

1213580 [2012] RRTA 1161 (12 December 2012)

DECISION RECORD

RRT CASE NUMBER: 1213580

DIAC REFERENCE(S): CLF2012/158758

COUNTRY OF REFERENCE: Sri Lanka

TRIBUNAL MEMBER: Lesley Hunt

DATE: 12 December 2012

PLACE OF DECISION: Brisbane

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Sri Lanka, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] July 2012.
3. The delegate refused to grant the visa [in] August 2012, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

4. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other 'complementary protection' grounds, or is a member of the same family unit as a person in respect of whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:
owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant*

S395/2002 v MIMA (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression 'serious harm' includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
11. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
12. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
13. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb

of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

15. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Complementary protection criterion

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. The applicant appeared before the Tribunal [in] December 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Tamil and English languages.
21. The applicant was represented in relation to the review by his registered migration agent.

Departmental file

22. In his application for protection the applicant provided the following information.
23. He was born on [date deleted: s.431(2)] in a part of Jaffna, Sri Lanka. He is of Tamil ethnicity and his religion is Christian. He speaks, reads and writes Tamil. He is single

and his occupation is [in a certain trade]. He departed Sri Lanka illegally [in] April 2012. He has a passport and had no difficulty obtaining it. His passport is with his mother in Sri Lanka.

24. The applicant states that his mother lives in Jaffna and his father is working in [Country 1]. His [siblings live in Sri Lanka]. From a very early age the applicant lived with his family in a camp [in the mid 1990's]. After that he lived [movement and family details deleted: s.431(2)].
25. The applicant's schooling was interrupted by the war. He finished [school] in [date deleted: s.431(2)]. After that he worked in a [business] until December 2009. He was unemployed for about 3 months and then he went to [Country 1] where he [worked]. When he returned to Sri Lanka he worked at his uncle's [business] in Jaffna until he left Sri Lanka.
26. The applicant claims that when he was [a teenager] he was injured in a bomb blast at [location deleted: s.431(2)] in Jaffna. He sustained [injuries] and required surgery. He is left with a large surgical scar and a smaller scar from the blast.
27. Years later, in April 2011, when [the applicant] was playing cricket inside the temple grounds in [a town], in Jaffna. A fight broke out after the match about playing arrangements. The applicant was taken off the field before the game finished. Some local people said they should go to the police to resolve the issue. So they went to the police station. They were still arguing. The police told them to stop fighting and go home. The police made an entry on their records of the incident. Later that night the applicant was called back to the police station as were several others. The police wrote up a case against them and detained them overnight. They had to go court the next day. After this they were jailed for four days. When they were released they had to attend the police station each week to sign. They had to do this right up till the end of 2011.
28. [In early] 2012 men from the CID came to the applicant's uncle's house, which is next door to where his family home was before it was bombed. The applicant was staying with this uncle at the time as he was working for him. On the first visit from the CID they asked the applicant his name and how long he had lived there for. They asked him about the recent fights. They asked him if he had wounds on his body and where he had been for so long. They checked his scars and said they knew that he had not been in the village for some time. They were referring to his absence from the village [for several years]. They told him that he was not to go anywhere as they needed to investigate him completely. The applicant did not see them again for two months. When they came back the second time they said that the people from the cricket fight told them that the scars on his body were because he was once with the Liberation Tigers of Tamil Eelam (LTTE) and they were war wounds. The CID did not believe the applicant when he explained how he got the scars.
29. The CID came again in April 2012, a few days before the applicant left for Australia. They took him to the [CID branch]. They detained him for 1 day and interrogated him. They tried to make him confess to being an LTTE fighter and that he had escaped the army in 2010 and came to Jaffna at the end of the war. They told him that if he didn't say these things they would take him to a special camp and interrogate him further.

