

Refugee Review Tribunal

AUSTRALIA

RRT RESEARCH RESPONSE

Research Response Number: LKA31046
Country: Sri Lanka
Date: 18 December 2006

Keywords: Sri Lanka – Tamils – Colombo – Matale – LTTE – Forced recruitment

This response was prepared by the Country Research Section of the Refugee Review Tribunal (RRT) after researching publicly accessible information currently available to the RRT within time constraints. This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum.

Questions

- 1. Please provide an update on the circumstances and treatment of Tamils residing in Colombo and Matale.**
- 2. Are they targeted by the authorities as suspected LTTE or conversely are they likely candidates for forced recruitment by the LTTE?**

RESPONSE

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The security situation in Sri Lanka has deteriorated in recent months following the breakdown of attempted peace talks between the government and the Liberation Tigers of Tamil Eelam (LTTE) in October; the closure of the A9 highway between Kandy and the Jaffna peninsula, resulting in a shortage of basic supplies to the northern LTTE-controlled area; and the recent spate of violence between government forces and the LTTE (International Crisis Group 2006, *Sri Lanka: the Failure of the Peace Process*, Asia Report No.124, 28 November – Attachment 1). While most of the current fighting is taking place in the north and east of the country, murders and abductions are also occurring in Colombo. A number of sources indicate that Tamils in Colombo are more likely to be targeted by security forces for being suspected LTTE members, rather than forcibly recruited by the LTTE. Tamils living in Colombo have recently been subjected to a number of security operations conducted by police/military generally referred to as “Strangers Night” operations. Several sources reported that security forces conducted “cordon and search” operations of Tamil households in Colombo. Sri Lankan authorities claimed that the operations were aimed at ordinary criminals. However, according to the British High Commission in Colombo, the “ethnic balance of the suspects show it was a security operation i.e. most arrested were Tamil”. During the largest reported operation, “Strangers Night III” conducted in December

2005, about 1000 Tamil people were allegedly arrested on suspicion of being involved in terrorist activity. Most of the arrested were released soon after their arrest ('Tamils in Colombo harassed by "Strangers Night" operation' 2006, Transcurrents.com website, 5 January <http://transcurrents.com/tamiliana/archives/32> – Accessed 30 November 2006 – Attachment 2). Little information was found on the district of Matale, located just north of Kandy. The information that was found is illustrated below under the heading 'Matale'.

The UK Home Office's 2006 report describes the "operations" and the Sri Lankan authorities' response as follows:

Arbitrary arrest and detention

8.10 A letter from the BHC Colombo dated 26 September 2005 noted that:

"One of our political officers and I have spoken to several NGOs to discuss the Emergency Regulations. The Western Province Peoples Front (WPPF, a political party representing Tamils in Colombo which has 1 MP in alliance with the United National Party) said that there was serious harassment of Tamils. They had documented over 500 detentions under the regulations and the reintroduction of House Registration (used to track the identity of individual members of houses) which had been suspended since 2002. They also linked the Emergency regulations to the abduction and murders of five Tamil civilians in Colombo...The Government (Marasinghe, Legal Director Secretariat for Co-ordinating the Peace Process) said that in the 'chaos' after the assassination of Kadirgamar some members of the Police had gone too far and had detained 'everybody they could find'. However the situation was settling down and the ERs were aimed at finding the killers and not at suppressing legitimate political activity."

...8.12 On 31 December 2005 the pro-LTTE website TamilNet reported that:

"Sri Lankan Military troopers and the Colombo Police have arrested 920 Tamils, including 105 Tamil women, in a joint cordon and search operation in Colombo between Friday midnight and Saturday noon, police said. The arrested were taken in busses to 8 different police stations and were being photographed, finger-printed and videoed by the Sri Lankan Intelligence agencies, informed sources said. The search operation was conducted in Tamil residential areas in Wellawatte, Bambalapitiya, Maradana, Kotahena, Grandpass and Mutuwal. Fifty three Tamils were detained after identity-registration in the operation code named 'Strangers Night III,' Police said...A number of Tamil persons were arrested during the search operations conducted in Colombo over the past weeks. Only five persons, from the earlier search operations were still in custody, the Police sources claimed."

8.13 As mentioned in a letter from the British High Commission, Colombo to the Home Office dated 13 February 2006:

"The Sri Lankan authorities had launched a number of 'cordon and search' operations in recent weeks. Of these the largest, in Colombo on 31 December [2005], had been called Strangers Night III. About 1000 people had been arrested, most had been detained briefly, but released after fingerprinting or photographs had been taken. The HRC had summoned the Inspector General [of] Police, Defence Secretary, Attorney-General, the Police Deputy Inspector General in charge of the operation and the Deputy Inspector General in charge of the Criminal Investigation branch to explain the purpose of these operations. They had initially argued that the operations were aimed at ordinary criminals, but also caught some security suspects. The HRC disagreed, the ethnic balance of the suspects show it was a security operation i.e. most arrested were Tamil. The HRC reminded the police that they

could not simply round up hundreds of suspects. If they were operating under normal law they must first demonstrate reasonable suspicion, they could not detain and then begin to investigate. If the arrests were part of a security operation (i.e. Prevention of Terrorism Act or the Emergency Regulations) then the police had to inform the HRC within 48 hours even if the suspect had been released in the interim.”

...8.17 A letter from the British High Commission in Colombo, dated 24 August 2006, noted that:

“The Sri Lankan authorities often require households in predominantly Tamil areas to register all residents. These lists are then used in cordon and search operations to identify people who the police consider need to give a fuller explanation of why they are residing or travelling in a location. Lists of failed asylum seekers could form part of this, although the areas covered by cordon and search operations (normally a few blocks) would not yield very many. Normally the police detain those who have not registered, for further questioning. After a big push in November and December 2005, when police registration forms were distributed throughout Colombo and which culminated in Operation Strangers Night II, the authorities have become more relaxed about this. In June [2006] there was public discussion about implementing police registration island wide as was done in the past, but nothing has come of this. Occasional cordon and search operations still take place, mainly where there are Tamil pockets in predominantly Sinhalese or Muslim areas. In July [2006] the government published large advertisements in the press reminding security officials of their responsibilities when they detain anyone. This is a partial response to complaints that those detained in cordon and search operations were not being treated according to the law.”

8.18 On 28 August 2006 the pro-LTTE website TamilNet reported that 76 Tamils, including eight women, had been arrested in Colombo and its suburbs during a combined search operation by Sri Lankan military troopers and police and that according to the police the arrested were being interrogated at different police stations in Colombo. “The search operations were conducted in police divisions of Borella, Kotahena Bambalapitiya, Kollupitiya and Wellawatte, between noon and midnight.” (UK Home Office 2006, *Sri Lanka Assessment*, 31 October, sections 8.10-8.18 – Attachment 3).

Advice published by the Immigration and Refugee Board of Canada (IRBC) in 2006 indicates that Tamils are required to produce their national identity card to Sri Lankan security forces when requested and face arrest if they fail to do so. The advice also describes the search operations conducted by security forces in Colombo and the current extensive powers held by security forces as a result of the state of emergency imposed in August 2005:

Sources consulted by the Research Directorate, however, indicate that Tamils may be asked by Sri Lankan security forces to produce their national identity cards (AI 29 June 2006; AP 31 Dec. 2005). **In a December 2005 door-to-door search for LTTE members in Colombo, Sri Lankan security forces detained over 900 people for failing to produce their national identity cards or for not having a valid reason for staying in the city [Researcher emphasis]** (AP 31 Dec. 2005). Security forces later released 867 of the detainees, but kept the others for further questioning (ibid.). No information on whether charges were laid could be found among the sources consulted by the Research Directorate.

A state of emergency imposed in August 2005 and still in effect as of September 2006 (Australia 20 Sept. 2006), reportedly gives Sri Lankan security forces the authority to close roads without notice, set up road blocks and impose curfews (ibid. 1 Sept. 2006), as well as make arrests without warrants and detain individuals for up to 12 months without trial (US 8 Mar. 2006, Introduction) (Immigration and Refugee Board of Canada 2006, *LKA101784.E – Sri Lanka: Security measures in place to control the movement of Tamils between northern*

and southern regions of the country (August 2005 – September 2006), 22 September – Attachment 4).

Senior Lecturer in Political Science at the University of Colombo, Dayan Jayatilleka, recently gave a seminar on Sri Lanka to the Tribunals in which he stated that a person living in Colombo who has attempted to flee the LTTE's influence would be targeted. In relation to the situation for known LTTE supporters in Colombo, Mr Jayatilleka stated that persons suspected of performing a military or intelligence role for the LTTE "are increasingly targeted". The following pertinent extracts expound on the LTTE's influence in Colombo and the situation for known LTTE supporters and critics.

How effective is the LTTE in being able to endanger suspected non-supporters in Colombo?

I'd say very effective. The best evidence of that being the fate of Ketheshwaran Loganathan, the Deputy Secretary-General of the government's peace secretariat, SCOPP, who didn't carry a gun, had no body guards because he considered himself a member of the peace secretariat,virtually a diplomat. Like Dr Palitha Kohona, who is part yours, part ours, Australian Government employee.

...What is the situation for known LTTE supporters in Sri Lanka including Colombo at the present?

There I suppose – well, it really depends on whether they are in parliament or not. The TNA MPs are openly pro-LTTE, critics would call them proxies, and they have made no secret of their sympathies, even affiliation with the Tigers. But certainly not only have none of them been targeted, they interact with the President of the country and so on. So they are LTTE supporters; they have not been in danger.

But I would think that those who are suspected of performing an intelligence function – a military function or intelligence function – for the LTTE are increasingly targeted. In that sense the war is becoming very much like other counter-terrorist wars you find in other parts of the world; dirty certainly at its edges, and maybe more than at its edges. But there is a tendency, and there has been a dangerous tendency for people who work for newspaper organisations, pro and anti-LTTE to be..... Tamils.

...But for members of anti-Tiger Tamil groups, either those that have recently exited the Tigers or long-standing critics, then it is somewhat more emotive. So pro and anti-Tiger newspaper organisations, newspaper men, they have been seen somehow as legitimate targets in a kind of a Los Angeles gang war that has been going on, sort of bloods versus crips thing that is happening on the sidelines. And that is a very negative phenomenon.

...You said before that anti-LTTE support – well, people who are against the LTTE in Colombo could be targeted. And you mentioned a lot of high profile anti-LTTE people. What about someone who has fled their influence? Would they still be targeted if they went to Colombo?

MR JAYATILLEKA: They would be. They would be. There has been more of that outside Colombo because people who are high profile usually have the means to come and reside in Colombo. But others tend to still remain – to change their location and be in Mannar or in the part of the eastern province or something like that. But in Colombo, in Colombo there have been killings of both types, pro-LTTE by anti-LTTE people, and anti-LTTE by pro-LTTE, not just the high value targets or high profile people who have been taken out

(Jayatilleka, D. 2006, 'Sri Lanka Seminar: Mr Dayan Jayatilleka', 20 September – Attachment 5).

The UK Home Office recently issued an Operational Guidance Note on Sri Lanka which addresses the main categories of claims by Sri Lankan asylum seekers in the UK. In relation to the situation for Tamils living in Colombo – specifically those fearing persecution by authorities – the report states the following:

...Emergency Regulations imposed in August 2005 which continue to be in place allow the arrest of individuals by members of the armed force and that those detained may be detained for up to one year. However the number who continued to be in detention following arrests in Colombo in December 2005 is relatively small. Although the majority of those arrested in December were Tamils, detainees included Sinhalese and Muslims, and taking this into account and the fact that the majority were released within 12 hours it can still be said that generally the authorities in Sri Lanka are not concerned with those individuals with past low-level support for the LTTE. Taking these events into account there continues to be no evidence that the authorities in Sri Lanka are concerned with those individuals with past low-level support for the LTTE. Claims under this category are therefore likely to be clearly unfounded and fall to be certified as such.

Those individuals who may be of continuing interest to the authorities would be those wanted for serious offences. These cases will be exceptional, and will normally be high profile members of the LTTE who are still active and influential, and wanted by the authorities. Such individuals may face prosecution on return, although there is no evidence to suggest that they would not be treated fairly and properly under Sri Lankan law. Claims made under this category are therefore not likely to lead to a grant of asylum or Humanitarian Protection but taking into account the continuing interest of the authorities in those of high profile, and the introduction of the Emergency Regulations such claims cannot be considered to be clearly unfounded. Caseworkers should note that the LTTE have been responsible for numerous serious human rights abuses, some of which amount to war crimes...

...At the end of September 2006 members of the minority community in Colombo appealed for government help to tackle recent abductions. They say the police and government have not done enough to investigate the kidnappings of nearly 50 Tamils recent weeks. Campaigners met Sri Lanka's president to request more protection. Those kidnapped include an eminent Tamil journalist working for a private media network in Colombo. Nevertheless, due to the still relatively small number of abductions that have taken place in the Colombo area since August 2006, together with the professional background of many of those abducted, with either high inforamatory or financial value, the vast majority of the Tamil population in Colombo are not at real risk of abduction in Colombo (UK Home Office 2006, Operational Guidance Note: Sri Lanka, 8 December – Attachment 6).

