

Further Update on the Dangers Facing Tamil Asylum Seekers if they were to be Returned to Sri Lanka

Graeme Swincer OAM¹ for Blue Mountains Refugee Support Group, October 2022

In January 2019 I summarized and published² a solid body of information that reinforced the previously published conclusion³ 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 targetted 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.”*

Based on these high quality reports, I (a) concluded that *“Returned asylum seekers will be very likely to face extreme difficulties in this context”* and (b) argued that the Australian Government policy of returning numbers of Tamil Asylum Seekers to Sri Lanka was clearly based on flawed information about the security situation related to the Tamil population.

In spite of that overwhelming evidence, there has been little sign of a shift in Australia’s policy. Indeed in the past 3 and a half years there have been a plethora of reports that reinforce my previous conclusions. This is an attempt to summarise (and occasionally spell out in detail) that information and highlight the key conclusions. In most cases the title alone sends a clear message.

Two sets of reports are especially noteworthy: (a) successive reports from the UN High Commissioner for Human Rights on Sri Lanka, and (b) the commentary on a May 2021 landmark immigration case in the United Kingdom, in which three Upper Tribunal judges have been scathing in their rejection of Australian and UK country reports used as a basis to determine asylum applications for Sri Lankan Tamils. These are complemented and supplemented by a number of expert research papers.

A. Reports from the UN High Commissioner for Human Rights on Sri Lanka since 2021

1. Tamils – and Justice – Can’t Wait: The Need for Decisive UN Action on Sri Lanka, February 2021⁴

Tasha Manoranjan⁵, founder of People for Equality and Relief in Lanka, highlighted the fact that the entrenched impunity demonstrated by the Sri Lanka government in relation to the deaths of tens of thousands of Tamil civilians before 2009 has kept the conflict on the Human Rights Council’s agenda ever since. She complained that while a 2012 internal review of the U.N.’s actions (“or, more accurately, inaction”) in the final stages of the war and its aftermath exposed “systemic failure”, it did not lead to a sufficiently strong and effective response. She declared that the whole chapter until then indicated inconsistency with the principles and responsibilities of the UN. However she seemed hopeful that the most recent (2020) report from the Office of the High Commissioner for Human Rights (OHCHR) would lead to effective action. She noted that *“the report tracks Sri Lanka’s current, deteriorating human rights situation, identifying developments that “risk the recurrence of... the grave violations of the past.”*

Since then, there have been further UN reports; the most recent two of these are highlighted below.

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

² <https://bmrsg.org.au/wp-content/uploads/2020/11/Update-on-the-dangers-facing-Tamil-Asylum-Seekers-upon-their-return-to-Sri-Lanka-Jan-2019-1.pdf>

³ <https://www.bmrsg.org.au/compassion/wp-content/uploads/2018/08/Sri-Lanka-update-July-2018-final.pdf>

⁴ 19 February 2021, <https://www.justsecurity.org/74837/tamils-and-justice-cant-wait-the-need-for-decisive-un-action-on-sri-lanka/>

⁵ Tasha Manoranjan is founder and serves on the Board of Directors of PEARL (People for Equality and Relief in Lanka).

2. Sri Lanka: UN Report Describes Alarming Rights Situation

In March 2022 Human Rights Watch issued a significant analysis⁶ of an earlier United Nations report – from the UN High Commissioner for Human Rights on Sri Lanka, which showed the rights situation in alarming decline and contradicted government claims of improvement. The report documents discrimination against religious and ethnic minorities and security forces’ targeting of civil society groups, while accountability for past abuses has been blocked.

“The Sri Lankan government has responded to international scrutiny of its rights record with a false and misleading public relations offensive”, said Meenakshi Ganguly, South Asia director at Human Rights Watch.

