>2</sup> <https://www.bmrsg.org.au/compassion/wp-content/uploads/2018/08/Sri-Lanka-update-July-2018-final.pdf>

<sup>3</sup> <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22875&LangID=E>

<sup>4</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/020/09/PDF/G1702009.pdf?>

<sup>5</sup> <https://www.hrw.org/news/2018/06/20/testimony-john-sifton-human-rights-concerns-sri-lanka-house-foreign-affairs>

<sup>6</sup> <https://www.amnesty.org.au/sri-lanka-much-remains-to-be-done-on-torture/>

*the measures so far adopted to fulfil Sri Lanka's transitional justice commitments are adequate to ensure real progress.*" He said that reform had ground to a halt, and that individuals are still held in detention under the Prevention of Terrorism Act and are subject to routine and systemic torture. The Tamil community remains stigmatised and disenfranchised, while the trust of other minority communities is being steadily eroded. He reported that *"the counter-terrorism apparatus is still tainted by the serious pattern of human rights violations that were systematically perpetrated under its authority. . . . at the time of writing, the PTA remained on the statute book. The new draft Framework largely reflects the interests of the security sector and is far from being adequately grounded in international human rights law. . . impunity is still the rule for those responsible for the routine and systemic use of torture, and countless individuals are the victims of gross miscarriages of justice resulting from the operation of the PTA.*

Based on this evidence, as highlighted by the July 2018 article cited above, **"it is still unsafe for returnee asylum seekers returning to Sri Lanka. It is a criminal offence for them to have left Sri Lanka without permission, and they face arrest and prosecution on their return to Sri Lanka."**

In addition, there have been on-going incidents involving inter-communal violence, attacks and hate speech against minorities, including violence against Muslims in the Kandy district in March 2018 that led to the proclamation of a state of emergency for 12 days.

- e. On 20 June 2018 John Sifton of Human Rights Watch reported to the US House of Representatives Foreign Affairs Committee, Subcommittee on Africa, Global, Global Human Rights and International Organizations, noting that **"Sri Lanka's human rights problems today extend beyond issues of justice and accountability"**. *[emphasis added]* *The draconian Prevention of Terrorism Act, which has long facilitated torture and other abuse, remains in effect. The government has also failed to initiate reforms to the security sector and criminal justice system, such as establishing accountability for police abuses or bringing criminal laws in line with international standards. Muslims and other religious minorities face on-going threats and violence from ultra-nationalist Buddhist groups."*

It should be noted that this HRW report contains as an appendix the full Human Rights Watch 2017 report for Sri Lanka that had been published in January 2018<sup>7</sup>.

- f. The UN Committee against Torture considered a report on Sri Lanka in November 2016 and noted allegations of routine torture during police detention:

*" . . . torture is a common practice carried out in relation to regular criminal investigations in a large majority of cases by the Criminal Investigation Department of the police, regardless of the nature of the suspected offence. . . . police investigators often fail to register detainees during the initial hours of deprivation of liberty or to bring them before a magistrate within the time limit prescribed by law, during which time torture is particularly likely to occur. . . . neither the Attorney General nor the judiciary exert sufficient supervision over the legality of the detention or the conduct of police investigations to prevent this practice. . . . magistrates often do not inquire into potential ill-treatment during pre-trial hearings and agree to the requests of police officers to keep suspects in remand custody without further scrutiny."*

- g. Similarly, Amnesty International has criticised **the government's lack of progress on prevention of torture and other ill-treatment** in a report on 9 December 2016:

*Amnesty International is encouraged by some of the important steps Sri Lanka has taken, including the introduction of legislative and other measures designed to prevent torture and other ill-treatment. However, these efforts have yet to be implemented effectively, leaving impunity for perpetrators in place. [emphasis added]*

*The Sri Lankan authorities have also failed to act on previous observations made by the Committee against Torture. Safeguards are yet to be introduced to prevent torture and other ill-treatment by the security forces, and despite prohibitions in Sri Lanka's*

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<sup>7</sup> <https://www.hrw.org/world-report/2018/country-chapters/sri-lanka>

*Evidence Ordinance, courts continue to admit “confessions” obtained through torture and other ill-treatment into evidence. [emphasis added]*

- h. The UN Special Rapporteur on torture and other cruel inhuman or degrading treatment or punishment reporting on his mission to Sri Lanka in April/May 2016, commented on surveillance and intimidation in the North and East as follows:

