



Tamil Information Centre

தமிழ் தகவல் நடுவம்

Committed to Human Rights and Community Development

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Briefing Note 3 August 2007

UK's Premature Returns Endanger Safety of Asylum Seekers

Sri Lanka is faced with a situation of lawlessness of epidemic proportions. Such lawlessness is manifested by the continuing abductions, arbitrary arrests, enforced disappearances and large scale killings. In a climate of relentless violence, entire families have been wiped out. The law enforcement authorities have become dysfunctional and many policemen, including some high ranking officers have become partners in crime. UN officers estimated the number of killings in Sri Lanka in 2005 alone at 500. Between January 2006 and May 2007, human rights agencies estimated that 4,000 people were killed. In Jaffna alone, 13 people were shot dead between 8 July and 31 July 2007.

The UN Working Group on Disappearances said in its report in December 2005 that of more than 12,278 cases of disappearances in Sri Lanka submitted to the government, 5,708 remain un-clarified and this is the highest number of disappearances in the world next to the case of Iraq with 16,517 disappearances. In Sri Lanka, four Presidential Commissions inquired into 37,662 of the 54,404 complaints of disappearances, which took place between January 1988 and December 1995 and found evidence of disappearance in 21,115 cases. No enquiries have been conducted into another 16,742 cases of disappearances. No further action has been taken in the 21,115 cases.

Between January 2006 and May 2007, over 1,000 people disappeared in the conflict zones as well as in the other parts of the island. Between December 2005 and January 2007, a total of 777 missing cases were reported which includes 689 cases in the north-east and 88 cases in Colombo and other southern areas. In Jaffna alone, 14 people were either abducted or disappeared in July 2007. More than 100 Tamils have been abducted in Colombo by persons arriving in vehicles without number plates. These vehicles are easily able to pass through several checkpoints before and after abduction. The persons abducted include journalists, students and women. The bodies of 12 people were found later and the fate of the others is unknown. Sixteen people were released after paying huge sums of money as ransom. The ransom monies are paid into named bank accounts, but the Banks and the Police are not willing to carry out investigations. The police have also not investigated contravention of laws relating to money-laundering. Individuals, members of organizations and even parliamentarians who attempted to investigate the abductions have received death threats. It is clear that the security forces and high government officers are involved in the abductions.

Many Tamils in Jaffna have sought protection from the Sri Lanka Human Rights Commission (SLHRC) because of threats from unidentified gunmen. The SLHRC has handed over at least 70 such people to the police. These people are currently being held in protective custody in the Jaffna prison.

The Sri Lankan government expelled 470 Tamil civilians from Colombo on 7 June 2007. The Sri

Lankan Police forced them into buses and sent them to the North or East of the island. A week earlier (on 31 May 2007) lodge owners in Colombo were instructed by police to refrain from providing accommodation to Tamils from the north-east and evict all Tamils who were already resident in the lodges. On 1 June 2007, the Inspector General of Police (IGP) said that the Tamil people cannot stay in Colombo without a valid reason. This action was taken by the government despite the Sri Lankan Constitution guaranteeing the right of citizens to choose their place of residence in any part of the island. Human rights agencies accused the Sri Lankan government of ethnic cleansing and the European Union called upon the government to stop immediately the forced displacement of Sri Lankan citizens from Colombo and take urgent action to safeguard the rights of those already removed.

A large number of Tamils have been arbitrarily arrested by the Sri Lankan security forces in the north-east and southern areas under the draconian Prevention of Terrorism Act and the Emergency Regulations. The Emergency Regulations give the security forces wide powers, including detention for long periods without trial or access to legal representatives or relatives. They also provide for admission of confessions in a trial, and place the burden of proving, that the confession was not made voluntarily, on the accused. These Regulations also remove the powers of Inquirers of Deaths and Magistrates in ascertaining the cause of death in custody. In case of death in custody, the police are not required to apply for an inquiry. They may apply, and such application may be made only to the Colombo High Court and the proceedings are not open to the public. This secretive procedure could be used to prevent proper investigation of deaths caused by the security forces and cover-up illegal killings. In the past such powers to the security forces under Emergency Regulations have led to extreme forms of torture, rape, extra-judicial executions and disappearances in custody. We are already witnessing the impact of the Regulations. The fear of asylum seekers has heightened after the arrests and disappearances of Tamils in recent months. It is of grave concern that the Home Office Country Information of October 2005, the Country Information Bulletin of November 2005 and the Operational Guidance Note of December 2005, did not make any reference to the draconian August 2005 Emergency Regulations or the continuing arrests.