The following excerpts highlight the main issues:

“. . . the current government, led by President Gotabaya Rajapaksa, is pursuing policies that are hostile to the Tamil and Muslim communities, while using the security forces to intimidate and suppress human rights activists and the families of victims of enforced disappearance. Abuses, including torture, arbitrary detention, and extrajudicial killings, have continued.

“The Sri Lankan government is actively targeting minorities and civil society groups, while it protects alleged rights violators and undermines the rule of law,”

3. ‘Impunity remains a central obstacle to the rule of law’ – UN report demands demilitarisation of North-East⁷

Ahead of the 51st session of the United Nations Human Rights Council (UNHRC) (12 September–7 October 2022), the UN High Commissioner released a scathing report on Sri Lanka⁸ outlining the deepening militarisation, the continued harassment of Tamil survivor communities, and the deterioration of human rights on the island.

The “OHCHR continues to receive reports of surveillance, intimidation, harassment of journalists, human rights defenders, families of the disappeared and persons involved in memorialization initiatives, by intelligence services, military and police, particularly in the North and East”.

The report adds:

“Families of the disappeared face surveillance, questioning, intimidation and unannounced visits by intelligence officers and the police, especially when they are actively involved in protests or memorialization”.

This harassment is particularly harsh for former female cadre and as the report details:

“Former LTTE cadres, including women, are subject to intensive surveillance, regardless of whether they have undergone the government’s ‘rehabilitation’ scheme or not. Women ex-combatants still face serious security risks, including sexual abuse and extortion, including by security forces and others”.

The High Commissioner fears that without fundamental security-sector reforms and demilitarization of the North and the East, this pervasive culture of surveillance and oppressive environment for the people in these areas will continue”.

B. May 2021 landmark immigration case in the United Kingdom

In a landmark immigration case in the United Kingdom⁹, three Upper Tribunal judges have been scathing in their rejection of Australian and UK country reports that are used as a basis to determine asylum applications for Sri Lankan Tamils. Reliance on these country reports has had serious consequences for many Sri Lankan applicants, particularly Tamil people seeking asylum

⁶ *Sri Lanka: UN Report Describes Alarming Rights Situation*, March 3, 2022, <https://www.hrw.org/news/2022/03/03/sri-lanka-un-report-describes-alarming-rights-situation>

⁷ 06 September 2022, <https://www.tamilguardian.com/content/impunity-remains-central-obstacle-rule-law-un-report-demands-demilitarisation-north-east>

⁸ “*Situation of human rights in Sri Lanka*”, Advanced Unedited version: [https://www.tamilguardian.com/sites/default/files/Image/pictures/2022/London%20FOD%20protest%202022/A_HRC_51_5_AdvanceUneditedVersion%20\(1\).pdf](https://www.tamilguardian.com/sites/default/files/Image/pictures/2022/London%20FOD%20protest%202022/A_HRC_51_5_AdvanceUneditedVersion%20(1).pdf)

⁹ <https://tribunalsdecisions.service.gov.uk/utiac/2021-ukut-130>

in Australia: refusal of protection on the basis of what the UK court has said is “unreliable information”.

The court also confirmed that if returned to Sri Lanka, the refused applicants risk being subjected to torture, which the Tribunal says is endemic in the country.

The UK Home Office was prompted to remove the relevant reports and policy documents from the particular case. Indeed the Home Office was forced to withdraw its Country Policy and Information Note: *Tamil Separatism, Sri Lanka, May 2020*, which was its general policy document guiding decision makers on how to determine protection claims. An amended asylum policy was demanded, in line with the findings of the Upper Tribunal case in question.

Furthermore, the UK Tribunal recognised that the ‘authoritarian and paranoid’ Government of Sri Lanka monitors proactively the activities of Tamils in the diaspora and, as such, if identified persons are returned to Sri Lanka, they are at serious risk of detention and torture on return, not just at the airport, but following return to their home areas.

There has been a strong response to this judgment in Australia and beyond. Note especially the June 2021 article “**Human rights groups demand suspension of reports on Sri Lanka to assess refugee applications following rejection by a UK court**”¹⁰. The article mentions that a previous joint media release had announced that in a 2020 submission to the Department of Foreign Affairs and Trade (DFAT), the International Truth and Justice Project (ITJP) and the Australian Centre for International Justice (ACIJ) advised of their concerns relating to the accuracy, methodology and validity of the conclusions reached in DFAT’s Country Information Report Sri Lanka 4 November 2019. That submission had noted that DFAT’s Country Information reports are required to be considered by decision makers at (a) the Department of Home Affairs, (b) the Immigration Assessment Authority (IAA) and (c) the Administrative Appeals Tribunal (AAT), when assessing claims for refugee protection, that the reports are held by the Department of Home Affairs to be credible and authoritative, and that decision makers rarely depart from the positions presented in the reports. However this policy is strongly contested by the Human Rights groups mentioned plus several refugee and human rights organisations in Australia, especially in light of the May 2021 UK case cited above. The previously expressed concerns are now reinforced in the strongest possible terms.

These humanitarian and professional groups demanded that the 2019 DFAT report be set aside on the basis that it is factually inaccurate and relies on sources which are unreliable and lacks demonstrated knowledge of the real situation on the ground in Sri Lanka. The organisations also call on DFAT to issue an immediate notice that its 2019 and previous reports contained inaccuracies and to alert all responsible agencies, including the Department of Home Affairs, the IAA and the AAT and all refugee and community organisations in the sector. They say **“Immigration decision makers should be directed to suspend reliance on this report, and the UK Home Office report, until measures are taken to correct the record. An urgent review should be initiated into Tamil asylum cases already refused by decision makers placing weight on these reports.”**

The joint media release contained several clear statements, excerpts of which follow:

- (a) Ms Yasmin Sooka, Executive Director, International Truth and Justice Project said:
“This level of denial of ongoing abduction and torture is another layer of violence perpetrated against the victims and is quite disgraceful. There is no doubt that the abduction and torture of Tamils continued unabated up until the present day. The ITJP has continued to document ongoing violations of abduction, torture and rape of Tamils by the Sri Lankan security forces that occurred as recently as 2020 – and increasingly the victims are too young to have had any role in the war. All they did was ask for their rights.”
- (b) Ms Rawan Arraf, Executive Director, Australian Centre for International Justice said:
“It is staggering that DFAT would assert that torture is no-longer state sponsored in Sri Lanka in the face of overwhelming evidence from independent and verified sources. Australia has an obligation to prevent and punish the crime of torture, and to ensure that people who are seeking safety in this country are not be sent back to danger. Instead, DFAT’s report downplayed and denied the prevalence

¹⁰ Joint Media Release, Australia, 03 June 2021, <https://asrc.org.au/2021/06/03/joint-media-release-human-rights-groups-demand-suspension-of-reports-on-sri-lanka-to-assess-refugee-applications-following-rejection-by-a-uk-court/>

of torture in Sri Lanka as well as the practice of abduction and unlawful detention by Sri Lanka's security forces. The UK's country guidance decision is further confirmation that the DFAT report cannot be relied on and must be set aside. For the people affected there is too much at stake."

