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SRI LANKA, AUSTRALIA AND ASYLUM SEEKERS 2013-2014

Country Guidance Update for Refugee Supporters

Supplementary update & overview

Prepared for Blue Mountains Refugee Support Group, NSW Australia by Gillian Appleton, October 2014

The follow is a related paper:

- SRI LANKA AND ASYLUM SEEKERS – A country guidance paper for refugee supporters by Gillian Appleton, 29 July 2013 (with corrigendum July 2014)

All of these papers are available on our website:

bmrsg.org.au/research-material/sri-lanka/

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Introduction

NOTE: This update follows an earlier BMRSG country guidance paper on Sri Lanka, published in July 2013, available at <http://www.bmrsg.org.au/research-material/sri-lanka/>. These papers are intended to provide guidance on up-to-date reference material on asylum seeker source countries and to counter the deficiencies of official Australian government sources of information (see Appendix to this paper).

The update lists significant developments and reports concerning the situations relevant to Sri Lankan refugees, both within Sri Lanka and outside it, up to October 2014. To set these reports in context, it contains an account of associated events within Australia and internationally.

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Summary

Conclusions as at July 2013

The **major conclusions of my earlier country guidance paper** regarding the situation in Sri Lanka, Australia's treatment of Sri Lankan asylum seekers and the prospects for returned asylum seekers remain relevant over a year later. They were as follows:

- Evidence drawn from a wide range of sources substantiates the calls of major human rights organisations for governments, including the Australian Government, to cease deporting Tamil asylum seekers until the situation in Sri Lanka can be shown to have significantly improved.
- The civil war may long be over but Sri Lankan Tamils continue to face significant problems in their country. The suggestion that because outright hostilities have ceased asylum seekers are not in danger should they be returned, is open to serious question. Women and anyone with the slightest LTTE connections are particularly at risk.
- The dismissive claim by politicians that a majority of asylum seekers come for economic reasons is specious. 'Economic' reasons could encompass such pressures as having one's land confiscated, one's business destroyed, loss of livelihood and extreme poverty, merely for belonging to a particular ethnic or religious minority.
- While Tamils are the group most at risk, there is evidence that other minorities such as particular religious groups could be compromised as a result of sectarian or racist violence and discrimination, and might seek to escape from Sri Lanka.
- There is demonstrable risk that returned asylum seekers will be subjected to cruel treatment ranging from lengthy detention to torture and even death. Retribution can result from the mere fact of having fled the country, not only from being associated with the losing side in the civil war.

Developments from July 2013 to the present (October 2014)

- The United Nations Human Rights Council voted to open an international inquiry into alleged war crimes committed by both the Sri Lankan Government and the Liberation Tigers of Tamil Eelam (LTTE) in the final stages of the conflict in 2009.
- There is continuing confirmation that not only have the atrocities that occurred during the final stages of the war gone unaddressed, but many new forms of oppression and abuse have emerged since the end of the conflict.
- Human rights organisations within Sri Lanka and internationally, as well as international NGOs and the UNHRC, reported evidence of continued human rights violations by Sri Lankan government agencies. These violations include abduction, arbitrary detention, torture, rape and sexual violence. These crimes occur in a manner that indicates a coordinated, systematic plan and they appear to be approved by the highest levels of the government. Those who commit them – security, military and police forces - do so with impunity, secure in the knowledge that no action will be taken against them.
- Returned asylum seekers continue to be subject to ongoing surveillance, harassment and, often, more severe retribution.
- The Sri Lanka justice system has broken down and victims of torture and other crimes have no legal redress. Torture continues to be part of the day-to-day operation of the Sri Lankan state.
- Restrictions on freedom of expression continued and were strengthened with a Sri Lanka Government ban on diaspora organisations working towards human rights in Sri Lanka.
- In Australia, the government's cruel and inhumane treatment of asylum seekers, including detention of children, offshore processing, forced returns, minimal or no processing of refugee claims - attracted widespread domestic and international condemnation.
- The Australian Government's close and uncritical relationship with Sri Lanka continued to flourish, with Prime Minister Abbott attendance's at CHOGM, the welcoming of exchange visits by Ministers of both countries, a gift of lifeboats to the Government of Sri Lanka for use with forced returnees, and Australia's failure to support the UNHRC vote for a full investigation of war crimes and the post-war situation. This contrasts sharply with UK policy.
- Several European countries have suspended deportations of Tamils with connections to the LTTE, finding them to be at risk of torture on return. This is in line with UNHCR guidelines.

SECTION 1: Recent Evidence from Inside Sri Lanka

1. Bar Human Rights Committee of England and Wales and The International Truth and Justice Project, Sri Lanka

A comprehensive recent report on the situation inside Sri Lanka is ***An Unfinished War: Torture and Violence in Sri Lanka 2009-2014***, (<http://www.barhumanrights.org.uk/unfinished-war-torture-and-sexual-violence-sri-lanka-2009-2014> accessed 17 July 2014) prepared by human rights lawyer and co-author of the UN Panel of Experts report on mass atrocities in Sri Lanka, Yasmin Sooka, for the Bar Human Rights Committee of England and Wales and The International Truth and Justice Project, Sri Lanka. The 110-page report should be mandatory reading for all those concerned with Australia's response to asylum seekers from Sri Lanka.

The report is based on sworn statements from both men and women who testified to their experiences of abduction, torture, rape and sexual violence by the Sri Lankan security forces. The families of the people interviewed had been able to pay bribes to secure their release, which raises the question of what may have happened to countless others who had no such recourse.

In summary, the report states:

- *Abduction, arbitrary detention, torture, rape and sexual violence have increased in the post-war period. Targeted for these violations are LTTE suspects, or those perceived as having been connected to, or supporters of, the LTTE. The purported aim is to extract confessions and/or information about the LTTE and to punish them for any involvement with the organisation.*
- *These widespread and systematic violations by the Sri Lankan security forces occur in a manner that indicates a coordinated, systematic plan approved by the highest levels of government. Members of the Sri Lankan security forces are secure in the knowledge that no action will be taken against them.*
- *This report establishes a prima facie case of post-war crimes against humanity by the Sri Lankan security forces, with respect to (a) torture and (b) rape and sexual violence.*

On the issue of asylum seekers returning to Sri Lanka, whether voluntarily or forcibly, ***An Unfinished War*** states:

The Sri Lankan High Commission in London sends details of all those removed from the UK to Colombo. The CID [Criminal Investigation Department] has a 24-hour presence at Colombo airport. The airport therefore remains a major area of potential vulnerability for returning asylum seekers.

