



Australian Government
Refugee Review Tribunal

Country Advice

Sri Lanka

Sri Lanka – LKA36517 – Colombo –
Tamils – Returnees – Security situation –
Extortion – Brahmins – Teachers – State
protection – Police
22 April 2010

1. What is the current situation for Tamil returnees to Colombo?

There is some variation in the reporting on the treatment of Tamil returnees to Colombo. In August 2009 the Australian High Commission in Colombo advised the UK Foreign and Commonwealth Office (FCO) that “there were no procedures in place to identify failed asylum seekers”; and that: “The only way that the authorities were alerted to a failed asylum seeker returning was if the airlines or IOM notified them that a person was a deportee or was being escorted”.¹ A Tamil returned to Colombo after seeking asylum in Australia would therefore be under no more scrutiny than any other Tamil returning to Colombo and would be subject to the same screening procedures with the same risk criteria for being perceived as having an LTTE association (for a list of these criteria see the paragraphs below). In 2004, Australia’s Edmund Rice Centre claimed to be aware of two instances in which returnees had been detained for a number of weeks by Sri Lankan authorities following their return; connecting this development with the manner in which Australian immigration officials had shared information about the returnees with the Sri Lankan authorities and the manner in which the returnees were escorted to Colombo airport by an Australian immigration official.² In recent months Bruce Haigh, a retired Australian diplomat who formerly served at Australia’s Colombo post (and at the RRT as a Member), has claimed that it has been the practice of the Australian government, in his experience, to share information with the Sri Lankan government about the identities of Sri Lankan nationals applying for asylum in Australia;³ which would indicate that, if such a practice is taking place, the identities of Sri Lankan asylum seekers are being communicated to the Sri Lankan authorities. These claims noted, the UN High Commissioner for Refugees has expressed no concerns about the treatment of Tamil returnees at Colombo airport.⁴

¹ UK Foreign and Commonwealth Office 2009, Report of Information Gathering Visit to Colombo, Sri Lanka 23-29 August 2009, August, pp.8-18 – Attachment 1.

² Edmund Rice Centre for Justice & Community Education 2004, *Deported to Danger: A Study of Australia’s Treatment of 40 Rejected Asylum Seekers*, September, pp.27, 56 – Attachment 5.

³ Haigh commented as follows on 13 April 2010: “For many years it has been a requirement of the Australian government to seek a security clearance from the Sinhalese police for Tamils seeking refugee status in Australia. When I was posted to the Australia High Commission in Colombo I could see no sense in the arrangement. It was best ignored for all it did was to put the family of the applicant in jeopardy”, see: Haigh, B. 2010, ‘The AFP gets close to the edge of the law’, Online Opinion website, 13 April

<http://www.onlineopinion.com.au/view.asp?article=10281> – Accessed 22 April 2010 – Attachment 2; Morgan, D. & Mottram, L. 2010, ‘Australian government pressured over Tamils’ visa refusals’, *ABC News*, 13 January <http://www.radioaustralianews.net.au/stories/201001/2790915.htm?desktop> – Accessed 22 April 2010 – Attachment 4; ‘Bruce Haigh’ 2009, *ABC News*, 13 April <http://www.abc.net.au/unleashed/stories/s2499656.htm> – Accessed 22 April 2010 – Attachment 3.

⁴ Asked about this issue by the the UK Foreign and Commonwealth Office in August 2009 an officer of the Colombo office of UNHCR replied that while UNHCR had “little involvement with this type of issue”, “they were aware that some returned failed asylum seekers were interviewed with CID. If there was any suspicion there would be a quick, and usually non-problematic, interview with CID who would ask things like why they

No further information could be located within publicly available sources regarding the treatment of Tamils returned to Colombo from Australia in recent years; although information is available on *the number* of ethnic Tamils who have been returned since 2008. According to the Australian High Commission in Colombo:

Four more Sri Lankan asylum seekers, two Tamils, one Sinhalese and one Muslim, have been removed from Australia after their applications for refugee status were unsuccessful, a spokesman for the Australian Department of Immigration and Citizenship (DIAC) said today.

The departure of these intercepted individuals brings the total number of unsuccessful Sri Lankan asylum seekers removed from Australia to 80, since late 2008.⁵

As is noted above, in August 2009 the UK FCO undertook a substantial survey of the views of a number of commentators on the situation at Colombo airport with regard to the manner in which Tamil returnees are processed. The mission consulted with representatives from the Sri Lankan government, UNHCR, human rights groups, other western embassies, and a member of the opposition United National Party (UNP), Mano Ganesan MP. The survey reported as follows:

Sources agreed that all enforced returns (of whatever ethnicity) were referred to the Criminal Investigations Department (CID) at the airport for nationality and criminal record checks, which could take more than 24 hours. All enforced returns were wetfingerprinted. Depending on the case, the individual could also be referred to the State Intelligence Service (SIS) and / or Terrorist Investigation Department (TID) for questioning.

Anyone who was wanted for an offence would be arrested. Those with a criminal record or LTTE connections would face additional questioning and may be detained. In general, non-government and international sources agreed that Tamils from the north and east of the country were likely to receive greater scrutiny than others, and that the presence of the factors below would increase the risk that an individual could encounter difficulties with the authorities, including possible detention:

- outstanding arrest warrant
- criminal record
- connection with LTTE
- illegal departure from Sri Lanka
- involvement with media or NGOs
- lack of an ID card or other documentation.⁶

2. How is the current security situation for Tamils in Colombo? Is harassment by security forces and threats of mistreatment/extortion a problem for the Colombo Tamil community?

