



**TAG Submission to the Committee Against Torture –
50th Session
Regarding the 5th Periodic Report of the United Kingdom**

About TAG

- 1) Tamils Against Genocide Inc. and Tamils Against Genocide (Europe) Limited, jointly TAG, are part of an International non-profit human rights organization incorporated in the United States in 2008 and United Kingdom in 2012. TAG is devoted to advocacy, research and litigation against genocide and its accompanying human rights violations as well as the provision of support to victims of war crimes and human rights abuses from Sri Lanka.
- 2) With regards to TAG's legal standing in the UK, TAG's standing to make submissions to the UK High Court has been accepted by Mr Justice Mitting and by Lord Justice Kay; respectively in the case Tamils Against Genocide And SSHD [CO/12153/2011] and subsequent appeal at the Court of Appeal. TAG has intervened in two asylum cases at the Administrative Court, Queen's Bench Division [including CO/9452/2011]. TAG is an Interested Party in the UK Country Guidance Case between MP, NT, GJ and SSHD that is currently ongoing in the Immigration and Asylum Upper Tribunal.
- 3) TAG has made submissions to the UPR -14th Session - of the HRC in the case of Sri Lanka
http://lib.ohchr.org/HRBodies/UPR/Documents/Session14/LK/TAG_UPR_LKA_S14_2012_TamilsAgainstGenocide_E.pdf.
- 4) TAG's mandate is accessible on our website at www.tamilsagainstgenocide.org where the majority of TAG's research reports and press releases are also available.

Executive Summary

- 5) TAG's submission is restricted to questions regarding Article 3 of the UN Convention Against Torture, namely,

Article 3

1. *No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.*

2. *For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.*

- 6) We present a summary of TAG's evidence regarding predominantly voluntary returns to Sri Lanka who were tortured on return. Significantly we refer to 34 asylum appeal determinations from the UK, in which asylum was refused by the UK Border Agency (UKBA) and then granted on appeal. The cases are of returns to Sri Lanka, all of whom allege that they were tortured in Sri Lanka, who managed to escape and sought refuge in the UK. We consider it worrying that asylum was refused in the first instance by the UKBA, and we deplore the frequently spurious reasoning employed in so doing.
- 7) The UK has temporarily suspended Charter flights of failed asylum seekers (FAS), but this was done not in light of the wealth of information that returnees were at risk, but because the country guidance asylum case was on-going. We contend that the UKBA's reaction to the information presented to it was inadequate. The tendency of the UKBA has been to respond to new evidence with dismissal and critique.
- 8) We note that the country guidance asylum case regarding risk to Sri Lankan Tamils is ongoing. Nonetheless we wish here to express concern regarding the UKBA's record to date and methodology. Specifically:
- a) We note that Operational Guidance notes have been produced without consultation with NGOs whose work they include and critique. Specifically TAG is aware of one country policy bulletin was produced that contained errors, and published directly prior to a scheduled charter flight of FAS allowing insufficient time for NGOs and legal practitioners to respond.
 - b) TAG has observed the dismissal of torture claims and a refusal to give any weight to the presence of scarring without recourse to evidence, and with a distinct lack of sensitivity for the victim. As noted, paragraph 6, we take issue in general with the reasoning applied by UK officials in the decision making process. There is a tendency to extrapolate from what is judged 'reasonable' or 'sensible' and asylum applicants' claims then judged against this artificial and subjective benchmark.
 - c) Only upon receipt of a Freedom of Information (FoI) Request has the UKBA analysed its own available data with regard to the treatment of FAS in Sri Lanka. We contend that such analysis should be done as a matter of

course in order that asylum decisions are made having considered all available information.

- d) In an interview, Parliamentary Under-Secretary of State for Foreign & Commonwealth Affairs Minister Alistair Burt, denied knowledge of evidence that returnees from the UK to Sri Lanka had been tortured on their return to Sri Lanka, this despite there being a considerable amount of evidence on this matter in the hands of the Home Office at the time of the interview. That the FCO was not aware of this information, and indeed, in this instance, spoke contrarily to the facts is deemed unacceptable.

9) Reports and Documents upon which we rely¹:

- a) TAG Report, "Activist Intimidation: Surveillance and Intimidation of Tamil Diaspora activists and their supporters" 13 March 2013 (Available on request). Hereafter, "Activist Intimidation".
- b) TAG Report, "Returnees at Risk: Detention and Torture in Sri Lanka" September 2012 <http://www.tamilsagainstgenocide.org/Data/Docs/TAG-Report-16-Sep-2012-Returnees-at-Risk.pdf> (Appendix A). Hereafter, "Returnees at Risk".
- c) Report of the Office of the United Nations High Commissioner for Human Rights on advice and technical assistance for the Government of Sri Lanka on promoting reconciliation and accountability in Sri Lanka, 11 February 2013, accessible at <http://www.southasianrights.org/wp-content/uploads/2013/02/OHCHR-Report-on-Sri-Lanka-February-11-20132.pdf>
- d) Letter to TAG from David Becker, Country Specific Litigation Team, 23 October 2012 (Appendix B)
- e) Freedom of Information Act reply 25159, 6 February 2013 (Appendix C)
- f) TAG Press release, 15 February 2013, "Alistair Burt Interview" <http://www.tamilsagainstgenocide.org/read.aspx?storyid=91>
- g) FFT,
i) "Sri Lankan Tamils tortured on return from the UK", 13 September briefing.
http://www.freedomfromtorture.org/sites/default/files/documents/Freedom%20from%20Torture%20briefing%20-%20Sri%20Lankan%20Tamils%20tortured%20on%20return%20from%20the%20UK_0.pdf
ii) FFT, "Submission to the Committee against Torture for its examination of Sri Lanka in November 2011"
http://www2.ohchr.org/english/bodies/cat/docs/ngos/FFT_SriLanka47.pdf

¹ Of note – HRW, FFT and TAG cross checked their respective datasets in the reports listed at 9b, g and h. In total there were found to be 3 overlaps.

iii) "Out of the Silence, New Evidence of Ongoing Torture in Sri Lanka 2009-2011"
http://www.freedomfromtorture.org/sites/default/files/documents/Sri%20Lanka%20Ongoing%20Torture_Freedom%20from%20Torture_Final%20Nov_07_2011.pdf

h) HRW – Press Release, "United Kingdom: Halt Deportation flight to Sri Lanka. Urgently Review Tamil Allegations of Torture" 15 September 2012.
<http://www.hrw.org/news/2012/09/15/united-kingdom-halt-deportation-flight-sri-lanka>

Submissions

10) TAG Specific Evidence: "Returnees at Risk" was published in September 2012, "Activist Intimidation" which was published in March 2013, was in part an update to "Returnees at Risk".

a) The main evidence from "Returnees at Risk" is as follows;

- i) Asylum Appeal Determinations.² 26 successful asylum appeal determinations of returnees, all of who allege they were tortured. The UK Immigration and Asylum Tribunal found that all were credible. Of those 26, 15 were questioned about foreign 'activity', 10 were specifically questioned about protests/demonstrations, with five being shown images of protests, and a further one being shown an image though of what was not qualified. 11 of the 26 applicants knew that their families in Sri Lanka had either received a visit from, been threatened, or been physically abused by Government of Sri Lanka (GoSL) officials or associates since their escape from detention and/or leaving Sri Lanka.³
- ii) Asylum Interviews.⁴ Of the 11 interviews claiming torture in the period 2011-2011, the results of which had not been determined at date of publication of the initial report, we now know four were successful and were granted leave to remain in the UK. The results of the remaining seven are not yet known.⁵ Of the 11 interviews, seven were questioned about having being abroad, two specifically questioned on protests and in one a video of a protest was shown.

b) The main evidence from "Activist Intimidation" is as follows;

² These are judgements in asylum appeal proceedings before British immigration tribunals.