UNHCR data for 2011 indicated that 75% of refugee returns under the voluntary repatriation scheme were contacted in their homes by either the military or the police for further registration. 26% of returnees were visited on more than one occasion. Every returning person to the Vanni, the mainland area of the Northern Province which was under LTTE control, is required to register his or her presence with the authorities.

Some witnesses whose previous asylum applications were unsuccessful reported being abducted upon their return to Sri Lanka by the security forces, who knew of their failed asylum applications. Once in detention, they were subsequently repeatedly tortured and sexually assaulted until, in cases documented in the study, bribes could be used to procure release and they managed to leave the country again.

There is evidence that Tamil protests in the diaspora have been monitored. In London, Sri Lankan embassy staff were observed photographing protestors. It is not known what happens to the photographs but it is probably reasonable to assume that they are sent to the relevant intelligence section of the State Intelligence Service (SIS). Research on human face detection and research is reportedly underway within the Department of Statistics and Computer Science at the University of Colombo. From a witness protection point of view, there are reasonable grounds to believe that Sri Lanka intelligence is using highly sophisticated facial recognition software to identify protesters from

abroad if they return home.

An Unfinished War goes on to make recommendations to key decision-makers on the issue of treatment of returned asylum seekers. For national governments, it recommends:

All decision makers within national asylum procedures should have careful regard, when seeking to evaluate risk on return to Sri Lanka in an individual application for asylum, of reports produced by well-established NGO's on the position of returnees and current UNHCR guidance on country conditions in Sri Lanka. Furthermore, it is imperative that all Sri Lankan asylum seekers should, prima facie, have access to full national asylum procedures. Given the concerns highlighted in this report about the treatment of detainees, asylum applications should proceed on the basis that they are well founded with the consequence that it is inappropriate to subject them to accelerated asylum procedures.

2. Visit to Sri Lanka of the UN High Commissioner for Human Rights

The UN High Commissioner for Human Rights, Ms Navi Pillay, has warned that Sri Lanka is sowing the seeds of future discord by limiting personal freedoms and human rights. Ms Pillay recently completed a week long fact-finding mission in Sri Lanka to determine progress made by the country following the 26-year civil war between the Government and rebel Liberation Tigers of Tamil Eelam.

The war, which saw thousands of people killed, ceased in May 2009 after government forces declared victory over the Tamil rebels. The UN reports that as many as 40,000 people were killed during the final stages of the war. Ms Pillay's visit follows a resolution made in March 2013 by the UN Human Rights Council (UNHRC) that called on Sri Lanka to investigate alleged war crimes committed by government forces and Tamil rebels.

During her visit, Ms Pillay met with President Mahinda Rajapaksa and other government officials to discuss progress made by the country since 2009. Ms Pillay also held talks with senior judicial figures, members of the National Human Rights Commission and the committee monitoring the National Plan of Action on the recommendations of the Lessons Learnt Reconciliation Commission.

At the end of the visit, Ms Pillay expressed her deep concern that Sri Lanka is heading in an increasingly authoritarian direction by silencing dissent and continuing to harass political opponents.

<http://www.unaa.org.au/sri-lanka-receives-warning-from-unhchr.html> (11 Sept 2013, accessed 21 October 2014)

3. Asian Human Rights Commission

The Asian Human Rights Commission (AHRC), founded in 1984, is a regional non-government organisation that monitors human rights in Asia, documents violations and advocates for justice and institutional reform to ensure the protection and promotion of these rights. The AHRC in 2013 published a book documenting 400 cases of torture experiences, taken from around 1,500 cases studied by the Commission. <http://www.humanrights.asia/resources/books/ALRC-PUB-001-2013> (accessed 20 October 2014)

In a statement dated 26 June 2014, **Sri Lanka An Addiction to Torture**, the Asian Human Rights Commission writes:

The Sri Lankan government encourages torture despite public gestures at the international level claiming that it is opposed to torture. The Convention against Torture Act (No. 22 of 1994) is not implemented anymore and this is a policy decision. Another avenue open for torture victims in the past was the filing of fundamental rights applications. This, too, has been discouraged for policy reasons.

[...]

Common methods of torture used in Sri Lanka range from beatings, sometimes with the victim hung upside down, to the use of chili powder applied to the eyes and genitals. Another common method is the use of the 'dharma chakra', when the accused is tied up between two poles and beaten. Victims are also often humiliated, forced to strip naked or, upon asking for water, told to drink from the toilet.

Another common practice is, subsequent to severe torture, police officers forcing the victims to

sign blank sheets of paper. These are later used when fabricated charges are laid against victims. The compliance of the magistracy in police abuse is often seen in these cases.

Torture is carried out by both police forces and the military, according to the AHRC. The Sri Lankan military are accused of serious acts of torture, particularly relating to the operation of anti-terrorism law.

Recommendations to government of Sri Lanka by the United Nations agencies dealing with torture, including the Committee against Torture, to investigate torture complaints and to prosecute offenders have been ignored.

There are frequent reports of custodial killings. In some cases victims die due to excessive beatings in police custody.

The Asian Human Rights Commission concludes:

Torture is part of the day-to-day operation of the Sri Lankan state. The democratic, rule-of-law-based system that existed in Sri Lanka has been systematically undermined and its governing institutions have been no longer functioning in their assigned roles. Following the collapse of the rule of law and a functioning criminal justice system, an alternative system based on state violence has been entrenched in Sri Lanka.

At the moment, there are no reasonable grounds on which to believe that torture will be brought to an end in Sri Lanka. All indications are that this problem will increase due to the impunity enjoyed by the perpetrators.

<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-127-2014> (26 June 2014, accessed 5 August 2014)

4. INFORM Human Rights Documentation Centre

INFORM is based in Colombo, and works closely with local activists, groups and networks as well as regional (Asian) and international human rights networks. An INFORM report dated April 2014 (informcolombo@gmail.com), **Repression of Dissent in Sri Lanka** records, and illustrates with particular cases:

- threats to arrest people advocating accountability for alleged War Crimes;
- attacks, threats & restrictions on freedom of expression;
- threats and restrictions on freedom of association;
- repression of university student activists;
- threats to a human rights defender promoting religious freedom;
- restriction on a human rights defender to visit prisoners;
- suppression of opposition political parties.

The report describes beatings and threats on journalists and editors, and the Government of Sri Lanka's refusal to extend the working visa of the BBC correspondent in Colombo, who had reported extensively on human rights and postwar issues in the country.