30. After one day the CID released him and he went back home. When he came home he told his mother what happened. She spoke to his brother about it and they decided he was in a very dangerous situation with the CID and he should get out of Sri Lanka. The applicant's brother sometimes took him with him to Colombo on his driving trips, but the CID had the means to find him there also. His family decided that he should leave the country so as to be safe. The second day after his release his brother found someone to take him to Australia and he made the arrangements. A couple of days later the applicant left Sri Lanka.
31. The applicant claims that if he returns to Sri Lanka he will be picked up by the CID. He believes that his going to Australia illegally would have confirmed their belief that he was a former LTTE fighter. He would be detained again and jailed without charge.
32. He claims that he cannot relocate to another part of Sri Lanka, because as a Tamil he would be required to make a police report wherever he relocated to. This is a national requirement for all Tamils. Also the CID is a national body and they could locate him easily wherever he was in Sri Lanka just by checking police registration records.
33. The applicant's representative lodged a submission in support of the applicant's claims for protection. In summary, it is submitted that the applicant has a well-founded fear of persecution as he has a real chance of suffering serious harm at the hands of the CID for reasons of his Tamil ethnicity and imputed political opinion. He cannot relocate to any part of Sri Lanka as the CID has a national reach, the country is small, and the applicant could not hope to escape the attention of the CID. The representative referred to various reports in support of the applicant's claims. The representative also made submissions relating to the complementary protection grounds for protection.
34. The delegate refused the application as, in summary, it was not accepted that the applicant has a profile as a member or supporter of the LTTE.

Tribunal file

35. The applicant provided an additional statement in response to the decision. He states that all information provided in his previous interviews and statements are true and correct. The applicant clarified that he went with his mother and siblings to [Town 2] in 2003 because the bombing and fighting in their home village in Jaffna made it too dangerous for them to remain there. He stated that his two friends who supported him during the fight at the cricket match were both LTTE members. He has known them since they were [very young] and went to school with them. He lost contact with them when he went to [Town 2] but they resumed their friendship when he returned to his village in 2010. He did not know about their LTTE activities as he was never involved in the LTTE himself. He believes he was wrongly accused of being in the LTTE because of his association with these two friends and because of the scars on his body from the bomb blast.
36. During his interview with the DIAC case officer, the case officer said that he did not mention that these two friends were with the LTTE, but he did mention it. He didn't make any special mention of them in his statement of claims but he did say "a group of us" meaning him and his two friends.

37. He has always claimed that he would be persecuted because of his ethnicity as a Tamil and stated during his interview with the case officer that he was fearful of being persecuted because he is a Tamil. He has not ever been a member of the LTTE himself however he has been accused of being one; therefore his life is at risk.
38. The applicant's representative also provided an additional submission. In summary it is submitted that the applicant believed that if he had remained in Sri Lanka he would continue to be harassed, interrogated and assaulted by the CID until he admitted he had dealings with the LTTE and then he would be falsely charged. His Tamil ethnicity and unlawful departure from Sri Lanka would create further suspicion that he was involved with the LTTE and his life would be in danger as a result. As an ethnic Tamil the applicant fears he will be perceived to hold a political opinion because of false accusations of assumed involvement with the LTTE. As a failed asylum seeker he also fears significant harm above and beyond the laws of application by the Sri Lankan authorities for departing Sri Lanka illegally. He will be unable to seek adequate protection from the Sri Lankan authorities as the police act in cooperation with the CID throughout Sri Lanka.
39. The representative also submitted that the current ongoing human rights abuses against Tamils, ethnic repression of Tamils by forcefully resettling Sinhalese in Tamil areas, an increased troop presence in the North and East, and the activities of paramilitary groups whose actions are condoned by the central authorities and who act with impunity, are all indicators of the serious circumstances that Tamils, in particular Tamils originating from the North and East, continue to face. The representative referred to various independent country reports in support of the applicant's claims and various Court decisions with respect to aspects of the Refugees Convention. It is submitted that relocation is not a reasonable or a safe option for the applicant. Further submissions were made in relation to complementary protection and s.36(2)(aa) of the Act.
40. At the hearing the applicant provided the following additional information in response to questions from the Tribunal.
41. The applicant confirmed that he was aware of the contents of his protection visa application and the contents were true and correct. He did not wish to change anything in his application. The applicant confirmed his date and place of birth in Jaffna, Northern province, Sri Lanka. He confirmed that he is a [age deleted: s.431(2)] Tamil, a citizen of Sri Lanka and no other country, and that he [religious belief deleted: s.431(2)].
42. The applicant stated that he had a passport in his own name that was issued prior to his travel to [Country 1] in 2010. He stated that he had no difficulty obtaining the passport or exiting and re-entering Sri Lanka in 2010. The applicant stated that his passport is with his mother in Sri Lanka.
43. The applicant confirmed that his mother and [some siblings] live in Jaffna. He stated that [another sibling] lives in [Town 2] and the other lives in Kandy. [Some of his siblings] are married. The applicant's father has lived and worked in [Country 1] since 2000. His father has returned to Sri Lanka twice in the past 12 years.
44. The applicant stated that when he was very young his family was displaced by the war and he lived with them in a camp run by the Sri Lankan army for most of the year [in

