Treatment of Failed Asylum Seekers

An Overview of the Persecution Faced by Failed Asylum Seekers Returning to Sri Lanka

Tamils Against Genocide

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ABSTRACT

This report seeks to show that failed asylum seekers who are returned to Sri Lanka are at risk of intimidation, arbitrary detention, disappearance and violence on account of the fact that they sought asylum elsewhere.

1 EXECUTIVE SUMMARY

This report describes relevant recent developments regarding the treatment of failed asylum seekers to Sri Lanka. It presents various sources of country of origin information showing that failed asylum seekers are at risk of persecution upon return simply by virtue of the fact that they sought asylum abroad and also because of imputed political opinion regarding involvement with or sympathy for the LTTE.

1.1 RISK OF TORTURE UPON RETURN

There is credible evidence showing that failed asylum seekers are at a heightened risk of torture and arbitrary detention immediately upon return simply on the basis of their status as failed asylum seekers.

1.1.1 Human Rights Watch, in its latest press release on 29 May 2012[1], declared that "the United Kingdom should immediately suspend deportations of ethnic Tamil asylum seekers" as "investigations by Human Rights Watch have found that some failed Tamil asylum seekers from the United Kingdom and other countries have been subjected to arbitrary arrest and torture upon their return to Sri Lanka." It states that "in addition to eight cases in which deportees faced torture on return reported in February, Human Rights Watch has since documented a further five cases in which Tamil failed asylum seekers were subjected to torture by government security forces on return from various countries, most recently in February 2012."

1.1.2 This was a restatement of its position on returnees to Sri Lanka stated in the press release titled "Sri Lanka: Australia Should Raise Torture Concerns" in April 2012[2]:

[…] Australia's immigration minister should raise concerns with Sri Lankan officials about alleged arbitrary arrest and torture of people who were refused asylum and sent back to Sri Lanka when he visits this week, the Human Rights Law Centre and Human Rights Watch said today. […] "Rejected asylum seekers returned to Sri Lanka have been subject to arbitrary detention, torture, and other serious human rights abuses," said Phil Lynch, executive director of the Human Rights Law Centre. "[…] Human Rights Watch has documented at least eight cases in which people who had unsuccessfully sought asylum in the UK were returned to Sri Lanka and endured serious human rights abuses, including torture and rape. Some said they were beaten with batons and burned with cigarettes. The Edmund Rice Center in Australia similarly documented in May 2010 that asylum seekers returned to Sri Lanka were handed over to the Criminal Investigation Department, the Sri Lankan police, and taken into custody. Some have been detained and assaulted. […]

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[1] http://www.hrw.org/news/2012/05/29/uk-suspend-deportations-tamils-sri-lanka

[2] http://www.hrw.org/news/2012/04/30/sri-lanka-australia-should-raise-torture-concerns

1.1.3 There is primary evidence supporting claims of torture against failed asylum seekers. Tamils Against Genocide (TAG) has documented the torture and arbitrary detention of a failed asylum seeker returned from the UK. An excerpt from a signed witness statement provided from him states:

"…about 5 C.I.D officers beat me. And pushed me roughly and tightly. They hit my head against the wall and tore my T shirt off. Then one person untied the knots in my hand and ordered me to undress. They forced me to undress and then beat me left and right with their booted legs.. T they tied my hands back again ,spoke something in Sinhala, switched off the lights and locked me inside The light switch was outside the room. I was locked alone in a small room. I was not given any food that day. I did not know what will happen to me ever after. After some time, they came in switched on the lights and opened the door. It should have been the following day. I couldn't gage the time. I was lying naked on the floor .They came and kicked me with the boots. One of them spoke in broken Tamil. He said that I was a member of the L.T.T.E because my family member was an important person in the L.T.T.E. They beat me all over (my head, back and legs).I replied that I didn't know anything at all already screaming with pain. One of them spoke very bad Tamil and beat me with a big stick. He didn't want to my pleas and then they hit my genitals with their booted legs. I couldn't bear the pain and I fainted. I did not know what happened thereafter."

1.1.4 The United Kingdom Border Agency's latest Operational Guidance Note (OGN) on Sri Lanka from April 2012[3] includes country of origin information documenting accounts of torture and arbitrary detention of failed asylum seekers upon return.

The OGN states:
3.6 Fear of persecution by the Sri Lankan authorities
Treatment of failed Asylum seekers (see also section 5: Returns)
[…]3.6.35 … In February 2012, Human Rights Watch stated that its research found that "some returned Tamil asylum seekers from the United Kingdom have been subjected to arbitrary arrest and torture upon their return to Sri Lanka" and documented specifically "eight recent cases in which people deported to Sri Lanka have faced serious abuses" obtaining "medical evidence supporting each of the [eight] claims of torture".