5. Sri Lanka Campaign for Peace and Justice

Prior to the Commonwealth Heads of Government Meeting (CHOGM) in November, the Sri Lanka Campaign for Peace and Justice issued a guide for visiting media representatives, available as a PDF from <http://www.srilankacampaign.org/welcome.htm> (accessed 17 July 2014)

This useful guide to both recent history and current conditions in the country, contains an excellent list of on-line links, including to domestic sources of information. Commenting on the significance of CHOGM, the Campaign wrote:

As well as using the summit to whitewash its international reputation, the Sri Lankan Government is making a significant amount of domestic political capital out of it. Over the last two years many billboards have gone up over Sri Lanka showing President Rajapaksa with various world leaders,

in photographs taken at the last Commonwealth Summit. It is likely that the summit itself will be an even greater source of such propaganda material, and there is even talk of President Rajapaska calling early presidential elections in the spring to take advantage of a 'CHOGM bounce'.

The Commonwealth Ministerial Action Group (CMAG) – created to investigate serious or persistent violations of human rights – has failed to place Sri Lanka on its official agenda, despite two UN reports and two resolutions documenting serious human rights abuses within the country. It therefore seems likely that CHOGM 2013 will be a major embarrassment for all those in attendance.

The UK Parliament's Foreign Affairs Select Committee stated in 2012 that: 'continuing evidence of serious human rights abuses in Sri Lanka shows that the Commonwealth's decision to hold the 2013 Commonwealth Heads of Government Meeting in Colombo was wrong'.

In the guide, the Campaign warned visiting journalists:

[It] is important that you realise that the vast majority of Sri Lankans will not be in a position to respond truthfully to questions regarding sensitive political matters unless you can guarantee their anonymity and security. Furthermore it is very likely that you will be watched closely if you attempt to stray from the major CHOGM venues, particularly if you go to the North. If the military believes you have been talking with villagers they may return to those villages later and carry out reprisals – even if the villagers in question did not tell you anything of a sensitive nature.

[.....].

We also wish to emphasise that it is simply not the case that human rights abuses in Sri Lanka are a thing of the past – regrettable instances in a turbulent period of Sri Lanka's recent history. Not only have the atrocities that occurred during the final stages of the war gone unaddressed, but many new forms of oppression and abuse have emerged since the end of the conflict in 2009.

6. International Crisis Group

Coinciding with CHOGM, the ICG published a report, ***Sri Lanka's Potemkin Peace: Democracy Under Fire***, a wide-ranging account of recent developments in the country which concludes that *[r]ecent moves that create a perception of progress have not weakened the power of the president, his family or the military or brought reconciliation, ended human rights abuses or reduced impunity.*

[...]

The government's policies have badly damaged the rule of law and democracy, undermined the rights of Tamils, Muslims and Sinhalese alike and rendered all Sri Lankans insecure. If it continues to close off avenues of peaceful change, the risks of violent reaction will grow. International vigilance and pressure are essential to keep the situation from getting worse.

<http://www.crisisgroup.org/~media/files/asia/south-asia/sri-lanka/253-sri-lankas-potemkin-peace-democracy-under-fire.pdf> (12 November, 2013, accessed 20 Oct 2014)

7. Special Broadcasting Service (SBS) Australia

In late September 2014, the Special Broadcasting Service (SBS) Australia aired a *Dateline* program in which reporter David Corlett heard horrifying stories of beating and torture of those accused of being associated with the defeated Tamil Tigers. These included:

- A returnee describing his fingernails being torn out with pliers and being hung upside down and beaten.
- A woman claiming she was raped and beaten by Sri Lankan authorities as she tried to flee her homeland.

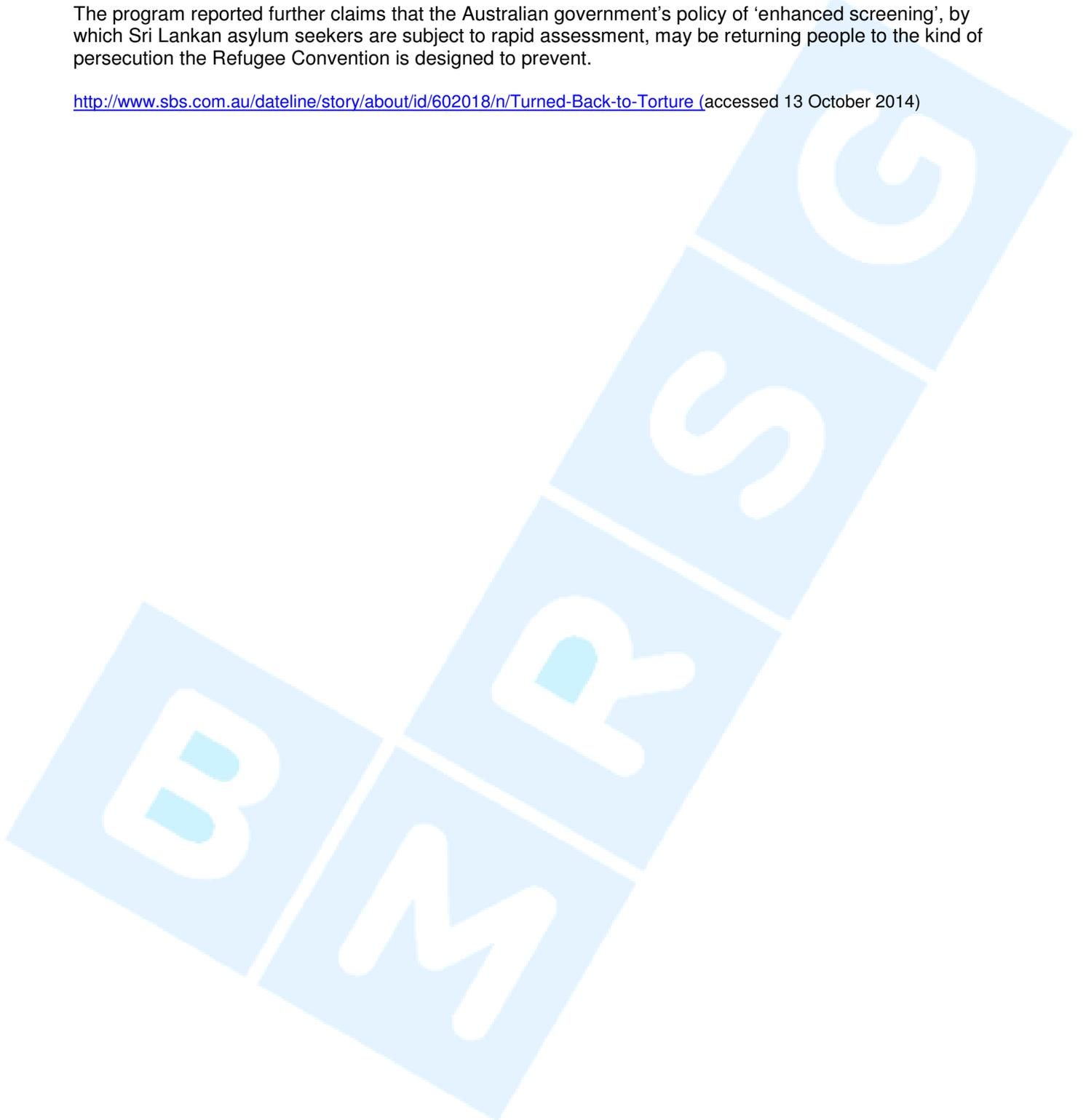


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In the program, Sri Lankans who had fled to the United Kingdom and human rights experts described incidents of rape and torture, including branding with hot metal rods.