Conversely, in October this year the Hotham Mission's Asylum Seeker Project (ASP) published the findings of a two-week field trip to Sri Lanka and refugee camps in Tamil Nadu which focuses on concerns facing returnees. The Hotham Mission is an affiliate of The Uniting Church and is based in Melbourne working with asylum seekers in the community. Hotham Mission met with Norwegian monitors, international NGOs, doctors, lawyers, human rights groups and internally displaced persons and refugees. The findings of the field trip illustrate a bleak picture for returnees, highlighting that "protection needs of Tamils are extremely high, with no ability to live in the safer areas of Colombo, Kandy or elsewhere". The pertinent extracts follow in detail.

Lack of state protection and implications for asylum seekers

The Norwegian and Icelandic Government monitors, the Sri Lankan Monitoring Mission (SLMM), and the United Nations High Commission for Refugees (UNHCR), as well as all other groups we met, outlined a range of serious protection concerns that directly affect the safety of refused asylum seekers being returned at this time, including the high likelihood of targeting of individuals with certain past affiliations or histories of arrest, the lack of effective state protection, particularly for Tamils, as well as a large range of human rights and humanitarian concerns affecting return. A lack of protection exists for Tamils throughout the country who are experiencing persecution based on their ethnicity. The SLMM clearly stated, *'There are absolute protection needs. People are trying to get out, not in.'*

This has been noted in the high number of Tamils and some Muslims fleeing the country into India, now reaching more than 16,000 since the beginning of 2006. All groups interviewed stated the protection needs of Tamils are extremely high, with no ability to live in the safer areas of Colombo, Kandy or elsewhere, highlighted throughout the paper. As one human rights worker stated, *'If people can live in Colombo, why are they crossing the border into India, travelling through hostile terrain and risking their lives on a boat to live in restricted camp environments?'*

...Colombo

Since the assassination of the Foreign Minister last August, the introduction of the ongoing state of emergency the same month and the April 25 terrorist attack, the city has returned to previous experiences of random checkpoints and house searches and the general removal of civil rights of much of the population in Colombo. Groups indicated that Colombo was seeing the highest level of civil restrictions since the late 80s, including checkpoints not only in the outer suburbs but throughout the city, manned by both STF, police, army, navy and air force. As highlighted earlier, previously unseen restrictions now exist relating the household registration, particularly targeted in Tamil suburbs.

The city remains on high alert for terrorist attacks, with a bomb found on a railway line in the city during our visit. The team had visited the popular site near the seafront the day before. In this atmosphere of fear and paranoia about the possibility of terrorist attacks, mass arrests and torture are widespread as highlighted previously. The SLMM noted that *'people taken into custody in the district, no matter if it is a petty crime, are sent to Colombo. They can then be in custody for many months – and will most likely be beaten or more.'*

One human rights group reported the case of a Tamil woman who had moved to Colombo 10 years ago, and bought her own home, living as a permanent resident there. However her ID card said that she is from Jaffna. She was caught in a generalised round up and taken to station with many others. All were scrutinised person by person. Eventually all of the Tamils caught were kept in custody, the others released. The woman's family (including children) did not know where she was when she did not return home as expected, as they were not informed by police of her arrest as is the regulation. The woman's sister, brother and children went looking for her at a number of police stations, asking if Tamil people had been rounded up there. The brother explained that the woman was a permanent resident. The police continued to suspect her because she was from an LTTE area.

The UNHCR and other human rights groups were quite clear to state that Colombo was not a viable safe relocation options for Tamils fleeing the conflict in the north or east, explored in more detail in the Protection Implications section (page 47).

... Protection implications for returnees

Protection relates to the provision of state protection as defined by the 1951 Refugee Convention and human rights related obligations. The Norwegian and Icelandic Government monitors, the Sri Lankan Monitoring Mission, and the UNHCR, as well as all other groups we

met, outlined a range of serious protection concerns that directly affect the safety of returnees at this time.

Previous affiliation

In relation to returning asylum seekers, the SLMM stated, *'If a person has had any affiliation in the past and returns they will face danger'*. This was mentioned in relation to both perceived connections with the LTTE, thus concerns about being targeted by the police or armed forces, and also affiliations to certain parties or individuals which may make a person a target of the LTTE. They mentioned for example that PLOTE members 10 years ago are still targeted today. *'People returning from overseas may be a target'*. They also mentioned widows in Vavuniya whose husbands were in the army 9 years ago and long dead being hunted down. This was also noted in that one Sinhalese refused asylum seeker returned was in hiding after receiving death threats one week after his return to Sri Lanka in relation his past political connections, as highlighted earlier.