3.6.36 Amnesty International (AI) reported in June 2011 that the United Kingdom rejected 26 asylum seekers from Sri Lanka, most of whom were Tamil, and that when the returnees arrived in Colombo, they were taken for questioning. AI's Sri Lanka researcher is quoted as saying that "[t]he government of Sri Lanka has a history of arresting and detaining rejected Sri Lankan asylum seekers upon their return and we are aware of cases of people being tortured". In a news item about the pending deportations issued on 16 June [2011], the day before the deportations, the same researcher is also quoted as saying that "the

[3]http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/ognsrilankaogn?view=Binary

end of the armed conflict in Sri Lanka in May 2009 has not diminished the risks faced by rejected Sri Lankan asylum seekers, who continue to be subjected to arrest and detention upon their arrival in Sri Lanka". In October 2011, Amnesty International stated that "Sri Lankan nationals returning to the country after living abroad are at risk of being arbitrarily detained on arrival or shortly thereafter. Sri Lankan nationals who are failed asylum seekers are especially at risk and are likely to be interrogated on return".

1.1.5 The Research Directorate, Immigration and Refugee Board of Canada, Sri Lanka reported on 22/08/2011[4]:

[...] In contrast to the Canadian High Commission official's statement is a joint submission prepared specifically for the Research Directorate by the following parties: Law and Society Trust, a non-profit organization based in Colombo that is "conducting human rights documentation, research and advocacy" work (Law and Society Trust n.d.); INFORM Human Rights Documentation Centre, a "Sri Lankan human rights organization" that has been active since 1989 and that focuses on "monitoring, documentation and networking" (WEDO n.d.); Networking for Rights in Sri Lanka, a group creating a national and international network of Sri Lankan human rights defenders (NFR Sri Lankan.d.); and a human rights lawyer in the United Kingdom (UK) (Law and Society Trustet al. 18 July 2011, 7).

With regard to security procedures at the Colombo airport for failed Tamil refugee claimants, their joint submission states that [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 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. (Law and Society Trust et al. 18 July 2011, 5) Their joint submission further notes that Tamil returnees are "particularly vulnerable if they arrive individually, and if no one knows they are arriving" (ibid., 6).

[…] In a January 2011 article, the daily Sri Lanka Guardian reported that Colombo's Katunayake International Airport has a "heavy presence of the intelligence officers" who "systematically targeted" Tamils coming back from overseas, putting them through "extensive interrogative processes for several

[4] http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e

hours" (5 Jan. 2011). According to the news site's sources, Tamil passengers on all incoming and outgoing flights are the focus of the TID (Sri Lanka Guardian 5 Jan. 2011). These sources report that TID officials take individuals into custody, either interrogating them for hours or taking them away "in unmarked white vans to unknown destinations" (ibid.).Similarly, the joint Law and Society Trust submission notes that Tamil returnees are detained and questioned about their connections with the LTTE in Sri Lanka, prior to their leaving the country, about the circumstances of their departures and about their links while they were outside the country. This can be a long process and under the PTA [Prevention of Terrorism Act] persons can be detained for prolonged periods. (Law and Society Trust et al. 18 July 2011, 6)

According to the joint submission, detention conditions are "very brutal" (ibid.). […]

1.1.6 In its report[5], "Out of the Silence: New Evidence of Ongoing Torture in Sri Lanka " released on 7 November 2011, Freedom From Torture (FFT) documents further evidence of ill-treatment of failed asylum seekers in Sri Lanka "through the detailed examination of evidence of torture which took place between May 2009 and early 2011, as documented in the case sample of 35 completed medico-legal reports prepared by Freedom from Torture".

The report states at page 7:

"Return to Sri Lanka from abroad: 14 of the 35 cases report periods of residence or travel abroad preceding detention and torture: five travelled for educational purposes, three for family reasons and four for the purpose of seeking refuge outside of Sri Lanka. In the remaining two cases, the purpose of travel was not stated. Of the four who sought refuge abroad, three were forcibly returned to Sri Lanka. In one case the individual had unsuccessfully claimed asylum in the UK a number of years earlier but was returned to Sri Lanka from another European state. Another was returned from a European state after two years of residence, having been refused asylum there. Of the 10 cases involving individuals who travelled abroad for non-asylum purposes, nine returned voluntarily to Sri Lanka (all from the UK). Several report returning for temporary visits for a variety of family reasons and two due to the disappearance of their fathers. One individual was en route to a non European state for family reasons, but was returned en route due to the use of false documents.