The program reported further claims that the Australian government's policy of 'enhanced screening', by which Sri Lankan asylum seekers are subject to rapid assessment, may be returning people to the kind of persecution the Refugee Convention is designed to prevent.

<http://www.sbs.com.au/dateline/story/about/id/602018/n/Turned-Back-to-Torture> (accessed 13 October 2014)



SECTION 2: Sri Lanka and International Governments and NGOs

1. Commonwealth Heads of Government Meeting (CHOGM)

CHOGM was held in 15-17 November 2013 amid considerable prior and subsequent controversy. The meeting attracted the lowest attendance on record. Only 27 of 53 heads of government attended. On 11 November Indian PM Singh announced decision to boycott the summit; Canadian and Mauritian PMs also chose not to attend, citing human rights concerns. International media coverage was extremely negative, focused on Sri Lankan record of human rights abuses, intimidation of Sri Lankan activists, and attempts to block Tamil protests.....The Chinese foreign ministry (18 November) released a statement asking the government to 'make efforts to protect and promote human rights'.

The human rights situation in Sri Lanka and lack of accountability for wartime atrocities became the focus of media coverage. United Kingdom Prime Minister David Cameron attended the summit, and spent much time touring war-ravaged parts of the north and talking to local activists. He publicly said the UK would back an international investigation into war crimes if the Sri Lankan government did not undertake an independent investigation, a position supported by the US and Canada.

<http://www.hrw.org/news/2013/11/17/dispatches-rights-issues-trump-all-chogm-sri-lanka> (17 November 2013, accessed 23 July 2014)

Australian Prime Minister Tony Abbott attended the meeting. A subsequent Guardian newspaper report commented on the 'startling' difference between Tony Abbott and UK prime minister David Cameron at the summit:

Cameron used the opportunity to publicly raise human rights abuses, visiting war-affected communities in the north, and had a frank exchange with President Rajapaksa over accountability for war crimes. By contrast, Abbott gifted two patrol boats to the Sri Lankan navy, went jogging with one of Rajapaksa's sons, and commended the government for its progress.

<http://www.theguardian.com/commentisfree/2014/mar/25/australia-sri-lanka-human-rights-united-nations> (25 March 2014, accessed 5 August 2014)

2. Human Rights Watch

In its World Report 2014, Human Rights Watch stated that rape and sexual violence have been a key element of broader torture of suspected LTTE members and supporters even since the war's end. The torture is used to obtain "confessions" of LTTE involvement, and to instill terror in the broader Tamil population to discourage involvement with the LTTE.

The Government of Sri Lanka rejected HRW's findings published in a 2013 report that rape and sexual violence had been a key element of broader torture of suspected LTTE members and supporters even since the war's end. HRW says the torture is used to obtain 'confessions' of LTTE involvement, and to instill terror in the broader Tamil population to discourage involvement with the LTTE. The Government of Sri Lanka claimed reports of torture were fabrications by individuals seeking to embellish their overseas asylum claims. Human Rights Watch said it was unaware of any government investigations into the reported sexual abuse.

Several European countries have since suspended deportations of Tamils with connections to the LTTE, finding them to be at risk of torture on return. UNHCR revised its guidelines on assessing asylum claims in December 2012, and recommended that persons with certain links to the LTTE be regarded as being at risk on return.

Sri Lanka's Prevention of Terrorism Act gives police broad powers over suspects in custody and is the law most commonly invoked by officials to justify prolonged detention without trial of security suspects. It is still in regular use. The government asserts it has made available comprehensive lists of the names of those detained under the law as well as their places of detention, but family members in 2013 reported difficulty accessing the information. UN High

commissioner for Refugees Navi Pillay said during her trip in August that she had 'never seen this level of uncontrollable grief' when visiting with families of the forcibly disappeared in northern Sri Lanka.

<http://www.hrw.org/world-report/2014/country-chapters/sri-lanka?page=2> (21 January 2014, accessed 15 October 2014)

3. Archbishop Desmond Tutu and Others

Nobel laureate Archbishop Desmond Tutu, Sri Lankan activists, and concerned citizens from more than a dozen other countries around the world in a letter to the United Nations Human Rights Council, urged members to commit to an independent international investigation in the form of a Commission of Inquiry into human rights violations in Sri Lanka.

We, concerned individuals and organisations from around the world, urge the UN Human Rights Council (UNHRC) to use their March 2014 session to pass a resolution that will include a commitment to an Independent International investigation in the form of a Commission of Inquiry. Only this will help to put the country on the path to justice and reconciliation.

[.....]

Post-conflict processes do take time, but what matters is getting on the right path. Nearly five years after the war ended, the situation appears to be getting worse, not better.

The biggest issue Sri Lanka faces is a systemic lack of respect for the rights of its citizens, particularly — but not exclusively — its minority citizens. This is rooted in a culture of impunity which is in turn rooted in a failure to hold to account those, on both sides, who committed some of the worst atrocities this century.

<http://mg.co.za/article/2014-03-04-letter-from-desmond-tutu-to-the-un-sri-lanka-needs-healing> (5 March 2014, accessed 3 August 2014)

4. United Nations High Commissioner for Human Rights

On 24 February 2014, preceding the meeting of the UN Human Rights Council in March, UN High commissioner for Human Rights Navi Pillay issued a report *Promoting Reconciliation and Accountability in Sri Lanka*, finding the Government of Sri Lanka had failed to ensure independent and credible investigations into past violations of international human rights and humanitarian law. The report also contains updates on the ongoing attacks on religious minorities, and the harassment and intimidation of human rights defenders, lawyers and journalists.

www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-23_en.doc (24 Feb 2014, accessed 21 October 2104)

In her address to the Council on 28 March,

[...] Pillay stressed the need to ensure justice and accountability, including through the establishment of an independent and credible investigation, saying: 'This is essential to advance the right to truth for all in Sri Lanka and create further opportunities for justice, accountability and redress'.

She noted that in recent years, the Government has established various mechanisms with the task to investigate past violations. 'But none have had the independence to be effective or inspire confidence among victims and witnesses', she stated.