While a handful of Tamils have been arrested as LTTE suspects in Colombo in recent months there have been no reports, during this period, of mass arrests as a result of cordon and search operations or of the abduction of Tamil persons by “white vans”. Most commentators have noted this as an improvement in the situation but have, nonetheless, been reserved about the nature of the long term outlook. A number of commentators have noted that local journalists

left and how long they were away for. High profile cases, such as those suspected of having involvement with the LTTE, would be taken away for further questioning, usually by the police”, see: UK Foreign and Commonwealth Office 2009, Report of Information Gathering Visit to Colombo, Sri Lanka 23-29 August 2009, August, p.9 – Attachment 1.

⁵ Australian High Commission, Colombo 2010, ‘Failed asylum seekers removed to Sri Lanka’, 19 March <http://www.srilanka.embassy.gov.au/clmb/100319MRfailedasylum.html> – Accessed 22 April 2010 – Attachment 6.

⁶ UK Foreign and Commonwealth Office 2009, Report of Information Gathering Visit to Colombo, Sri Lanka 23-29 August 2009, August, p.5 – Attachment 1.

and human rights commentators are fearful of reporting any news critical of the government on the issue the Tamil community. There is, further to this, a sense of anxiety amongst Colombo's Tamil residents. Reports of disappearances in the north continue to be reported and human rights groups are concerned about the fate of the over 10,000 Tamils thought to be held in the Boosa detention centre just south of the capital. The continued practice of having to cross checkpoints and register with local police continues to expose Colombo Tamils to the possibility of harassment and extortion.

The Changing Situation in Colombo

In previous years UNHCR has expressed concern about the manner in which large numbers of Tamils have been detained by security forces in Colombo following "cordon and search" operations.⁷ The abduction of individual Tamils by "white vans" (thought to be driven by paramilitary cadres, police or other government security personnel) have also been a concern in previous years; with abductees either disappearing, being discovered dead, or being held for ransom, about which Human Rights Watch produced a major report in March 2008.⁸ In April 2009 UNHCR reported as follows:

Cordon and search operations, roundups and arrests of Tamils, in particular Tamils from the North and East, are regularly reported in Colombo. In the fall of 2008, all citizens coming to Colombo and the Western Province from war affected regions, including all those who arrived within the past five years, were required to register with the police.

...In October 2008, Sri Lanka's Deputy Minister of Vocational and Technical Training, P Radhakrishnan, accused the police of arresting "five to 10 Tamil people" every day in Colombo and its suburbs using information from the registration exercises in Colombo. He claimed that there were over 1,000 Tamils already in security detention and that anybody carrying identity cards with addresses from rebel-held areas was immediately arrested.⁷² The Supreme Court has also highlighted the unacceptably high number of Tamil civilians in security detention in the Colombo region and has repeatedly called upon the Government to end practices leading to arbitrary arrest and detention.

Abductions of civilians have also been reported in Colombo and the Western Province. The recorded cases involve predominantly Tamil abductees, particularly young Tamils.⁹

Since the conclusion of hostilities in May 2009 reports of incidents of this kind have diminished.¹⁰ While the occasional arrest of LTTE suspects¹¹ and the monitoring, by police,

⁷ UN High Commissioner for Refugees 2009, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, April, pp.13-14 – Attachment 7.

⁸ Human Rights Watch 2008, *Recurring Nightmare: State Responsibility for "Disappearances" and Abductions in Sri Lanka*, vol.20: no.2(c), 6 March, p.7 – Attachment 8.

⁹ UN High Commissioner for Refugees 2009, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, April, pp.13-14 – Attachment 7.

¹⁰ DIAC Country Information Service 2009, *Country Information Report No.09/75 – Treatment of Tamils – Colombo airport, search operations, disappearances, checkpoints and residency*, source: DFAT (14 October 2009), 14 October – Attachment 9.

¹¹ According to the Tamil advocacy monitor Tamil Net on 28 January 2010: "A Tamil civilian Subramanian Siva Kumar was arrested by the Terrorism Investigations Department (TID) in Colombo, according to the Director of the TID. He told media persons in Colombo Thursday evening that the suspect has been identified as a hardcore cadre of the LTTE" ('Tamil civilian arrested in Colombo' 2010, Tamil Net website, 28 January <http://www.tamilnet.com/art.html?catid=13&artid=31088> – Accessed 20 April 2010 – Attachment 10); According to China's *Xinhua* news agency: on 16 March 2010: police arrested a "72-year-old man suspected of masterminding LTTE bombings" (<http://english.peopledaily.com.cn/90001/90777/90851/6921351.html> – Accessed 20 April 2010 – Attachment 11); According to Tamil Net on 31 December 2009: "Police...arrested three Tamil youths in Colombo in a cordon and search operation. One youth was taken into custody in Bambalapitya and two at Wellawatte. They are now detained in the fourth floor of the Criminal Investigation Department headquarters and being interrogated, according relatives of the arrested youths" ('3 Tamil youths arrested in Colombo' 2009, Tamil Net website, 31 December <http://www.tamilnet.com/art.html?catid=13&artid=30918> – Accessed 20 April 2010 – Attachment 12).

of Colombo's Tamil residents continues to be reported¹², there have been no reports in 2010 of the mass arrest of Tamils in Colombo as a consequence of cordon and search operations of the kind that were being reported a year ago.¹³ The most recent Colombo cordon and search operation to be noted in the reporting of Tamil advocacy groups occurred in December 2009 in the Maligawatte Housing Scheme; and while residents complained about the inconvenience caused by the operation there were no reports of arrests or of harassment.¹⁴ Recent months have also been free of any reports of "white van" disappearances involving Tamils in Colombo; although Colombo has, in recent months, seen reports of abductions of this kind involving NGO workers,¹⁵ journalists,¹⁶ members of opposition groups,¹⁷ and businessmen.¹⁸