All of the 14 individuals who had returned to Sri Lanka after a period abroad, whether they left Sri Lanka through a legal route or otherwise, were subsequently detained and tortured. "

[5]http://www.freedomfromtorture.org/sites/default/files/documents/Sri%20Lanka%20Ongoing%20Torture_Freedom%20from%20Torture_Final%20Nov_07_2011.pdf

1.2 CONTINUED SURVEILLANCE

1.2.1 Furthermore, the report also documents that the risk of torture, re-arrest and arbitrary detention continues beyond the point of immediate return by providing evidence that failed asylum seekers were targeted at varying time periods following their return.

"In five of these cases, the episode of detention and torture documented in the MLR occurred over a year and up to seven years after return. However, in nine cases the individual was detained within days, weeks or a month of their return. Of these nine cases, six were detained in Colombo, either from their home, at checkpoints or from a lodging house. Others were detained at checkpoints elsewhere in the country or directly from the airport upon arrival."

1.2.2 Tamil Net, SLA suspected in slaying Jaffna youth while ex AG defends crimes as normal, 27/04/2012[6]

[…] Sri Lankan military intelligence resorts to liquidate Tamil youths it suspect by using different means in recent times, human rights activists in Jaffna said, citing a brutal killing that took place on Tuesday this week at Vathiri Junction of Nelliyadi in Vadamaraadchi. The killer squad followed 28-year-old Sivarooban Sivagnanam, who had returned from Qatar six months ago when he was on his way to Manthikai hospital from his house in Koththiya-kaadu in Tho'ndaimaanaa'ru, taking food to his hospitalised father. The squad that followed Sivaraoopan in motorbike, knifed him to death in broad daylight near a Sri Lanka Army camp located near the Vathiri junction, residents said. The pattern of the killer squads nowadays is to use swords and knives so that it will look as acts of 'normal crimes'. The squads avoid deploying guns. […]The incident on Tuesday also shows the monitoring carried out by SL military intelligence on people coming back from abroad. […]

1.2.3 TamilNet, UK deportee killed while Tamil Nadu returnees arrested in Trincomalee, 28/03/2012[7]

[…] In the meantime, in a systematic combing operation launched by the special units of Colombo's military and police establishments, up to 300 Tamil males and females have been 'arrested' and sent to military detention camps in Welikanda and Vavuniyaa since last Saturday. Among the victims are also people who have recently returned from Tamil Nadu and they too have now ended up in Welikanda and Vavuniyaa, the sources in Trincomalee further said.[...] Meanwhile, last week, the military and police units that had come from Colombo to launch the combing operations in the district were having lists of recently deported people from abroad, the details of returnees from Tamil Nadu and details of ex- LTTE members who were released by them earlier, the sources

[6] http://www.tamilnet.com/art.html?catid=13&artid=35128
[7] http://www.tamilnet.com/art.html?catid=13&artid=35136

further said.Although the official explanation for the combing operations by the SL military was that it was targeting former LTTE members who had not undergone SL government 'rehabilitation' programme, the arrests that have taken place during the nights in the past week have also targeted those who were not members of the LTTE, civil sources further said.[...] Despite the earlier reports that around 200 Tamil men and women were sent to detention, the civil sources in Trincomalee city now say that reports reaching from several remote villages indicate that around 300 Tamils have been taken.At Kumpu'rup-piddi alone, more than 40 Tamils have been arrested and sent to detention by the genocidal Sri Lankan military. […]

1.2.4 The Research Directorate, Immigration and Refugee Board of Canada, Sri Lanka reported on 22/08/2011[8]:

[…] According to the Law and Society Trust-led joint submission, some of the challenges faced by returnees, other than at the airport during re-entry, include difficulties finding accommodation, employment, family, and documentation (Law and Society Trust et al. 18 July 2011, 6). The report notes that if the returnees do not obtain a National Identity Card (NIC), "they could face re-arrest, detention and torture" (ibid.). There are also no programs or policies in place to help returnees reintegrate into society, leaving them "vulnerable to abduction and extortion by armed groups" (ibid.). Returnees are also viewed with "suspicion," and are generally seen as "'traitors,' 'those who brought the country to disrepute' [and] '... lied about the situation in the country abroad'" (ibid., 6-7). They also face "systematic media attacks" that characterize "the Tamil diaspora community as being LTTE mouthpieces and supporters" (ibid., 7). […] The Law and Society Trust-led joint submission also notes that even if a deported/returned person is 'cleared' and allowed to leave the airport, they are in danger of being detained at check-points for any number of reasons, and also subject to intimidation and extortion. They also face a threat from paramilitary groups who may abduct and torture them for information or for purposes of extortion. (ibid., 6) […]

1.3 PERCEPTION OF INVOLVEMENT WITH THE LTTE

There is a strong presumption that asylum seekers and refugees are linked to the LTTE.