At the same time, new evidence continues to emerge, and witnesses are willing to come forward to testify before international mechanisms in which they have confidence and which can guarantee their protection, the High Commissioner added.

"This shows that an international inquiry is not only warranted, but also possible, and can play a positive role in eliciting new information and establishing the truth where domestic inquiry mechanisms have failed."

The UN Human Rights Council the next day voted to open an **international inquiry into alleged war**

crimes committed by both the Sri Lankan Government and the Liberation Tigers of Tamil Eelam (LTTE) in the final stages of the conflict in 2009.

Adopted by a vote of 23 in favour to 12 against with 12 abstentions, the Geneva-based Council requested the Office of the UN High Commissioner for Human Rights to undertake a 'comprehensive investigation' into alleged serious violations and abuses of human rights and related crimes by both parties, and to establish the facts and circumstances of such alleged violations 'with a view to avoiding impunity and ensuring accountability'.

<http://www.un.org/apps/news/story.asp?NewsID=47447#.VDsaqr7ust0> (27 March 2014, accessed 21 October 2014)

Australia, which had previously co-sponsored resolutions at the UNHRC, failed to support the resolution for an inquiry, much to the exasperation of the US, Canada, Britain and the EU. This had been foreshadowed in the lead-up to the Council meeting.

The Abbott government is resisting a push by its closest allies to establish a United Nations investigation into war crimes and human rights abuses in Sri Lanka, where Australia has returned more than 1100 failed asylum seekers in the past 18 months.

[...]Any inquiry could place Australia's policy of returning Sri Lankan asylum seekers in jeopardy. Returning asylum seekers to a country where there remains a genuine fear of persecution is illegal under international law.

[...]More than 1100 Sri Lankan asylum seekers have been returned, many forcibly, since October 2012 and that country's government boasts it has stopped 4500 more leaving its shores, in part due to intelligence, materiel and financial support from Australia.

<http://www.smh.com.au/federal-politics/political-news/julie-bishop-stalls-on-un-call-for-sri-lanka-war-crimes-inquiry-20140320-355y9.html#ixzz39waeZWP> (21 March 2014, accessed 21 October 2014)

5. Government of Sri Lanka Bans Diaspora Organisations

In early April, shortly after the UNHRC resolution, the Government of Sri Lanka moved to break links between Tamils in the country and the diaspora by introducing regulations that named 16 organisations and 424 individuals in the diaspora as financiers of terrorism. The organisations operate in Australia, Canada, France, Italy, Norway, the United States, the United Kingdom and Switzerland.

Analysts said the ban was intended to effectively muzzle rights groups within Sri Lanka and punish diaspora organizations that aided the UN's inquiries ahead of the Council's vote.

Paikiasothy Saravanamuttu, executive director of the Center for Policy Alternatives based in Colombo, said the objective of the ban was 'to prevent the flow of information, internationally, regarding the human rights situation in the country at present' and 'to de-legitimize the involvement of these banned organizations with the investigation that will follow pursuant to the Human Rights Council resolution'.

Alan Keenan, Sri Lanka Project Director and Senior Analyst at the International Crisis Group, described the ban as 'a very serious and negative development, effectively criminalizing legitimate democratic dissent within Sri Lanka and making it harder to challenge government policies from outside the island. It appears designed in part to punish those Tamils inside and outside Sri Lanka who organized in support of the UNHRC resolution'.

<http://www.ucanews.com/news/critics-question-sri-lankas-ban-on-tamil-exile-groups/70629>
(3 April 2014, accessed 5 August 2014)

Amnesty International's representative to the U.N. in Geneva, Peter Splinter, told CNN that the move would add to a climate that made it difficult for NGO staff, journalists and others interacting with Tamil groups, as it could render them vulnerable to anti-terror laws.

'The consequences of that is that anyone dealing with those organizations will be subject to accusations of cooperating with terrorism — that brings them within the parameters of a rather draconian piece of

legislation, the Prevention of Terrorism Act', he said.

www.cnn.com/2014/04/02/world/asia/sri-lanka-united-nations-probe/ (3 April 2014, accessed 21 October 2014)

The response of the Canadian Government was typical of the widespread international condemnation of Government of Sri Lanka's move to ban diaspora organisations. Foreign Affairs Minister John Baird and the Honourable Lynne Yelich, Minister of State (Foreign Affairs and Consular) issued the following statement (1 May 2014):

Sri Lanka's action has no legal effect in Canada: it does not constrain the freedom of listed groups and individuals to lawfully express their views in Canada. However, Canadians targeted by this list could be subject to possible questioning, detention or arrest by authorities in Sri Lanka.

Diaspora communities play an important role in Sri Lanka's post-conflict reconciliation process. This action by the Sri Lankan government could further hinder progress on reconciliation. While we may share concerns about some of those listed, we remind the Government of Sri Lanka that it must ensure any measure taken to combat terrorism complies with its obligations under international law, in particular international human rights law.

<http://www.international.gc.ca/media/aff/news-communiqués/2014/04/30a.aspx?lang=eng> (30 April 2014 accessed 15 October 2014)

In *Foreign Policy* magazine, Taylor Dibbert, *Sri Lanka's NGO clampdown*, commented:

The government's unwillingness to promote human rights, reconciliation, or accountability has made a complex post-war environment even more unsustainable. And continued (and unnecessary) militarization has only made things worse. The regime's recent crackdown on NGOs is another example of the government's relentless effort to further centralize power and stifle dissent. From initiatives pertaining to livelihood, education, health, advocacy, and more, the void that many NGOs fill in Sri Lanka is irreplaceable. But in order for these groups to be fully effective, they need to be given space to do their work.

http://southasia.foreignpolicy.com/posts/2014/07/25/sri_lanka_s_ngo_clampdown (25 July 2014 accessed 14 October 2014)

6. Amnesty International

In late 2014 Amnesty released ***Ensuring Justice – Protecting Human Rights for Sri Lanka's Future***, its submission to the UN Human Rights Committee ahead of its examination in October 2014 of Sri Lanka's fifth periodic report on its implementation of the International Covenant on Civil and Political Rights.

The submission gathers information from the period 2012-2014 based on interviews with survivors of human rights violations and their families who have sought refuge outside Sri Lanka, as well as from correspondence with human rights defenders in Sri Lanka.

Amnesty comments:

The Sri Lankan government's hostility towards human rights monitors makes it difficult for international human rights organizations to reach out to victims of repression and their families in Sri Lanka, who risk retaliation for communicating with international organizations. Because of the possibility of reprisals to family members still in Sri Lanka as well documented cases of reprisals against returned asylum seekers, Amnesty International has withheld identifying information, which may include names of victims or witnesses, current locations, place names in Sri Lanka and dates or methods of communication.