In August 2009 the UK Foreign and Commonwealth Office (FCO) undertook a substantial survey of the views of a number of commentators of the situation on Sri Lanka in a number of regards, consulting with representatives from the Sri Lankan government, UNHCR, human rights groups, other western embassies, and a member of the opposition United National Party (UNP), Mano Ganesan MP. With regard to Colombo most of the sources consulted by the UK FCO reported an improvement in the security situation of Tamils while also noting that Tamils originally from the north could face some problems in finding residence in Colombo as well as some inconvenience at checkpoints and the possibility of some harassment and/or extortion. With regard to cordon and search operations during the period June to August 2009, the following comments are worth noting:

2.8 The representative from Centre for Policy Alternatives (CPA) had not heard of any arrests. However, they were aware that in some areas of low-income Tamil residence, such as Wellawatte and Kotahena, there were operations once or twice a week. In other areas, such operations were less frequent; but every day, somewhere in Colombo was raided. In general, cordon and search operations were 'easing off' but still happened.

¹² 'Household checking by police in Colombo reimposed' 2009, SriLankaTruth.com website, source Tamil Net, 10 November

http://srilankatruth.com/news/newspublish/news.php?news_id=4815&start=0&category_id=23&parent_id=23&arcyear=&arcmonth= – Accessed 22 April 2010 – Attachment 13.

¹³ 'SLA arrests 66 Tamils in Colombo, Ampaa'rai, Vavuniyaa' 2009, SriLankaTruth.com website, source Tamil Net, 11 April http://www.srilankatruth.com/news/newspublish/news.php?news_id=3386 – Accessed 22 April 2010 – Attachment 14.

¹⁴ 'SLA, Police cordon, search Maligawatte housing schemes' 2009, SriLankaTruth.com website, source Tamil Net, 24 December http://srilankatruth.com/news/newspublish/news.php?news_id=5211&start=0&category_id=23&parent_id=23&arcyear=&arcmonth= – Accessed 22 April 2010 – Attachment 15.

¹⁵ 'Disappearance of Mr. Pattani Razeek, Executive Committee Member of Forum-Asia' 2010, Asian Human Rights Commission website, AHRC- FUA-002-2010, 18 February <http://www.ahrchk.net/ua/mainfile.php/2010/3370/> – Accessed 22 April 2010 – Attachment 16.

¹⁶ 'A political analyst has been missing since the election run-up' 2010, Asian Human Rights Commission website, AHRC-UAC-009-2010, 4 February <http://www.ahrchk.net/ua/mainfile.php/2009/3360/> – Accessed 22 April 2010 – Attachment 17; 'Sri Lanka: Political reporter and cartoonist missing in Colombo on eve of election' 2010, Asian Human Rights Commission website, AHRC-FST-006-2010, 27 January <http://www.ahrchk.net/statements/mainfile.php/2009statements/2385/?print=yes> – Accessed 22 April 2010 – Attachment 18.

¹⁷ 'Sri Lanka: Two men are abused by police for carrying opposition posters during the presidential election; one is arbitrarily arrested' 2010, Asian Human Rights Commission website, AHRC-UAC-021-2010, 4 March <http://www.ahrchk.net/ua/mainfile.php/2010/3385/> – Accessed 22 April 2010 – Attachment 19; 'Sri Lanka: Sri Lankan Activists Threatened' 2010, Amnesty International website, UA: 53/10 Index: ASA 37/005/2010, 10 March <http://www.amnesty.org/en/library/asset/ASA37/005/2010/en/1c012c1a-bb4f-40c7-b293-2115e505a8b7/asa370052010en.html> – Accessed 22 April 2010 – Attachment 20.

¹⁸ 'SL Police Sub-Inspector, businessman abducted in Colombo' 2009, SriLankaTruth.com website, source Tamil Net, 3 December http://srilankatruth.com/news/newspublish/news.php?news_id=5041&start=0&category_id=10&parent_id=10&arcyear=&arcmonth= – Accessed 22 April 2010 – Attachment 21; Mushtaq, M. 2009, 'And... The White Vans Are Back!', *Sunday Leader*, 6 December <http://www.thesundayleader.lk/2009/12/06/and%E2%80%A6the-white-vans-are-back/> – Accessed 22 April 2010 – Attachment 22.

...2.12 Professor Wijesinha said that recently there had been no complaints about cordon and search operations, but there were some in the past. He was not aware of the total number of people arrested/detained in such operations. In the past, the evidence suggested that a lot of people were questioned during such operations, but released on the day itself or shortly thereafter. He said they used to keep track of such incidents in the past when there had been some large-scale operations (e.g. 2007) and had to look into complaints related to those. Such large-scale operations had not been seen in recent years.

...2.13 Mano Ganesan MP thought that around 50 persons had been detained by TID since June 2009.¹⁹

With regard to problems faced by Tamils at checkpoints during the period June to August 2009, the following comments are pertinent:

4.39 The representative of the Swiss Embassy in Colombo said that people, who could not identify themselves, lacked an ID card or had ID cards from Jaffna or northern districts, were likely to be detained briefly and then released after checks on their identity had been carried out. However there had been examples when applicants[1] who applied with the Embassy stated, mostly with proof, that they were arrested at checkpoints, detained with detention orders (under ER and to a lesser extent under PTA) and some even sent to Boosa. However, the Swiss representative added that since the end of the war the Embassy had not received any asylum applications[1] where a person had been arrested at checkpoints and sent to Boosa. However, the official thought it was far too soon to look at trends.

