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Recourse available to Jaffna Tamils who have been victims of human rights violations, including places where complaints can be lodged (2010-June 2011) [LKA103784.E]

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Sri Lanka: Recourse available to Jaffna Tamils who have been victims of human rights violations, including places where complaints can be lodged (2010-June 2011)
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

In its 2011 annual report, Amnesty International (AI) notes that, in Sri Lanka, "[i]nvestigations into human rights violations by the military, police and other official bodies and individuals made no apparent progress" in 2010, and "court cases did not proceed"(AI 2011). Minority Rights Group International (MRG) notes, in its March 2011 statement to the 16th session of the United Nations Human Rights Council, that "human rights violations against ethnic Tamils continue unabated in a climate of impunity" (MRG 16 Mar. 2011). The United States (US) Country Reports on Human Rights Practices for 2010 notes that Sri Lankan government officials "continued to be responsible for serious human rights problems" and further states that "[o]fficial impunity was a problem" (8 Apr. 2011, Intro.).

Recourse Available for Human Rights Violations

Police

The Sri Lanka Police website indicates that their human rights division, active since 2002 and located in Colombo, has "the preliminary objective of preventing human rights violations committed by police officers when performing their routine duties and to preserve the human rights privileged by the general public" (Sri Lanka n.d.). Tasks of the human rights division include: teaching police officers to protect human rights; coordination of human rights affairs involving the Human Rights Commission of Sri Lanka (HRCSL) and interministerial human rights groups; and, use of police stations to educate the public about human rights (Sri Lanka n.d.).

In 7 July 2011 correspondence with the Research Directorate, an adjunct professor of political science at Temple University in Philadelphia notes that "[i]n theory, Tamils in Jaffna have a right to report to a police station and file a case for human rights violations." However, said the professor, "[v]ery few cases of human rights violations reported to police stations are 'positively handled'" (Adjunct Professor 7 July 2011). According to the professor, police and security forces "do not take Tamil complaints seriously nor do they seek remedies to address [their] legitimate concerns" (ibid.).

In response to inquiries made by the Research Directorate, a joint submission was prepared by

- * Law and Society Trust, a non-profit organization based in Colombo "conducting human rights documentation, research and advocacy" (Law and Society Trust n.d.);
- * INFORM Human Rights Documentation Centre, a Sri Lankan human rights organization active since 1989 who focuses on monitoring, documentation and networking (WEDO n.d.);
- * Networking for Rights in Sri Lanka, a group creating an international network of Sri Lankan human rights defenders (NFR Sri Lanka n.d.); and
- * a human rights lawyer in the United Kingdom (Law and Society Trust et al. 18 July 2011, 7).

The joint submission from Law and Society Trust states, similarly to the professor, that anyone can "officially" file a complaint at a police station (ibid., 1). However, the joint submission indicates that it is difficult for Tamils to file complaints at police stations because "often, there are no Tamil-speaking officers" (ibid., 2). The Temple University professor corroborates this, noting that Tamils encounter a "language barrier" when going to police stations, as Jaffna police services are in Sinhalese (Adjunct Professor 7 July 2011).

The Law and Society Trust joint submission further notes that Tamils who wish to make a complaint at the police station face "an extra level of scrutiny," particularly if the complaint is against a state institution or officer (Law and Society Trust et al. 18 July 2011, 2). Furthermore, Tamils born in the north, east, or the central highlands are subject to "more questioning and suspicion" at police stations (ibid.). The joint submission also indicates that there have been reports of complainants "being turned away [by the police] and told that their complaint cannot be registered," while some complainants have been "abused, assaulted and arrested" (ibid.).

Another way to submit a complaint, indicated by the joint submission, is to send a written complaint to the police headquarters by registered post (ibid.). However, the Law and Society Trust joint submission points out that this is rarely done because people are afraid of including their personal information on the letter, as the letter requires a return address (ibid.).

