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Responses to Information Requests

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4 February 2015

LKA105042.E

Sri Lanka: Surveillance, arrest and detention of Tamil citizens; recourse available to Tamil citizens (August 2011-January 2015)

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Surveillance of Tamil Citizens

According to the report *Sri Lanka's Assault on Dissent*, published by Amnesty International (AI) in April 2013, "large concentrations" of Tamils reside in the north and east of Sri Lanka, and human rights defenders there report "heavy police surveillance and repeated interrogation about their activities, international contacts and donors" (AI 30 Apr. 2013, 8). The same report states that many of those affected by "this new repression" are not actually "prominent activists engaged in advocacy at the international level, but local community workers providing assistance to people struggling to recover from decades of armed conflict" (ibid.).

Similarly, a 2014 report produced by the Bar Human Rights Committee of England and Wales (BHRC), an independent arm of the Bar of England and Wales that works on international human rights issues (BHRC n.d.), in collaboration with the International Truth & Justice Project in Sri Lanka, a campaign to end the torture and rape allegedly perpetrated by Sri Lankan security forces (International Truth and Justice Project n.d.), states that soldiers and police are engaged in monitoring the civilian population and that the "Sinhalese dominated" military is "effectively acting as a force of occupation in the predominately Tamil areas of the north" (BHRC and the International Truth and Justice Project Mar. 2014, 13). The report further indicates that Tamils in the north and east "are under scrutiny in a way in which they were never before" (ibid.). The same source states that though it is the government's obligation to ensure that "measures [are] in place to prevent a possible resurgence of conflict ... this kind of surveillance is completely disproportional to the perceived threat of renewed violence and violates their [Tamils] rights to privacy" (ibid.).

A Ministry of Defence press release states that, during a public lecture on future challenges to national security at the Sri Lanka Foundation Institute, a long-established adult education center in Colombo (SLF n.d.), the Defence Secretary, Gotabaya Rajapaksa, indicated that "ex-LTTE [1] cadres, pro-LTTE activists and LTTE sympathizers [are] still operating in various guises through various groups in many countries around the world," and identified this as a threat to national security (Sri Lanka 11 Jan. 2012). He added that Sri Lanka's Ministry of Defence is aware of the "potential threat of terrorism" in the country and that it is of "critical importance" that security forces maintain a "strong presence in areas that were traditionally used by the LTTE for terrorist activities" (ibid.).

In correspondence with the Research Directorate, an anthropologist who has researched issues pertaining to ethnic minorities in Sri Lanka and their political situation during and after the civil war, and is affiliated with the American Institute of Sri Lankan Studies [2], indicated that, based on research he conducted in the country in 2013,

[m]ost community activists, especially in the North, report being continually monitored by security forces. They feel that they are unable to talk to each other about political issues due to fear of increased surveillance and scrutiny. (Anthropologist 8 Jan. 2015)

At a 31 August 2013 press conference during her mission to Sri Lanka to assess human rights conditions, the UN High Commissioner for Human Rights, Navi Pillay, expressed concern about "the harassment and intimidation of a number of human rights defenders, at least two priests, journalists, and many ordinary citizens who met with me, or planned to meet with me" (UN 31 Aug. 2013). Pillay stated that she received reports that people in villages and settlements in the Mullaitivu area were "visited by police or military officers both before and after I arrived there in Trincomalee, several people I met were subsequently questioned about the content of our conversation" (ibid.). A 31 August 2013 article published by the BBC also reported on Pillay's visit to Sri Lanka, indicating that an MP with the TNA [Tamil National Alliance], Sri Lanka's biggest Tamil party, "had raised concerns that 'people who had met her [Navi Pillay] in the north and east are now being harassed by military intelligence'" (BBC 31 Aug. 2013).