...4.42 Staff of a non-governmental organisation stated that Tamils felt they got worse treatment at checkpoints and feel discriminated against. However, they received brusque treatment but not necessarily harassment. An ability to communicate with police made a difference. Some Tamils from Colombo were tri-lingual (Tamil, Sinhala and English) and speaking fluent Sinhalese helped. Tamils from the north were vulnerable at checkpoints, especially those seeking employment and/or staying in Colombo on a temporary basis.²⁰

It should be noted that one source, a February 2010 report produced by the well regarded International Crisis Group (ICG), is at variance with the source information presented above. According to the February 2010 ICG report: “Young men still ‘disappear’ – often after being picked up by government security forces not only in the country’s north and east but also in the capital”. This statement is sourced to a March 2008 Human Rights Watch report: *Recurring Nightmare: State Responsibility for “Disappearances”*.²¹ No sources from more recent months suggesting an ongoing trend of Tamil disappearances in Colombo are noted by this February 2010 report. In all other regards the assessment of the ICG matches the assessment presented in the wider commentary. This noted, the ICG’s statement may be relevant, read in the context in which it appeared:

While the situation has improved since the end of the war, a climate of fear still pervades the Tamil community in Colombo. Many are routinely subjected to arrest or humiliating searches. Young men still “disappear” – often after being picked up by government security forces not only in the country’s north and east but also in the capital. [noting a March 2008 HRW report: *Recurring Nightmare: State Responsibility for “Disappearances”*] While some may be members or supporters of the LTTE, this does not justify their secret detention without due process. Most of the missing Tamils are feared dead. Simply put, many do not see Colombo as home. Even if forced to return there is little incentive for the repatriated to stay; it is likely that they would simply migrate once more.

¹⁹ UK Foreign and Commonwealth Office 2009, Report of Information Gathering Visit to Colombo, Sri Lanka 23-29 August 2009, August, p.20 – Attachment 1.

²⁰ UK Foreign and Commonwealth Office 2009, Report of Information Gathering Visit to Colombo, Sri Lanka 23-29 August 2009, August, p.35 – Attachment 1.

²¹ Human Rights Watch 2008, *Recurring Nightmare: State Responsibility for “Disappearances” and Abductions in Sri Lanka*, vol.20: no.2(c), 6 March – Attachment 8

While some Tamil migrants flouted asylum procedures by fabricating grounds for flight, a majority were legitimate asylum seekers. This is underscored by the large Tamil populations in the West, comprised of thousands of people whose asylum cases withstood intense scrutiny.²²

It is also worth noting that an overall decline in abductions, in recent months, was noted by the ICG in a previous January 2009 report:

The human rights situation has slightly improved since the end of the war, with very few reports of extrajudicial killings, abductions and enforced disappearances received in the final months of 2009. Nonetheless, the structures that enable violations and impunity – chiefly the anti-terrorism regulations promulgated under the state of emergency and the Prevention of Terrorism Act – remain in place.

...Disappearances and abductions – whether for ransom or to target those suspected of working with the LTTE – are much less frequent than in 2006-2008, though there have been reports of such cases since the war's end, primarily from the Northern and Eastern Provinces. To date, no one has been prosecuted for any of the thousands of enforced disappearances and extrajudicial killings known to have taken place from late 2005 onwards. In addition to the 11,000 or more alleged LTTE members held in special camps in the north, another 1500-2000 suspects continue to be held under emergency detention orders or other anti-terrorism legislation, some for years without charges.²³

Ongoing Fears

Even so, it should also be noted that observers have reported a sense of fear and anxiety within the Tamil community about the future;²⁴ not least because of continuing reports of the disappearance of Tamils in other parts of the country and the ongoing detention of thousands of Tamils as suspected LTTE cadres in the Boosa detention centre just south of Colombo in Galle. Over recent months Tamil advocacy monitors like Tamil Net²⁵ have regularly reported claims of Tamils being disappeared from the Vavuniyaa Menik Farm IDP camp,²⁶ as well as from Jaffna²⁷ and other parts of the north and east²⁸ of the country, believed to have been

²² International Crisis Group 2010, *The Sri Lankan Tamil Diaspora after the LTTE*, Asia Report no.186, 23 February, p.4 – Attachment 23.

²³ International Crisis Group 2010, *Sri Lanka: A Bitter Peace*, Asia Briefing no.99, 11 January, p.18 – Attachment 24.

²⁴ US Senate Committee on Foreign Relations 2009, *Sri Lanka: Recharting US Strategy after the War*, 111th Congress, 1st Session, 7 December, pp.1, 7 <http://foreign.senate.gov/imo/media/doc/SRI.pdf> – Accessed 14 January 2010 – Attachment 25; and: Feith, D. 2010, 'Tamil asylum seekers still need protection', *Sydney Morning Herald*, 25 March <http://www.theage.com.au/opinion/politics/tamil-asylum-seekers-still-need-protection-20100325-qzc4.html?comments=11> – Accessed 22 April 2010 – Attachment 26.

²⁵ Tamil Net represents itself as a "an independent and not-for-profit newswire service that provides up to date news with Tamil perspective on issues concerning Tamil people in the island of Sri Lanka" employing both paid journalists and a volunteer network as news sources. In February 2008 Amnesty International commented that: "TamilNet is a Tamil nationalist website accused by the Government of being sympathetic to the LTTE but its news is widely read including by the diplomatic community" (Amnesty International 2008, *Sri Lanka: Silencing Dissent*, AI Index: ASA 37/001/2008, 7 February, p.36 – Attachment 52; 'TamilNet' 2005, Tamil Net website, 9 October <http://www.tamilnet.com/aboutus/index.html?catid=67> – Accessed 22 April 2010 – Attachment 53).