³ Of note, several of the determinations made no mention of the types of questions that an applicant endured in detention and under torture. In some cases, we have had access to the background material such as witness statements and interview notes and have found in those documents examples of these questions. In other cases we neither had access to the background data, or the questions were never asked of the applicant. Consequently it is assessed that the statistics here border on the conservative side. This assessment applies likewise to the other determinations and asylum interviews.

⁴ Asylum interviews conducted by the UK Border Agency, a government department.

⁵ At time of writing, TAG remain in the process of chasing the status of these cases.

- i) Asylum Appeal Determinations. A further eight successful determinations all of whom were returnees; seven were voluntary, one was a FAS from Europe. Of the eight, we only know of one who was questioned about protests. What is significant however is the low levels of LTTE association, two claimed to have no LTTE links, of which one was not politically active and yet was questioned about protests. Four had some small degree of association with the LTTE, for example, through a family or friend connection, and only one had been an LTTE member. The LTTE links of the remaining case were not elaborated upon in the determination. Given these negligible links, their detention and torture seems unlikely to have been the result of these associations alone. Aside from the financial motivation for GoSL officials, the common denominator is that all were tortured after visiting the UK, which we contend in the GoSL eyes dramatically increases the likelihood of being a 'terrorist'.
 - ii) Interviews with Activists. During January 2013, TAG researchers conducted five interviews with activists, four of which are anonymised. All five had experienced or had witnessed intimidation. All were aware of or had themselves been photographed by believed-to-be GoSL officials or associates. All were of the opinion that the GoSL surveillance of Tamil Diaspora activists and their supporters was on the increase. The cause of this increase was understood to be proportional to the increase in diaspora activities including protests.
- c) Secondary Sources and Methodology. In both reports having extracted from the data sets detailed above with a particular focus upon protesters, activists and GoSL response to protesters, these findings were foregrounded against the context, namely of persecution of Tamils in Sri Lanka since Independence in 1948.
- d) Findings:
- i) The GoSL defines 'traitor' and 'terrorist' broadly to include both those who call for an independent international process of accountability for the crimes committed during the Sri Lankan conflict and human rights abuses since the end of the conflict, and those who are considered to bring Sri Lanka into international disrepute, such as asylum seekers and protesters. Commensurate with its assessment of the threat, the GoSL allocates resources to collecting (both through surveillance and interrogations) and then acting upon that threat. Those accounts of interrogations under torture that are detailed in our data sets reveal the information requirements of GoSL officials.
 - ii) The findings from the data sets confirm that the diaspora is considered the locus of the 'LTTE' threat. Members of the diaspora are treated as suspicious, by virtue of the fact that they are in the diaspora.⁶ The risk to returning members of the Tamil Diaspora is further heightened when that member:
 - (1) Is an actual or perceived member of an organisation that is (actual or perceived) to be critical of the GoSL

⁶ Indeed, where threat = capability + intent, Tamil diaspora have both the capability (since they are not in Sri Lanka) and the motivation (the crimes amply committed by successive Sri Lankan Governments.)

- (2) Has been (or is perceived to have been) involved in protests and/or activist events against the GoSL
 - (3) Is believed to have brought the Rajapaksa Administration into disrepute in any way - this includes asylum seekers and witnesses of war crimes or human rights abuses who dare to speak out.
- iii) As diaspora groups have become increasingly better organised and more active, largely in response to the crimes committed in the final months of the conflict in 2009, the GoSL has responded by increasing its surveillance and intimidation of those groups and individuals. As International attention and condemnation increases it is assessed that the collection and intimidation tactics of the GoSL are likely to increase.
- e) The asylum applications at a i) and b i) were rejected by the UKBA, before then going on to be accepted by the Asylum and Immigration Chamber. We contend that this suggests the UKBA culture is one in which rejection of claims rather than acceptance is encouraged. Paragraph 12 below further explores UKBA methodology.

11) Charter Flights:

- a) We oppose scheduled charter flights altogether in the case of Sri Lanka. The effect of such flights is to assist the GoSL in identifying returnees who have or are perceived to have opposed the state, and are thus more likely to be persecuted as a result. Asylum seekers are considered to have something to hide, hence their reason for seeking asylum. The background evidence indicates that asylum seekers are considered by the GoSL to be bringing the state into disrepute by the very act of seeking asylum from it. For example, the Bishop of Mannar, December 2012, called for an end to deportations back to the North East, <http://www.tamilguardian.com/article.asp?articleid=6484>. He stated in his letter that those who were returned to the island were considered to be "traitors". Whilst TAG's evidence predominantly relates to voluntary returns, there is ample evidence regarding forced returns, as listed at paragraph 9.
- b) Charter flights of Sri Lankan Tamils have been temporarily suspended. On the 28 February 2013 there was a scheduled charter flight to Sri Lanka of FAS. On 27 February 2013 Mr Justice Wilkie and Upper Tribunal Immigration Judge Gleeson ordered the suspension of the deportation of all failed Tamil asylum seekers. The cases concerned the sole issue of whether removal should be suspended for some or all of those on the charter flight at a time when the courts were considering detailed evidence on the safety of returned FAS in an upcoming country guidance case.
- c) In the case of Sri Lankan Tamils, given the UKBA had access to its own data regarding torture of FAS, (See Appendix C), and had been presented with the evidence from Human Rights Watch (HRW), Freedom From Torture (FFT) and TAG (See Para 9 and 10 above), we consider that charter flights should have been halted previously, prior to the country guidance asylum case.

- d) In general, however, we are in favour of charter flights being suspended while the risks are being re-assessed in country guidance proceedings. Indeed the default setting should be that the return of FAS is suspended. It should be the exception to the rule for deportations to continue, not the rule.

12) UKBA methodology:

e) Country of Origin Information and Operational Guidance Notes

- i) UKBA Policy Bulletin 1/2012 was released on 22 October 2012. The Bulletin made extensive mention of reports by TAG as well as those of HRW and FFT. TAG contacted the Treasury Solicitor's Department since there were a number of significant errors in the Bulletin. On the 23 Oct 2012, David Becker, Country Specific Litigation Team, UKBA, wrote to TAG in order to inform that, further to TAG's email correspondence, a number of amendments to the Bulletin had been made. (Appendix B). Nevertheless on the same day that the original Bulletin, with errors, was published, TSOL produced a Service for the attention of the Immigration and Asylum Courts that relies, inter alia, upon the Bulletin (Case Claim No CO/9942/2012). On the 23 October 2012 a charter flight took FAS from the UK to Sri Lanka.
- ii) The UKBA level of access to the Courts was such that it was able to submit unsolicited representations to the Judges, but the information it submitted contained errors. Any Judge who had considered the Treasury solicitor's letter therefore may have been influenced by erroneous material with the consequence that errors may have been made further down the line that could have lead to loss of life and liberty. In addition both the Policy Bulletin and Treasury solicitor's letters were released too late for the respective NGOs and legal practitioners to act on them.
- iii) Given the emphasis on work by TAG, as well as FFT and HRW in the Bulletin, we are of the opinion that TAG and others should be informed of or preferably involved in the production of the report to insure there are no such errors. Indeed the unique nature and impact of asylum work renders prior consultation especially desirable.

f) Reasons for Refusal of asylum:

- i) As part of TAG's victim support function we provide, on a case-by-case basis, expert reports for asylum applications. In the first 3 months of 2013 we wrote more than 10 such reports. In the process of doing so we have had access to numerous UKBA Reasons for Refusal letters (RFRL) about which we have made the following observations:⁷
- (1) There has been a disturbing trend of suggesting that victims of torture may have inflicted their wounds upon themselves in order to improve their chances of securing asylum, and to dismiss the presence of scars in their evaluation of the asylum applicant's case. Such suggestions are not evidence based and indeed fly in the face

⁷ These observations are confirmed in a recent Amnesty International report on Asylum Decision Making in the UK, http://www.amnesty.org.uk/uploads/documents/doc_23149.pdf.

of the considerable background information that attests to the prevalence of torture in Sri Lanka post 2009. Such cynicism, it is assessed, is harmful to the well-being of already vulnerable asylum applicants, many of whom have not spoken out about their experiences and who, when they do so, are then faced with disbelief.