the mid 1990's]. He and his family were displaced a second time in [the 1990's] and again lived in a camp. He was taken by [some] priests to live in a hostel for 2 years. His mother and siblings stayed in the camp. The priests took him to protect him as the army was taking young boys in his age group. The applicant stated that he and his family moved to [Town 2] where they lived from September 2003 until the end of the 2009 when the war finished.

45. The applicant stated that after he [finished school] he did some [work] for a Sinhalese man in [Town 2]. He experienced [problems] because he had been injured by an exploding bomb shell in 2003 and this meant he had to stop work for a while. He did mainly casual work for a while. He then went to [Country 1] [in] 2010 where he [worked]. When he returned to Sri Lanka he worked for his uncle in [Jaffna]. The applicant stated that he was employed up until the time he left Sri Lanka to travel to Australia.
46. The applicant stated that [in] January 2003 he was [near] his home when a bomb exploded. He was seriously [injured] by flying shrapnel. He stated that he lay on the road for a while and then he was taken to hospital in Jaffna where he remained for 17 days. He was operated on [a number of] times during those 17 days. [He has scarring] from the surgery and from the shrapnel.
47. The applicant stated that he left Sri Lanka as he had become afraid that he would be seriously harmed by the CID. The CID interest in him began when he was involved in a fight during a cricket match in April 2011. He was stopped from batting by people who stated that he should not bat before the older players had batted as they had lived in the area longer than he had. A fight developed between him and two friends of his whom he had known since childhood, and most of the other people involved in the game. During the fight he was hit with a bat and the fight became a physical fight. He was taken by the others to the police station where they lodged a complaint about him to the police. His two friends had been in an LTTE camp when they were young and the fight ended up as the LTTE supporters against the others.
48. The applicant ended up spending 4 days in jail as a result of this fight. He also had to appear in Court and the Court said he had to stay out of trouble and report to the [police] for the following 6 months. In response to questions from the Tribunal the applicant clarified that initially the police told everyone to be quiet, they listened to the complaint against him and then after a while they sent him home and told him to stay out of trouble. However later that night 4 people who had been involved in the fight came to him and forced him to go back to the police station with them. He was afraid that if he did not go with them they would bash him up. At the police station the others said that he started the fight. So the police jailed him for 4 days. His mother came the first night and tried to get him released but he was not released. He was taken to Court and the Court said he had to sign in at the police station every week and he did this for 6 months. He was doing this until [a certain time in]2011.
49. After this he did not have any problem for a while, although he could feel the others were still angry with him. He thinks these people spread rumours about him being in the LTTE. He thinks they thought this because he had scars and injuries and because he had been away from the village for some time and because of the way the fight at the cricket match unfolded and the things that were said. It was not good to be thought of as LTTE, particularly as Jaffna is full of Sri Lankan army people. At the beginning of

this year some people came looking for him. He was working with his uncle at the time. These people spoke Sinhalese and only a bit of Tamil. They were not in uniform but they arrived on motor bikes. They asked for him by his name. They asked if he had a problem earlier and had been in a fight. He responded that he had but that it had been sorted out. He had been to Court and he had done what he was told to do by reporting to the police every week. They wanted to know where he had been for all those years when he was not in the village. He told them he went with his family to [Town 2]. They asked him for his identification card and for something to show that he had been at school in [Town 2]. He was able to show them his old National ID card which had his [Town 2] address on it.