²⁶ '49 women detainees arrested in Vavuniyaa camps' 2010, Tamil Net website, 20 February <http://www.tamilnet.com/art.html?catid=13&artid=31229> – Accessed 22 April 2010 – Attachment 27; '54 women detainees taken to Boosa prison from detention camps in Vavuniyaa' 2010, Tamil Net website, 24 February <http://www.tamilnet.com/art.html?catid=13&artid=31260> – Accessed 22 April 2010 – Attachment 28; '100 Tamil youths taken to Boosa prison from Vavuniyaa detention camp' 2010, Tamil Net website, 2 March <http://www.tamilnet.com/art.html?catid=13&artid=31289> – Accessed 22 April 2010 – Attachment 29.

²⁷ '100 Tamil youths taken to Boosa prison from Vavuniyaa detention camp' 2010, Tamil Net website, 2 March <http://www.tamilnet.com/art.html?catid=13&artid=31289> – Accessed 22 April 2010 – Attachment 29; 'Fate of 100 Vanni detainees taken away by SLA not known' 2010, Tamil Net website, 26 March <http://www.tamilnet.com/art.html?catid=13&artid=31430> – Accessed 22 April 2010 – Attachment 30.

²⁸ '17 persons reported missing since January' 2010, Tamil Net website, 28 February <http://www.tamilnet.com/art.html?catid=13&artid=31283> – Accessed 22 April 2010 – Attachment 31.

taken to the Boosa prison. Such sources also report claims of the abuse of female Tamils in the north and east by security forces,²⁹ the encroachment of Sinhalese settlers in northern areas upon Tamil areas,³⁰ and the intimidation of Tamils in the north and east by paramilitary and security forces.³¹ Independent observers, such as NGOs, the press, and foreign missions, are currently unable to access such areas to properly investigate such claims.³² Self censorship by local journalists and human rights activists reportedly also makes confirmation of such claims a problem. In December 2009 the US Senate Committee on Foreign Relations reported of its November 2009 visit to Sri Lanka that: “Committee staff members noted a palpable fear among journalists and civil society”; and that: “some journalists cancelled scheduled meetings with staff for fear of persecution from the Government”.³³ While Committee staff were allowed access to the camps and did conduct meetings with Sri Lankan journalists and bloggers it nonetheless assessed that there is “no free flow of credible information coming from the camps”. The International Crisis Group has similarly observed that: “The discrepancy between what UN and humanitarian agencies are saying in public and what those working with the displaced – both Sri Lankan and international – will say in private is striking”.³⁴

Human Rights Watch is, nonetheless, sure that large numbers of disappeared Tamils are being held in the Boosa detention centre. Human Rights Watch has recently produced a major report expressing concern about the unknown situation of the estimated 11,000 Tamils who were rounded up during the final weeks of the conflict in the north and from amongst the 300,000 displaced Tamils who were being held in the IDP detainment camps.³⁵ According to HRW:

The complete lack of transparency in the detention process, particularly the authorities’ consistent failure to inform families of the basis for the detainees’ arrest and their whereabouts, raises serious concerns that some detainees may have been victims of enforced disappearance.

...Security forces carrying out the arrests at Menik Farm and other camps often refuse to inform the families or government representatives (*grama sevakas*) in the camps where they take those arrested. Even the Human Rights Commission on Sri Lanka, which needs to be

²⁹ ‘Captive Tamil women were sexually abused in Lankan refugee camps’ 2009, *Thaindian*, source: ANI, 20 December http://www.thaindian.com/newsportal/world-news/captive-tamil-women-were-sexually-abused-in-lankan-refugee-camps_100292031.html – Accessed 22 April 2010 – Attachment 32; ‘Sri Lanka soldiers remanded over rape of 9-year old Tamil girl’ 2010, Tamil Net, 27 February <http://www.tamilnet.com/art.html?catid=13&artid=31278> – Accessed 22 April 2010 – Attachment 33.

³⁰ ‘Government engaged in Sinhalese colonization in Kokkavil – Suresh Premachandran’ 2010, Tamil Net website, 18 March <http://www.tamilnet.com/art.html?catid=13&artid=31386> – Accessed 22 April 2010 – Attachment 34; ‘Sinhalese soldiers, hooligans destroy Thileepan memorial in Jaffna’ 2010, Tamil Net website, 23 March <http://www.tamilnet.com/art.html?catid=13&artid=31414> – Accessed 22 April 2010 – Attachment 35.

³¹ ‘SLA harrasses former Jaffna parliamentarian’ 2010, Tamil Net website, 23 February <http://www.tamilnet.com/art.html?catid=13&artid=31253> – Accessed 22 April 2010 – Attachment 36; ‘SLPP persons harass senior Tamil journalist Parameswaran in Jaffna’ 2010, Tamil Net website, 27 February <http://www.tamilnet.com/art.html?catid=13&artid=31279> – Accessed 22 April 2010 – Attachment 37; ‘Young man beaten to death in Vavuniyaa’ 2010, Tamil Net website, 29 March <http://www.tamilnet.com/art.html?catid=13&artid=31454> – Accessed 22 April 2010 – Attachment 38.