The submission, which gathers together material from Amnesty's past reports, is a useful and detailed reference.

<http://www.amnesty.org/en/library/asset/ASA37/011/2014/en/4c09c88e-a298-4cba-bdee-4b6a077ef55a/asa370112014en.pdf> (accessed 15 Oct 2014)

7. New UN High Commissioner Keeps Up the Pressure

On 8 September, Navi Pillay's successor as Human Rights Commissioner, Prince Zaid of Jordan, made his inaugural speech before the Human Rights Council.

*I attach great importance to the investigation on **Sri Lanka** mandated by this Council, on which OHCHR will report later in the session. I encourage the Sri Lankan authorities to cooperate with this process in the interests of justice and reconciliation. I am alarmed at threats currently being levelled against the human rights community in Sri Lanka, as well as prospective victims and witnesses. I also deplore recent incitement and violence against the country's Muslim and Christian minorities [...]*

*[T]he detention of asylum seekers and migrants should only be applied as a last resort, in exceptional circumstances, for the shortest possible duration and according to procedural safeguards. **Australia's policy of off-shore processing for asylum seekers arriving by sea, and its interception and turning back of vessels, is leading to a chain of human rights violations, including arbitrary detention and possible torture following return to home countries.** [Our emphasis]*

<http://blog.unwatch.org/index.php/category/human-rights-council/> (accessed 13 October 2104)

8. The Issue of Religious Freedom

United States Commission on International Religious Freedom (USCIRF) is an independent federal advisory body the International Religious Freedom Act (IRFA) created to monitor religious freedom abuses abroad. In its 2014 annual report (released 30 April) the agency said it is increasingly concerned about the religious freedom situation in Sri Lanka.

In the last year there have been numerous attacks against religious minority communities, including Muslims, Hindus, and Christians, by extremist Buddhist monks and laity affiliated with Sinhalese Buddhist nationalist groups such as Bodu Bala Sena (BBS) and Sinhala Ravaya. Additionally, USCIRF received multiple reports that government officials and police did not stop religiously-motivated attacks and in some cases participated in them, did not provide adequate protection for minority communities, and even harassed religious minority communities at their houses of worship.

USCIRF Annual Report 2014 - Other Countries/Regions Monitored: Sri Lanka, 30 April 2014, available at: <http://www.refworld.org/docid/5369e5a16.html> (30 April 2104, accessed 21 October 2014)

The US State Department 2013 in its report on religious freedom in Sri Lanka, dated 28 July 2014, wrote:

Human rights organizations and members of religious minority groups expressed concern that authorities tacitly condoned harassment and violence, particularly perpetrated by Buddhist nationalist groups, aimed at religious minorities. In multiple instances during the year, police failed to respond or were reluctant to arrest or pursue criminal cases against individuals instigating attacks on minority religious sites.

The government was hesitant to arrest and prosecute Buddhist monks involved in numerous attacks against Muslims and Christians. Buddhist monks generally operated under the protection of the government. Some monks, particularly outside Colombo, operated with impunity in trying to eliminate Christian and Muslim places of worship.

<http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm#wrapper> (undated, accessed 21 October 2014)

SECTION 3: Political Developments in Australia 2013-2014

1. Human Rights Law Centre Report

A March 2014 report from the Human Rights Law Centre (Sydney) found that Australia's co-operation with Sri Lanka to prevent would-be refugees from seeking protection was riddled with human rights risks and should be stopped immediately.

The report, *Can't flee, can't stay: Australia's interception and return of Sri Lankan asylum seekers*, based on interviews with government officials, information obtained through freedom of information requests and statements from the public record, reveals a deeply flawed suite of policy measures and practices.

http://www.hrlc.org.au/wpcontent/uploads/2014/03/HRLC_SriLanka_Report_11March2014.pdf (accessed 8 August 2014)

The Human Rights Law Centre's Director of Advocacy and Research and the report's author, Emily Howie, said Australia's efforts at 'stopping boats' are jeopardising the ability of Sri Lankans at risk of persecution to gain access to safety and asylum. Ms Howie said that based on government data, 50 to 90% of the people who are intercepted by Sri Lankan authorities are likely to be asylum seekers.

"The entire approach is flawed because it fails to recognise that many Sri Lankans are in genuine and urgent need of protection. Instead of providing protection, Australia blocks their pathway to safety and puts Sri Lankan asylum seekers at risk of torture and mistreatment in the hands of Sri Lankan military and police," said Ms Howie.

These risks are compounded by Australia's domestic policy of forcibly returning Sri Lankan boat arrivals in Australia without conducting proper assessments as to their refugee status or monitoring their safety on return. The Immigration Minister has made it clear that his preference is for Australia to return all Sri Lankans arriving by boat.

The report recommends that Australia stop aiding and assisting systems of interception and return as the systems put people at risk of harm.

"Despite evidence that the majority of Sri Lankans arriving by boat are genuine refugees, Australia bases its treatment of Sri Lankans on the politically expedient assumption that they're economic migrants," said Ms Howie

The report is particularly critical of Australia's 'enhanced screening process' that is applied to Sri Lankans. Enhanced screening is a truncated assessment process in which detainees have no access to a lawyer and no independent review of the decision is available.

"Enhanced screening is a flimsy short-cut and a grossly inadequate way to handle what are potentially life and death decisions. Sri Lankans have a legal right to have their protection claims heard properly – instead we subject them to a less rigorous process and expose them to harm on return," said Ms Howie.

Australia claims that no returnees have been harmed upon return to Sri Lanka. However, HRLC has obtained documents through freedom of information that show one instance where Australia received a complaint that a returnee had been "severely tortured." In that case the Australian Federal Police officer based in Colombo, despite being in the police building where the complainant was being held, declined an invitation to meet with the complainant to assess his well-being.

"This kind of monitoring is woefully inadequate considering the gravity of the complaints made. How can we accept assertions that nobody has been harmed on return when an official fails to take the most basic step to look into allegations of the most serious abuse," said Ms Howie.

<http://hrlc.org.au/report-launch-australias-cooperation-with-sri-lanka-to-intercept-asylum-seekers-is-in-urgent-need-of-rethink/> (12 March 2014, accessed 21 October 2014)

2. Australia and the Rajapaksa Regime

Immigration Minister Scott Morrison and the head of Operation Sovereign Borders, Lieutenant-General Angus Campbell, welcomed a Sri Lanka delegation, including Defence Secretary Gotabaya Rajapaksa, formally invited by the federal government, in late April 2014.