50. These people told him not to leave the area and they told him they would come back to talk to him again. He knows that these people are from the Criminal Investigation Department (CID). About two months later the CID came again. He was scared when he saw them. They said they had received a complaint that he was with the LTTE. They said they would have to take him to a camp to question him. He begged them not to do this. They frightened him for more than an hour. They asked him all the same questions that they had asked him the last time.
51. They took him to a place in Jaffna behind [location deleted: s.431(2)]. They checked the scars on his arm. They twisted his arm behind his back and they hit him in the head. They made him go into a room where they forced him to sit on a chair. There were 2 people and another person was outside. They kept telling him they would be taking him to another camp for longer questioning. They kept at him to tell them the truth. They said if he told them the truth they would let him go but if he didn't tell them the truth they would send him to the other camp. He was very scared. They kept him there for the whole day and they questioned him all day. They gave him water but nothing to eat. When they released him they told him they would be back to talk with him again. They told him to stay at home, not to leave the area. They told him if he went anywhere he had to write the address of where he was going and leave it at his home so that they would always know where he was. They said if he didn't do this they could not guarantee his safety.
52. The Tribunal asked the applicant if he had any evidence that he had been to Court and jailed for 4 days. He responded that he had a yellow slip of paper from when he was released and his mother had it. He had asked her to send it to him but she said that she had misplaced it. He had asked her to go and get a copy of it from the authorities but she told him that she was too scared to do this.
53. The applicant stated that his mother recently told him that about 8 days ago this person who is a friend of the family, they call him a cousin, had been attacked by the army and he was in the [hospital]. This person was an orphan and he had been taken in by friends of the applicant's family. There were many witnesses to say that the army had hit him repeatedly on the head with [a weapon] but nobody knew why they did this to him. The man's family have been told that he can only stay in hospital for [a few] more days and then they have to take him home. He said this happened [in] Jaffna.
54. The applicant stated that he fears returning to Sri Lanka as he fears the CID. He believes they will keep harassing him and they will hurt him or kill him. He stated that the Sri Lankan army is everywhere in his village and all through Jaffna and it is

impossible to avoid them. They do inspections all the time. There is a curfew and if they find anyone on the streets after 6p.m. they beat them.

55. The applicant stated that he could not live anywhere else in Sri Lanka because he is Tamil and he will be asked for his identification and when they learn that he is from Jaffna they will contact the CID there and he will be taken away by them and hurt or killed.

Independent Country Information

Current information on the situation for Tamils in the north and east of Sri Lanka

56. In May 2012, the US Department of State reported paramilitaries in the east and north of Sri Lanka have assisted state security agencies to detect and apprehend “civilians suspected of LTTE connections” The report also states that interrogation of detainees sometimes included torture:

In the east and the north, military intelligence and other security personnel, sometimes working with armed paramilitaries, were responsible for the documented and undocumented detention of civilians suspected of LTTE connections. Detention reportedly was followed by interrogation that frequently included torture. There were reports that detainees were released with a warning not to reveal information about their arrest or detention, under the threat of rearrest or death.¹