On 6 December 2006, the President issued additional Emergency Regulations. These regulations give a very wide definition of “terrorism” and are clearly intended to curtail legitimate democratic activities and constitutionally protected rights of the people, organizations and the media. The regulations say that no person shall engage in any transaction on any matter whatsoever with a group engaged in terrorism. But the regulations also say that there can be transaction with such a group with the written approval of the Competent Authority appointed by the President, to facilitate a peaceful political solution, maintenance of supplies, services essential to the life of the community, provision of humanitarian assistance, conduct of development activities or for any other lawful purpose. This means, individuals and civil society organizations engaged in these activities, including promotion of peace, cannot continue. If they wish to carry out these legitimate activities, they must obtain written approval from the Competent Authority, as otherwise they would be accused of engaging in terrorism.

The security forces have also carried out cordon and search operations and have arrested many Tamils in the hill country and other southern areas such as Kandy, Ratnapura, Galle, Matara, Nuwara Eliya, Vennappuwa, Badulla and Hatton. Tamils travelling from one area to another have also been taken into custody. Those arrested are held in detention at various detention centres and prisons, including Kalutara where there are 68 Tamil detainees. More than 300 Tamils are detained at the Boossa detention centre in Galle District, 105 km south of Colombo and 400 km south of Jaffna, very far away from where relatives live. The Boossa detention centre has been notorious for torture and disappearances. Parents and family members of the detained persons are not permitted to visit them at detention centres. Detainees do not have any change of clothing or other essential materials and there is hardly any arrangement for legal advice and legal representation.

Amnesty International says that ‘a climate of fear dominates Sri Lanka with human rights activists and journalists threatened, attacked, intimidated, harassed and killed’ and that ‘even humanitarian workers have not been immune’. Amnesty further says that the alarming escalation of human rights abuses over the past 18 months clearly shows that existing domestic mechanisms for protecting civilians and delivering justice have failed to deter perpetrators and the Sri Lankan government’s efforts to date have been woefully inadequate.¹ In its testimony to the European Parliament on Development, Human Rights Watch says as follows:

“.....what has become a source of deep concern to us is the Sri Lankan government’s human rights track record over the past year, which has taken a decisive turn for the worse. As hostilities increased, eager to destroy the LTTE at all costs, the government’s respect for Sri Lankan and international law has sharply declined..... Some of the most serious violations have taken place in the areas of open conflict, where civilians have died and been displaced. Both the government and the LTTE have shown a brazen disregard for the well-being of civilians..... Both the LTTE and the government have failed to provide for the needs of the displaced. The LTTE has at times blocked civilians from leaving areas of conflict, while the government through its indiscriminate shelling and restrictions on humanitarian aid has encouraged civilians to flee.....The spiraling number of enforced disappearances is also cause for alarm. As of mid-May, more than 1,100 people had “disappeared”. The vast majority of these are Tamils. While the LTTE and other armed groups are responsible for some disappearances, many occurred in government-controlled territory and involved government forces, either directly or with their complicity.”²

Chairman of the Subcommittee on Middle East and South Asia of the US House Foreign Affairs Committee says as follows in August 2007:

“The 2002 ceasefire in Sri Lanka exists only on paper as both the government and the Liberation Tigers of Tamil Eelam have resumed full scale conflict resulting in over 4,000 dead, hundreds of thousands displaced and massive human rights violations committed by both sides. In particular, the government of Sri Lanka seems intent on winning the conflict militarily and has resorted to alliances with pro-government Tamil militias, extrajudicial killings and disappearances of political opponents. Hundreds of Sri Lankans have been detained under newly strengthened emergency regulations. The expansion of emergency powers, the wide-spread use of extra-judicial killings and disappearances by the government and the free reign given by the government to Sinhalese nationalists only accelerates Sri Lanka’s descent into chaos and drift away from democracy.”³

