

Urgent Matter Affecting Sri Lankan Tamil Asylum Seekers

November 2023

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.¹ There are grave dangers facing Tamil people sent back to Sri Lanka.²

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 northeast 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.

The November 2019 Sri Lankan Presidential Election saw Gotabaya Rajapaksa elected as President. At the August 2020 Parliamentary Elections, Mahinda Rajapaksa was officially installed as Prime Minister. Human Rights Watch described the election campaign as a 'Campaign of Fear', where opposition lawyers, activists, and journalists were intimidated, threatened and arrested.³

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.⁴

Rajapaksa made changes to the nation's constitution which allowed 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. Seven members of the Rajapaksa family were appointed to positions of power within the Government. The legislation also allowed Rajapaksa to dissolve Parliament two and a half years after an election.⁵

In July 2022, with Sri Lanka in deep economic crisis and with massive anti-government protests in the south, both Gotabaya and Mahinda Rajapaksa resigned and Ranil Wickremesinghe was appointed President by the Parliament. Wickremesinghe has close ties to the Rajapaksa family and those accused of mass atrocities.⁶

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.⁷

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.

Current Status:

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 and east, with Tamil people subjected to surveillance, harassment, arrests and state-led land confiscations.^{8 9 10}

Fourteen UN Human Rights experts have condemned Government measures that infringe on the legitimate exercise of the rights to freedom of peaceful assembly and expression.¹¹

United Nations Deputy High Commissioner for Human Rights, Nada Al-Nashif, in her June 2023 Oral Report to the UN Human Rights Council stated, "*The past months have unfortunately witnessed the old*

reflex of using draconian laws to curtail opposition and control civic space, with a heavy-handed approach to protests far too often, including the arrest of protest leaders and forceful crowd control measures, as well as the persistent use of the military in police functions.”¹²

United Nations Commissioner for Human Rights, Michelle Bachelet, in her January 2021 and March 2022 reports 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”*.¹³ 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.”*^{14 15}

In September 2021, the International Truth and Justice Project released a report with testimonies from 15 Tamils who had been abducted, detained and tortured by Sri Lankan security forces, since Gotabaya Rajapaksa took office as Sri Lanka's president in 2019. Violations remain systemic and officially sanctioned by command structures within the security forces.¹⁶

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 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.

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 does not recognise all facts available from the United Nations Human Rights Commission, Human Rights Watch, Tamil Guardian, and other credible sources.¹⁷ In a landmark immigration case in the United Kingdom in May 2021, three Upper Tribunal judges were scathing in their rejection of the Australian DFAT country reports used as a basis to determine asylum applications for Sri Lankan Tamils.¹⁸

According to figures compiled by the Refugee Council of Australia, the Immigration Assessment Authority (IAA) has overturned only 5% of decisions rejecting Sri Lankan cases since July 2015. This figure was 60% of rejections overturned under the previous review system.¹⁹

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.²⁰ 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 has become 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 biased 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 by the UN and human rights organisations 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

References:

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- ² <https://acij.org.au/joint-media-release-human-rights-groups-demand-suspension-of-reports-on-sri-lanka-to-assess-refugee-applications-following-rejection-by-a-uk-court/>
- ³ <https://www.hrw.org/news/2020/08/08/sri-lanka-increasing-suppression-dissent>
- ⁴ <https://www.tamilguardian.com/content/thileepans-indomitable-spirit-newsletter-21-september-2020>
- ⁵ <https://www.aljazeera.com/news/2020/10/22/sri-lanka-parliament-votes-to-strengthen-presidential-power>
- ⁶ <https://www.tamilguardian.com/content/ranil-wickremesinghe-declared-sri-lanka-s-president>
- ⁷ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21884&LangID=E>
- ⁸ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FLKA%2FCO%2F6&Lang=en UN Human Rights Committee. Concluding observations on the sixth periodic report of Sri Lanka. 24th March 2023. [points 28,29, 34]
- ⁹ <https://www.hrw.org/news/2023/03/30/un-paints-bleak-picture-rights-sri-lanka>
- ¹⁰ <https://www.ohchr.org/en/press-releases/2023/09/accountability-central-sri-lankas-future-un-human-rights-report> Situation of human rights in Sri Lanka. Report of the United Nations High Commissioner for Human Rights. Human Rights Council. Fifty-fourth session 11 September–6 October 2023. [paragraphs 33 & 61].
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- ¹² <https://www.ohchr.org/en/statements/2023/06/sri-lanka-promoting-reconciliation-accountability-and-rights>
- ¹³ https://www.ohchr.org/Documents/Countries/LK/Sri_LankaReportJan2021.docx
- ¹⁴ <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session49/Pages/ListReports.aspx>
- ¹⁵ https://www.ohchr.org/Documents/Countries/LK/Sri_LankaReportJan2021.docx
- ¹⁶ <https://itjpsl.com/assets/ITJP-Torture-report-2021-Sep-ENGLISH.pdf>
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- ¹⁸ <https://www.nswccl.org.au/dfat>
- ¹⁹ <https://www.refugeecouncil.org.au/fast-tracking-statistics/9/>
- ²⁰ <https://www.refugeecouncil.org.au/boat-arrivals/>