57. Amnesty International alleges that ill-treatment of people detained on suspicion of being LTTE sympathisers remains widespread,² and Freedom House states that “there has been no decline in the use of torture against LTTE suspects over the last two years”. In addition there has been a sharp increase in the “kidnappings of Tamils” Regulations under the *Prevention of Terrorism Act 1979* reportedly allow for LTTE suspects to be detained indefinitely without charge or trial. The Supreme Court has reportedly ordered that security forces release or charge detainees held longer than 90 days; however such orders are reportedly largely ignored.³ These comments are not made exclusively in relation to the eastern regions. A May 2012 Amnesty International Report on Sri Lanka’s detainees provides detailed accounts of alleged ill treatment of people detained on suspicion of LTTE affiliation, however the report focuses on cases where people were detained in 2009-10.⁴
58. Freedom House reports that the Sri Lankan government has “ostensibly concentrated on rehabilitating former LTTE-controlled territory on the north and east” since the end of the civil conflict in May 2009.⁵ By September 2010, approximately 4, 000 of the 12,500-13,000 people detained as LTTE ex-combatants had been released from

¹ US Department of State 2012, *Country Reports on Human Rights Practices for 2011 – Sri Lanka*, 24 May, Section 1.c

² Amnesty International 2012, *Annual Report 2012 – Sri Lanka*, 24 May

³ Freedom House 2012, *Countries at the Crossroads 2012 – Sri Lanka*
<<http://www.freedomhouse.org/sites/default/files/Sri%20Lanka%20-%20FINAL.pdf>> Accessed 18 September 2012

⁴ Amnesty International 2012, *Locked away: Sri Lanka’s Security Detainees*, UNHCR Refworld, 13 March
<<http://www.unhcr.org/refworld/docid/4f5f4c3a2.html>> Accessed 12 September 2012

⁵ Freedom House 2012, *Freedom in the World 2012 – Sri Lanka*, UNHCR Refworld, 22 August
<<http://www.unhcr.org/refworld/docid/503c72222b.html>> Accessed 18 September 2012

detention.⁶ The military continues to control most aspects of daily life in former conflict areas.⁷ ⁸ A March 2012 report by the International Crisis Group (ICG) noted that suspected former LTTE members who were released from detention have been subject to tight surveillance by government forces. However, the ICG noted that surveillance of released LTTE suspects appeared to have been relaxed by March 2012.⁹

59. According to the United States Department of State (USDOS), frequent harassment of young and middle-aged Tamil men by security forces and paramilitary groups frequently took place in Sri Lanka's northern and eastern regions during 2011. In addition, "unlawful killings by security forces and government-allied paramilitary groups" are common in predominantly Tamil areas. The USDOS reports that members of the armed forces and government-backed paramilitaries arbitrarily detained LTTE suspects without turning them over to the police, thus "blurring the line between arrests and abductions".¹⁰ One of the cases of detention and torture of voluntary returnees, as documented by Human Rights Watch in 2012, relates to a man from Batticaloa in the eastern part of Sri Lanka. Another case involves a woman from eastern Sri Lanka who was reportedly detained in a Batticaloa army camp.¹¹
60. Information published by the Immigration Review Board of Canada in February 2012 asserts that security forces prefer to outsource much of their operational capacity to non-LTTE paramilitary groups such as the TMVP, a constituent of the governing United People's Freedom Alliance (UPFA). The report notes that the Karuna faction holds a close alliance with Sri Lanka's security forces (including police and army operatives), with "some Karuna members reportedly even [wearing] police uniforms".¹²
61. While not immediately current, advice provided by the Department of Foreign Affairs (DFAT) on 15 June 2010 states that DFAT are aware of instances where extortion threats against Tamils "have involved abduction for ransom and also threats of murder". The report states that extortion threats are primarily carried out by paramilitary groups.¹³
62. A report from the Human Rights Commission of Sri Lanka, dated April 18, 2012, states that from January 2012 to April 2012, 21 complaints of disappearances have been made at the Head Office of the Commission and from among the Regional Offices.