It is clear that from the above statements asylum seekers cannot return to Sri Lanka in safety and dignity. Returned asylum seekers in the last few weeks have been arrested at Colombo airport and detained at the Negombo prison. It is on the basis that the situation in the island had deteriorated that the British government removed Sri Lanka from the ‘White List’ of safe countries on 13 December 2006. Since then, the situation has become far worse. The Foreign and Commonwealth Office says there remains a high threat from terrorism, that there is heightened security in Sri Lanka and that there have been detentions particularly of people of Tamil ethnicity.⁴

The UNHCR says in its December 2006 Position Paper says as follows:

¹ *Sri Lanka: President must invite international human rights field operation*, Amnesty International (ASA 3/013/2007), 14 June 2007 – <http://web.amnesty.org/library/index>

² *The human rights situation and humanitarian space in Sri Lanka* - Testimony before the European Parliament Committee on Development – Human Rights Watch, 5 June 2007 – <http://hrw.org/english/docs>

³ Statement of Gary Ackerman on 1 August 2007, Subcommittee on Middle East and South Asia, House Foreign Affairs Committee, US House of Representatives – <http://www.house.gov/ackerman>

⁴ Travel Advice, Foreign and Commonwealth Office, Updated 1 August 2007 – <http://www.fco.gov.uk>

“All asylum claims of Tamils from the North or East should be favourably considered. In relation to those individuals who are found to be targeted by the State, LTTE or other non-state agents, they should be recognized as refugees under the criteria of the 1951 Convention, unless the individual comes within the exclusion criteria of the 1951 Convention.”

The UNHCR also says that ‘No Tamil from the north-east should be returned forcibly until there is significant improvement in the security situation in Sri Lanka’ and that ‘Where a Tamil from Colombo is the subject of targeted violation of human rights by the LTTE, the authorities or paramilitary groups, no internal flight alternative is available anywhere in the country. UNHCR further says that the fact that internally displaced people are receiving international assistance in certain areas in Sri Lanka should not give rise to the conclusion that return to such areas is safe or reasonable.’⁵ International human rights agencies, including the Tamil Information Centre (TIC), are advocating the establishment of an international human rights monitoring mechanism in Sri Lanka to effectively address the growing political killings and human rights abuses, which, as already pointed out by the UN, must meet the requirements of independence, credibility, effectiveness and empowerment, so that it contributes to public confidence, peace and stability in all parts of Sri Lanka. The TIC believes that Tamil asylum seekers should not be returned in the absence of such a mechanism which could also monitor the situation of the returning asylum seekers.

The TIC is aware that there is a great deal of confusion within the Tamil community over the manner in which asylum decisions are made by the Home Office. The TIC feels that concerns and fears of the community should be adequately acknowledged, understood and addressed. An ongoing engagement with the community is essential to create awareness and to respond to their concerns. The TIC acknowledges that there are asylum applications that lack merit and appear not to be well founded. This may be due to difficulties asylum seekers currently face in obtaining good legal representation. Many Solicitors, for various reasons, have closed their legal firms or given up asylum practice. The lack of proper legal advice and representation result in the failure of asylum applications in many instances.

The UK government’s mishandling of the asylum issue and arbitrary deportations have led to media vilification of asylum seekers resulting in public hostility, and the treatment of failed asylum seekers are major concerns to the community. Many of the asylum seekers have no means to support themselves and have become destitute. This problem affects not only the Tamils but other refugee communities as well. Solicitors inform the TIC that there are instances where asylum seekers have been removed from the country before their cases were concluded or before they could avail themselves to entitled remedies. The TIC is of the opinion that there should be procedural fairness in the case of removals and asylum seekers should be given the opportunity to explore all available legal remedies.

The UK has the obligation to examine the likelihood of persecution of returned asylum seekers. In the past, returned asylum seekers have been arrested at the Colombo airport, interrogated and detained. Some have suffered degrading treatment or torture and others have been charged in courts. The TIC calls upon the UK government to review all claims from Tamil asylum seekers in the light of the deteriorating situation in Sri Lanka and where appropriate delay determination of asylum claims until the declared end of hostilities in the island.

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⁵ UNHCR Position Paper on international protection needs of asylum seekers from Sri Lanka, UNHCR, 22 December 2006, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld>