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IRB – Immigration and Refugee Board of Canada

Sri Lanka: Treatment by authorities of returnees to Sri Lanka, including failed refugee claimants and family members of persons who have left Sri Lanka and claimed refugee status (2017–August 2020) [LKA200301.E]

Research Directorate, Immigration and Refugee Board of Canada

1. Legislation

The *Immigrants and Emigrants Act*, last amended in 2006, provides the following:

34. No person to whom this Part applies shall leave Sri Lanka from any place other than an approved port of departure.

35. No person to whom this Part applies shall-

1. if he is a citizen of Sri Lanka, leave Sri Lanka unless he has in his possession a Sri Lanka passport;
- ...

45. (1) Any person who

1. enters or remains in Sri Lanka in contravention of any provision of this Act or of any order or regulation made thereunder;
2. leaves Sri Lanka in contravention of any provision of this Act or of any order or regulation made thereunder;
3. in reply or in relation to the Minister, or any authorized officer, or other person lawfully acting in the execution of the provisions of this Act or of any order or regulation made thereunder, makes or causes to be made any false return, false statement or false representation;
4. forges, alters or tampers with any passport, whether issued in Sri Lanka or elsewhere, or any visa or endorsement thereon;
5. forges, alters or tampers with any certificate;
6. without lawful authority uses or has in his possession any forged, altered or irregular passport, or any passport with any forged, altered or irregular visa or endorsement;
7. without lawful authority uses or has in his possession any forged, altered or irregular certificate;
8. obstructs or impedes any person in the exercise of his powers and duties under this Act or under any regulation or order made thereunder;
9. being the holder of a travel document, residing outside Sri Lanka, dispatches or transmits such travel document to a person residing in Sri Lanka, through the post or through another person, without the prior approval in writing of the Controller;
10. being the holder of a travel document, residing in Sri Lanka, dispatches or transmits such travel document to a person residing in any country outside Sri Lanka, through the post or through another person, without the prior approval in writing of the Controller;
11. has in his possession, more than one travel document for the time being in force, issued to him;
12. being in possession of a travel document issued to him, and for the time being in force, applies for the issue of a travel document;
13. without lawful authority, has in his possession a travel document of any other person;
14. during the pendency of an order under section 51c, impounding a travel document issued to such person, applies for the issue of another travel document;

15. otherwise contravenes or fails to comply with any provision of this Act or of any regulation or order made thereunder, shall be guilty of an offence under this Act and shall on conviction be liable, in the case of an offence under paragraph (a) or paragraph (b) or paragraph (c) or paragraph (d) or paragraph (e) or paragraph (f) or paragraph (g), paragraph (h), paragraph (i), paragraph (j), paragraph (k), paragraph (l), paragraph (m), paragraph (n) and paragraph (o), , [sic] to imprisonment of either description for a term not less than one year and not more than five years and to a fine not less than fifty thousand rupees [approximately C\$364] and not more than two hundred thousand rupee [approximately C\$1,456], and in the case of an offence under paragraph (h) or paragraph (i) or paragraph (j) or paragraph (k) or paragraph (l) or paragraph (m) or paragraph (n) or paragraph (o), to imprisonment of either description for a term not less than six months and not more than five years and to a fine not less than fifty thousand rupees and not more than two hundred thousand rupees. (Sri Lanka 1949)

A report on a fact-finding mission (FFM) to Sri Lanka by the UK Home Office, conducted between 28 September to 5 October 2019, citing their interview with the Sri Lankan Attorney General's Department, indicates the following:

Punishment for illegal departure under Section 45 – a fine. Facilitators would face a jail term. Penalty for forged documents for a first offence is a fine (5000 LKR) [approximately C\$36] and subsequent offence a higher fine/short jail term. (UK 20 Jan. 2020, 58)

Australia's Department of Foreign Affairs and Trade (DFAT) states that individuals who departed "irregularly by boat" are deemed to have violated the *Immigrants and Emigrants Act* (Australia 4 Nov. 2019, para. 5.31).

2. Treatment by Authorities of Returnees, Including Failed Asylum Claimants

2.1 Upon Arrival

The UK Home Office FFM report, citing a representative of Sri Lanka's Criminal Investigation Department (CID), indicates that individuals returning to Sri Lanka are checked against a "watchlist" maintained by the police, and would be arrested if they had outstanding criminal offences (UK 20 Jan. 2020, para. 7.6.1). The same report, citing the International Organization for Migration (IOM), states that the returning individuals will also be screened against a watchlist maintained by the State Intelligence Service (SIS) (UK 20 Jan. 2020, para. 7.6.1). Australia's DFAT similarly reports that different government agencies responsible for processing returnees, including the Department of Immigration and Emigration, the SIS, the CID, and, "at times," the Terrorism Investigation Division, check the returnees' travel documents and identity information against the "immigration databases, intelligence databases and records of outstanding criminal matters" (Australia 4 Nov. 2019, para. 5.32).

Australia's DFAT reports that "[i]f a returnee voluntarily returns on their own passport on a commercial flight, they may not come to the attention of local authorities if they had departed Sri Lanka legally through an official port on the same passport" (Australia 4 Nov. 2019, para. 5.31). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Australia's DFAT reports that "[m]ost" returnees are questioned upon arrival, "usually" at the airport (Australia 4 Nov. 2019, para. 5.34). In correspondence with the Research Directorate, a senior lecturer at the University of Jaffna, in Sri Lanka, who has written about the causes of boat migration from Sri Lanka to Australia, stated the following:

All non-voluntary returnees from abroad undergo a brief investigation by both the immigration and the police at the airport and their details of origin and destination are recorded. In the past more than five years (since early 2015), this investigation is mainly conducted to find out the means through which the person had left the country (legal or illegal channel), to find out whether any organised agents have been directly or indirectly involved in their departure from the country, and the transit route (if any) they had undertaken, etc., in order to prevent such irregular migration. (Senior Lecturer 17 July 2020)

The Swiss Refugee Council, a non-profit "umbrella organisation of NGOs working in the field of asylum" (Swiss Refugee Council n.d.), citing its interview with a representative of an international organization in Sri Lanka conducted on 18 October 2019, states that returnees are [translation] "systematically" questioned upon arrival at Colombo Airport by the Department of Immigration and Emigration, followed by the SIS and the CID (Swiss Refugee Council 10 Apr. 2020, 10). The same source indicates that the length of [translation] "interrogations" vary between "a few hours to several days"; the returnee may be "visited" by the police at their residence at a later time after the interrogations, "usually" by the CID (Swiss Refugee Council 10 Apr. 2020, 10).

The UK Home Office FFM report cites representatives of the Sri Lankan Department of Immigration and Emigration as indicating that

[r]eturning failed asylum seekers will be questioned if they've overstayed their visa. If a person is identified as a failed asylum seeker they will be questioned, then passed to CID. They may be released but monitored. (UK 20 Jan. 2020, 42)

In contrast, the same report cites the IOM as stating the following:

If someone claimed asylum, this would not be considered an offence. If a failed asylum seeker returned, they would not look at how long they have been gone. The police are only interested in criminal offences committed in Sri Lanka.

Even if a person had been away for a number of years, or their visa had expired, they wouldn't be questioned specifically on this. IOM do not see such alleged discriminatory treatment. There are no media reports of returnees being interrogated on such grounds. (UK 20 Jan. 2020, 54)

The UK Home Office FFM report, citing members of the CID, indicates that a previously detained individual "may be questioned by immigration, CID or SIS" upon re-entering Sri Lanka and can be held for two to three hours while the CID or SIS check with the local police to check "the person[]"s address, etc." (UK 20 Jan. 2020, 39). The same source further reports that the returnee would be arrested if they present forged travel documents (UK 20 Jan. 2020, 39). The UK Home Office FFM report, citing the CID and the Attorney General's Department, states that a returning former Liberation Tigers of Tamil Eelam (LTTE) cadre would only be "of interest" if they had a pending criminal case (UK 20 Jan. 2020, para. 4.2.2). The same report, citing a UNHCR Sri Lanka representative, indicates that a "high profile LTTE cadre" would face "additional questioning," but would not "necessarily" be detained (UK 20 Jan. 2020, para. 4.2.1). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Australia's DFAT reports that returnees can be charged under the *Immigrants and Emigrants Act* if they are suspected of departing illegally (Australia 4 Nov. 2019, para. 5.34). The UK Home Office FFM report, citing their interview with the Secretariat for Coordinating Reconciliation Mechanisms (SCRM), an "executive agency under the office of the Prime Minister," states that "some [failed asylum seekers] may be charged for leaving Sri Lanka illegally but not all will be held criminally culpable" (UK 20 Jan. 2020, 33-34). The same report, citing an October 2019 interview with UNHCR Sri Lanka, indicates that no "refugee returnees" have been arrested or detained at the airport since 2017 (UK 20 Jan. 2020, 57). In contrast, media sources indicate that a Tamil asylum seeker deported from Australia [on 16 July 2018 (*The Guardian* 18 July 2018)], was arrested and detained on arrival in Sri Lanka, then released [on 18 July 2018 (*The Guardian* 18 July 2018)] and was expected to face court proceedings (*The Guardian* 18 July 2018; SBS News 19 July 2018). A February 2019 article by Tamil Guardian, a news website "providing context and commentary on Tamil affairs," indicates that the deported asylum seeker was charged for illegal departure from Sri Lanka (Tamil Guardian 16 Feb. 2019). The same article reports that eight returnees who had left Sri Lanka by boat, deported from Reunion Island in February 2019, were "detained and held in remand" (Tamil Guardian 16 Feb. 2019).

2.2 Court Proceedings

According to an article by the Special Broadcasting Service (SBS), an Australian "hybrid-funded broadcaster" with funding from its own commercial activities and from the Australian Government (SBS n.d.), "[m]any" failed asylum seekers are caught in "lengthy court battles" after returning to Sri Lanka (SBS 2 Dec. 2019). Australia's DFAT indicates that the Sri Lankan Attorney General's Department directed "all passengers of people smuggling ventures" to be charged under the *Immigrants and Emigrants Act* and to appear in court at the location where the offence was committed; this involves "legal and transport costs" for the returnees (Australia 4 Nov. 2019, para. 5.35). The same source further states that "most individuals" charged under the *Immigrants and Emigrants Act* are required to appear in court every three to six months and that the court case proceeds only when "all members of a people smuggling venture have been located," leading to "protracted delays" (Australia 4 Nov. 2019, para. 5.35). The 2 December 2019 SBS article provides an example of a family of failed asylum seekers in Jaffna, who have had to attend court in Negombo every six months since they were flown back to Colombo from Christmas Island in 2014 (SBS 2 Dec. 2019).

2.3 Monitoring

The UK Home Office FFM report, citing a journalist, indicates that monitoring upon return to Sri Lanka is a "possibility" if the individual is "deemed to have done something against the government" (UK 20 Jan. 2020, para. 5.2.4). The same report, citing representatives from the Sri Lankan Department of Immigration and Emigration, indicates that the local police would be informed that a returning failed asylum seeker has been released and "the person would be monitored although the length of time may vary" (UK 20 Jan. 2020, 42-43). Australia's DFAT states the following:

DFAT understands that some returnees, including returnees in the north and east with suspected LTTE links, have been the subject of monitoring by the authorities, involving visits to returnees' homes and telephone calls by the Criminal Investigation Department. DFAT understands that most returnees, including failed asylum seekers, are not actively monitored on an ongoing basis. DFAT is unable to verify whether monitoring, where it occurs, is specific to former LTTE cadres. DFAT is not aware of returnees, including failed asylum seekers, being treated in such a way that endangers their safety and security. (Australia 4 Nov. 2019, para. 5.46)

The Swiss Refugee Council, citing an interview with a catholic priest working in northern Sri Lanka conducted on 24 October 2019, indicates that returnees from western countries face a [translation] "more complicated" situation than those returnees from India or the Gulf states (Swiss Refugee Council 10 Apr. 2020, 10). The same source further states that these returnees are [translation] "placed under surveillance" and the authorities would try to determine whether they have ties to the LTTE; if the ties are confirmed, the returnee would be placed under "enhanced surveillance" (Swiss Refugee Council 10 Apr. 2020, 10).

The Senior Lecturer indicated that there has been "no change" to the treatment of failed asylum claimants from western countries following the presidential election in November 2019 (Senior Lecturer 17 July 2020). The same source further stated that from

January 2015 until November 2019, no [individuals belonging to specific] "groups" were specially targeted on arrival to the best of my knowledge. However, since the election of the new President in November 2019 there is certainly heightened scrutiny, surveillance, and indeed harassment (short of arrest) of specific groups of people who have been publicly critical about the abuses in the past by the police, armed forces (including in the aftermath of the Easter bombings), and indeed by the people close to the Rajapaksa family, including the Rajapaksa family members themselves.

But to the best of my knowledge, the people undergoing the foregoing are those who have been living in the country throughout and not the returnees from abroad to date. Such groups under pressure include human rights activists, journalists, and NGO personnel irrespective of their ethnicity or faith. There are a number of Sinhala and Muslim "suspects" being "watched" in addition to a few Tamil activists as well. However, most of those who are "watched" and from Colombo and the outskirts and only a few are from the former conflict-affected areas in the northern and eastern parts of the country. (Senior Lecturer 17 July 2020)

Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response. For additional information on the treatment of Tamil citizens, before and after the presidential election of November 2019, see Response to Information Request LKA200298 of August 2020.

The UK Home Office FFM report, citing its interview with the Sri Lankan Human Rights Commission (HRC) conducted on 1 October 2019, indicates that freedom of speech and association has "opened up" since October 2015 (UK 20 Jan. 2020, 40). Freedom House states that "[t]he Rajapaksas' expected return to power also reportedly impeded free expression beginning in late 2018, and allegations of threats and harassment aimed at perceived opponents of the new administration rose after the 2019 election" (Freedom House 2020). For additional information on the current political situation, see Response to Information Request LKA200300 of August 2020.

3. Treatment of Family Members of Persons who Have Left Sri Lanka and Claimed Refugee Status

The UK Home Office FFM report, citing a human rights activist, states that "[s]ome family members may be harassed if the police are looking for someone who has fled abroad" (UK 20 Jan. 2020, 38). Australia's DFAT states that "close relatives of high-profile former LTTE members who are wanted by Sri Lankan authorities may be subject to monitoring" (Australia 4 Nov. 2019, para. 3.83). The Senior Lecturer indicated that there is "absolutely no problem" for family members of individuals who have claimed asylum abroad "except in probably a handful of cases" where the asylum seeker abroad starts a "high-profile public campaign" seeking accountability for prior injustices (Senior Lecturer 17 July 2020). The same source provided an example of a father of one of five Tamil students, who were victims of extra-judicial killings in Trincomalee in 2006 [1], who fled to the UK and campaigned publicly demanding the identification of the perpetrators; the Sri Lanka-based family members of the father came under "intense pressure" from the authorities, in order to pressure the father to stop his campaign (Senior Lecturer 17 July 2020).

The International Truth and Justice Project – Sri Lanka (ITJP) [2], citing its interview with 26 Tamil male asylum seekers in the UK, who were "typically" former members or supporters of the LTTE and have family residing in the former LTTE stronghold in the Vanni, indicates that after the departure of the asylum seekers, their relatives were "repeatedly visited" "mainly" by plain clothes police officers, and military intelligence or the Civil Security Department in some instances (ITJP 24 Oct. 2019). Some of the asylum seekers indicated to the ITJP that their relatives were shown photos of them attending protests in London (ITJP 24 Oct. 2019). The UK Home Office report, citing a journalist, indicates that members of the diaspora, who participated in protests, were photographed by individuals inside the

Sri Lankan High Commission (UK 20 Jan. 2020, para. 5.2.1). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The ITJP, citing their interviews with the asylum seekers, indicates that during searches of the homes of the asylum seekers, Sri Lankan authorities "assaulted" and "threatened" their wives, and took away their identity cards; parents were "assaulted" and "[s]ome extended families" were questioned about how the asylum seeker fled abroad (ITJP 24 Oct. 2019). The same source reports that some of the relatives attempted to report such incidents to the police, but most had their complaints refused by the police (ITJP 24 Oct. 2019). Five of the interviewees stated to the ITJP that their families attempted to register a complaint with the Human Rights Commission of Sri Lanka (HRCSL), but three were told to submit a police report first, which the police refused to provide (ITJP 24 Oct. 2019). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

A source who works for an international Tamil diaspora organization indicated, in correspondence with the Swiss Refugee Council, that they were aware of a case of individuals in the UK with relatives in Sri Lanka who received money from abroad and were questioned by the authorities (Swiss Refugee Council 10 Apr. 2020, 11). The same source further states that [translation] "interrogation and harassment" of relatives of Sri Lankans abroad have increased since the [presidential election] in November 2019 (Swiss Refugee Council 10 Apr. 2020, 11). The same report, citing a source who is active in human rights in Sri Lanka, indicates that Sri Lankans abroad who send money home are [translation] "placed under surveillance" and the recipients may come to the "special attention" of the authorities (Swiss Refugee Council 10 Apr. 2020, 11). The same source provided an example of a group of Tamil journalists and activists who were questioned in spring 2020, about funds they received from members of the diaspora (Swiss Refugee Council 10 Apr. 2020, 11). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The Swiss Refugee Council, citing the source who works for an international Tamil diaspora organization, indicates that the [translation] "threats" to a member of a diaspora who sends money to Sri Lanka is dependant on how the Sri Lankan authorities "perceive" the purpose of the money; financial support from the diaspora is linked to various causes, including war crimes investigation and humanitarian projects for Tamils (Swiss Refugee Council 10 Apr. 2020, 11). According to the same source, citing a catholic priest working in northern Sri Lanka, it is [translation] "very probable" that Sri Lankan authorities perceive fundraising by the Sri Lankan diaspora for victims of the civil war as attempts to revive the LTTE (Swiss Refugee Council 10 Apr. 2020, 11). Australia's DFAT indicates that during the war, some Sri Lankans abroad provided funds, weapons and "other material support" to the LTTE, and the Sri Lankan government "continues to assess that elements of the Tamil diaspora remain committed to a separate Tamil state" (Australia 4 Nov. 2019, para. 3.79-3.80).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Notes

[1] Human Rights Watch (HRW) indicates that in July 2019, 12 members of the Special Task Force (STF) of the police and a police officer were acquitted of the execution of five Tamil students on 2 January 2006, known as the "Trinco Five," due to a "lack of evidence" (HRW 8 July 2019). The same source states that eight witnesses did not appear in court, and that the case was "marred by serious threats against the survivors and witnesses, which forced them and their family members to flee Sri Lanka" (HRW 8 July 2019). The same source further reports that the father of one of those killed, along with his family, received death threats and were later granted asylum in the UK (HRW 8 July 2019).

[2] The International Truth and Justice Project – Sri Lanka (ITJP) is "administered by the Foundation for Human Rights in South Africa under the guidance of transitional justice expert Yasmin Sooka" (ITJP n.d.). The ITJP "both collects and stores evidence for any further credible justice process but also intervenes where [they] can to assist victim communities in Sri Lanka in seeking accountability" (ITJP n.d.). The Foundation for Human Rights (FHR) is "a grant[-]making institution supporting civil society organisations in South Africa, and the region, to implement programmes which promote and protect human rights" (FHR n.d.). Yasmin Sooka was appointed in July 2010 to a three-member panel of experts advising the UN Secretary General on the accountability of war crimes committed during the final stages of the war in Sri Lanka and has authored reports on Sri Lanka (IFIT n.d.).

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Oral sources: Centre for Policy Alternatives (CPA); National Peace Council of Sri Lanka; Organisation for Elangai Refugees Rehabilitation (OfERR (Ceylon)); researcher at a university in Brunei Darussalam who has conducted research on returnees to Sri Lanka.

Internet sites, including: Al Jazeera; Amnesty International; Asian News International; Asylum Research Centre; The Conversation; ecoinet.net; Groundviews; Network of Researchers in International Affairs (Noria); The New Humanitarian; Sri Lanka – Office of the Cabinet of Ministers; UN – Refworld; US – Department of State.

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Query response on Sri Lanka: Treatment of returnees and family members of individuals who have claimed asylum abroad by authorities (2017 - August 2020)

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