Similarly, in correspondence with the Research Directorate, the Executive Director of the National Peace Council of Sri Lanka, an NGO which aims to mobilize Sri Lankans "towards peace and conflict transformation," through advocacy, research, training, and dialogue (National Peace Council 25 Nov. 2008), stated that

[i]ntelligence personnel in military uniform and civilian attire question participants at civil society events, such as exchange visits, seminars and even at social functions such as weddings. Prior notice of such events is routinely required in the North and East. With regard to individuals, there is widespread apprehension, even outside the North and East, of surveillance of phone calls and emails. (Executive Director 12 Jan. 2015)

Sources report that, according to the Federation of University Teachers' Associations (FUTA), the representative union of academics of state universities in Sri Lanka (*Colombo Gazette* 3 Sept. 2013), some academics were harassed for attending a conference overseas (ibid.; Freedom House 2014). Freedom House states that the academics that reported the harassment were studying Tamil issues (ibid.). According to an article published by the *Colombo Gazette*, a Sri Lankan online newspaper, the military claimed the academics had "gone to attend an event in support of the LTTE" (*Colombo Gazette* 3 Sept. 2013). The same source indicates that according to FUTA, "the academics had gone to attend the World Research Conference on Tamilological Studies 2013, an international conference at which Tamil scholars from around the world participate" (ibid.).

2. Arrest and Detention

Sources report that in August 2011, Sri Lanka lifted the state of emergency that had been in place in the country for decades (AI 23 May 2012; Human Rights Watch Feb. 2013, 27). An August 2011 *Globe and Mail* article indicates that Sri Lankan President Mahinda Rajapaksa announced the end of the 28-year state of emergency because the country has not experienced any terrorism since the end of the civil war in 2009 (25 Aug. 2011). Sources indicate that the Prevention of Terrorism Act (PTA) is still in place and used by officials to detain people for long periods of time without trial (AI 23 May 2013; Freedom House 2014; Human Rights Watch Jan. 2014). A Human Rights Watch report on sexual violence against Tamils by security forces in Sri Lanka, published in February 2013, indicates that after removing the state of emergency, the president introduced new regulations in 2011 under the PTA that allowed the government to detain suspects without charge for up to 30 days (ibid. Feb. 2013, 27). The same source reports that in January 2013, the government passed a new law where suspects can be held for up to 48 hours by police, without a warrant (ibid.). For further information on the PTA, see Response to Information Request LKA103837.

The US Department of State's *Country Reports on Human Rights Practices for 2013* indicates that there were no official statistics regarding "enforced and involuntary disappearances" and that "citizens' considerable fear of reporting such incidents made reliable accounting difficult" (US 27 Feb. 2014, 6).

2.1 Incidents of Arrest and Detention Involving Tamils

The Human Rights Watch report documents 75 cases of rape and other sexual violence committed by Sri Lankan security forces against victims identified as Tamil; these cases include detention, beatings, and suspicion of links to the LTTE (Human Rights Watch Feb. 2013, 50, 51, 57). According to the press release for the report, these incidents took place between 2006 and 2012 (ibid. 26 Feb. 2013). The same source states that men and women interviewed by Human Rights Watch "reported being raped on multiple days, often by several people, with the army, police and pro-government paramilitary groups frequently participating" (ibid.).

Sources report the following incidents involving the arrest and deportation of Tamils:

- In May 2013, AI reported on the "alleged enforced disappearances" of more than 20 people, including political activists, businesspeople and suspected criminals (AI 23 May 2013). According

to the same source, Ramasamy Prabakaran, a Tamil businessman, was abducted by armed men in February 2012 "just two days before the Supreme Court was scheduled to hear his complaints against arbitrary arrest, detention and torture by police and seizure of his business in May 2009" (ibid.).

