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Sri Lanka: Treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; information on specific asylum cases, including the Tamil asylum-seeker boat that stopped in Togo, the return of Sri Lankan asylum seekers from Australia in 2012, and any cases of voluntary repatriation (August 2011-January 2013)

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1. Background

According to the UN's Integrated Regional Information Networks (IRIN), although the Sri Lankan government is focusing on the resettlement of Tamils that have been internally displaced during

the final stages of the civil war, the government is "keen to welcome thousands of ethnic Tamil Sri Lankan refugees home after two and a half decades" (30 Aug. 2012). The UN High Commissioner for Refugees (UNHCR) reports on the voluntary return of 1,728 refugees to Sri Lanka from India in 2011, and 1,300 between January and mid-December 2012 (UN 21 Dec. 2012, 7).

2. Arrests and Detention

According to UNHCR, "there is no systematic monitoring after arrival in Sri Lanka of the treatment of Sri Lankans who were forcibly returned" (UN 21 Dec. 2012, 8).

Several sources report on cases of arrest of Tamil returnees to Sri Lanka (UN 21 Dec. 2012, 7; Human Rights Watch 29 May 2012; *The Sydney Morning Herald* 29 Sept. 2012). Several sources also report on cases of detention of Tamil returnees to Sri Lanka (Human Rights Watch 25 Feb. 2012; Freedom from Torture 13 Sept. 2012, 5; TAG 16 Sept. 2012). Freedom from Torture, a UK-based medical foundation that helps torture survivors rebuild their lives (n.d.), also notes that three voluntary returnees from the UK were detained twice after returning to Sri Lanka (13 Sept. 2012, 5, 10).

Several sources report on cases of arrest of Tamil returnees at the airport upon arrival (Human Rights Watch 29 May 2012; Freedom from Torture 13 Sept. 2012, 10, 14; TAG 16 Sept. 2012, 13). However, according to Tamils Against Genocide (TAG), a US-based non-profit litigation advocacy organization, there is also a "practice" of waiting until returnees have left the airport before making arrests (ibid., 1, 13). Sources report on arrests of Tamil returnees from:

- their home (ibid.) or a street near their home (Freedom from Torture 13 Sept. 2012, 5, 10, 14);
- public places such as bus stops (TAG 16 Sept. 2012, 13);
- outside of a police station (Freedom from Torture 13 Sept. 2012, 14);
- a local police station when reporting after receiving a summons (ibid., 10); and
- checkpoints (ibid., 5, 14; Human Rights Watch 25 Feb. 2012; TAG 16 Sept. 2012, 13).

There are widespread checkpoints in northern and eastern Sri Lanka (US 24 May 2012, 25; MRG Jan. 2011, 12). Sources also report that some returnees have been picked up by "white vans" (TAG 16 Sept. 2012, 13; Freedom from Torture 13 Sept. 2012, 13).

Sources report that Tamil returnees have been arrested or detained by

- the police (Freedom from Torture 13 Sept. 2012, 5; *The Sydney Morning Herald* 29 Sept. 2012);
- the Criminal Investigation Department (CID) (Adjunct Professor 14 Jan. 2013; Human Rights Watch 25 Feb. 2012); and
- the military (ibid.; Freedom from Torture 13 Sept. 2012, 5).

On 8 December 2012, the Sri Lankan government reported that 29 Sri Lankans, including 25 Tamils, who were deported after being denied refugee status in the UK, "were directed for further investigations by the CID unit of the Airport" and would be released after "questioning by the state intelligence division." Further information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2.1 Reports of Torture

At the end of 2011, the UN Committee Against Torture indicated that allegations of the "widespread use of torture" in police custody are "continued and consistent" (UN 8 Dec. 2011, 2). Freedom House's *Freedom in the World 2012* report states that torture occurs during "routine interrogations" (2012).

Several sources report on cases of torture of Tamil returnees to Sri Lanka by state authorities (Human Rights Watch 25 Feb. 2012; Freedom from Torture 13 Sept. 2012, 2; TAG 16 Sept. 2012, 3). Human Rights Watch reports on cases of failed Tamil asylum seekers from the UK and various other countries who have been subjected to torture upon return to Sri Lanka (Human Rights Watch 29 May 2012). In February 2012 and May 2012, Human Rights Watch documented thirteen cases of torture of Tamil deportees to Sri Lanka, from which the most "recent" alleged torture occurred in February 2012 (ibid.). The organization claims to have obtained "medical evidence" of torture for the eight cases published on 25 February 2012 (ibid. 25 Feb. 2012). Human Rights Watch indicates there is medical evidence for four of the five cases of torture, which were published on 29 May 2012.

In September 2012, Freedom from Torture released a publication documenting 24 cases of Tamils who faced torture upon voluntary return to Sri Lanka from the UK after the civil war, and have subsequently returned to the UK (13 Sept. 2012, 1, 3). Twelve of these cases, which occurred between 2009 and 2012, were based on forensic reports documenting physical and psychological consequences of torture, which are prepared by their Medico Legal Report Service consisting of specialist clinicians, who also consider the possibility of fabrication of evidence (Freedom from Torture 1, 2, 4, 8). The remaining 12 documented cases of torture took place between 2011 and 2012, and came to the attention of Freedom from Torture through referrals for treatment sent to the organization by the UK's National Health Service, or other health and social care professionals (ibid., 1, 13).

A report by TAG reviews the torture allegations of 48 Tamils who returned to Sri Lanka from the UK between 2010 and 2012 (TAG 16 Sept. 2012, 5). TAG indicates that the data used include 26 successful refugee appeal determinations in the UK "exclusively shared with TAG," 11 interviews with asylum seekers, diaspora members, activists and journalists, and 21 medico-legal reports produced for an unpublished thesis at a UK university (ibid., 3-6). According to TAG, "a period of residence in the UK or other 'Western' country may itself constitute a risk factor" for torture (ibid., 3). The organization further states that "[d]emographic determinants are sufficiently broad so as to assume that a majority of Tamils are at risk of arrest and torture upon involuntary return" to Sri Lanka (ibid., 14).

Sources report on several torture methods that returnees have reportedly been subjected to, including:

- beatings with various objects (Human Rights Watch 25 Feb. 2012; *The Sydney Morning Herald* 29 Sept. 2012; Freedom from Torture 13 Sept. 2012, 6, 11, 14);
- burning (ibid.; Human Rights Watch 25 Feb. 2012);
- suffocation (ibid. 29 May 2012; *The Guardian* 15 Sept. 2012; Freedom from Torture 13 Sept. 2012, 6, 11, 14);
- submerging head in water (Human Rights Watch 25 Feb. 2012; TAG 16 Sept. 2012, 14);
- hanging upside down (*The Sydney Morning Herald* 29 Sept. 2012; Human Rights Watch 25 Feb. 2012; TAG 16 Sept. 2012, 14); and
- sexual violence (ibid., 15; Human Rights Watch 25 Feb. 2012; Freedom from Torture 13 Sept. 2012, 6, 11, 14).

Sources report on the use of torture to elicit "confessions" (Freedom from Torture 13 Sept. 2012, 11; TAG 16 Sept. 2012, 4; UK Oct. 2012, Sect.13.1), including confessing to being a member of the Liberation Tigers of Tamil Eelam (LTTE) (Human Rights Watch 25 Feb. 2012). Some returnees have reportedly been forced to sign confessions in Sinhala (ibid.), a language that some Tamil returnees were unable to understand (TAG 16 Sept. 2012, 4; Freedom from Torture 13 Sept. 2012, 11). Some returnees have also reportedly been forced to sign blank documents (ibid.; TAG 16 Sept. 2012, 4).

Freedom from Torture reports that one returnee reported their detention and torture to a local police station upon release (Freedom from Torture 13 Sept. 2012, 10). This person was reportedly sent to the hospital for treatment, and subsequently re-arrested, detained, and tortured again (ibid.). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Sources indicate that the Sri Lankan government has denied the use of torture (*The Sydney Morning Herald* 29 Sept. 2012; UK 4 July 2011, para. 8.35). The British High Commission stated in a letter dated 11 May 2011 to the UK Home Office that, according to Sri Lankan intelligence officials, the wounds of detainees are self-inflicted with the purpose of providing evidence for future asylum claims (ibid.). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

An October 2012 UK Border Agency Policy Bulletin on the allegations of mistreatment and torture of returnees to Sri Lanka from the UK presented by Human Rights Watch, Freedom from Torture, TAG and Amnesty International, expresses the opinion that

in general the acts of torture are random and usually used to extract confessions. As reflected in the OGN [*Operational Guidance Note*] for Sri Lanka, the Agency accepts that ill treatment amounting to torture does exist and that certain categories of individual by the fact of their profile, or by accumulative risk factors, might be at risk. This is in accord with existing UK and European case law. The Agency does not accept that Tamils in general would be at risk on return to Sri Lanka. [] A key question in light of improvements in the overall security situation remains whether any past involvement in the LTTE, actual or perceived, is currently likely to bring returnees to the adverse attention of the Sri Lankan authorities. (UK Oct. 2012, Sect. 1, 3, 13.1, 13.9)

3. Political Activity

In a telephone interview with the Research Directorate, an adjunct professor of Asian studies and political science at Temple University, Pennsylvania, US, indicated that airport security procedures in Sri Lanka are not dependent on a person's ethnicity, but on the person's political activities (Adjunct Professor 14 Jan. 2013). The Adjunct Professor added that Tamil returnees with "very significant" political or military involvement against the government are "very likely" to be detained and subjected to the "use of force" (ibid.). He added that this may be in order to gather information about people's connections and activities in Sri Lanka and Canada, or the other country from which the person has returned (ibid.). According to TAG, there is a "clear pattern: that any association with any form of political activity in support of minority rights, *either on the island or abroad*, places an individual at risk of arrest - thereby making a large proportion of the Tamil community vulnerable" [emphasis in original] (16 Sept. 2012, 14).

Sources indicate that some Tamil returnees have been interrogated about their political activities abroad (Human Rights Watch 29 May 2012; TAG 16 Sept. 2012, 10; Freedom from Torture 13 Sept. 2012, 3). Freedom from Torture reports that in at least 12 of the 24 cases documented, returnees indicated that they were interrogated about their or other Tamils' activities in the UK (ibid.).

Sources report that during interrogation, some returnees have been shown photographs of themselves at protests in the UK (TAG 16 Sept. 2012, 10), as well as photographs of others (Freedom from Torture 13 Sept. 2012, 11). The Adjunct Professor indicated that the Sri Lankan government has agents in "key countries," including Canada, who monitor peoples' activities (14 Jan. 2013).

Sources indicate that informants have identified Tamil returnees as having an association with the LTTE (TAG 16 Sept. 2012, 10; Freedom from Torture 13 Sept. 2012, 5, 10, 14; Adjunct Professor

14 Jan. 2013). The Adjunct Professor indicated that LTTE opponents, such as the Eelam People's Democratic Party (EPDP) and former LTTE members that have been "rehabilitated" or unable to find work and have agreed to work with the EPDP, have been hired to stay at the airport and identify Tamils with "direct and indirect" connections to the LTTE (ibid.). Human Rights Watch reports that, in 2011, soldiers told a Tamil who was deported from the UK and allegedly arrested upon return that he "had to work as an informer for the army to identify former LTTE cadres"; the Tamil was released after his family paid a bribe (25 Feb. 2012). Sources report on the release of returnees from detention through the payment of bribes (TAG 16 Sept. 2012, 4; Human Rights Watch 25 Feb. 2012; Freedom from Torture 13 Sept. 2012, 5, 10).

3.1 Links to LTTE

According to Freedom from Torture, the cases of torture they documented

reveal that Sri Lankan Tamils who in the past had an actual or perceived association *at any level* with the LTTE but were able to leave Sri Lanka safely now face risk of torture on return. These cases demonstrate that the fact the individuals did not suffer adverse consequences because of this association in the past does not necessarily have a bearing on risk on return now. (13 Sept. 2012, 2)

The UNHCR states that people who have had any previous real or perceived links to the LTTE, that "go beyond prior residency within an area controlled by the LTTE continue to expose individuals to treatment which may give rise to a need for international refugee protection" (21 Dec. 2012, 27). *The Sydney Morning Herald* reports that, according to a Colombo human rights advocate, "Tamils broadly, □ people who had contact with the LTTE □ even minor contact or if they were forcibly recruited," as well as people who live in or travel to the north, could face "persecution" from state authorities (29 Sept. 2012). Similarly, TAG states that the extent of LTTE association is not correlated with the likelihood of arrest and torture (16 Sept. 2012, 12.).