*“Owing to the heavy militarization that still exists in the North and East of the country, surveillance continues to be used as a tool of control and intimidation. In addition to rehabilitated persons, many former detainees under the Prevention of Terrorism Act and their families, anyone deemed to have had any link to LTTE during the conflict and political and human rights activists remain subject to extensive surveillance and intimidation by the military, intelligence and police forces. While the extent and level of this practice have dropped compared to the early post-conflict period, **systematic surveillance and intimidation continues, sometimes constituting ill-treatment.**” (para 42) [emphasis added]*

## **B. Recent detailed accounts of incidents of violence against Tamils**

The summary reports cited above, unanimously pointing to continuing discrimination and violence against Tamils, including widespread violence, can be complemented and illustrated by numerous detailed accounts of specific incidents and practices.

- For example in January 2018 Human Rights Watch published a record of 34 case studies, *“Locked Up Without Evidence: Abuses under Sri Lanka’s Prevention of Terrorism Act”*<sup>8</sup>. The report is based on interviews with 34 former detainees or their relatives and it documents serious human rights violations under the PTA right up to 2017, including severe torture and sexual abuse, as well as systematic denials of due process. The study concludes that nine years after the end of the “war”, the Prevention of Terrorism Act “has remained in effect, and has been used to arrest and hold people without charge or trial for months, even years. Many PTA detainees have been tortured in custody, and others have been among those forcibly disappeared. Those released have suffered psychologically as well as physically.”
- Two other accounts illustrate and highlight the continuing victimisation of innocent Tamils many years after the war was officially ended.

### ➤ **Jaffna village terrorised by revenge arrests by SL Special Task Force**<sup>9</sup>

The lucrative practice of “sand scooping” is officially illegal in Sri Lanka, but it is widely executed by the rich and powerful, especially military personnel and their friends. These “actors” do not take kindly to poor villagers getting part of the action. In July 2017 SL police and STF targetted the population of Thunnaalai when some of the youth, unable to find jobs, were turning their hand to sand scooping. 24-year-old Yogarajah Thinesh escaped the police hunt but was later found and gunned down. The villagers then smashed the local police post, and this has resulted in a revenge campaign of “targeted cordon and search arrests”. At least 42 young Tamils have been victims of this disproportionate and unaccountable action and have fled to seek refuge elsewhere. Demands for an independent investigation and repeated complaints to the SL Human Rights Commission have fallen on deaf ears.

### ➤ **The case of Tamil fisherman Santhiyogu Anton**

On 28 June 2016, 38-year-old Tamil fisherman Santhiyogu Anton was abducted and tortured in gruesome fashion by agents linked to the Sri Lanka Military Intelligence. Anton was told he would lose his eyes if he didn’t provide names of former LTTE people who had not undergone SL ‘military rehabilitation’. He has been harassed many times over the years, suffering frequent abductions and arrests in spite of a lack

<sup>8</sup> 29 January 2018, <https://www.hrw.org/report/2018/01/29/locked-without-evidence/abuses-under-sri-lankas-prevention-terrorism-act>

<sup>9</sup> TamilNet, 10 August 2017, <https://www.tamilnet.com/art.html?catid=13&artid=38769>

of evidence of LTTE links. Originally, in 2001, he was detained with the allegation of telephone contact with a 'suspect' of the famous LTTE military operation on Katunyake military airbase and the international airport, but was released through lack of evidence. However the Sri Lanka Military Intelligence has threatened and pursued him relentlessly for 15 years. The cease-fire of 2009 has not given him or his wife any relief or peace.

- **Report on conflict related sexual violence perpetrated against captured Tamil men in the past decade**

A ground-breaking report from the International Truth and Justice Project<sup>10</sup> was released in Geneva in September 2018 while the UN Human Rights Commission was in session. Author Professor Heleen Touquet concludes that the sexual abuse of Tamil men in detention in Sri Lanka is massive and widespread and has occurred throughout the conflict and the post-conflict period. The report provides a narrative analysis of the experiences of more than one hundred male victims of sexual violence by the state.

The testimonies, collected by the ITJP over the last four years provide a unique resource that gives insight into the strategic patterns of sexual violence against men taking place in Sri Lanka, the role of the various security forces, the impact on survivors as well as the barriers to access justice and services. While genital mutilation is very prevalent, rape and gang rape in particular are also very common, featuring in almost half of the statements. Instances are recorded of female perpetrators, with commentary that this is no exception in Sri Lanka.