- An article published in October 2014 by Colombo Mirror, a Sri Lankan news website reporting in both English and Tamil, indicates that the Terrorists Investigation Department (TID) arrested a Tamil man in Kilinochchi for "allegedly distributing forms meant to be circulated among the witnesses of the ongoing war crime probe by the Office of the High Commissioner for Human Rights (OHCHR)" (26 Oct. 2014). According to Tamil Guardian, a UK-based Tamil affairs website, the man was arrested and charged with possession and distribution of "evidence collection forms for the OHCHR Investigation into Sri Lanka" (27 Oct. 2014).
- Sources report that human rights defender Balendran Jeyakumari, was detained in March 2014 (BBC 14 Mar. 2014; Anthropologist 8 Jan. 2015; AP 21 Mar. 2014) "under the country's tough anti-terrorism law on charges that she harboured a former Tamil Tiger rebel" (ibid.). INFORM Human Rights Documentation Centre, a Colombo-based organization that works with activists and human rights networks to "monitor and document [the] human rights situation in Sri Lanka," indicates in its report *Repression of Dissent in Sri Lanka*, that Jeyakumari and her daughter have been taking part in campaigns "to find out [the] truth about disappeared persons, including Jeyakumari's son" and they had both "received much publicity in [the] second half of 2013, due to their participation in an event with the UN High Commissioner for Human Rights on 30th August 2013 and later in November, when they participated in a public protest with other families of disappeared persons, in Jaffna" (INFORM Apr. 2014, 5). According to the anthropologist, Jeyakumari is still in detention at Boosa camp [a detention camp in southern Sri Lanka] and "has not been charged with anything" (8 Jan. 2014).
- Sources indicate that human rights activist Ruki Fernando and pastor Praveen Mahesahn were arrested in March 2014 (Reuters 17 Mar. 2014; Anthropologist 8 Jan. 2015). Sources state that the two were detained for investigating the arrest of Jeyakumari (ibid.; AP 21 Mar. 2014). Other sources report that the reason given by authorities for their arrest was that the individuals were suspected of trying to revive the LTTE (INFORM Apr. 2014; Reuters 17 Mar. 2014). An article published by the International Federation for Human Rights (Fédération internationale des ligues des droits de l'Homme, FIDH), reports that, according to the Observatory for the Protection of Human Rights Defenders, a joint programme of FIDH and the World Organisation Against Torture (OCMT), Sri Lankan police media spokesman, Ajith Rohana, announced that the activists were detained under the PTA; they were reportedly charged with "attempting to create ethnic discord among communities and to promote separatism" (FIDH 25 Mar 2014).

3. Recourse Available to Tamil Citizens

Sources report that the Human Rights Commission of Sri Lanka is a government resource available to Tamil citizens who claim they have been subjected to human rights violations by authorities (Executive Director 12 Jan. 2015; Sri Lanka Coordinator 19 Jan. 2015). In correspondence with the Research Directorate, AI's Sri Lanka Coordinator indicated that the Human Rights Commission is a state organization that investigates human rights violations, monitors and reviews human rights activity, and has 10 regional offices throughout Sri Lanka (ibid.). For further information on the Human Rights Commission of Sri Lanka, including its complaint resolution procedure, see Response to Information Request LKA103784.

In correspondence with the Research Directorate, the President of the Council of Non-Governmental Organisations in Jaffna, an NGO that focuses on lobbying, peacebuilding, and acting as a stakeholder with other NGOs who work in the Jaffna peninsula (Insight on Conflict Dec. 2014), stated that there are government bodies "such as the National Human Rights Commission and several commissions of [inquiry], but they have very limited mandates. They are not really accessible to detainees" (ibid.).

The Human Rights Watch report states that those who are mistreated under the PTA "are unlikely to come forward and make an official complaint because of immunity provisions in these laws" (Feb. 2013, 27). Similarly, the Executive Director at the National Peace Council of Sri Lanka indicated that "if the security forces say that there is a national security issue at stake, the police and judiciary tend to be neutral to the security forces" (12 Jan. 2015).

