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Note on the Applicability of the 2009 Sri Lanka Guidelines

Overview

In April 2009, UNHCR issued the “Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka”¹ (the “April 2009 Guidelines”). Since the April 2009 Guidelines were issued, there have been important developments in Sri Lanka, which are relevant to the determination of refugee claims by asylum seekers from the country.

Most significantly, in May 2009, Government forces captured the last territories controlled by the Liberation Tamil Tigers of Eelam (LTTE) in the North, thereby ending the hostilities related to the armed conflict between the Sri Lankan Army and the LTTE. This Note has been prepared to provide guidance on the continued applicability of the 2009 Guidelines in light of these developments.

Applicability of the Guidelines

At the time that the April 2009 Guidelines were issued, civilians in the North of Sri Lanka were exposed to the risk of indiscriminate harm in the prevailing situation of generalized violence resulting from the armed conflict between the Sri Lankan Army and the LTTE. Consequently, UNHCR recommended that asylum seekers from the North who did not meet the criteria in the 1951 Convention should be recognized under an extended refugee definition, where applicable, or granted a form of complementary protection. With the cessation of the fighting related to the armed conflict in the North, the risk to civilians of indiscriminate harm in the cross-fire of the hostilities has essentially ended. UNHCR is, therefore, no longer recommending the application of an extended refugee definition or complementary forms of protection on this basis alone.

Notwithstanding the end of the hostilities, the human rights situation in Sri Lanka remains of concern to UNHCR. UNHCR considers the observations and recommendations in the April 2009 Guidelines remain valid and should be taken into consideration when assessing the eligibility of asylum seekers from Sri Lanka under the 1951 Convention.

The 2009 Guidelines recommend that “in view of the extensive and reliable evidence of widespread targeted human rights violations against Tamils in and from the North, which has affected men and women of all ages, UNHCR considers that Tamil asylum seekers from the North of Sri Lanka should be recognized as refugees under the 1951 Convention, absent clear and reliable indicators that they do not meet the criteria in Article 1A (2).”

¹ UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, April 2009, available at: <http://www.unhcr.org/refworld/docid/49de0b6b2.html>.

This recommendation of a presumption of eligibility for Tamils in and from the North reflects UNHCR's conclusions on both the degree of risk to which Tamils in and from the North are exposed, in particular in light of the events since the 2006 position was issued, as well as the link which more often than not exists in the North between the risk and one or more of the 1951 Convention grounds.

Part C of the April 2009 Guidelines sets out at length the pervasive and targeted human rights violations taking place in Sri Lanka. The country of origin information indicates that Tamils are significantly and disproportionately represented in the reported incidents of abductions and disappearances, arbitrary arrest and detention, restrictions on freedom of movement, freedom of expression, torture and other inhuman, cruel, or degrading treatment. These human rights violations were widespread in the North during the conflict and, to a large extent, still are notwithstanding the cessation of hostilities.

The country of origin information that UNHCR has considered indicates that Tamils from the North of Sri Lanka continue to face a significant risk of suffering serious human rights violations in the region (and elsewhere in the country) because of their race (ethnicity) or (imputed) political opinion. Tamils in the North are still heavily targeted in the security and anti-terrorism measures described in the Guidelines. Wide scale detention and confinement of Tamils from the North remains a serious concern. Pro-Government paramilitary elements also continue to operate with impunity against Tamils in the North. While Tamils with certain profiles (as highlighted in the April 2009 Guidelines) are at relatively higher risk, Tamils of every age and profile have been affected. Although not every Tamil in the North will suffer serious violations of human rights, UNHCR considers that, in the current context, the risk is sufficiently high as to meet the "reasonable possibility" threshold required to satisfy the well-foundedness element of the criteria.

Therefore, pending a more detailed assessment of the situation on the ground in the near future, UNHCR considers that the recommendation of the 2009 Guidelines that Tamil asylum-seekers from the North of Sri Lanka should be recognized as refugees under the 1951 Convention, absent clear and reliable indicators that they do not meet the criteria in Article 1A (2), should be retained.

Current Situation in Sri Lanka

Notwithstanding the cessation of the hostilities, the current protection and humanitarian environment in Sri Lanka remains extremely challenging. In the North, nearly the entire of the population from the formerly held LTTE territory in the North (285,000 Tamils) has been confined in heavy militarized camps in the Northern region. Although the government has gradually reduced the military presence in the camps and has pledged to start progressively the return to their villages of origin of the majority of those in the camps, it is clear that this may take a considerable amount of time. The lack of freedom of movement remains the overriding concern for this population restricting its ability to reunite with family members outside the camps, access employment, attend regular schools, and ultimately choose their place of residence. To date, some 5,483 IDPs, mostly elderly, have been released from the camps and the Government has announced that another 9,000 have been cleared. While these developments are welcome, the UN continues to advocate for general freedom of movement and, in the interim, the timely release of other persons with specific needs as well as broadening the categories of people for release. All civilians who do not pose a danger to national security should be afforded their right of freedom of movement, including to live outside the camps if they so choose.

UNHCR considers that Tamils who are returned to the North at this time are likely to be exposed to the human rights violations associated with massive displacement and confinement of Tamil civilians in the region. UNHCR therefore recommends that the involuntary return of Tamils to Sri Lanka not be undertaken during this transitional post-conflict period and pending clear indications that the situation of displacement and confinement has significantly improved.

For the reasons mentioned above, UNHCR does not consider appropriate to change the position on the Internal Flight Alternative (IFA) for Tamils in and from the North, and therefore the recommendation in the April 2009 Guidelines in this respect is retained pending a clearer assessment of the current situation in the different areas of the country.

Individuals already recognized as refugees, whether on a *prima facie* basis or following individual status determination, should retain this status.

Future Revisions

When it can be determined that substantial and durable changes have clearly emerged in the country, UNHCR will undertake a thorough review of the situation in Sri Lanka, and will do so as to update the Guidelines. Until such time, the April 2009 Guidelines will continue to be considered valid and applicable.

UNHCR
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