Along with his brother the President, Gotabaya Rajapaksa has the ultimate responsibility for the deaths of an estimated 70,000 innocent Tamil civilians towards the end of the civil war in 2009. This deliberate action, in herding 300,000 people into so-called No Fire Zones and then raining bombs and shells down upon them, became the subject of an official UN war crimes investigation in March.

<http://tamilfightback.com/australia-rolls-out-red-carpet-for-gruesome-gotabaya/> (3 May 2014, accessed 21 October 2014)

Morrison and Rajapaksa met to discuss their partnership in trying to stop Tamil asylum seekers from fleeing Sri Lanka.

The Sri Lankan government via its High commission thanked Australia for its 'bold' decision not to co-sponsor a UN resolution to investigate alleged human rights abuses in the south Asian nation.

<http://www.smh.com.au/federal-politics/political-news/sri-lanka-thanks-australia-for-its-bold-decision-20140506-zr5n9.html> (6 May 2014, accessed 21 October 2014)

In July, Immigration Minister Morrison was guest of honour in Colombo at a navy commissioning ceremony for two former Bay Class patrol boats donated by Canberra. He joined President Mahinda Rajapaksa, his Defence secretary brother Gotabhaya and army and navy chiefs Lieutenant General Daya Ratnayake and Vice Admiral Jayantha Perera at Colombo Harbour for an official inspection of the gifted vessels, which will be used by the country's coastguard to apprehend departing asylum boats.

(Also in July, 41 Sri Lankan asylum seekers were intercepted and returned to Sri Lanka, claiming they had been mistreated by Australian Customs, while 153 other asylum seekers were held in legal limbo awaiting a decision from the high Court about the legality of their interception.)

<http://www.theaustralian.com.au/national-affairs/immigration/sri-lanka-lays-on-vip-welcome-for-scott-morrison/story-fn9hm1qu-1226983207980> (9 July 2014, accessed 21 October 2014)

Following Morrison's visit, Reuters Colombo reported Tamil criticism of Morrison for visiting northern Sri Lanka without meeting Tamil leaders.

During a visit on Wednesday to the northern city of Jaffna, Morrison met the governor of the Northern Province, G.A. Chandrasiri, a presidential appointee.

Tamil groups were upset Morrison did not meet the province's chief minister, C.V. Vigneswaran, the leader of the Tamil National Alliance, the party that finished first in last year's regional election.

"He did not meet any single Tamil representative or civil society group," Tamil National Alliance spokesman Suresh Premachandran told Reuters. "I still don't know the intention of his brief visit. He may want to show that he visited Jaffna. But he did not speak to any Tamils."

Most of the group returned to Sri Lanka are members of the majority Sinhalese community and not minority Tamils, who have alleged persecution by Sri Lankan authorities since the defeat of Tamil Tiger separatists in the north in 2009.

Morrison's schedule was organised by the Sri Lankan government, a spokesman for the minister said, adding that he has previously visited the north with members of the Tamil community.

<http://www.reuters.com/article/2014/07/10/us-sri-lanka-australia-asylum-idUSKBN0FE1D20140710>, (accessed 10 July, 21 October 2014)

3. Responses in Australia

The Refugee Council of Australia (RCOA) strongly criticised the return of the 41 asylum seekers to Sri Lanka. (In May, the Government had cut core funding to the RCOA despite allocating \$140,000 just two weeks earlier in its 2014-15 Budget.)

The Council demanded Australia explain what had happened to the 41 asylum seekers returned to Sri Lanka and what guarantees were given about their safety in a country with a notorious human rights record.

RCOA President Phil Glendenning said Immigration Minister Scott Morrison's confirmation that Australia had intercepted and swiftly returned the asylum seekers to Sri Lanka after assessing their refugee claims under "enhanced screening", raised serious questions.

Mr Glendenning said Australia's special relationship with the Rajapaksa regime had clouded its judgement on human rights and was potentially endangering the lives of asylum seekers it returned to Sri Lanka.

"While the Sri Lankan government is under investigation for its role in alleged serious violations of human rights and war crimes, Australia should not be returning any asylum seekers back to potential danger.

[...]

"The UN Working Group on Enforced or Involuntary Disappearances ranked Sri Lanka second only to Iraq for the number of unexplained disappearances of civilians. Since its establishment in 1980 to assist the relatives of disappeared persons, the Group has investigated the disappearances of more than 12,000 Sri Lankans.

[...]

"If the Government is wondering why the boats are still coming, Minister Morrison only needs to look at the on-going persecution of Tamils and opponents of the Rajapaksa regime in Sri Lanka."

Mr Glendenning said the Government's use of "enhanced screening" to interview asylum seekers was an Orwellian concept that seriously hampered the ability of decision makers to thoroughly assess a person's claim for refugee protection.

[...]

"The whole process conspires to make it almost impossible for people to thoroughly demonstrate their need for refugee protection."

http://refugeecouncil.org.au/n/mr/140707_SLReturn.pdf (7 July 2014, accessed 21 2014)

On 9 July the High Court of Australia ruled to block the forced return of 153 Sri Lankan asylum seekers caught in Australian waters last week. This major ruling follows an international outcry over its deportation of 41 asylum seekers who were handed back to the Sri Lankan military on Monday. The 153 refugees have been held on a customs boat since being intercepted by the Australian navy.

Mr Morrison rubbished the idea that the asylum-seekers were fleeing persecution. "I'd be surprised if anyone was seriously suggesting that people were being persecuted in India by the Indian government," he said.

The 157 (sic) people, including some 50 children, after being held at sea for three weeks on board a customs vessel, were transferred to Western Australia's Curtin detention centre.

<http://www.independent.co.uk/news/world/australasia/the-plight-of-a-group-of-sri-lankan-refugees-at-sea-for-over-a-month--then-locked-up-in-the-outback-under-australias-hardline-asylum-policies-9636446.html>
(29 July 2014, accessed 21 October 2014)

Morrison subsequently circumvented the High Court Ruling by moving the asylum seekers at night to offshore detention in Nauru, beyond the jurisdiction of Australia's courts.

Morrison stated that the group had refused to speak with Indian officials in a move he described as 'disappointing'.

Under a deal Morrison had struck, Indian consular officials would interview the asylum seekers at Curtin with the intention of taking back its residents. But the Minister said when they refused to speak with officials the deal was off.

A witness who saw the refugees arrive on Nauru described them as “traumatised”.

Contractors are understood to have expressed concerns that there is not enough space to house them all on Nauru.

<http://www.theguardian.com/world/2014/aug/02/tamil- asylum-seekers-moved-to-nauru>
(2 August 2014, accessed 15 August 2014)

4. UNHCR Response to Australia’s Return of Asylum Seekers

The United Nations human rights office said that is “deeply disturbed” that Australian authorities on Sunday returned to Sri Lanka 41 people seeking asylum, apparently without adequate screening of their protection claims and needs.