Country Reports 2013 indicates that citizens can file "fundamental rights cases" in instances of human rights violations and that the judiciary demonstrated "some independence and impartiality in adjudicating these types of cases, and plaintiffs were awarded damages in a number of instances" (US Feb. 27 2014, 21). In contrast, the anthropologist indicated that "the courts have ... lost their independence after the President had the chief judge of the Supreme Court impeached in 2014" (8 Jan. 2015). Similarly, sources indicate that in January 2013, President Mahinda Rajapaksa had Shirani Bandaranayake, Chief Justice of the Supreme Court, removed from office after parliament voted to impeach her (BBC 13 Jan. 2013; *The New York Times* 13 Jan.

2013; Reuters 13 Jan. 2013) on charges of "financial irregularities" (ibid.; *The New York Times* 13 Jan. 2013). According to sources, the Supreme Court of Sri Lanka ruled that the impeachment process was illegal and the Court of Appeal also nullified the parliamentary ruling (*The New York Times* 13 Jan. 2013; Reuters 13 Jan. 2013).

According to the President of the Council of Non-Governmental Organisations, with regards to non-governmental support for Tamils, international NGOs need "special permission to operate in the North" (President 14 Jan. 2015). The President also indicated that international organizations like UNHCR and UNICEF "are not allowed to work freely, their access is controlled" (ibid.). Similarly, the anthropologist indicated that the government has "pushed out many international NGOs and intimidated local NGOs, so that NGOs do not provide sufficient avenues for recourse as they once did" (Anthropologist 8 Jan. 2015). He added that some local NGOs that are still active include Home for Human Rights in Colombo, "women's groups and church groups in the former war zones, particularly Catholic churches, which do a lot of work with Tamils who have faced abuses by the Sri Lankan security forces and Tamil militant groups" (ibid.).

The AI Sri Lanka Coordinator stated that AI in Sri Lanka refers Tamils and other complainants to lawyers or NGOs who provide them with help in pursuing human rights complaints (Sri Lanka Coordinator 19 Jan. 2015). The Coordinator stated that the following organizations have provided help to complainants: the Centre for Policy Alternatives, Home For Human Rights, INFORM Human Rights Documentation Centre, Law & Society Trust, and Suriya Women's Development Centre (ibid.).

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] The Liberation Tigers of Tamil Eelam (LTTE), or Tamil Tigers, is a "guerilla organization that sought to establish an independent Tamil state ... in northern and eastern Sri Lanka" (Encyclopaedia Britannica 18 Dec. 2014).

[2] The American Institute of Sri Lankan Studies (AISLS) is an institute that aims to "promote US research and teaching on Sri Lanka and to build links between US and Sri Lankan scholars and institutions" (AISLS n.d.).

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Additional Sources Consulted

Oral sources: Attempts to contact the following individuals and organizations were unsuccessful within the time constraints of this Response: associate professor, Department of Peace and Conflict Research, Uppsala University; professor, Department of Sociology, University of Peradeniya; British Tamils Forum; Center for Human Rights and Research, Colombo; Center for Peace & Reconciliation; Centre for Policy Alternatives; Centre for the Study of Human Rights, University of Colombo; Free Media Sri Lanka; Home for Human Rights; Human Rights Commission of Sri Lanka; INFORM Human Rights Documentation Centre; Law & Society Trust; Networking for Rights in Sri Lanka; Tamils Against Genocide.

Internet sites, including: Agence France-Presse; Asian Forum for Human Rights and Development; Association of Humanitarian Lawyers; ecoi.net; Hein Online; The Hindu; Human Rights Quarterly; Human Rights Watch; International Crisis Group; IRIN; Jane's Intelligence Review; Minority Rights Group International; NorthEast Secretariat on Human Rights; Political Handbook of the World 2014; Reporters Without Borders; Sri Lanka Campaign for Peace and Justice; Sri Lanka – Human Rights Commission of Sri Lanka; National Police Commission, Police Service; TamilNet; Tamil News Network; United Nations – Office of the High Commission for Human Rights (OHCHR), Refworld, ReliefWeb; TamilCanadian.com.

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