People with previous problems with the GoSL or LTTE

The team were told by multiple sources that the National Intelligence Bureau has records dating back 10 years and earlier, with a national computer database being used for the past 2 years. People with a previous incident of arrest or questioning are likely to be arrested and under the state of emergency and level of conflict, may face further human rights violations such as torture. One group stated, *'They will know people's history.'* Another stated, *'The NIB will have a record of past interrogations, and can cause further charges if returned.'*

Unlawful departure or suspicious entry

One group stated, *'How a person has left Sri Lanka will impact on their return experience – they could be charged under immigration law...If he is a Tamil chances are he will be immediately detained, suspected'- (particularly) if he used fake documents or bribed- in Sri Lanka you can be charged for leaving the country on a fake passport'*.

We also noted that people entering the country under any irregular circumstances are more likely to be identified, questioned and possibly targeted under the current state of emergency... (Hotham Mission Asylum Seeker Project 2006, *Hotham Mission field trip to Sri Lanka: Security, protection and humanitarian concerns and implications for Sri Lankan asylum seekers in Australia*, 15 November – Attachment 7).

A number of disappearances have been occurring in the Jaffna peninsula, the east, as well as Colombo. The victims have allegedly all been Tamil men and the abductors drive white vans without number plates. The white vans have reportedly become a symbol of terror, as was the case in the late 1980s when they first appeared and “armed men, traveling in white vans without number plates abducted thousands of people who were never seen again. The recent cases that have been reported are occurring predominantly in the north and east; however, a few have also been reported in Colombo. The suspicion of many commentators in the region – as well as family members of the victims – is that the abductions are carried out “either directly by the military or with its approval” (“Sri Lanka: White vans without number plates; the symbol of disappearances reappear” 2006, Asian Human Rights Commission, 13 September <http://www.ahrchk.net/statements/mainfile.php/2006statements/729> – Accessed 30 November 2006 – Attachment 8). On 19 October 2006, the Asian Human Rights Commission reported the killing of a Tamil man “after being abducted by four unidentified men in one of the notorious ‘white vans’ in Colombo” (“One man killed after abduction and his brother complains of his possible forced disappearance” 2006, Asian Human Rights Commission website <http://www.ahrchk.net/ua/mainfile.php/2006/2073> – Accessed 30 November 2006 – Attachment 9).

Matale

Little information was found on Matale, a district north-east of Colombo. Of the information found are two pertinent 2006 articles. According to Colombo's *Daily Mirror* newspaper, Matale "has become a safe haven for LTTE cadres". The Matale Police Division claims that some cadres have settled in Matale to escape the LTTE (Somaratne, M.W. 2006, 'Tiger deserters roosting in Matale', *Daily Mirror* <http://www.dailymirror.lk/2006/07/17/news/9.asp> – Accessed 30 November 2006 – Attachment 10). Matale is also mentioned in an October 2006 article by the *Hindustan Times* regarding the "foiled" LTTE attack on the Galle naval base. The attack triggered violence against Tamils in several towns: "in Matale, a town on the Colombo-Kandy road, Tamils were asked to get down from buses. 'They were harassed,' a source said. Fortunately, the incidents were minor" ('LTTE attack on naval base foiled' 2006, *Hindustan Times*, 18 October – Attachment 11).

List of Sources Consulted

Internet Sources:

Google search engine <http://www.google.com.au/>

Databases:

FACTIVA (news database)

BACIS (DIMA Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Country Research database, including Amnesty International, Human Rights Watch, US Department of State Reports)

RRT Library Catalogue

List of Attachments

1. International Crisis Group 2006, *Sri Lanka: the Failure of the Peace Process*, Asia Report No.124, 28 November.
2. 'Tamils in Colombo harassed by "Strangers Night" operation' 2006, Transcurrents.com website, 5 January <http://transcurrents.com/tamiliana/archives/32> – Accessed 30 November 2006.
3. UK Home Office 2006, *Sri Lanka Assessment*, 31 October, sections 8.10-8.18.
4. Immigration and Refugee Board of Canada 2006, *LKA101784.E – Sri Lanka: Security measures in place to control the movement of Tamils between northern and southern regions of the country (August 2005 – September 2006)*, 22 September. (REFINFO)
5. Jayatilleka, D. 2006, 'Sri Lanka Seminar: Mr Dayan Jayatilleka', 20 September.
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7. Hotham Mission Asylum Seeker Project 2006, 'Hotham Mission field trip to Sri Lanka: Security, protection and humanitarian concerns and implications for Sri Lankan asylum seekers in Australia', 15 November.
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11. 'LTTE attack on naval base foiled' 2006, *Hindustan Times*, 18 October. (FACTIVA)