³² ‘Why the Tamils want to flee: Eric Campbell interviewed by Shane McLeod’ 2010, *ABC News – Correspondents Report*, 7 February <http://www.abc.net.au/correspondents/content/2010/s2812143.htm> – Accessed 22 April 2010 – Attachment 39; Human Rights Watch 2010, *Legal Limbo: The Uncertain Fate of Detained LTTE Suspects in Sri Lanka*, February, p.1 – Attachment 40 .

³³ US Senate Committee on Foreign Relations 2009, *Sri Lanka: Recharting US Strategy after the War*, 111th Congress, 1st Session, 7 December, pp.8, 6 <http://foreign.senate.gov/imo/media/doc/SRI.pdf> – Accessed 14 January 2010 – Attachment 25.

³⁴ p.8 in: International Crisis Group 2010, *Sri Lanka: A Bitter Peace*, Asia Briefing no.99, 11 January, p.8 http://www.crisisgroup.org/library/documents/asia/south_asia/sri_lanka/b99_sri_lanka_a_bitter_peace.pdf – Accessed 13 January 2010 – Attachment 24.

³⁵ Human Rights Watch 2010, *Legal Limbo: The Uncertain Fate of Detained LTTE Suspects in Sri Lanka*, February – Attachment 40

informed about an arrest according to the Presidential Directives on Arrest and Detention, has not been informed in the cases documented by Human Rights Watch. The families, particularly those held in the camps, have no ability to search for their missing relatives.³⁶

Of the situation in the north more generally the US Department of State has noted: “Tamils throughout the country, but especially in the conflict-affected north and east, reported frequent harassment of young and middle-aged Tamil men by security forces and paramilitary groups”.³⁷ The Sri Lankan government has recently extended the state of emergency³⁸ which allows security forces to detain Tamils for screening.

Continued reports of this kind have made some commentators reluctant to speak confidently about recent improvements in security conditions for Tamils as long term indications. The British Foreign and Commonwealth Office has recently flagged Sri Lanka as a country of concern in this regard. Australia’s High Commission in Colombo has also expressed reservations about the future security situation with regard to the, presently diminished, activities of the Eelam People’s Democratic Party (EPDP), Karuna and Tamil Makkal Viduthalai Pulikal (TMVP) groups. On 14 October 2009 Australia’s Colombo post advised the Tribunal as follows:

...developments have seen some overall reduction in the activities of these groups since the end of the war, although incidents are still reported, especially from the eastern province and it is not possible to be sure of future trends. The majority of incidents seem to take place in the north and east. Although the security incidents perpetrated by these groups may have lessened, there is no guarantee that the activities will completely cease, especially where inter-party rivalry is concerned.³⁹

Current UNHCR Guidelines

Finally it should be noted that UNHCR is yet to revise its July 2009 statement that its April 2009 (pre cessation hostilities) assessment of the situation of Tamils remains current. UNHCR’s assessment finds that Tamils who originate from the north, and young Tamil men from the north in particular, are at risk of harm. UNHCR recommends that such persons should be “recognized as refugees under the 1951 Convention”.⁴⁰

3. Are Brahmin Tamils at particular risk of being identified as LTTE supporters?

No information could be located which identified high caste Tamils as having a profile that would make them stand apart from other Tamils as being suspected of having an association with the LTTE. On the contrary, studies of the relationship between the LTTE movement and caste stratification relate that the LTTE, while it has sought to appeal to all Tamils irrespective of caste, has typically drawn the bulk of its support from the lower middle classes with much of the LTTE leadership being from the lower Karaiyar fisherman caste identity. According to a 2008 study of caste in Sri Lanka produced by the Indian Institute of Dalit studies:

³⁶ Human Rights Watch 2010, *Legal Limbo: The Uncertain Fate of Detained LTTE Suspects in Sri Lanka*, February, pp.10-11 – Attachment 40.

³⁷ US Department of State 2010, *2009 Human Rights Report: Sri Lanka*, 11 March – Attachment 41.

³⁸ ‘Sri Lanka to extend emergency laws’ 2010, *Al Jazeera*, 3 March <http://english.aljazeera.net/news/asia/2010/03/20103333313841729.html> – Accessed 22 April 2010 – Attachment 42.

³⁹ DIAC Country Information Service 2009, *Country Information Report No. 09/88 – CIS Request No LKA 9899; activities of paramilitary groups in Sri Lanka*, source DFAT (18 November 2009), 18 November – Attachment 43

⁴⁰ UN High Commissioner for Refugees 2009, *Note on the Applicability of the 2009 Sri Lanka Guidelines*, UNHCR Refworld website, July <http://www.unhcr.org/refworld/docid/4a6817e22.html> – Accessed 30 November 2009 – Attachment 44; and see: UN High Commissioner for Refugees 2009, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, April, pp.21-22 – Attachment 7.

There are three parallel caste systems in Sri Lanka namely, Sinhala, Sri Lankan Tamil and Indian Tamil. Though there is no uniform notion of untouchability can be found among the people of these three caste systems yet each involves caste discrimination of some kind. The academic research on caste was popular in the 1950s and 1960s.

...The Brahmins are at the highest position in the Indian caste order, whereas the Vellalars are at the upper level in Jaffna society. The Brahmins were brought from India by the Vellalars to perform ritual and ceremonial functions in their temples. As the Vellalars employed the Brahmins in their temples and the Brahmins worked for the Vellalar landlords, the Brahmins in Jaffna were considered in some sense to be lower than Vellalars.

...From its inception, the LTTE leadership came from a lower middle class background, usually with white-collar occupational ambitions but vernacular grounded in both education and orientation in contrast to the Western orientation and bilingual skills of the Vellalar elites of the previous decades.