- (c) Ms Sarah Dale, Centre Director of the Refugee Advice & Casework Service said:
"To continue to have their claims for asylum assessed against a DFAT report found to be unreliable, flawed and potentially biased, amounts to a vast failure in our justice system. It leaves vulnerable individuals and families at risk of being sent back to the very danger from which they fled. People are regularly denied protection in Australia based on information relied upon in such reports, there needs to be an avenue for review when such misinformation determines the outcome which so gravely affects someone's life."
- (d) Dr Carolyn Graydon, Principal Solicitor, Asylum Seeker Resource Centre said:
"We have had long standing concerns with DFAT country information downplaying human rights violations against Tamils in Sri Lanka, being used as the basis to deny Tamil asylum seekers the protection they are entitled to. The consequences of such a report going unchecked may already have resulted in Tamil people being forcibly returned to situations of torture, in breach of Australia's human rights obligations.
"The bias reflected in the DFAT Sri Lanka Report has now been exposed in clear findings by a British Tribunal presided over by three judges. Immediate steps must be taken by the Australian Government to recall the report and cease its use in all refugee determination assessments currently before decision makers. There should also be an independent review conducted of all Tamil asylum cases already refused by primary and merits review decision makers which have placed weight on the information provided in this flawed report, to mitigate the risk of any further people facing refoulement to Sri Lanka and provide them with a further opportunity to have their cases assessed against accurate and balanced country information."
- (e) George Newhouse, Principal Solicitor and Director, National Justice Project said:
"There is evidence that Sri Lankan refugees remain in real danger of torture if they are forcibly returned to danger in Sri Lanka. Australia will be in breach of its non-refoulement obligations under international law if we continue to use unreliable country reports to determine the fate of so many Sri Lankan refugees. These are serious matters, lives are at risk."

It is to be noted that a new DFAT report on Sri Lanka was issued in December 2021¹¹, 6 months after the joint media release cited above. However, by any measure this new DFAT report provides hardly any substantial advance on the 2019 DFAT report. No reference is made to the joint media release or indeed to the May 2021 UK Upper Tribunal judgment which condemned the use of DFAT reports. There is still scant admission of the dangers facing Tamils in Sri Lanka – in contrast the situation documented strongly and professionally by numerous high quality investigators. The best DFAT could concede in relation to mistreatment of Tamils was *"The ITJP cited 76 alleged cases of torture between 2015 and 2017 involving Tamils suspected of LTTE involvement, the majority of which followed 'white van' abductions, and were reportedly conducted by Counter-Terrorism Investigations Division (CTID), CID and members of the armed forces. All cases allegedly involved physical and psychological torture, such as beatings, burning, asphyxiation and rape."* Note the qualifications "alleged" and "reportedly", presumably meant to throw doubt on the veracity of the ITJP report. It seems obvious that this is a diplomatic document, designed to please the Sri Lanka government, and if so it certainly should not be relied upon in matters of life and death.

Dr Niro Kandasamy, Lecturer at the Australian Catholic University, also referred to the UK court judgment in his June 2021 article **Why do Tamil asylum seekers need protection — and why does the Australian government say they don't?**¹² Affirming the general consensus "a damning critique of the DFAT report", he reiterated the details presented in the court judgment: ***None of the sources are identified, there is no explanation as to how the information from these sources was obtained, and there is no annex containing, for example, records of any interviews.***

The December 2021 DFAT report does little to remedy these observations.

¹¹ DFAT COUNTRY INFORMATION REPORT SRI LANKA, 23 December 2021, https://www.google.com/search?q=DFAT+COUNTRY+INFORMATION+REPORT+SRI+LANKA+23+Decemb er+2021&rlz=1C1GCEA_enAU877AU877&oq=DFAT+COUNTRY+INFORMATION+REPORT+SRI+LANKA+23+December+2021&aqs=chrome..69i57j0i30i546j0i546l2j0i30i546.3688j0j15&sourceid=chrome&ie=UTF-8

¹² June 15, 2021, <https://theconversation.com/why-do-tamil-asylum-seekers-need-protection-and-why-does-the-australian-government-say-they-dont-162609>

C. Expert articles addressing the dangers facing Tamil Asylum Seekers if returned to Sri Lanka.

The UN reports cited above and the comments related to the UK Upper Tribunal quoted in section B are complemented by several other high quality reports. I will list them chronologically, with brief quotations and comments.