The UNHCR said that the perceptions of peoples' political opinions are "usually linked to their ethnicity" (21 Dec. 2012, 28). According to Freedom from Torture, one returnee indicated that during interrogation, the authorities said that they were "'killing the supporters'" of the LTTE and since "'all Tamil supporters are LTTE, if we kill them we will not get this problem again'" (13 Sept. 2012, 6). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The UNHCR states that "all persons" living in the northern and eastern provinces of Sri Lanka "and at the outer fringes of the areas under LTTE control, necessarily had contact with the LTTE and its civilian administration in their daily lives" (UN 21 Dec. 2012, 26). Similarly, TAG indicates the following:

As a popular social movement the LTTE was integrated within many aspects of Tamil society, particularly in the period during which the LTTE controlled their own de-facto state Nearly every family would be likely to have some tie to the movement through either bloodlines or their own engagement in legitimate or illegitimate activities. (16 Sept. 2012, 12)

According to TAG, "failed asylum seekers are more likely to be readily associated with the LTTE either by virtue of the fact that they sought asylum or because of a presumption of involvement in Tamil diaspora activities which are viewed by the Sri Lankan government as being supportive of the LTTE" (TAG May 2012, para. 1.3.3). Freedom from Torture indicates that, according to a returnee, interrogators said that "'the Sri Lankan authorities know that Tamils who are in the UK support the LTTE'" (13 Sept. 2012, 11).

Freedom from Torture reports that in 11 of the 12 cases of torture documented in medico-legal reports, the returnee had an actual or perceived association with the LTTE before going to the UK,

with all but one who indicated that they were interrogated about their LTTE association upon return to Sri Lanka (Freedom from Torture 13 Sept. 2012, 4-6, 9-10). The organization reports that, at times, such interrogation also included questions about activities in support of the LTTE while the returnee was in the UK, and information about other members and supporters of the LTTE in the UK (ibid., 11).

3.2 Criticism of or Opposition to Government

Sources indicate that returnees who have been critical of the government face "risk" when returning to Sri Lanka (TAG 16 Sept. 2012, 3; *The Sydney Morning Herald* 29 Sept. 2012). *The Sydney Morning Herald* reports that, according to a Colombo human rights advocate, anyone who criticizes the government could face "persecution" upon return to Sri Lanka (29 Sept. 2012). TAG indicates that criticizing or protesting against the Sri Lankan government or being returned from a country that has, through government or media, criticized the Sri Lankan government or encouraged accountability and reform, is a "new risk factor" (16 Sept. 2012, 3).

4. Identity Documents

Human Rights Watch documented two cases of returnees being "specifically targeted because they did not possess the required IDs" (25 Feb. 2012). According to the Adjunct Professor, if a Tamil returnee does not have identity documents, the government will search for that person's records, and the individual may be interrogated in an attempt to acquire information about the location of their documents and why they left Sri Lanka (14 Jan. 2013). Further information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

5. Sri Lankan Asylum Seeker Boat in Togo

Sources indicate that more than 200 Sri Lankan asylum seekers that were en route to Canada were stopped in Togo in 2011 (Sri Lanka 29 May 2012; IOM 3 Feb. 2012; BBC 31 Jan. 2012). In 2012, sources indicated that these asylum seekers were being detained in a stadium in Lome (ibid.; IOM 3 Feb. 2012).

On 3 February 2012, the International Organization for Migration (IOM) indicated that 164 of the 209 asylum seekers decided to return to Sri Lanka voluntarily, including 9 who had already returned, while 3 migrants sought asylum in Togo, and 42 had not yet decided what to do. The IOM also indicated that four migrants escaped from the stadium (3 Feb. 2012). Further information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

On 1 February 2012, the BBC stated that they spoke to Tamil detainees over the telephone. According to the BBC, one of the asylum seekers reportedly indicated that detainees have been told that if they do not voluntarily return to Sri Lanka, they "'would be deported forcefully'" (BBC 31 Jan. 2012). The BBC adds that, according to the detainees, the UNHCR, IOM, Canadian government and local immigration authorities told them that "it would be better to be deported than being put in the local prison," and allege that they are forbidden from meeting with people, other than the international bodies (ibid.). The BBC states that they have not been able to "independently verify" the claims of detainees (ibid.). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

6. Sri Lankan Deportees and Voluntary Returnees from Australia

On 18 January 2013, the Australian Department of Immigration and Citizenship announced that, since 13 August 2012, the date when the Australian government announced that "irregular maritime arrivals would be liable to transfer to regional processing facilities in Nauru and Papua New Guinea," a total of 935 Sri Lankans returned to Sri Lanka involuntarily and voluntarily. According to the Australian Broadcasting Corporation (ABC), the Australian government does not release information regarding the ethnicity of returnees "as a matter of course" (24 Sept. 2012). *The Australian* newspaper indicated that 550 of 700 Sri Lankan returnees in 2012 are reportedly Sinhalese (17 Dec. 2012).

On 19 December 2012, the Sri Lankan government news source, News Line, reported that 100 Sri Lankans had returned to Sri Lanka from Australia voluntarily, and added that 682 were involuntarily returned.

Media sources report on the voluntary repatriation of 18 Sri Lankan asylum seekers from Australia in September 2012 (*The Sydney Morning Herald* 29 Sept. 2012; ABC 24 Sept. 2012). Media sources also indicate that 14 out of 18 of these returnees are Sinhalese, 3 are Tamil, and 1 is Muslim (ABC 24 Sept. 2012; *The Sydney Morning Herald* 29 Sept. 2012). The voluntary returnees were told they would be provided with "re-integration packages" of approximately US\$3,000 (ibid.) by the Australian government (ABC 24 Sept. 2012). The ABC reports that refugee advocates have questioned whether the 18 voluntary returnees made their decision to leave with "informed consent," indicating that the returnees did not have access to independent information (ABC 24 Sept. 2012). According to *The Sydney Morning Herald*, a Sinhalese returnee reportedly said that the Australian authorities "'just wanted [him] to go back to Sri Lanka'" (29 Sept. 2012). *The Sydney Morning Herald* reports that all 18 voluntary returnees were interrogated upon return to Sri Lanka by immigration officials, police and the CID on why and how they went to Australia, and why they came back, and provides the account of a returnee who was "hailed" to the police station and questioned twice in the first week of his return to Sri Lanka (ibid.). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

According to the Refugee Action Coalition Sydney, a refugee advocacy organization in Australia (n.d.), on 30 November 2012, a "plane-load" of 35 mostly Tamil asylum seekers were arrested upon return to Sri Lanka from Australia and taken to Negombo prison, near Colombo (Refugee Action Coalition Sydney 3 Dec. 2012). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

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: Attempts to contact the following individuals and organizations were unsuccessful within the time constraints of this Response: Amnesty International, Associate Professor of Global Studies at the University of Gothenburg, Associate Professor of Political Science at Wake Forest University, Canadian High Commission in Sri Lanka, Canadian Tamil Congress, Centre for Asia Studies, Center for Human Rights and Development, Centre for Land Warfare Studies, Centre for Policy Alternatives, constitutional and human rights lawyer in Colombo, human rights lawyer in Colombo, INFORM Human Rights Documentation Centre, International Conflict Research Institute, Law and Society Trust, Network for Rights, Refugee Action (Choices AVR), Sri Lanka — High Commission in Ottawa, Sri Lanka Human Rights Project, Transparency International, UNHCR, US NGO Forum on Sri Lanka.

Internet sites, including: Airport and Aviation Services (Sri Lanka) Limited; ecoi.net; European Center for Constitutional and Human Rights; International Crisis Group; Ireland Refugee Documentation Centre; Lessons Learnt and Reconciliation Commission; Migrant News Sri Lanka; Reuters Institute for the Study of Journalism; Sri Lanka — Ministry of Defence and Urban Development, Ministry of Justice, Ministry of Public Administration and Home Affairs, Ministry of Rehabilitation and Prison Reforms, official website of the government of the Democratic Socialist Republic of Sri Lanka.

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