...There was a stage when Uma Maheswaran (Vellalar) was raised to a leadership position, but the sharp personal conflict between him and Prabhakaran led to his eviction from the LTTE. During the mid-1980s, apart from Ponnamma, Kerdes, Yogi and Rahim, there were relatively few Vellalar in the top rungs of the LTTE. Prabhakaran himself, Mahattaya, Kittu (died in 1993), Charles Anthony (died in 1982), Victor (died in 1985), Kumarappa (died in 1987), Baby Subramaniam and Soosai are believed to be Karaiyar in caste identity (Roberts 2005). Traditionally, the Karaiyar are associated with deep sea fishing, but their own lore points to the engagement as warrior mercenaries and sea captains in the distant past.

...Nevertheless, the LTTE has been careful not to identify with any particular caste configuration and at the same time, not to alienate the Vellalar, the largest caste group in Sri Lanka Tamil population. It could not have sustained its militant Tamil identity and the claim that they are the sole representative of the Tamil speaking people in Sri Lanka without considerable support from the Vellalar, a caste grouping that has families in all three strata, middle class, lower middle class and working class.⁴¹

A 2005 dissertation on Tamil society comments similarly:

The majority of the Sri Lankans from Jaffna in Raja Nagar were also of higher caste origin, being either Vellalar, which is a farmer and landowner caste, or belonging to the Karaiyar community. The former is the highest ranking caste (jati) among the Sri Lankan Tamils, which numerically constitute the absolute majority of the population on the peninsula (Wilson 2000). The Karaiyars on the other hand is a fisherman caste from northern Jaffna. It is the community from which the LTTE had its naissance, and this jati's link to the Tigers is known to be particularly strong.⁴²

Those at the higher end of the caste spectrum who were also of the ruling land owning class were typically at odds with the LTTE leadership, insofar as they represented a rival ruling elite, and many fled LTTE occupied areas. According to the 2008 study:

...while the LTTE eliminated more or less the traditional Vellalar political leadership in Jaffna through its campaigns of terror, there were many waves of selective out-migration of 'high caste' and 'high class' Vellalar families from Jaffna; thereby leaving a political and social vacuum in Jaffna society and enabling the downtrodden to assert themselves like never before.

...Over one million people have left Jaffna and other areas in Northern Province since the outbreak of war in the 1980s. People from different caste backgrounds have left Jaffna under these population movements, but a disproportionate number of people from Vellalar

⁴¹ Indian Institute of Dalit Studies 2008, *Casteless or Caste-Blind? Changing Patterns of Caste Discrimination in Sri Lanka*, International Dalit Society Network website, pp.v, 34, 52-54
http://www.idsn.org/fileadmin/user_folder/pdf/Old_files/asia/pdf/RR_Sri%20Lanka.pdf – Accessed 22 April 2010 – Attachment 45.

⁴² Paus, N. 2005, *Strained Fraternity. Identity Formations, Migration and Social Transformation among Sri Lankan Tamils in Tamil Nadu, India*, Chr. Michelsen Institute website, April p.58
<http://www.cmi.no/publications/file/1940-strained-fraternity.pdf> – Accessed 22 April 2010 – Attachment 46.

backgrounds have successfully moved to Colombo and overseas due to their existing social networks extending beyond the peninsula (Siddartan 2003). The oppressive nature of the caste system of Jaffna may have been weakened by the rapid exodus of many Vellalar landlords and the availability of some of their land for sale to those from other castes besides the ban on caste imposed by the LTTE

A 2001 article which appeared in *The Island* comments similarly noting the antipathy of the Brahmin priest jati to the LTTE:

As a teenager, Prabhakaran grew up in the highly stratified Jaffna society, with three major handicaps, his caste, class and very poor education. Prabhakaran belongs to Karaiyar or deep sea fisherman's caste. This caste is way below the dominant Brahman and Vellala caste. This is shown in table one.

... While the high caste Brahmins and Vellalas have sought to maintain their socio, politico and economic dominance, Prabhakaran and his followers are clearly pursuing two escape routes to gain freedom from oppression.

... It is most significant if that the Hindu clergy (who belong to the Brahmin caste) has not extended their support to the LTTE, nor has Prabhakaran sought their support or blessings even the most efficient LTTE propaganda has not shown any pictures of Prabhakaran entering a Hindu temple in order to win support of the devout Tamils. Prabhakaran's Marxist ideology, which considers religion as the opium of the people may also explain this strange conduct.⁴³

4. Are persons associated with groups of young Tamil men, such as Tamil school teachers, ever suspected of LTTE involvement?

While studies of Tamil abductions and arrests have, over recent years, noted that young Tamil men (particularly those from the north) have a high profile in terms of a imputed LTTE association there have been no reports which have identified Tamil teachers, as a specific group, as having a high profile for being targeted by Sri Lankan security forces or paramilitaries. The UNHCR guidelines of April 2008, for instance, make no reference to Tamil school teachers as having a particular profile of this kind; although the UNHCR report does note the claim of the Tamil advocacy monitor Tamil Net publication that a female Tamil teacher in Colombo was the victim of a "white van" abduction in March 2009.⁴⁴ Tamil Net has also reported other alleged abductions involving Tamil teachers in Colombo, either by white vans or by arresting security forces, including in May 2008,⁴⁵ and June 2009,⁴⁶ with other teacher abductions reported in areas outside Colombo on a number of occasions, including in: April 2009,⁴⁷ December 2008,⁴⁸ October 2008,⁴⁹ May 2008,⁵⁰ and April 2008.⁵¹

⁴³ 'Caste, Class and Prabhakaran's struggle' 2001, Virtual Library Sri Lanka, source: *The Island*, 25 February <http://www.lankalibrary.com/pol/prabha.html> – Accessed 22 April 2010 – Attachment 47.