⁶ Based on government figures. See Department of Foreign Affairs And Trade 2010, *Sri Lanka: Update on management of alleged ex-combatants*, 21 September

⁷ Freedom House 2012, *Freedom in the World 2012 – Sri Lanka*, UNHCR Refworld, 22 August <<http://www.unhcr.org/refworld/docid/503c7222b.html>> Accessed 18 September 2012

⁸ International Crisis Group 2012, *Sri Lanka's North II: Rebuilding under the Military*, Asia Report No. 220, 16 March, pp.17-22

⁹ International Crisis Group 2012, *Sri Lanka's North I: The Denial of Minority Rights*, Asia Report No. 219, 16 March, pp. 10-11

¹⁰ US Department of State 2012, *Country Reports on Human Rights Practices 2011 – Sri Lanka*, 24 May, Section 1(d)

¹¹ Human Rights Watch 2012, *United Kingdom: Document containing cases of Sri Lankan deportees allegedly tortured on return*, 15 September <<http://www.hrw.org/news/2012/09/15/united-kingdom-document-containing-cases-sri-lankan-deportees-allegedly-tortured-ret>> Accessed 27 September 2012

¹² Immigration Review Board of Canada 2012, *Sri Lanka: The Tamil Makkal Viduthalai Pulikal (TMVP) and Karuna factions; their relationship with each other; reports concerning their treatment of Sinhalese and Tamil citizens; whether they are still active as paramilitary groups*, LKA103950.E, 17 February <http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453812&l=e> Accessed 22 August 2012

¹³ DIAC Country Information Service 2010, *Country Information Report No. 10/33 – CIS Request No. LKA10306: Sri Lanka Tamil Request*, 15 June

Complaints have been made at the Jaffna, Vavuniya and Batticaloa Regional Offices of the Commission. The report notes that *while some of these complaints have been given publicity by the media, others have not received publicity.*'

63. The report states in part:

What is reported from Trincomalee is that checks are being carried out by persons said to be from a division of the police department and that those carrying out the checks do not properly identify themselves' As such it is an unhealthy precedent that any person has the ability to carry out such checks'

But to date, the Human Rights Commission of Sri Lanka has inquired about the progress of relevant investigations from the police department vested with the legal responsibility to investigate offences of disappearances' However it is evident that there's no justifiable progress in respect of investigations and the occurrence of yet more disappearances amount to a challenge to the democratic social system and the well being of society' It is essential that responsible state parties with suitable mechanisms should focus their attention on this reprehensible situation'

The Commission is of the view that the occurrence of such incidents having achieved peace after 20 years of war obviously has not reaped the benefits of peace for Sri Lankan society'

Abduction of persons from within judicial premises, disappearance of student activists and those engaged in political activities within the democratic way of lives cause a grave concern vis a vis the peaceful progress of the country and sets a bad example both nationally and internationally' As such the Commission observes that immediate action by State officials is imperative to prevent such occurrences in the future'

64. A news article in Groundviews, dated 30 August 2012, states as follows:

On 21st at 2.31pm, August 2012, 32 year old Vasanthamala sent a sms from her mobile to her relatives saying she had been taken by the Criminal Investigation Department (CID) in Vavuniya. Around 8pm the same night, she made short phone calls to her mother and father, and said she was alright. When her parents had tried to find out where she was calling from, the call had been cut off and has been switched off thereafter, to date as her parents are still unable to get through to her.

When her father tried to complain to the Vavuniya Police, they had refused to accept the complaint stating that she must have eloped with a man. The complaint was only accepted once her father visited the Police station the following day along with his wife. Prior to the arrest, on the 19th of August, some persons claiming to be from the CID, had called Vasanthamala's mother and told her that her daughter would be arrested unless she produced some documents to the Vavuniya Police. Even in July, 2012, the Police had made inquiries regarding Vasanthamala.

Vasanthamala's parents were amongst the around 500 families of disappeared persons who gathered in Vavuniya today, 30th August 2012, the International Day of the Disappeared, demanding for justice, accountability and the whereabouts of their loved ones. . The families staged a peaceful protest on the A9 road in front of the Vavuniya bus stand, and later held a public meeting at the Vavuniya Urban Council hall. Most of the families were Tamil and from the North and the East, with many families of former LTTE leaders who have gone missing after surrendering, and also families of soldiers who are missing in action.

