



Urgent Matter Affecting Sri Lankan Tamil Asylum Seekers

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Issue:

A disproportionate number of applications for refuge made by Sri Lankan Tamils are rejected by Home Affairs. Case decisions often state that Tamils are no longer at risk of persecution in Sri Lanka. This is contrary to evidence of ongoing discrimination, abductions and torture of Tamil people, provided by international human rights reports. Case decisions also do not take into account the changed political situation in Sri Lanka after recent elections. There are grave dangers facing Tamil people sent back to Sri Lanka.

Background:

Mahinda Rajapaksa was President of Sri Lanka during the civil war in which Armed Forces massacred Tamil men, women and children on Mullivaikal beach in Sri Lanka's north east during the final phase of the civil war in 2009.

Mahinda's brother, Gotabaya Rajapaksa, was Secretary to the Minister of Defence from 2005 - 2015, leading the Sri Lankan Armed Forces. He has long been accused of human rights abuses and war crimes pertaining to this period.

Persecution of the Tamil minority has continued since the war, with consecutive United Nations Rapporteurs on Human Rights citing the process of Sri Lankan Armed Forces or Police arbitrarily detaining, interrogating and routinely torturing Tamils.¹

United Nations Commissioner for Human Rights, Michelle Bachelet, in her January 2021 Report to the UN Human Rights Council stated, "*Sri Lanka's current trajectory sets the scene for the recurrence of the policies and practices that gave rise to grave human rights violations*".² She recommended that "*the Human Rights Council and Member States: Review asylum measures with respect to Sri Lankan nationals to protect those facing reprisals and avoid any refoulement in cases that present real risk of torture or other serious human rights violations.*"³

An investigation into the use of torture in Sri Lanka by the International Truth and Justice Project in 2016/17 found that both the military and police in Sri Lanka continue to abduct, unlawfully detain, torture and rape Tamils, and that the violations remain systematic and officially sanctioned by command structures within the security forces.⁴

The UN Committee Against Torture, and the UN Working Group on Arbitrary Detention, have highlighted concerns over the detention and torture of returned Tamil asylum seekers.⁵

Current Status:

The November 2019 Sri Lankan Presidential Election saw Gotabaya Rajapaksa elected as President and appoint his brother, Mahinda as caretaker Prime Minister.

At the August 2020 Parliamentary Elections, Mahinda Rajapaksa was officially installed as Prime Minister. Chamal Rajapaksa, the eldest brother, and two of Gotabaya's nephews were also elected and appointed to Ministerial positions. Human Rights Watch described the election campaign as a 'Campaign of Fear', where opposition lawyers, activists, and journalists were intimidated, threatened and arrested.⁶

Gotabaya Rajapaksa was elected on a strong nationalist mandate which pledged not only to avoid prosecutions of Sri Lankan "war heroes" who have been accused of heinous war crimes, but to undo concessions made by the previous administration towards accountability.⁷

Since holding office, Rajapaksa has made changes to the nation's constitution which will allow him to hold ministries, appoint and dismiss ministers and be the appointing authority for commissions relating to elections, public service, police, human rights, and bribery or corruption investigation. The legislation also allows him to dissolve Parliament two and a half years after an election.⁸

Along with the continued use of the internationally condemned Prevention of Terrorism Act to silence government critics, there is increased entrenchment of Sri Lanka's military in the Tamil areas in the north-east, with Tamil people subjected to surveillance, harassment, arrests and state-led land confiscations.⁹

Many Sri Lankan Tamils in immigration detention centres, or residing in Australia on temporary visas, do not have any assurance about their future safety, regardless of what positive contributions they may have made to their Australian communities. They experience ever-increasing fear of being returned by the Australian Government back to Sri Lanka placing them at real risk of persecution, interrogation, torture and disappearance. A number of Tamils have been issued with 'Pending Departure' visas as Home Affairs expects them to return as soon as is possible in the current pandemic situation.

Key Considerations:

Information obtained by the Australian Department of Foreign Affairs and Trade, and used by Home Affairs to assess whether Sri Lanka is safe to return Tamil refugees, is outdated and does not recognise the facts available from the United Nations Human Rights Commission, Human Rights Watch, Tamil Guardian, and other credible sources.¹⁰

According to the Home Affairs report on Processing Status and Outcomes to October 2020, 13.4% of total cases subject to the Fast Track system are from people whose country of origin is Sri Lanka.¹¹ Yet according to the Refugee Council of Australia, Sri Lankan cases make up 39% of all applications for refuge rejected and referred to the Immigration Assessment Authority (IAA) for review. The IAA has only overturned 6% of Sri Lankan case decisions since July 2015.¹²

Everyone who has faced persecution in their homeland has a right to seek asylum in a new country. It is lawful to arrive in Australia by boat without authorisation if it is for the purpose of seeking safety from persecution.¹³ This is the only avenue for escape many Tamil people have been able to access.

Conclusion and Recommendations:

While Sri Lanka may be a beautiful tourist destination, its government is becoming increasingly authoritarian and the use of torture against Tamil people is routine, endemic and state-sanctioned. This must be highlighted to the Australian public and to Federal Members of Parliament and Senators.

The Australian Government must:

- Immediately cease deportations of Tamil asylum seekers to Sri Lanka
- Cease using outdated country information on Sri Lanka in refugee assessments
- Reassess rejected claims for asylum for those still in Australia, based on the current political situation in Sri Lanka
- Take current reports on Sri Lanka into account when assessing cases for refuge that have not yet been decided
- Uphold International Treaty Obligations to provide refuge for people at risk of persecution
- Understand that people in genuine need of protection must be offered that protection, regardless of their mode of arrival

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- ⁷ <https://www.tamilguardian.com/content/thileepans-indomitable-spirit-newsletter-21-september-2020>
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