1. Post-War Sri Lanka: Fractured and Unjust for Tamils¹³

Specialist journalist Visvajit Sriramrajan¹⁴ observed that more than a decade after the Mullivaikkal massacre (the brutal killing of nearly 50,000 Tamils over a few days, effectively ending the civil war), ***“Tamils remain heavily discriminated against by a state that has yet to reckon with its violent past”***. He states:

The war may have drawn to a close, but the island’s minority Tamils continue to be discriminated against severely by the majoritarian government, which has been increasingly emboldened in its subjugation of Tamils since the rise of Gotabaya Rajapaksa to power following the country’s 2019 presidential election.

. . . In Tamil-majority districts, the end of the war has not been synonymous with the withdrawal of troops.

. . . Tamils are routinely stopped and searched without explanation at military checkpoints, while reporters are censored and attacked.

. . . Police violence is also rampant and disproportionately affects Tamils. Demonstrators demanding answers to the whereabouts of their abducted children or the return of their ancestral lands are told to clear out without notice. Tamils are reprimanded for commemorating their deceased.

2. Australia deems Sri Lanka safe for Tamils like the Murugappan family from Biloela. But is it?¹⁵

In June 2021 senior ABC reporter Max Walden¹⁶, discussed the situation of the Murugappan family of Biloela fame while they were still held on Christmas Island. He quoted Vashini Jayakumar, a Tamil refugee and family friend of the family, who told the ABC: *“I believe Tamil[s] still face danger in Sri Lanka.”*

The article provides historical information on the oppression of the Tamil population of Sri Lanka, finally quoting Charishma Ratnam, a researcher at the Monash Migration and Inclusion Centre

“While the war ended 12 years ago, what we are continuing to see now is militarisation of the north-east of Sri Lanka . . . So there is continued fear amongst the Tamils, and especially for those Tamils who are returning after fleeing, for their wellbeing and livelihoods.

“Tamils who have recently returned to Jaffna after fleeing have experienced abductions, sexual and physical violence, and state-sanctioned torture.”

Walden states that *“Some international law experts, including Francis Boyle, go as far as arguing that Tamils are victims of genocide”,* and that *“The UN, EU, US and human rights groups continue to express concern over the situation facing Tamils and other minorities in Sri Lanka”*.

He mentions that a 2020 report by the US State Department cited, *“long-standing, systematic discrimination in university education, government employment, housing, health services, language laws, and procedures,”* against Tamils.

He also quotes Clive Williams, a former senior Defence official, who told the ABC that Australia, *“regarded the Tamil LTTE as a terrorist organisation and put its support behind the Sri Lankan government and disregarded the atrocities committed by government forces”. . . . “It seems to have believed [the Sri Lankan] government assurances about the wellbeing of the Tamils and chosen not to sympathise with the Tamils, possibly to discourage boat people coming to Australia.” . . .*

¹³ 15 May 2020, <https://thediplomat.com/2020/05/post-war-sri-lanka-fractured-and-unjust-for-tamils/>

¹⁴ Visvajit Sriramrajan is a journalist who writes on the intersection between minority rights and governmental policy in South Asia.

¹⁵ 17 June 2021, <https://www.abc.net.au/news/2021-06-17/sri-lanka-tamil-asylum-explainer-australia-deportations/100213684>

¹⁶ Max Walden is a reporter and producer with ABC Asia Pacific Newsroom in Melbourne.

"Classifying the Tamils coming here as economic migrants has been convenient, but they could also be classed as refugees."

Walden is yet another commentator who highlights the fact that "A British court recently rejected the Australian and UK country reports as a basis to determine asylum applications for Sri Lankan Tamils. Significantly, he notes that "Neither Home Affairs nor the Sri Lankan High Commission returned the ABC's request for comment", and that "DFAT did not provide comment on the record".