According to the joint submission, if a complaint is successfully submitted to the police, "the police must investigate, report to magistrate courts and then formulate a charge sheet and hand it on to the Attorney General's Department for further action" (ibid., 3). As indicated in the report, the HRCSL "will conduct its own inquiry into the complaint and can recommend action by the relevant parties. However, the [HRCSL] has no capacity to enforce implementation of its own recommendations" (ibid.).

Human Rights Commission of Sri Lanka

The HRCSL states that one of its functions is to "investigate into violations of fundamental rights" (HRCSL n.d.a). This is done through the Inquiries and Investigations Division, which has the "main responsibility to investigate and inquire into complaints regarding infringements or imminent fundamental rights violations" (ibid. n.d.b). The information included in the complaint should be:

- * What rights have been violated;
- * Whose rights have been violated;
- * Who is responsible for the violation/s;
- * In what manner were the rights violated;
- * When and where the violation took place;
- * Remedies you seek for. (ibid. n.d.a)

A person must submit a complaint to the HRCSL "within three months of the alleged violation" (ibid.). Complaints to the Commission can be made by hand, faxing, or sending a letter to the head office or regional offices, as well as calling their 24 hour hotline (ibid. n.d.c). The HRCSL brochure indicates that calling the hotline is meant to "prevent arbitrary arrest or detention or torture" (ibid. n.d.a). Furthermore, an officer is present at the head and regional offices on week days to provide advice on human rights violations (ibid. n.d.c). All HRCSL offices also provide a free complaint application form available in Sinhala, Tamil and English (ibid.). There are HRCSL offices in Jaffna, Kandy, Matara, Batticaloa, Anuradhapura, Trincomalee, Vavuniya, Badulla, Ampara, and Kalmunai (ibid. n.d.a).

The HRCSL states that if the complaint is within the Commission's mandate, there will be a preliminary investigation to verify whether grounds are sufficient to proceed with the case (ibid.). The examination of the case includes contacting the petitioner and asking the respondent to provide a report (ibid.). The Commission notes that if the case is *prima facie*, it will inquire into the case and use conciliation or mediation to resolve the issue (ibid.). If mediation fails, recommendations are made to "relevant" authorities (ibid.).

The Commission also notes that every Thursday, it holds a "Public Day" when complainants can meet the Director of the Inquiries and Investigations Division to discuss their case (ibid. n.d.c). The Director can take "prompt action when it is necessary" (ibid.). The HRCSL indicates that all of its services are free (ibid. n.d.d).

The HRCSL's Inquiries and Investigation Division reports that in 2010, the Commission received 9,901 complaints, with 243 in Jaffna (HRCSL 3 Mar. 2011). Out of the complaints received by the HRCSL in 2010, over 14 percent were related to employment issues; other types of complaints that were considered "significant" included "torture, arrest, detentions, [and] harassment" (ibid.). For the first four months of 2011, the Inquiries and Investigations Division reported 1,295 complaints, 25 percent of which did not come under the Commission's mandate (HRCSL 24 June 2011). Of those complaints, 15.8 percent were based on issues in employment, 7.8 percent on "torture," 7.3 percent on "arrests and detention," 7.5 percent on "harassment," and 8.4 percent on "land and property matters, compensation, utilities and infrastructure" (ibid.). ColomboPage, an online gateway to information on Sri Lanka that is based in Indiana, reports that according to the government, between 2009 and June 2011, the HRCSL received 11,732 complaints (21 July 2011). Out of those, 2,329 were solved, 3,319 were deemed not to be human rights violations, some complaints were directed to other institutions, and some were withdrawn by the complainants (ColomboPage 21 July 2011). Further information on rates of cases that were resolved could not be found among the sources consulted by the Research Directorate.