“This is not something that can or should be done hurriedly, remotely and on high seas,” said Ms. Ravina Shamdasana, spokesperson for the UN High commissioner for Human Rights.

International law requires that every case be individually examined on its own merits along with procedural safeguards and due process guarantees. Any returns, even from the high seas or in the territorial seas of other States, must be carried out in accordance with international law, under which handing back victims to their persecutor and collective expulsions are strictly prohibited.

“It is unclear whether the Australian Government has been given any assurances that the returnees will not face ill treatment upon their return to Sri Lanka, nor is it clear how the Australian Government plans to monitor their treatment,” Ms. Shamdasani said.

She welcomed the High Court of Australia’s issuance of an interim injunction against the return of another 153 other Sri Lankan asylum seekers, reportedly including 37 children. Intercepted by Australian authorities over a week ago, however, those on the vessel have not been able to make contact with family members or refugee organisations.

<http://www.un.org/apps/news/story.asp?NewsID=48216 - .U8dbQVbust0> (8 July 2014, accessed 15 August 2014)

5. Note:

A Sydney Morning Herald special report published on July 5-6 (*Ghosts on the High Seas*, pp.1, 30-31) contains a **summary of statistics** relating to Sri Lankan arrivals in Australia in the post civil war period, and The Refugee Council of Australia has a useful **chronology of policy developments in Australia** up to February 2014 which provides historical context on immigration policy:

<http://www.refugeecouncil.org.au/f/rhp-time.php> (last updated Feb 2014, accessed 15 August 2014)

Conclusion

The conclusions to BMRSG’s previous country guidance on Sri Lanka remain as valid in October 2014 as they were in July 2013.

Perhaps the most significant change affecting Asylum seekers from Sri Lanka is that ever-tougher government policy means their prospects for settlement in Australia, indeed for setting foot on Australian soil, have become even dimmer, and the possibility of their forced return to Sri Lanka or movement to another country, considerably more likely.

Meanwhile, the situation within Sri Lanka shows no sign of significant improvement, and returning refugees continue to be in significant danger of punishment and retaliation.

Appendix

Notes on Australia's official information on Sri Lanka

Since 2013, country guidance notes for use by the Refugee Review Tribunal and other interested parties are issued by the Department of Foreign Affairs (DFAT) rather than being prepared by independent analysts.

The most recent country information report (Department of Foreign Affairs and Trade, Country Information Report Sri Lanka, 31 July 2013, accessed August 2014) was issued before the Commonwealth Heads of Government Meeting in November.

DFAT's information on Sri Lanka is inevitably coloured by current immigration policy and by political pressures in both Sri Lanka and Australia. The report is cautious in tone but nevertheless contains some advice which should give pause to those responsible for assessing the claims of Tamil asylum seekers. While the report takes a generally soft line towards the government of Sri Lanka, it concedes that much remains of concern.

In its overview of human rights in the country, it states:

While less pronounced than during the civil conflict, there continue to be credible reports of instances of arrest and detention without charge, as well as reports of enforced disappearances and abductions, and intimidation and harassment of the media and members of civil society. (2.26)

The report notes inter alia:

- on-going issues of gender-based violence [which] demonstrate a need for stronger institutional protection. (2.31)
- Tamils, particularly those living in the north and east of the country, suffer discrimination in employment, education and general economic conditions as a result of post-conflict recovery and lack of opportunity, though *not on the basis of ethnicity* (our emphasis) (3.6)
- Tamil speakers who speak no other language can face difficulties including in the Tamil-dominated Northern Province. (3.11)
- Attacks on places of worship throughout the country, predominantly against non-traditional Christian churches and on Muslim places of worship; a number of incidents of verbal and physical attacks on Muslims and Muslim businesses. (3.17-3.18)
- Credible allegations regularly surface about Government/military monitoring and disruption of political activities by opposition Tamil political parties in the north and east. (3.28)
- Credible reports about monitoring, harassment and intimidation of [former LTTE cadres] who have undergone rehabilitation by local authorities. (3.37)
- Same-sex sexual activity is a criminal offence in Sri Lanka. Persons can be given sentences of up to 10 years imprisonment, although convictions are very rare. NGOs working in this sector report regular harassment of lesbian, gay, bisexual, trans or intersex (LGBTI) individuals, especially in rural areas outside Colombo (3.59).

On the question of **treatment of returned asylum seekers**, the DFAT report is at pains to emphasise advice that suggests that returnees may be subject to various bureaucratic or legal procedures, being *treated along (sic) standard procedures applying to all Sri Lankans, regardless of their ethnicity and religion. DFAT has not observed any difference in the way Tamil returnees are treated in comparison to Sinhala or Muslim returnees. (3.72)*

In response to claims of torture, DFAT's report states (4.27-4.18):



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[T] here are reports that Sri Lankan citizens of all ethnic groups have been tortured and/or abused by the Sri Lankan police and security forces. This includes reports of torture resulting in death. Such allegations come from a wide range of actors, including political activists, suspects being investigated for criminal offences and civilians detained in all parts of Sri Lanka, including in relation to suspected LTTE connections.

*There **is no evidence that all such reports are credible** [our emphasis]. Few formal reports or complaints are lodged. While this may be related to problems with complaint and inquiry mechanisms, it means few reports are proved or disproved.*

The bipartisan approach of Australia's major parties to the asylum seeker issue and to Sri Lanka in particular, was highlighted when Australia's former Foreign Minister Bob Carr (ALP) said in an interview on ABC Radio National in July that allegations of mistreatment of returning asylum seekers were 'urban mythology'. Carr stated that while he was minister the Australian High commission in Colombo had repeatedly 'said there was no evidence of mistreatment of those we are returning...they are treated in accordance with law, interviewed and released'.

He said the High commission in Sri Lanka had tried to determine if there were cases of mistreatment, but there 'were no cases they could find'.

The comments follow the federal government giving an undertaking not to return a group of 153 asylum seekers to Sri Lanka without 72 hours notice after an urgent hearing in the high court on Tuesday.

'The idea there is some sort of entrenched apartheid in the country ... just can't be sustained when 30% of Colombo is Tamil ... and [there is] a high level of co-operation between the racial groups', he said.

<http://www.theguardian.com/world/2014/jul/09/asylum-seeker-claims-mythology-bob-carr> (9 July 2104, accessed 5 August 2014)

Carr's statement and the advice of the Department on treatment of returnees are demonstrably at odds with evidence from a wide range of reliable sources cited in the earlier BMRSG paper and updated in this paper.