- (2) The use of background material is frequently highly selective to support whatever decision has been made, as opposed to informing the decision making process. For example, that corruption is endemic in Sri Lankan society including at the airports, has been accepted, the British High Commission letters attest to this. However several of the reasons for refusal letters we have had access to question the credibility of the applicant because they escaped detention and torture through payment of a bribe or because they were able to leave on their own passport, for example. For example "It is therefore considered that if you were of any significant interest to the authorities, you would not have been able to depart from the airport. Therefore this part of your account is not accepted".⁸ Similarly, "Taking into account the above background information, it is not accepted as credible that a person suspected of and arrested for association to a terrorist organization who has then 'escaped' detention would be able to leave the country using his own passport".⁹
- (3) The reasoning employed by UKBA officials often strongly suggests that their decision is a foregone conclusion. For example, in one RFRL the UKBA officer gave no weight to the asylum applicant's account of his training, and basic military technical knowledge, since the details he provided could have been found on the Internet. One rather wonders the reason for the line of questioning at all. If the information could not be corroborated by open source intelligence, it seems highly likely that the UKBA officer would have dismissed the account precisely because of lack of corroborative material.¹⁰

- g) UKBA analysis of own data: On 6 February 2013, the Home Office in response to a FoI request revealed that between May 2009 and September 2012, 15 failed asylum seekers forcibly returned to Sri Lanka by the UK Border Agency managed to escape back to Britain whereupon they won refugee status after giving evidence that they were tortured in Sri Lanka. (The FoI request response is available at <http://www.freedomfromtorture.org/sites/default/files/documents/FOI%20Response.pdf>. Appendix C). It was only in response to a FoI application that the data was analysed. We submit that the UKBA ought to regularly analyse its own data or be more proactive in making that information available to NGOs and the judiciary. The British High Commission does not monitor failed asylum seekers beyond the airport. Given this limitation, the least that can be done is for the UKBA to analyse the information that is readily available to it.

⁸ Case 2013-04A

⁹ Case 2013-05S

¹⁰ Case 2013-04A

- h) Inter government departmental communications:
- i) The BBC's Charles Haviland interviewed Parliamentary Under-Secretary of State for Foreign & Commonwealth Affairs Minister Alistair Burt on 1st February 2013, during an official visit to Sri Lanka. In the latter half of the interview on the issue of the deportation of FAS, Charles Haviland, noting that a number of international organisations say they have clear testimony that some of those returned to Sri Lanka have then been tortured, questioned "Is it really right that Britain should be sending them back?" The Minister answered in no uncertain terms, "We do not have the direct evidence of which you speak. We are aware of the allegations and we've sought to get confirmation....So far we have not had those allegations substantiated....I look into this extremely carefully, I have just not seen this". A link to the interview is at, <http://www.tamilsagainstgenocide.org/read.aspx?storyid=91>,
 - ii) Since the Minister's confident assertions, the Home Office released the above FoI response, making open information and knowledge of which it was already in possession. Either UKBA had analysed its own data or it had not. If it had, why had it not shared its findings with Mr Burt, or for that matter with the judiciary? If it had not, why not? Furthermore, at the time of the Minister's interview the reports of HRW, FFT and TAG had long been published.

Conclusion

- 13) Given the above evidence – evidence that is complimented by other INGOS – given the UKBA's failure to analyse its own data in a timely fashion, and in consideration of the aforementioned methodological deficiencies, we consider that:
- a) NGOs should be consulted with prior to the publication of bulletins that reference their research
 - b) the UKBA ought to regularly analyse their own statistics and data on the treatment of failed asylum seekers
 - c) charter flights of failed Tamil asylum seekers, specifically, be stopped, and generally, all deportation charter flights be suspended whilst a country guidance case is on-going
 - d) a review should be undertaken of communications between FCO and UKBA regarding asylum with a view to bettering liaison
 - e) an inquiry be conducted into UKBA policy and processes to combat the above methodological issues.



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Appendices

	Title	Pages
A	"Returnees at Risk: Detention and Torture in Sri Lanka" September 2012	11 - 25
B	Letter to TAG from David Becker, Country Specific Litigation Team, 23 October 2012	26
C	Freedom of Information Act reply 25159, 6 February 2013,	27 - 28

Returnees at Risk: Detention And Torture in Sri Lanka

Tamils Against Genocide, 16 September 2012



ABOUT TAMILS AGAINST GENOCIDE

Tamils Against Genocide Inc [TAG] is a non-profit litigation advocacy organization incorporated in the United States. TAG is involved in evidence gathering and in bringing litigations on behalf of victims of war crimes, crimes against humanity and genocide against perpetrators from Sri Lanka under universal jurisdiction provisions in countries including the United States .

TAG's mission statement is on its website at

<http://www.tamilsagainstgenocide.org/AboutTAG.aspx>. More information can be obtained on the website www.tamilsagainstgenocide.org or by emailing TAG at advocacy@tamilsagainstgenocide.org

2 EXECUTIVE SUMMARY

This report calls for a comprehensive re-evaluation of the UK government's current policy towards asylum applicants of Sri Lankan Tamil origin in light of the significance of the collection of 27 recent asylum appeal determinations published and analyzed here. We understand this collection, exclusively shared with TAG, to be the largest such collection yet to be analyzed and made public by an independent third party. The appeals determinations are particularly valuable as 26 of the 27 claims of egregious torture have succeeded and been found to be credible under the most stringent adversarial review. They provide us with the benefit of a valuable collection of judicial opinion. This dataset is supplemented by other datasets including a further 11 asylum interviews by the UK Border Agency, also exclusively provided to TAG and a further set of 21 Medico-legal reports [MLRs] drawn up in the UK by leading UK experts. All the above cases relate to detention and torture that took place in the period 2010-2012 although some cases make mention of previous [pre-2010] episodes of torture.

Our research on the context surrounding the torture of returnees to Sri Lanka draws from credible secondary sources and primary data in the form of interviews by our consultant. We observe that post-2009 new factors impacting the political repression of Tamils returning from abroad have emerged that were not foreseen in the analysis of TK and the existing body of country guidance. These include a post-2009 upsurge in Sinhalese nationalism and in anti-Western and anti-British rhetoric, as noted by the Foreign Office in 2012¹¹. There has also been a noticeable increase in hostility towards local and international critics of the Sri Lankan government's alleged committing of mass atrocities during the final phases of the conflict.

We consider that a period of residence in the UK or other 'Western' country may itself constitute a risk factor. We contend the LP/TK risk factor of 'a previous record as an actual or suspected LTTE member' has been superseded in importance in the case of persons returning from abroad by a new risk factor, namely 'a record of criticizing or protesting against the Sri Lankan government'. Similarly the risk factor 'return from a 'centre of LTTE activity or fund-raising' should be refined to refer to 'return from a country whose government or media have been critical of the Sri Lankan government and/or have called for progress towards accountability and reform.' We consider that in the eyes of the Sri Lankan authorities these two types of risk factors may well overlap, yet argue that UK country guidance needs to maintain a distinction.

2.1

2.2 EXAMPLE JUDICIAL OPINIONS

In support of our contention that legitimate forms of foreign political activity will attract the adverse interest of the Sri Lankan authorities, with the attendant risk of torture on return to Sri Lanka, we provide a sample of judicial opinions drawn from our data set.

¹¹ Foreign Office Travel Advice on Sri Lanka, 23 August 2012
<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/asia-oceania/sri-lanka>.

Case 18 “I find it reasonably likely that the appellants was arrested in Colombo in [Redacted] as he claims and **subjected to torture for participation in the London demonstrations**” [emphasis added]

Case 28 *"I accept that the appellant has been subjected to torture and ill treatment in the way he has described **on account of his perceived involvement with the anti-Government protests in London, and that he was asked to identify other people who were also at the demonstration**" [emphasis added]*

Case 15 The appellant resembled a British Tamil who had protested to call for an independent international enquiry into war crimes in Sri Lanka. In a case of mistaken identity he was detained , interrogated about this protest [which he had not participated in] and subsequently tortured. .

Finding “Background material relating to Sri Lanka and the expert's report and previous case law all confirm that **Sri Lanka is a country where corruption of officials is rife** and the circumstances of the appellant's detention and the subsequent release through bribery and the assistance given for him to leave the airport after **being tortured whilst incredible in the context of many regimes is not incredible in the context of what happens in Sri Lanka**, even after the final onslaught against the LTTE. I conclude that the appellant is a truthful witness. I accept his account as credible in its entirety.” [emphasis added]

Case 23 *“One matters continues to trouble me. **That is that this is the fourth Sri Lankan case that I have heard in the past month where the facts are essentially the same.** A young Tamil in London returns to Sri Lanka...(and)...is picked up at or after the airport by a white van, is questioned about his activities in London and horribly tortured, leaving...terrible burns to the back and/ or buttocks. The man is released on payment of a bribe, is dropped off with a Muslim agent who then secures his safe passage through the airport at Colombo. The striking similarity of these cases has caused me great concern. **Either the Sri Lankan authorities are suddenly extremely interested in the activities of the diaspora in London, or this account is being offered as a "package to asylum seekers hoping to secure refugee status. Either of these options is extremely depressing. ...If the CID are routinely arresting those arriving from London and subjecting them to this hitherto unknown level of torture, leaving such unambiguous evidence, then their audacity is breath-taking; it marks a turn for the worse in the already appalling human rights record of their country.**" [emphasis added]*

2.3 WHAT DOES OUR SET OF CASES TELL US?

We summarise in turn what we have gleaned from our 3 data sets.

Set 1: Asylum Appeal Determinations

Of 26 successful asylum appeal determinations, all were of Tamil ethnicity and had returned voluntarily to Sri Lanka in the period **2010 to 2011**, apparently having accepted the UK government's contention that it was safe for Tamils to travel to Sri Lanka from the UK. In all these cases the Tribunal accepted extreme forms of torture in detention. There is no evidence before us that any of the detainees were charged, all were released via the payment of a bribe and most had signed blank confessions or confessions in Sinhalese that they did not understand prior to release, thus ‘legitimizing’ their detention.

Close to 40% of the appellants were interrogated under torture on their participation and occasionally their family member's participation in political activities abroad such as protests and assisting in anti-Sri Lanka media coverage. The details of interrogations indicate that the Sri Lankan government routinely uses torture to obtain information on a variety of lawful civic activities that take place in the UK and elsewhere.

Set 2: Asylum Interviews

We consider 11 interviews claiming torture in the period **2011 to 2012**, relating to cases that have as yet not been determined¹². We find this dataset is consistent with Set 1 on key aspects such as: topics of interrogation under torture, the corrupt and extra-judicial characteristic of detention and release and in the methods of torture.

Set 3 The Medico Legal reports

Of the 21 Medico Legal reports in the period **2010 to 2012**, 10 relate to claimants who were detained and tortured shortly after return from Europe [Set 3a], while 11 relate to claimants who make no mention of having travelled abroad [set 3b]. Of the 10 returnees in Set 3a, 9 returned voluntarily from the UK and 1 was returned involuntarily from another European country.

Of the 10 returnees from Europe, 4 including the European returnee reported being interrogated on anti-government protests, consistent with our previous two data sets. The detailed account of torture is also consistent with the medical evidence cited in the determinations in Set 1.

In total we have analysed torture allegations pertaining to 48 returnees in the period 2010 to 2012, of which 26 have been accepted by the UK courts. While noting the high proportion of voluntary returns in our 3 datasets, we observe no inconsistencies between the data sets in this and other respects. All of the voluntary returns left Sri Lanka lawfully, the vast majority as students. They did not consider themselves sufficiently at risk to apply for asylum prior to returning. We are only able to explain the large proportion of voluntary returnees among persons claiming torture, with reference to their period of residence abroad. We consider this in itself to be a new risk factor that leads to adverse interest by the Sri Lankan authorities. Additionally, , some perfectly lawful types of activities abroad (such as political criticism of the Sri Lankan government) elicit adverse interest. .

Team

In order to provide a thorough analysis of a unique data set, a multidisciplinary team collaborated to produce the findings presented here. This includes two researchers drawn from TAG's litigation research team, legal counsel, and an outside academic consultant, a political science expert on Sri Lanka, with significant policy and human rights experience.

Data

This report relies on a qualitative analysis of multiple data sets. The primary evidence is in two sets. We have described in the Executive summary the compilation of *27 asylum appeal determinations [set 1] and 12 additional records of asylum interviews* by the UK Border Agency [set 2]. We exclude from further consideration a single interview in set 2 where the date and originating country of return to Sri Lanka is unspecified, leaving 11 useable interview records. Our data was obtained from parties involved in the asylum litigation. We

¹² This data was collected in August and September 2012, we have not had an opportunity to check for changes in status in cases since they were first shared with us.

asked for ‘data relating to asylum cases of persons alleging persecution on return to Sri Lanka from abroad’. Thus this data is not a random sample. By construction all the cases are of returnees to Sri Lanka from abroad.

The set of 21 medico-legal reports [MLRs] of torture is part of a non-overlapping compilation produced for an unpublished Msc Thesis at a UK university. This set [set 3] is a sample of all asylum seekers from Sri Lanka assessed to have been tortured post-2009 by two leading UK medical experts. Thus it includes 10 persons detained and tortured upon return from abroad [set 3a] as well as 11 who do not mention having left Sri Lanka prior to detention [set 3b].

The second primary data set comes from previously unpublished interviews conducted with a broad range of civil society activists, diaspora members, asylum seekers, and journalists in the UK, U.S., and Sri Lanka from 2010-2012. This evidence is supported by secondary evidence derived from media reports and credible sources both on the island and within the international community.

Methods

Of the 27 determinations, 26 related to successful asylum appeals where the appellants’ account of their past history was found to be credible. The single claimant who was not found to be credible was excluded from further analysis. The positive determinations were reviewed in detail and subsequently coded in order to identify patterns across cases within a distinct time period (2009-2012).

We then observe the extent to which similar patterns were found among the histories recounted in the set of UKBA interviews and in the set of MLRs. A detailed chronology was developed in order to situate the torture episodes within international and local contextual factors impacting levels of state repression. The findings from raw data were supported by existing reports and statements from credible sources, in order to provide a comprehensive analysis.

Updating LP/TK: Refining and Identifying Emerging Risk Factors

Based on available evidence, this report highlights patterns of experience and relevant contextual shifts that primarily re-interpret and update the determination handed down in the case of TK (2009) A review of this, and other relevant judicial statements, reveals key underlying assumptions for existing policy that since 2009, “*the likelihood of a Tamil returning to Colombo being the subject of adverse interest on the part of the Sri Lankan authorities has, if anything, declined*”¹³.

The underlying assumptions identified are:

- The cessation of hostilities will automatically shift the country context, making the return of asylum seekers safe.¹⁴
- The use of more sophisticated surveillance mechanisms by the state will decrease the likelihood of random arrest and torture.

¹³ As per Senior Immigration Judge HH Storey TK (Tamils – LP updated) Sri Lanka CG [2009] UKAIT 00049

¹⁴ During periods of continuing hostility forced removals from the UK were completely suspended (FFT 2012).

- Low levels of engagement or affiliation with the Liberation Tigers of Tamil Eelam (LTTE) and other oppositional political movements decrease the risk of an individual returnee.
- Those subject to arrest or questioning under local laws (Prevention of Terrorism Act) will be allowed a fair trial, and will not be at risk of torture.

These assumptions inform the rationale behind the TK judgment, which has led to a significantly higher rate of return for failed asylum seekers *in the UK*¹⁵. The TK judgment accepts at para 73: ‘We lack full evidence of the post-conflict situation in Sri Lanka’. While TK considers the level of adverse interest faced by Tamils in Colombo, nowhere does it consider adverse interest in diaspora Tamils. At Para 75 TK considers that ‘almost all security measures ..are in response to LTTE armed actions. With the eclipse of the LTTE ..there is less reason to respond.’

Yet our determinations contain a significant number of accounts of detention, interrogation and torture that are not a response to any LTTE armed actions. Our analysis shows these detentions and torture are a response to lawful political activity abroad. Thus post-2009 developments necessitate a re-evaluation of the TK assertions.

Drawing on expert opinions and credible data, this report finds all four assumptions to be flawed in the context of the current situation and deeply problematic as a basis for current analysis of risk on return. The evidence urges a re-evaluation of current operating procedures with regard to asylum seekers being returned involuntarily to Sri Lanka.

I. The Nature of the State

When understanding the risk of return for failed asylum seekers re-entering Sri Lanka, it is essential to first understand the broader nature of the judicial, political and security institutions of the Sri Lanka state¹⁶ as well as key events in the international community impacting levels of surveillance and repression. In addition to the findings set out below, a detailed chronology of the events surrounding the cases examined here assists in setting the framework against which recent developments must be considered¹⁷.

Since the current administration came to power in 2005, there has been a direct correlation between advocacy and critiques from the international community to levels of scrutiny and repression on local civil society actors. There is well-documented evidence on the erosion of democratic principles at the state level¹⁸ since 2005. Within this context of a repressive state, in the post-war period in Sri Lanka, a sharp increase in human rights abuses, censorship practices, and counter-terrorism surveillance methods that violate civil rights has been noted

¹⁵ The Independent, “Failed Asylum Seekers Flown Home” (16th December 2011) <<http://www.independent.co.uk/news/uk/home-news/failed-asylum-seekers-flown-home-6278067.html>> Accessed 12th September 2012; The Independent, “Special Report: Tamil Asylum Seekers to be Forcibly Deported” (31st May 2012) <<http://www.independent.co.uk/news/uk/home-news/failed-asylum-seekers-flown-home-6278067.html>> Accessed 11th September 2012

¹⁶ Tamil Youth Organisation, “Submission to the Universal Periodic Review of the United Nations Human Rights Council: Fourteenth Session, Sri Lanka” (23rd April 2012)

¹⁷ Tamils Against Genocide, “A Chronology on The Development of War Crimes” (Unpublished)

¹⁸ Mampilly, Z., *Rebel Rulers: Insurgent Governance and Civilian Life During War* (Cornell University Press, 2011),

by international and local watchdogs alike¹⁹. These reports highlight the state's paranoia of the resurgence of terrorist activity, repressive responses to various forms of dissent and political expression, and the continued fear of abduction and abuse locally for those suspected of engaging in these activities.²⁰ Fear of paramilitaries and white vans have replaced the shock and awe of shells and cluster bombs. As one journalist noted in August 2012, *"It is a government of thugs we are dealing with, this is the way they operate"*. (TC Meeting NYC, 2012²¹) Freedom House finds in its 2011 study that Sri Lanka remains only partially free, assessing political rights as low as 5 on a scale of 1-7 (7 being the lowest), and civil liberties at a 4 – comparable to the levels under blatantly authoritative regimes. (Freedom House, 2011).

Post 2009: Upsurge in Sinhalese Nationalism and Anti-Western Rhetoric

Following the cessation of the war, fought by the Sri Lankan government with significant support from countries such as China, Pakistan, and Libya, the administration in Sri Lanka embarked on an anti-Western crusade. Making accusations of "neo-colonialism", they took a hostile approach to "the West", whose insistence on adherence to humanitarian and human rights norms they found meddling.²²

From September 2009, Sri Lanka posted senior military officers – all of whom were accused of bearing responsibility for mass atrocities by INGOs²³ – as Ambassadors to Germany, Switzerland, the United Nations and other countries sparking European prosecutorial interest and/or civil litigations, and contributing to a deterioration in diplomatic relations.²⁴ These appointments have led to an increase in foreign intelligence gathering and surveillance activities undertaken by Sri Lankan Embassies abroad.²⁵

In August 2012 the Foreign Office updated its Sri Lanka travel advice as follows:

"Travellers should note that the end of the military conflict in May 2009 has seen an upsurge of nationalism in Sri Lanka. As a result, anti-Western (particularly anti-

¹⁹ International Crisis Group, "Sri Lanka's North II: Rebuilding Under The Military", (Asia Report Number: 220, Colombo/Brussels, 16th March 2012) ; Human Rights Watch, "Halt Harassment of Media" (3rd July 2012) <<http://www.hrw.org/news/2012/07/03/sri-lanka-halt-harassment-media>> Accessed 11th September 2012; Human Rights Watch, "UK: Suspend Deportations of Tamils to Sri Lanka" (29th May 2012) <<http://www.hrw.org/news/2012/05/29/uk-suspend-deportations-tamils-sri-lanka>> Accessed 31st July 2012

²⁰ As frequently reported in Groundview, a citizens' journalism website for example: Groundviews, "A Disappearance Every Five Days in Post-War Sri Lanka" (30th August 2012) < <http://groundviews.org/2012/08/30/a-disappearance-every-five-days-in-post-war-sri-lanka/>> Accessed 11st September 2012

²¹ TAG consultant interview 2012

²² <http://www.lankaweb.com/news/items/2012/05/03/human-rights-excuse-for-neo-colonialism/> (3rd May 2012)

²³ INGOs including The European Centre for Constitutional and Civil Rights[ECCHR, Germany], TRIAL, The Society for Threatened Peoples (Switzerland), UNROW (United States) and TAG (United States).

²⁴ ECCHR January 2011: "Allegations of War Crimes committed by the 57th Division of Major Gen Diaz between April 2008 and May 2009"

²⁵ ECCHR above: TAG April 2012 "Prasanna de Silva Interview"

British) rhetoric has increased. This has led to violent protests against the British High Commission and other diplomatic premises.”

Post 2009: Sri Lanka's Hostile Response to Calls for Accountability

The United States was the first government to publish, via the War Crimes Office of the State Department a report into War Crimes in Sri Lanka in October 2009,²⁶ creating momentum for the empanelling of the UN Experts in June 2010, and the publication of the UN Expert report on War Crimes in Sri Lanka in April 2011. It has since been seen as key mover behind calls for accountability, while the UK is seen as an ally in this endeavor.

One well-respected civil society activist finds the push for justice essential, but notes that *“every time war crime is mentioned abroad, we feel it here at home.”* (TC Interviews, Sri Lanka June 2011²⁷). This trend is visible in the data reviewed. Among the cases examined, there is a significant spike in arrests, detention, and torture for those returning for holiday or family visits (the most prevalent reason for return amongst this data set) in the months of *July, August, and September 2011.*

This crackdown on local and visiting individuals, currently or previously engaged in political activities comes immediately following the release of the UN Panel of Experts Report (April 2011), the widely watched Channel 4 Documentary *“The Killing Fields, Part 1”* (May 2011), and the July 2011 release of a highly critical ICG Report²⁸. In July 2011 the former Sri Lankan President, Chandrika Kumaratunga stated *“Sri Lanka is now a “terribly divided nation” and that “the state was against everyone who opposed it, whatever their ethnic group”*²⁹.

In September 2011 Sri Lanka's delegation to the UN claimed: *“There has been a major international conspiracy against Sri Lanka at the recently concluded UNHRC session in Geneva”*.³⁰ The BBC reported the delegation, *“warned that more attempts might be made to pass a resolution against Sri Lanka at the next UNHRC session in March, next year.”*

The sharp increase in pressure by “Western” nations to curb impunity and rights abuses, led the state of Sri Lanka to pursue any organization or individual who had provided the underlying research for these condemnations. Locally, this resulted in a number of white van abductions, senior government officials harassing newspaper editors, and extreme levels of ethnic polarization.³¹ *In December 2011 Sri Lanka threatened to prosecute critics of its domestic ‘Lessons Learnt and Reconciliation process’*.³²

²⁶ October 21st 2009: Report to Congress on ‘Incidents in the recent Sri Lankan Conflict’, produced at the request of the Appropriations Committee,

²⁷

²⁸ International Crisis Group, “Reconciliation in Sri Lanka: Harder Than Ever” (Asia Report Number: 209, Colombo/Brussels, 18th July 2011)

²⁹ BBC, “Chandrika Kumaratunga Berates Sri Lankan Government”

<<http://www.bbc.co.uk/news/world-south-asia-14274988>> Accessed 11th September 2011

³⁰ BBC September 2011: “Sri Lanka defeated conspiracy at UN”

³¹ Crisis Group July 2011: “Reconciliation in Sri Lanka harder than ever”, Tamil Guardian Nov 2011 “Sunday Leader Editor threatened”

³² (25th July 2011), Tamil Guardian Dec 2011: “Sri Lanka to prosecute LLRC critics”,

As predicted by the Sri Lankan delegation in September 2011, the United States tabled a resolution at the UN HRC in March 2012 calling for among other steps, accountability for recent mass atrocities.

Aside from being regarded as one of the key political leaders in the “Western” world, the UK’s emphasis on the protection of basic civil rights has increased the risk for temporary residents here. The UK is both the base of media outlets which have been critical of the Sri Lankan government, such as Channel 4, and home to a particularly vocal and politically active Tamil diaspora responsible for protests which embarrassed the visiting President of Sri Lanka in December 2010.³³ Within an immediate and violent crackdown on all forms of political dissent following high-level international pressure, high levels of UK-specific activities leave all returnees subject to a *dual vulnerability* when visiting the island.³⁴

Levels of state repression and violations of civil rights have remained as high, if not higher, in the post-war period as during ongoing military hostilities.

II. Surveillance Mechanisms & Interrogation

The findings in TK suggest that the existence of sophisticated surveillance technology would decrease indiscriminate screening on the basis of ethnicity. Patterns from the current data set reveal this to be misguided.

The topics of interrogation under torture featured in the sampled cases show a significant interest in political activity in London, including protests. Of the 26 cases found to be credible, 10 claimants were interrogated under torture about protests against the Sri Lankan government. Of these, one was arrested initially in a case of mistaken identity: he was thought to be a British Tamil who had participated in a protest at the United Nations in Geneva. Another was interrogated on his work for assisting the media during protests against President Rajapaksa’s December 2010 visit to London. A further torture victim was interrogated on the activities of a well-known European NGO.

Increased surveillance by Sri Lankan embassies abroad is primarily done through photographs and videos. **(Error! Reference source not found.)** Dr Smith, one of the expert witnesses referred to in TK, stated that the “*Defence Secretary was thought to have ordered information gathering of protestors.*” [para 9.6 case 18] At least five of our determinations found that appellants had been shown photos of protests including photos of themselves at the protests and/or photos of their other activities. For example one appellant was shown a photo of himself taken with the Head of the Tamil Rehabilitation Organisation in London³⁵. Other direct evidence available to TAG corroborates the considerable photographic evidence held by the Sri Lankan government.³⁶

³³ BBC 2nd Dec 2010 : Sri Lankan President blamed for killings: ‘The demonstrations have been blamed for the Oxford Union’s decision to cancel a speech by Mr Rajapaksa planned for Thursday.

³⁴ “Sri Lankan Tamils Tortured on Return From the UK”, Freedom From Torture, September 13, 2012

³⁵ Sri Lanka has accused the TRO of financing the LTTE and frozen its local bank accounts

³⁶ TAG witness statement to the Tribunal in IG v SSHD, August 2011

This evidence of surveillance of political activity supports our view that the acquisition of, and investment in, costly technology with the support of international donors is indicative of the increased paranoia of the state towards any form of political dissent. It is therefore possible that screening (and subsequent torture) is currently based on broad demographic determinants, with some link to (legitimate and illegitimate) political activities.

Local screening methods are also unreliable. In 10 of the cases reviewed, individuals were “identified” by former LTTE members or informants claiming to know of their affiliation. As with photos, such crude methods of identification can be imprecise, and are often inaccurate. As has been shown by earlier cases, and by testimony of those examined here, “identification” often happens under severe duress.³⁷

Screening and subsequent torture is based on broad determinants such as participation in political activity or protests that oppose the government.

III. Involvement with the LTTE

TK considers that ‘data contained in official records pays close attention to the level of threat posed by an individual’ and this is of relevance in assessing the level of adverse interest in a person suspected of involved of the LTTE. However, Rights groups have also reported the ambiguous categories the military itself lumps individual members into, with no standard procedure as to what constitutes a “hard core” LTTE cadre, versus others.

Our collection of determinations fewer than 20% served as armed combatants, a further 20% claim to have undertaken information gathering activities outside the Vanni region, while 20% were NGO workers, and a further 20% claim to have done civilian type support work such as digging bunkers during the war. We have classified 40% as having tenuous links. Of those that had been involved in combat 2 had less than a years service, one who was classified by us senior on account of years service had left the organization in 1994. It is difficult to see how for the vast majority of detainees their present day circumstances would pose a security threat.

However, all were arrested, detained, and experienced some form of abuse, a large majority recounting severe torture. We are unable to see any variation in the length of detention or severity of interrogation using torture correlating with length of service or extent of involvement in military activities. In a recent conversation with a journalist who had interviewed former LTTE members coming out of rehabilitation centers in Sri Lanka, it was recounted that “Nearly all the cadres, regardless of stature, wanted to leave the island. They knew once they went to their home villages they would be harassed, or even tortured.” (NG Interview August 2012).

Starting in 2005, the Government of Sri Lanka cast a wide net over individuals and organizations who might be considered LTTE supporter/sympathizers, even boldly calling United Nations Human Rights Commissioner Navanthem Pillay a “Terrorist”³⁸.

³⁷ <http://www.globalpost.com/dispatch/asia/090904/sri-lanka-doctors?page=0,1>

³⁸ Tamil Guardian, “Peiris Accuses Western Powers of Colluding with LTTE” (26th November 2011) <<http://www.tamilguardian.com/article.asp?articleid=3976>> Accessed 30th July 2012

For example in Nov 2011 Sri Lankan Defense Attache to the UK stated to a Sri Lankan TV channel “The LTTE has cultivated sympathisers in all three major political parties”. He went on to say ‘LTTE supporters have money to buy journalists and in some cases media organisations’.

Also in Nov 11 Sri Lanka’s External Affairs Minister cited “a recent example of a defeated European parliamentarian receiving a well paid job from an LTTE front organization to underscore the nexus between the LTTE and some of its vociferous supporters abroad” and asserted a strong relationship “between the LTTE and those foreign powers still facilitating LTTE operations”³⁹

The frequent issuance of such statements by senior Sri Lankan officials supports our view that when returnees are accused of ‘LTTE fund raising’ this covers a broad nexus of real or imagined political activity.

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 (Mampilly, 2010). Nearly every family would be likely to have some tie to the movement through either bloodlines⁴⁰ or their own engagement in legitimate or illegitimate activities. Similarly, while those living abroad in the Tamil diaspora may be protected by possession of a foreign passport, relatives on the island may be under threat due to their involvement in legitimate forms of political repression. As one asylum seeker notes,

“My relative was taken by the Police and the CID. I left detention illegally and I was not officially released so they were looking for me and went home asking for me. They beat him and asked him where I was, he couldn’t bear the torture and told them I had left the country, so they released him on the condition that the moment I returned home he had sent me to the police.”⁴¹

Variation in levels of association with the LTTE, or perceived linkages, does not explain the likelihood of arrest and

IV. Rule of Law in Sri Lanka

Once returned to Sri Lanka, the assumption is that the host government rule of law will apply, and any violations of national law will be subject to a fair trial. The applicants in all of the 26 cases were arrested following their return and held without explanation (presumably under the authority of the Prevention of Terrorism Act), and 15 were forced to sign confessions in Sinhalese that they were unable to read. Returnees were questioned about participation in protests, journalistic and other activist activities – all forms of political repression which are protected in the UK. Despite the Sri Lankan state maintaining a nominal commitment to respecting similar freedoms, the evidence points starkly to a lack of adherence to those principles. The Sri Lankan courts have become politicized, and directly

³⁹ Peiris comments at a conference on reconciliation and the international community, published in the Island Nov 2011 and cited by the TamilGuardian newspaper in London.

⁴⁰ The LTTE had a one member per family recruitment policy until the last stages of the war when it compulsorily recruited multiple members from families – see para 68 of the Report of the UN Panel of Experts April 2011

⁴¹ Tamils Against Genocide, *Evidence of Risk to Diaspora and Activists* Case1-001

under the control of the executive, thereby reducing the likelihood of a fair trial in politically aggravated cases.⁴²

As further evidence of the lack of due process, the release of all but one of the 26 sampled cases was secured by a bribe from family members, raising questions about incentives for the initial arrests.

Questioning the legitimacy of some white van abductions, earlier this year, a TAG study asserted “Short-term detention is generally indicative of a profit-motive, where the abduction was contracted for monetary compensation; alternatively, short-term detention can be indicative of an informal revolving-door Sri Lankan national security investigation technique where the Tamil abductee is imprisoned, tortured, escorted by security or paramilitaries via white van to see his family or a particular locality, pressured to provide more money or information, and then returned to prison where the procedure is repeated.”⁴³

Again, a somewhat skewed sample data set can be read as representative when understood alongside a recent study by Transparency International ranking the government of Sri Lanka as 3.5 out of 10 (1 being the highest) in terms of levels of corruption.

“Successive governments have respected judicial independence, and judges can generally make decisions without overt political intimidation. However, concerns about politicization of the judiciary have grown in recent years. Corruption remains fairly common in the lower courts, and those willing to pay bribes have better access to the legal system.” (TI 2012)

Returnees will not be offered a fair trial due to the provisions within the PTA, and a highly politicized and corrupt state-controlled judiciary branch.

British High Commission Monitoring of Enforced Returnee Safety

The British High Commission in Colombo monitors arrivals of enforced returns and charter flights at the airport and asserts that this ensures the safety of returnees. Yet our data shows that less than a quarter of voluntary returnees claimed to have been detained at the airport. 9 out of 16 report being picked up white vans, the rest report being picked either at check points, public places such as bus stops or at home. The vast majority were picked up within a month of leaving the airport, some 11 cases report being picked up within 2 weeks, while some cases make no comment on this. Thus while the correlation between arrival and pick up is clear, there is also an established practice of waiting till returnees have cleared the airport before detaining them.

⁴² Crisis Group 2009: ,**“Sri Lanka’s Judiciary: Politicised courts, compromised rights”**⁴²

⁴³ TAG Report July 2012 entitled “Sri Lanka’s White Van’s: Dual Criminality of the Sri Lankan State and the Rajapaksa Regime”

Thus circumventing any efforts to monitor the safe arrival of returnees by meeting them at the airport is ineffective.

Findings

Who is at Risk: Demographic Categories

This section looks at patterns across both determinations and interviews to better understand the category of persons who are likely to be subjected to random arrest, abduction, and torture.

- *Age/Gender* : The standard age of those questioned, detained, and/or tortured upon their return was between 22-38, with a slight bias towards young men over women. This age range would have been those most exposed to political mobilization in the North and East during the course of the conflict.
- *Citizenship*: All of the cases where the determination was accepted were Sri Lankan citizens with temporary or student visas in the UK. One case, presented by an expert witness, cites a British citizen who was detained due to political activities in the UK, but this case represents the anomaly.⁴⁴
- *Ethnicity*: All of the cases related to ethnic Tamils.
- *Political Affiliation*: A real or perceived “tie” to the LTTE. Participation in political protests abroad has increased prevalence as a risk factor. In one case the judge stated, “ *I find it reasonably likely that the appellant was arrested in Colombo in [Redacted] as he claims and subjected to torture for participation in the London demonstrations*” (Case 18)

The country codes must be informed not only by the current political context in Sri Lanka, but also by the approach taken by the state to the minority population in question. The cases reviewed here show 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.

Demographic determinants are sufficiently broad so as to assume that a majority of Tamils are at risk of arrest and torture upon involuntary return.

What is the risk: Arrest, Abuse, and Torture

The 26 determinations taken to be credible, provide some insight into the likelihood of torture in association with initial arrest and detention. All were subjected to severe forms of torture, claims which were clearly corroborated by medical experts. The brutal interrogation

⁴⁴ TAG witness statement August 2012

techniques used by the state have been clearly documented in a number of reports, most recently in medical records reviewed by Freedom From Torture.⁴⁵

One claimant from the current data set recounts,

*“They pushed my fingers with pins, they hung me upside down and beat me. They would dunk my head in water. Then I was beaten with metal rods. They beat me on my head and also on my legs. They put chilli powder on the scars/wounds after beating me.”*⁴⁶

The majority of the cases that reported abuse reported similar forms of physical torture, with 6 verified as having experienced additional forms of sexual torture. In all of the cases reviewed, judges found legitimate claims of severe torture to be “*supported by photographic evidence and the medical reports*” as well as through “*psychological assessment*”. (Case #3). Several of the applicants suffer from continued physical pain as well as forms of mental illness caused by severe trauma.

BROADER IMPLICATIONS: PREDICTING OUTCOMES

Despite increasing pressure from the international community, the government of

Sri Lanka has made little progress in curbing state repression and engaging in a meaningful accountability and reconciliation process.⁴⁷

This reality on the ground should be the driving force behind the rationale for guiding principles in asylum cases. The lack of research around the methods used to establish these principles⁴⁸ as well as an absence of regional expertise can create a dangerously misguided policy resulting in a likely rise in risk on return.. Once these individuals have applied for asylum the assumption on behalf of the Sri Lankan state is that returnees have acknowledged an affiliation with the LTTE which is the bare minimum required to arrest, detain, and torture these individuals.⁴⁹

As has been demonstrated in this report, both the context of a repressive state, with minimal adherence to democratic standards, coupled with periods of intense international pressure regarding institutionalized abuse and violations of international law create a high level of vulnerability for individuals who fall within the demographic determinants outlined above. In March of 2012, the UN Human Rights Council voted to pass a resolution pushing for accountability and the full implementation of a national Lessons Learned and Reconciliation Commission report. The resolution finally gained momentum around fears that there has been a structural shift towards a more inherently repressive state in Sri Lanka. REFERENCE Angered by the move, President Rajapaksa claimed, “*No external forces will be allowed to*

⁴⁵ “Sri Lankan Tamils Tortured on Return From the UK”, Freedom From Torture, September 13, 2012