The US Country Reports 2010 notes that the HRCSL "rarely used its powers, and there were reports of a large backlog of cases with virtually no action by the commission during [2010]" (US 8 Apr. 2011, Sec. 5). According to Country Reports, instead of "taking an investigative approach to determining the facts and details of human rights cases, the [HRCSL] instead took a more tribunal-like approach, weighing only the evidence brought to it in deciding whether to pursue a case" (ibid.).

The Asian Forum for Human Rights and Development (AFHRD), a Bangkok-based regional human rights organization who aims to promote and protect human rights (AFHRD n.d.), reported in June

2010 that the terms of four commissioners of the HRCSL ended in May 2009, and the Chairman's ended in December 2009, with no following appointments (AFHRD 9 June 2010). In February 2011, News Now.lk, a Colombo-based news source, reported that new commissioners had yet to be appointed, and "thousands of cases remain piled" (News Now.lk 12 Feb. 2011). According to the news source, the HRCSL continues to register cases and conduct a "basic inquiry," however "no probe is conducted thereafter" (ibid.). As of late 2010, there were 12,000 pending cases before the HRCSL (ibid.). According to News Now.lk, "[t]he absence of the commissioners has made the HRCSL dysfunctional" (ibid.).

The Asian Tribune, a news source based in Hallstavik, Sweden, reports that a "newly-appointed" HRCSL convened on 24 February 2011 for its "inaugural sitting" (Asian Tribune 24 Feb. 2011). On 17 July 2011, ColomboPage reported an HRCSL member as saying that "the Commission was unable to inquire into over 2,000 complaints on alleged human rights violations due to lack of funds." According to the local media, this lack of financial resources has delayed the inquiries process and the recruitment of personnel for the Commission's regional offices (17 July 2011). Lanka Truth, a Colombo-based news source, reported that according to the HRCSL's Chairman, there are more than 800 "garnered" complaints at the HRCSL, because the Commission was inactive for over two years; however, an appointment of five judges has already taken place in order to "expedite the investigations" (Lanka Truth 25 July 2011).

The Asian Human Rights Commission (AHRC), a Hong Kong-based NGO monitoring human rights in Asia (AHRC 3 Jan. 2011), posted a statement made by the Friday Forum, "an informal gathering of public spirited persons committed to contributing to the future development of Sri Lanka within a framework of democracy, pluralism and social justice" (Groundviews 1 Oct. 2010); the statement questions "the suitability of some of the recent appointees" to the HRCSL, among which is a former inspector general of police, a former government analyst, and a medical practitioner (AHRC 15 June 2011). The Friday Forum argues that there is a lack of transparency in the selection process of the appointees (ibid.). Furthermore, the forum questions "the sustainability of those who have served in the police or the armed forces to serve as members" of the HRCSL, indicating that "many" complaints submitted before the HRCSL relate to "excesses" by the police or military (ibid.). Similarly, the joint submission from Law and Society Trust notes that "[p]ublic confidence in the institution has been undermined because of the appointment of commissioners by the executive," as well as by past actions, such as when the HRCSL "collude[d] with police and military" (Law and Society Trust et al. 18 July 2011, 2).

The Law and Society Trust joint submission notes that "[a]t present, persons who face human rights violations file complaints with the [HRCSL], more as a matter of record than with any expectation of a remedy" (ibid.).

Lessons Learnt and Reconciliation Commission

The purpose of the Lessons Learnt and Reconciliation Commission (LLRC) is to investigate the events that took place between 21 February 2002 and 19 May 2009, such as finding out who is responsible for the failure of the ceasefire agreement (LLRC n.d.a). Its focus is on "the causes of conflict, its effect on the people, and [the promotion of] national unity and reconciliation" (ibid. n.d.b). On 11 August 2010, the LLRC started to hold sittings during which any individual or organization could submit evidence to the Commission (ibid.). Unless witnesses asked to give evidence in camera, all sittings were open to the public (ibid.). Because of high demand, the

Commission was extended until 15 May 2011 (ibid.).