1.3.1 It was reported in The Australian on 29 May 2012[9] that "the Sri Lankan government has accused the remnants of defeated terrorist group the Tamil Tigers of funding the passage of asylum-seekers to Australia". Furthermore, "Sri Lanka says

[8] http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e

[9] http://www.theaustralian.com.au/national-affairs/immigration/people-smuggling-a-tamil-propaganda-plot-sri-lanka/story-fn9hm1gu-1226370442602?sv=bb335000b53a0f7cf8c353d9995d412a

it is part of a campaign to convince the world that Sri Lanka is not safe for Tamils" and "the claim -- dismissed by the Tamil community and doubted by the Gillard government -- came as authorities in Sri Lanka detained 113 asylum-seekers and six organisers as they prepared to leave for Australia."

1.3.2 Moreover, this presumption may be more readily applied to asylum seekers returning from countries such as Britain with an active Tamil diaspora community. This is because the activities of the Tamil diaspora communities have been consistently associated with terrorism by the Sri Lankan government. Sri Lankan President Mahinda Rajapaksa characterized the diaspora as "LTTE remnants"[10] and Defence Secretary Gotabaya Rajapaksa has mentioned "we consider those who talk about Eelam as terrorists."[11]

Addressing students of the General Sir John Kotelawala Defence University (KDU) in Sri Lanka on 22 November 2011, President Rajapaksa said, "terrorists attack us in the cover of human rights today", and "these attacks are against the motherland. You need to understand that it is a threat posed to national security"[12]. In an interview with The Island newspaper in 2011[13], Sri Lanka's defence secretary, Gotabhaya Rajapaksa, deemed that any diaspora activists who campaigned for justice and accountability were "traitors", and "should be given capital punishment".

1.3.3 Hence, failed asylum seekers are more likely to be readily associated with the LTTE either by virtue of the fact that they sought asylum or because of a presumption of involvement in Tamil diaspora activities which are viewed by the Sri Lankan government as being supportive of the LTTE. This profile places failed asylum seekers at a greater risk. As noted in the April 2012 OGN, ""Human Rights Watch on 16 June 2011 publicly expressed concern about Britain returning rejected asylum seekers to Sri Lanka because it believes that "Sri Lankan nationals who have been affiliated with or are considered to be supporters of the LTTE, would be at significant risk of persecution if deported back to Sri Lanka". The organization noted that its research "shows that Sri Lankan authorities have frequently violated the basic rights of people suspected of being affiliated with or supporters of the LTTE".

The Research Directorate, Immigration and Refugee Board of Canada, Sri Lanka reported on 22/08/2011[14]:

[…] In a 30 June 2011 telephone interview with the Research Directorate, an adjunct professor of political science at Temple University, who is currently conducting research on Sri Lanka, indicated that information from sources in Sri Lanka suggests that the government has stationed former Tamil Tigers, who have sided with the

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[10] http://www.asianage.com/interview-week/tamil-diaspora-does-not-want-peace-173

[11] http://www.dailymirror.lk/top-story/18071-karunanidhi-can-have-eelam-in-india-gota.html

[12] http://www.priu.gov.lk/news_update/Current_Affairs/ca201111/20111123terrorists_attack_us_hiding_human_rights.htm

[13] http://www.island.lk/2010/05/06/news2.html

[14] http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e

government and are working with the Sri Lankan security forces, at the Bandaranaike International Airport where they screen arriving individuals. The professor noted that 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 to the Tamil Tigers to go back to Sri Lanka. (Adjunct Professor 30 June 2011)

He also said that Tamils without any connection to the Tamil Tigers but with a history of opposing government policies would be considered associated with the Tigers and be screened at the airport (ibid.). The professor further stated that a person who has any past connection to the Tamil Tigers or a history of opposing the government will be detained and questioned (ibid.). He added that there have been reports of "abuse and torture" of airport detainees (ibid.).

[…] Similarly, the joint Law and Society Trust submission notes that Tamil returnees are detained and questioned about their connections with the LTTE in Sri Lanka, prior to their leaving the country, about the circumstances of their departures and about their links while they were outside the country. This can be a long process and under the PTA [Prevention of Terrorism Act] persons can be detained for prolonged periods. (Law and Society Trust et al. 18 July 2011, 6)

1.4 Prison Conditions

In light of the compelling evidence that failed asylum seekers are subject to arbitrary detention, it is relevant to note that the April 2012 OGN concludes with respect to detention conditions that they are likely to breach the Article 3 threshold and that those perceived to support the LTTE may be at heightened risk of illtreatment and torture:

1.4.1 "[…] 3.9.11 Conclusion Conditions in prisons and police custody are very poor and taking into account the levels of overcrowding, unsanitary conditions, lack of food and the incidence of torture, are likely to reach the Article 3 threshold and a grant of Humanitarian Protection may be appropriate…"