Finally, Walden quotes Ms Meenakshi Ganguly, South Asia director at Human Rights Watch: *Tamil asylum seekers in the past have faced ill-treatment after they were deported, . . . If they had participated in protests against government atrocities, they can also be detained and are at risk of torture.*

3. Why do Tamil asylum seekers need protection — and why does the Australian government say they don't?¹⁷

This article by Dr Niro Kandasamy has been cited above. It summarizes the earlier findings of the Human Rights Watch, the International Truth and Justice Project, and the UNHRO, drawing the following conclusions:

" . . . Sri Lanka has one of the worst records of state-perpetrated violence against civilians in the early 21st century.

"The post-war period has . . . been marked by the ongoing persecution of the Tamils."

"military occupation of the north and east of the island "is a cruel legacy" of the war and encroaches on Tamil civilian life" (HRW).

"Sri Lankan police . . . committed torture against civilians, with many of the perpetrators who orchestrated such crimes occupying senior positions in government. (ITJP)

" . . . deteriorating human rights situation in Sri Lanka, . . . deepening impunity, increasing militarization of governmental functions, ethno-nationalist rhetoric, and intimidation of civil society. (UNHRO)

The article notes that "Australia's position when it comes to Sri Lanka — and the safety of Tamils — has drawn criticism from human rights experts at home and overseas", highlighting the May 2021 UK Tribunal judgment discussed above.

Finally, the article mentions "reports from Tamils deported from Australia that they have been targeted by local security forces on their return to Sri Lanka".

4. The Overlooked Human Rights Problem: Sri Lankan Tamils¹⁸

After an erudite historical survey, the author Senthil Meyyappan¹⁹, writing for the International Relations Review continues:

Fast forward to today and one can still clearly see remnants of the conflict that ended over a decade ago but not in the shape of outright war.

She describes the experience of "Witness W344":

a male who's suffered from torture and imprisonment ever since his teenage years. He anonymously joined 14 other Tamils who had suffered the Sri Lankan government's inhumane treatment of previous political dissidents to share his story to the International Truth and Justice Project, the ITJP. Their experiences were so horrifying and despicable that soon after, the ITJP filed a case in the United Nations legal system alleging that Sri Lankan Prime Minister Gotabaya Rajapaksa had played a role of tacit compliance to the nation's security forces' project of detaining and interrogating members of the minority Tamil community . . . with little concern for human rights. In the report filed and published by the ITJP, witnesses narrated a collective experience of being held hostage in bloodstained rooms where they were "tortured, photographed, fingerprinted (with an inkpad), and forced to sign a confession in Sinhala."

Meyyappan then declares:

. . . Only 3 of the 15 whistleblowers were even once members of the LTTE, whereas the other 12 had been detained and tortured for no other reason than the fact that they shared the same language, culture, and community as an ethnicity that the Sri Lankan government saw as a threat. Many of the

¹⁷ Op.cit.

¹⁸ 12 October 2022, <https://www.irreview.org/articles/the-overlooked-human-rights-problem-sri-lankan-tamils>

¹⁹ Senior Officer of Model UN Club

witnesses with the ITJP recounted being sexually assaulted and raped by police officers, some remembering the trauma in vivid detail while others were in such shock, they couldn't gather much of what had happened to them. The report also details the common practice of using white vans with no number plates on behalf of the state to kidnap Tamils to interrogate them for supposed intent of insurrection, which the report supplements with numerous first-hand accounts by Sri Lankan residents and statements by international institutions such as Amnesty International and the Asian Human Rights Commission. This disregard to due process of law and equal protection of the laws, which are constitutionalized in Sri Lanka, and human rights has escalated in recent years . . .

. . . There exists also conclusive evidence supportive of the narrative given by the 15 witnesses who told their stories. Medical reports written by independent experts confirmed the torture recounted by the 9 witness, and the ITJP photographed several scars on the bodies of the witnesses.

. . . In 2017, the ITJP handed over a report to the UN that described Sri Lankan military-run sex camps where Tamil wives, mothers, and sisters were being held as sex slaves for soldiers.

. . . The UN Working Group on Enforced Disappearances stated in 2020 that Sri Lanka was the 2nd highest nation with enforced disappearances, the significant majority of which are attributed to the systematic usage of white vans by the Sri Lankan government to detain and torture and rape Tamil people.

5. Evidence of Sri Lankan crimes against Tamils is 'overwhelming' – Wayne Jordash QC on landmark ICC submission²⁰

A 30 October 2021 Editorial in the Tamil Guardian stated that “World-leading expert in international rights and humanitarian law Wayne Jordash QC²¹ is calling on the International Criminal Court (ICC) and the UK to investigate crimes perpetrated against Sri Lankan Tamils”.

The editorial continued:

“It’s crystal clear that the [Sri Lankan] government has been involved in a policy of persecuting the Tamils,” he told the Tamil Guardian in an interview this week. “The evidence is quite overwhelming that these crimes are occurring, and it is quite crystal clear from the 200 victims that we represent, that there are thousands, if not tens of thousands more.” [emphasis added]

Jordash stated that:

“this is the strongest communication I have submitted to the ICC. . . There is overwhelming evidence of the range of acts of abduction, unlawful detention, torture, deportation, deprivation of the right to return, persecution in the UK, persecution where the Tamils end up in another country seeking refugee status. There is no doubt that these crimes occurred, there is no doubt that they are continuing to occur.”

6. Tamils fear prison and torture in Sri Lanka, 13 years after civil war ended²²

In a significant March 2022 article specialist journalist Hannah Ellis-Petersen²³ spell out first hand evidence of the recent abuses experienced by Tamils in Sri Lanka. She summarises:

In recent years some of the worst abuses that were rife in the years after the war, from white-van abductions, torture and sexual crimes against Tamils, have abated. What never disappeared was the draconian Prevention of Terrorism Act (PTA). Since it was passed in 1979, the PTA has been a stain on Sri Lanka’s human rights record, enabling arbitrary arrest, detention without charge or evidence, forced confessions and torture of anyone suspected of terrorism.

. . . A 2020 report by the Human Rights Commission of Sri Lanka found that 84% of PTA prisoners were tortured after arrest and they are regularly held for between five and 10 years without trial. The European parliament recently declared that the act “breaches human rights, democracy and the rule of law”.

. . . Over the past two years, human rights organisations and the UN have reported an escalation of the harassment, surveillance and arbitrary detentions of Tamils, journalists and civil rights activists, and a “colonisation” policy, involving the systematic seizure of Tamil land by the government and military.

²⁰ <https://www.tamilguardian.com/content/evidence-sri-lankan-crimes-against-tamils-overwhelming-wayne-jordash-qc-landmark-icc>

²¹ Wayne Jordash QC (now KC) is co-founder and managing partner of Global Rights Compliance (GLC).

²² 27 Mar 2022, <https://www.theguardian.com/world/2022/mar/26/tamils-fear-prison-and-torture-in-sri-lanka-13-years-after-civil-war-ended>

²³ Hannah Ellis-Petersen is the Guardian's South Asia correspondent.

7. Years after civil war, Tamils and Muslims in Sri Lanka still fear persecution²⁴

In May 2022 Lakshmi Subramanian Human, senior special correspondent at The Week Magazine, documented examples of the appalling ongoing treatment of Tamils by the Sri Lankan Government, with special reference to misuse of the notorious anti-terror law. In so doing he affirmed and supplemented the reports cited above. He summarised:

More than 13 years after the Sri Lankan civil war, many Tamils in the country's north and east still fear persecution. The government has used the Prevention of Terrorism Act (PTA), 1979, to arrest what it calls dissidents and has allegedly tortured them into submission. Under the PTA, any "suspect" can be arrested without warrant for "unlawful activities" and placed in detention without being produced before a judge for 18 months.