AI notes that the LLRC's proceedings have exposed "important evidence of crimes under international law and other serious human rights violations and abuses" (AI 24 Feb. 2011). According to AI, "[t]housands of civilians came forward, some at great personal risk, hoping to testify (most were told to submit their complaints in writing)" (ibid.). However, as indicated by AI, the LLRC is not "a mechanism for accountability," as its mandate "does not require it to investigate alleged violations of international human rights or humanitarian law or to establish accountability for violations, and its members lack sufficient independence" (ibid.). AI lists some LLRC shortcomings, such as the lack of protection for witnesses; there are reports of uniformed military personnel and political party members who have connections with the government intimidating some witnesses (ibid.). The Senior Vice President of the United National Party (UNP) noted on 10 April 2011 that "[i]n the absence of a Witness Protection Act, the LLRC was a waste of time and public resources" and that it "did not have the mandate to inquire into human rights abuses" (The Island 11 Apr. 2011).

NGOs and legal aid

The Law and Society Trust joint submission notes that victims of human rights violations also report them to politicians, civil society human rights groups, the UN human rights system, and international human rights organizations in Sri Lanka (Law and Society Trust et al. 18 July 2011, 2). According to the Temple University professor, Tamils who are victims of human rights violations report them to human rights organizations working in the North of Sri Lanka in order to focus "international attention" on their problems (Adjunct Professor 7 July 2011). The UNP's Senior Vice President is quoted in an article by The Island, a Colombo-based online news source, as saying that "'Sri Lankans are forced to complain to foreign embassies and the UN Human Rights Committee, because the Rajapaksa regime had violated its own peoples' human rights'" (The Island 11 Apr. 2011).

The joint submission from Law and Society Trust indicates that "[f]ew NGOs, lawyers and church groups provide legal assistance, advice and accompaniment to lodge complaints to state and international bodies" (Law and Society Trust et al. 18 July 2011, 4). According to the report,

[t]here have been systematic attacks - direct threats as well as through media - by government officials and politicians on civil society groups and NGOs including church-based groups that have attempted to provide legal aid and other services to Tamils who are victims of human rights abuse. (ibid.)

The Law and Society Trust joint submission notes that of the few lawyers who do offer

pro bono work on behalf of human rights defenders, [many] refuse to take up sensitive cases such as disappearances, extrajudicial executions, ... occupation of land by military, detention under PTA [Prevention of Terrorism Act] and Emergency Regulations and torture due to concerns for their own safety and security. (ibid., 3)

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.

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Oral sources: The Asian Legal Resource Centre, the Centre for Policy Alternatives, the Commonwealth Human Rights Initiative, the High Commission of Canada in Colombo, the High Commission of Sri Lanka, the Human Rights Commission of Sri Lanka (Jaffna Regional Office), the Lessons Learnt and Reconciliation Commission (Sri Lanka), Minority Rights Group International, the Sri Lanka Police Service, and the Tamil Information Centre did not reply within the time constraints of this Response. The United Nations Office of the High Commissioner for Refugees was unable to provide information within the time constraints of this Response.

Internet sites, including: 123 Sri Lanka; Asian Legal Resource Centre; Australia - Refugee Review Tribunal; British Broadcasting Corporation; Centre for Policy Alternatives; Daily News; Denmark - Danish Immigration Service; The Economist; European Country of Origin Information Network; Factiva; Forced Migration Review; International Crisis Group; International Organization for Migration; Human Rights Watch; Human Rights Tribune; Inform HR Documentation Centre; Lanka Daily News; LankaNewspapers.com; LankaPage; Lanka Times; Lankaworld.com; National Peace Council of Sri Lanka; Networking for Rights in Sri Lanka; Norwegian Refugee Council; Onlanka; Refugees International; ReliefWeb; Reuters; Sri Lanka - National Police Commission, Police Service; The Sunday Leader; Tamil Information Centre; TamilNet.com; United Nations - Office of the Commissioner for Human Rights, Refworld; University Teachers for Human Rights (Jaffna).