⁴⁶ Tamils Against Genocide, *Evidence of Risk to Diaspora and Activists Case1-004*

⁴⁷ Crisis Group March 2012 : Government Promises, Ground Realities

⁴⁸ Yeo, S. *Tamils and Torture: Assessing the country guidance case system and the UK’s non-refoulement obligations* (2012)

⁴⁹ <http://www.srilankaguardian.org/2012/09/reconciliation-human-rights-and.html>

threaten the country's sovereignty". He further turned the finger on Tamil opposition parties, accusing them of being "*conspirators, opportunists, and traitors*" for providing any information or support to the resolution.⁵⁰

The patterns established here predict that with this, the strongest statement yet by the international community, the Sri Lankan government response is likely to be even more stringent and indiscriminate in its search for informants, particularly those living abroad with ties to the

nations who voted in favor of the resolution, including the UK. Concern over the lack of commitment to reconciliation was recently reiterated by U.S. Assistant Secretary of State Robert Blake, who "*emphasized the importance of progress in reducing the role and profile of the military in the north, and full respect for human rights.*"⁵¹

The continued involuntary return of asylum seekers to Sri Lanka, particularly in a state of heightened surveillance and arrest, would be irresponsible and encourage continued impunity for human rights abuses, like those found in the sampled determinations.

⁵⁰ (<http://www.colombotelegraph.com/index.php/sri-lanka-reacts-to-unhrc-resolution-on-hr-violation/>)

⁵¹ <http://www.thehindu.com/news/international/article3897165.ece>. (14th Sept 2012)

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Jan Jananayagam
(by e mail)

23 October 2012

Dear Sirs,

Sri Lanka Policy Bulletin v1 (October 2012)

Following your email correspondence with the Treasury Solicitor's Department regarding the Sri Lanka Policy Bulletin 1/2012 v.1.0 (issued October 2012) your request has been forwarded to me to consider.

The following amendments to that bulletin have now been made:

The second sentence at 3.3.4 - *"This is incorrect data even from the sample of 13 provided to date as their claims were not based upon any return incident"* **has been deleted.**

The penultimate sentence at 3.3.4 - *"This shows that almost half of the asylum claims were not accepted"* has been amended to *"The status of almost half of the asylum claims is unclear....."*

The third sentence at 13.6 - *"It is noted that of the 13 determinations submitted to the Agency, three of the claimants did not base their asylum claim on mistreatment after a return to Sri Lanka from the UK and a third case was a voluntary return from Switzerland, whose alleged ill treatment occurred 5 months after return"* **has been deleted**

The revised version of this bulletin has been sent for publication on the UK Border Agency website and decision makers in the Agency have been made aware of the changes. The Courts and Tribunal have also been made aware of the changes.

Yours faithfully,

David Becker
Country Specific Litigation Team

Sonya Sceats Policy and Advocacy Manager Freedom from Torture 111 Isledon Road London N7 7JW
Email: SSceats@freedomfromtorture.org
6 February 2013 Our Ref: FOI 25159

Dear Ms Sceats,

**Performance and Compliance Unit UK Border Agency 8th Floor, Long Corridor
Lunar House**

40 Wellesley Road Croydon CR9 2BY

Web: www.ukba.homeoffice.gov.uk

Thank you for your email of 15 November 2012, which has been handled as a request for information under the Freedom of Information Act 2000.

In your email you asked for information about Sri Lankan nationals granted refugee status, who had previously returned to Sri Lanka. For ease of reference your questions are listed below with answers beneath.

a) In how many cases was a Sri Lankan national granted refugee status by the UK having previously returned whether forcibly or voluntarily, to Sri Lanka from the UK from May 2009 onward.

In the period from May 2009 to September 2012, a total of 15 Sri Lankan nationals were granted refugee status, who had previously been removed from the United Kingdom.

(1) All figures quoted have been derived from management information and are therefore provisional and subject to change. This information has not been quality assured under National Statistics protocols. (2) Figures relate to main applicants only. (3) Figures relate to asylum applicants granted refugee status between 1 May 2009 and 30 September 2012. (4) Figures rounded to the nearest 5.

Figures on asylum grants by nationality for the period 1 October to 31 December 2012, will be available from 28 February 2013. Consequently, I have decided not to communicate this information to you pursuant to the exemption under section 36(2)(c) of the Freedom of Information Act 2000. This allows us to exempt information if it constitutes a subset of data that are intended for future publication.

The use of this exemption requires consideration of whether it is:

- Reasonable in all the circumstances not to produce the information until on or after 28 February 2013, and
- Whether in all the circumstances of the case the public interest in maintaining the exemption stated above outweighs the public interest in disclosing the information.

This is a two stage test but the central issue is whether in all the circumstances it is reasonable and in accordance with the public interest to require you to wait until 28 February 2013.

We recognise there may be a public interest in producing this information for you now and that this may also weigh in favour of it being unreasonable to make you wait until 28 February 2013. We have considered the following:

- It is important that the public have access to immigration statistics. Home Office staff are required to handle requests made under the Freedom of Information Act 2000, not least to assure them that this legislation is being fully implemented.

But there are also public interest reasons for maintaining the exemption to the duty to communicate which weigh in favour of it being reasonable to require you to wait until 28 February 2013. We have considered the following:

- Publication would undermine Home Office established pre-publication procedures, which includes internal consultation about the final statistics being established on the Home Office website, and also being able to use its staff resources effectively in a planned way so that reasonable publication timetables are not affected.

After balancing these conflicting arguments, we have concluded not only that it is reasonable to require you to wait until 28 February 2013, but also that the balance of the public interests identified favours maintaining the exemption. This is not least because we believe that in this case the overall public interest lies in favour of ensuring that the Home Office is able to plan its publication of information in a managed and coherent way, and this would not be possible if immediate disclosure were made.

b) In how many of the cases in (a) was it alleged that the person suffered torture or inhuman or degrading treatment upon return to Sri Lanka from the UK.

Of the 15 Sri Lankan nationals granted refugee status, all 15 claim to have been subject to torture or inhuman / degrading treatment either following their return to Sri Lanka.

(1) All figures quoted have been derived from management information and are therefore provisional and subject to change. This information has not been quality assured under National Statistics protocols. (2) Figures relate to main applicants only. (3) Figures relate to asylum applicants granted refugee status between 1 May 2009 and 30 September 2012. (4) Figures rounded to the nearest 5.

c) In how many of the cases in (b) was the allegation of torture or inhuman or degrading treatment found credible by the: i) UK Border Agency on initial consideration of the application;

ii) First Tier Tribunal and/or the Upper Tribunal.

d) Of the cases in (b) was refugee status granted:

i) ii) iii)

On the basis of an initial application (upon their return to the UK) On the basis of a successful appeal; In response to further submissions following the refusal of an application or appeal.

Of the 15 Sri Lankan nationals granted refugee status, 5 were granted asylum following the initial consideration of their asylum claim by the UK Border Agency, and 10 were granted following the successful determination of their appeal. Of the 10 granted at appeal, 5 were granted by the Immigration and Asylum Chamber of the First-tier Tribunal (IAC), and the remaining 5 were granted by the Immigration and Asylum Chamber of the Upper Tribunal (IAC).

(1) All figures quoted have been derived from management information and are therefore provisional and subject to change. This information has not been quality assured under National Statistics protocols. (2) Figures relate to main applicants only. (3) Figures relate to asylum applicants granted refugee status between 1 May 2009 and 30 September 2012. (4) Figures rounded to the nearest 5.

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Information Access Team Home Office Ground Floor Seacole Building
2 Marsham Street London SW1P 4DF Email: FOIRRequests@homeoffice.gsi.gov.uk

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Yours sincerely,

Fiona Larkin Head of Central Performance Office Performance & Compliance Unit