The author continued, referring to the notorious Prevention of Terrorism Act:

The Sri Lankan government has been accused of using the "draconian" law to stifle criticism. "The detention order can be renewed for a further 90 days and continue to be renewed for up to 18 months," says Ambika Satkunanathan, a human rights lawyer and former head of the human rights commission. She has written several research papers on the "abusive" PTA. "The Sri Lankan authorities have acknowledged the inherently abusive character of the PTA but have failed to repeal it as promised," she says. "The last government proposed its own legislation to replace the law, but failed to [do so]."

Several examples are cited, including the story of Murugaiah Komahan, who was arrested under the PTA for his alleged links with the rebels in 2010 and has started working for PTA detainees:

His Voice of the Voiceless, in northern Jaffna, gives them legal help. "The confession statement [in such cases] is in Sinhala," he says. "The detainee will be physically tortured and made to sign it." Most of the detainees end up signing it even though they do not know Sinhala. "The police tried to force me to sign a confession," he says. "When I refused, I was severely beaten. An officer even threatened to shoot me. When I complained to a judge about being tortured, I was beaten even more."

Another example:

Komahan fasted for nine days in jail to protest his arrest. In 2016, he was freed for lack of evidence. But, even now, he is under constant surveillance.

And yet another of many examples:

"At Mullaitivu in the north, Ganesan Chithra Saraswathi, 58, is waiting for her son Dharshan to be released from jail. "I do not know for what he was arrested," she says. "But I want him to come back soon to take care of his younger brother. I know my son was physically harassed." Every month, she goes to see him at the Vavuniya court in the Northern Province when he is produced before the magistrate. The authorities had picked him up as he was with the LTTE during the last phase of the war."

Summary and Conclusion

Key reports and articles of the past 3 and a half years relating to the dangers facing Tamil asylum seekers if they were to be returned to Sri Lanka reinforce and accentuate the previous conclusions that (a) "Returned asylum seekers will be very likely to face extreme difficulties" and (b) the Australian Government policy of returning numbers of Tamil Asylum Seekers to Sri Lanka was clearly based on flawed information about the security situation related to the Tamil population.

In particular, (a) successive reports from the UN High Commissioner for Human Rights on Sri Lanka, and related commentary, and (b) the commentary on a May 2021 landmark immigration case in the United Kingdom, have provided unequivocal support for these conclusions.

The three Upper Tribunal judges in the UK case were scathing in their rejection of the Australian and UK country reports used as a basis to determine asylum applications for Sri Lankan Tamils, and insistent that these reports be no longer used. Experts, lawyers, human rights advocates and others have used this judgment to strengthen their long-standing appeals for review of both the policies and the many flawed adverse decisions of the past decade. Perhaps the best summary was provided by

²⁴ 15 May 2022, <https://www.theweek.in/theweek/more/2022/05/06/years-after-civil-war-tamils-and-muslims-in-sri-lanka-still-fear-persecution.html>

the joint media release of June 2021²⁵, referring to DFAT's Country Information Report Sri Lanka 4 November 2019:

“Immigration decision makers should be directed to suspend reliance on this report, and the UK Home Office report, until measures are taken to correct the record. An urgent review should be initiated into Tamil asylum cases already refused by decision makers placing weight on these reports.”

It is clearly time for Australia's Department of Home Affairs to act with alacrity, professionalism and integrity to set right all the injustices that have been perpetrated because of the misguided use of flawed country information and failure to pay proper regard to all of the contrary information that has been readily available.

Furthermore, it is clear that Australia must take a much more sympathetic approach to present and future Tamil Asylum seekers from Sri Lanka, including refusing to regard them as criminals if they try to flee their country in search of safety.

Finally Australia must join international efforts to condemn the policies and actions of the current government in Sri Lanka towards Tamils and other minorities, and to work towards, appropriate changes, including restoration of justice and safety.

²⁵ <https://asrc.org.au/2021/06/03/joint-media-release-human-rights-groups-demand-suspension-of-reports-on-sri-lanka-to-assess-refugee-applications-following-rejection-by-a-uk-court/>