The goal of the sexual abuse is partly about obtaining confessions and extracting information. However the more important agenda is clearly domination and absolute control over victims, expressed in gross acts of dehumanisation. The analysis furthermore supports the idea that sexual violence against Tamil men is a crucial element of the "torture style" employed by various security forces and functions to demobilize and terrorise the community.

The men are usually picked up in front of family members or abducted in broad daylight. Very often they do not return to their families of origin but have to flee abroad after their release. In other concrete instances younger men and boys have been sexually targeted at army checkpoints and then released.

The author concludes that *"for the Government of Sri Lanka, there is no escaping the fact that a complex of security organs has to all intents and purposes morphed the so-called Prevention of Terrorism Act into an unwritten Promotion of Torture Act. The PTA, even if not used to charge the detainees directly, has given rise to a deeply disturbing pattern of grotesque and sexualised excesses and must correspondingly be repealed forthwith."*

The report also points to the wider context:

***Nearly ten years after the war, the Tamil population in the heavily militarised north of Sri Lanka continues to suffer the consequences of the 30 year conflict. Various reports by NGO's and international organisations have provided evidence that much as the war has officially stopped, the violence is still ongoing. Thousands of former fighters and surrendeers were brought to what were called "Rehabilitation Centres" by the government after the conflict ended in 2009. However, the 'rehabilitation' consisted of collective punishment and arbitrary detention, sometimes for several years.***

### **C. Recent political events**

The unwarranted presumption of safety for Tamils is even less defensible now, in light of the recent (26 October 2018) political upheaval caused by presidential intervention to replace the

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<sup>10</sup> "Unsilenced: Male survivors speak on conflict-related sexual violence in Sri Lanka":  
[https://www.researchgate.net/publication/328126748\\_Unsilenced\\_Male\\_survivors\\_of\\_conflict-related\\_sexual\\_violence\\_in\\_Sri\\_Lanka\\_speak](https://www.researchgate.net/publication/328126748_Unsilenced_Male_survivors_of_conflict-related_sexual_violence_in_Sri_Lanka_speak)

elected prime minister Ranil Wickremesinghe with previous president Mahinda Rajapaksa. Rajapaksa was a notorious oppressor of Tamils and condoned gross mistreatment of Tamils even after the vaunted “end of the war”. When Rajapaksa was appointed there were immediate statements from experts emphasising the serious implications for the Tamil population. For example: “Sri Lanka's Tamils are at imminent risk after Rajapaksa's return”<sup>11</sup>, and “Sri Lanka: Stepping Back from a Constitutional Crisis”<sup>12</sup>. The latter report, from the International Crisis Group, states:

*Should Rajapaksa's position as prime minister be ratified in parliament, his return to power will likely end Sri Lanka's flagging efforts at ethnic reconciliation.*

Fortunately Rajapaksa was not confirmed as prime minister, and Wickremesinghe was reinstated on 16 December 2018, following intervention by the Supreme Court<sup>13</sup>. However this does not mean that the situation is now stable. The situation is strained with president Sirisena now clearly in the opposite camp from the prime minister. Sirisena cannot be trusted to remain passive and he will be expected to throw his weight behind Rajapaksa in any general election. Importantly, Sirisena is opposed to Wickremesinghe's interest in investigating alleged abuses during Sri Lanka's long civil war, which ended in 2009.

## D. Summary

There can be little doubt that the Tamil population of Sri Lanka continues to be vulnerable to both significant discrimination at many levels and serious danger from government security forces, local police and various rogue elements. Alleged or suspected links with the LTTE often form the basis of targeted violence, frequently amounting to extreme torture. There is no assured protection and government commitments have repeatedly proved to be empty. The notorious Prevention of Terrorism Act is still used to torment the Tamil population in spite of commitments to suspend and replace it with more humane laws. The proposed replacement (“Counter Terrorism Act”) is no better and has stalled in the parliament anyway. Returned asylum seekers will be very likely to face extreme difficulties in this context.

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<sup>11</sup> Mario Arulthas<sup>11</sup>, 29 October 2018, <https://www.aljazeera.com/indepth/opinion/sri-lanka-tamils-imminent-risk-rajapaksa-return-181028092113245.html>

<sup>12</sup> International Crisis Group, Briefing 152 / Asia, 31 October 2018, <https://www.crisisgroup.org/asia/south-asia/sri-lanka/b152-sri-lanka-stepping-back-constitutional-crisis>

<sup>13</sup> “Sri Lankan president reinstates the prime minister he sacked, ending standoff”, Associated Press, 16 December 2018: <https://www.cbc.ca/news/world/sri-lanka-prime-minister-1.4948224>