⁴⁴ 'Tamil lady teacher abducted in Colombo' 2009, Tamil Net website, 11 March <http://www.tamilnet.com/art.html?catid=13&artid=28684> – Accessed 22 April 2010 – Attachment 48.

⁴⁵ 'Popular economics teacher Varathan, relative reported missing in Colombo' 2008, Tamil Net website, 12 May <http://www.tamilnet.com/art.html?artid=25619&catid=13> – Accessed 22 April 2010 – Attachment 49.

⁴⁶ 'Vavuniyaa Tamil Christian teacher reported missing in Colombo' 2009, Tamil Net website, 28 June <http://www.tamilnet.com/art.html?catid=13&artid=29675> – Accessed 22 April 2010 – Attachment 50.

⁴⁷ 'Young Tamil Teacher in Weligama detained in Booza camp' 2009, Tamil Net website, 2 April <http://www.tamilnet.com/art.html?catid=13&artid=28913> – Accessed 22 April 2010 – Attachment 51.

⁴⁸ 'Tamil student, teacher arrested in Aalangkea'ni, Trincomalee' 2008, Tamil Net website, 11 December <http://www.tamilnet.com/art.html?catid=13&artid=27718> – Accessed 22 April 2010 – Attachment 54.

⁴⁹ 'Tamil teacher arrested in Bandarawela' 2008, Tamil Net website, 12 October <http://www.tamilnet.com/art.html?catid=13&artid=27172> – Accessed 22 April 2010 – Attachment 55.

⁵⁰ 'Batticaloa Teachers protest demanding release of arrested colleagues' 2008, Tamil Net website, 6 May <http://www.tamilnet.com/art.html?artid=25552&catid=13> – Accessed 22 April 2010 – Attachment 56.

⁵¹ 'TID arrests principal, deputy principal, teacher in Nawalapitiya' 2008, Tamil Net website, 21 April <http://www.tamilnet.com/art.html?catid=13&artid=25371> – Accessed 22 April 2010 – Attachment 57.

5. Are Colombo police likely to assist Tamils who have been harassed, etc, by paramilitaries?

It is unlikely that Colombo police would assist Tamils who claim to have been harassed by paramilitary groups. While reports have appeared periodically detailing the arrest of extortion rings targeting Tamils in Colombo,⁵² and elsewhere,⁵³ there is a larger body of source information reporting that such paramilitaries are largely undertaking such activities with impunity and, in some cases, with the complicity of police and local security forces. According to Human Rights Watch study of abduction and extortion in Sri Lanka:

The military and police frequently use native Tamil speakers, often alleged to be Karuna group or EPDP members, to identify and at times apprehend suspected LTTE supporters. In several cases reported to Human Rights Watch, families said that they were first visited and questioned by the military, and then, usually several hours later, a group of Tamil-speaking armed men came to their house and took their relatives away. On other occasions, the Karuna group and EPDP seemed to be acting on their own – settling scores with the LTTE or abducting persons for ransom – with security forces turning a blind eye.⁵⁴

The US Department has noted similarly:

A separate commission set up under retired Supreme Court justice Tillekeratne to investigate abductions, disappearances, killings, and unidentified bodies completed its mandate on December 31 with a final report to the president due in early 2010. In November the commission told the press that in many cases relatives of disappeared persons had not filed reports with the local police, hampering investigations. Other observers commented that this was likely due to mistrust of local security forces and a belief that, at best, the local police were unlikely to be of any assistance.⁵⁵

It should also be noted that the “passivity” of the largely Sinhala police “in the face of abductions and killings of Tamils both in Colombo and in the North-East further contributes to the feeling among Tamils that the police are more a threat than an institution which is to serve their interests”.⁵⁶ In addition to being linked to paramilitary abductions Colombo’s police have been most familiar to Colombo Tamils as obstacles to be passed at checkpoints or as agents of cordon and search operations in Tamil areas.⁵⁷ Further to this, there have historically been no facilities at Colombo police stations to ensure that Colombo’s Tamil speakers (which make up 55% of the Colombo population) are able to lodge a complaint should they wish. March 2010 saw the announcement that “[f]our police stations in

⁵² ‘Sri Lanka: Sinha officer arrested for demanding Rs. 7 mn on pretext of raising funds of MR’ 2010, *Plus News Pakistan*, 12 February – Attachment 58; Wedaarachchi, L.S. 2009, ‘Four-pronged operation against crime’, *Sunday Observer*, 5 July <http://www.sundayobserver.lk/2009/07/05/sec01.asp> – Accessed 22 April 2010 – Attachment 59.

⁵³ ‘Ensure safety of IDPs valuables’ 2009, *Sunday Observer*, 10 May – Attachment 60; ‘Police told to protect belongings of Sri Lankan war-displaced’ 2009, *Indo-Asian News Service*, 10 May – Attachment 61.

⁵⁴ Human Rights Watch 2010, *Legal Limbo: The Uncertain Fate of Detained LTTE Suspects in Sri Lanka*, February, p.6 – Attachment 40.

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Colombo's suburbs will now have units to cater to the needs of Tamil-speakers", with "staffed by an expanding number of Tamil policemen and women, others by Sinhalese who have been trained in the language".⁵⁸ While such changes may improve matter the US Department of State's most recent report on human rights has noted as concerning that, in places like Jaffna, there have been claims that many of the Tamil speakers hired by the police "were members of Tamil paramilitary groups".⁵⁹

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