The event was held as disappearances (mostly in the form of abductions), continued to be reported at a rate of more than one every five days in post-war Sri Lanka. Twenty one disappearances (including attempted abductions) have been reported by Sri Lanka's English media in the 100 days between April 1st and July 9th 2012. This brings the total number of disappearances reported from 1st January to 9th July to 57.

...In the 100 days covered in this report, seven children (under the age of 18) are reported to have been abducted. Three of these child abductions were foiled by the parents giving chase and rescuing their children, while one abduction was prevented by the community foiling a soldier's from attempt to abduct a girl. Two children were released by the abductors. According to the media the body of one child, Sivalingam Sivakumaran was found 5 days following his abduction in the Vadamaradchi North area of the Jaffna district. The reported number of child abductions has increased from 2 in the first three months (January to March) to 7 in the latter three months.

Response by Ministry of Defence

The Watchdog is happy to note that the Ministry of Defence (MoD) of Sri Lanka has on its website[2] responded to the disappearances reported by this column between October 2011 and March 2012 with what it deems to be a 'Factual Analysis'[3]. The MoD statement refers to our earlier report as being one that is aimed at misleading the international community, thereby bringing disgrace to Sri Lanka. It is the consistent failure to take appropriate action in the case of complaints of abductions and disappearance that constitutes a disgrace to Sri Lanka, rather than the actions of human rights defenders to draw attention to this continuing crime.

In the text of the article the MoD stated that "Of the 56 purportedly disappeared only 18 have been reported as actually missing." However in the breakdown of numbers provided in a chart by the MoD, it admits that in addition to the 18 missing, 10 people were released after abduction, the bodies of 5 people reported abducted were found and another five people were found in police custody. It does not clarify whether those arrested have been initially reported as being abducted due to Police not following legal procedures such as informing the family members and allowing the arrested person to contact a lawyer. The critical issue remains that the MoD itself admits that 38 abductions (including those foiled) took place in Sri Lanka between the period of October 2011 and March 31 2012.

... Unfortunately, the list compiled from media reports covering 100 days, is evidence of disappearances continuing in Sri Lanka. Not only do they continue with impunity, but the responses of those responsible for maintaining law and order in the country, point to a marked reluctance on their part to conduct effective and credible investigations into the complaints they receive. The State's complicity in the crime of abduction or attempted abduction was clearly indicated in the statements made by Mr. Gunarathnam and Ms. Attygalle in April 2012, as well as in Mr. Wijesooriya's complaint in July. But there has been no credible investigation into these complaints, and no one has been apprehended to date.

Abductions violate both the Sri Lankan constitution and International Human Rights Law. Under the Sri Lanka constitution, the right to be free from arbitrary arrest, the right to equal protection under the law and the right to be free from torture are guaranteed under all circumstances[9]. Even if a single abduction has taken place in the country, it is a violation of the Constitution and a violation of human rights. The number of abductions and disappearances is irrelevant. It does not matter if there were "only 18" or 38 or 56 abductions, what matters is that there has been no appropriate response from the state and its agencies which are charged with law enforcement and the maintenance of law and order. The State must investigate the allegations with the objective of identifying and prosecuting perpetrators. It is only by doing so that the cycle of impunity can be broken, and citizens of Sri Lanka be assured that no abductions will take place in the future.

Sri Lanka has a long history of un-investigated disappearances from the 1970s onwards. The UN Working Group on Enforced and Involuntary Disappearances, as well as other UN human rights mechanisms have consistently called for the Government of Sri Lanka to take effective action to break the cycle of impunity in this regard, and to deliver justice and redress to the victims of disappearances and members of their families. Recently, the Lessons Learned and Reconciliation Commission (LLRC), appointed by the Government, had recommended the creation of a Special Commissioner of Investigation 'to investigate alleged disappearances and provide material to the Attorney General to initiate criminal proceedings as appropriate'[10] but no action has been taken in this regard after more than 9 months.

65. Journalists for Democracy in Sri Lanka reported on 2 December 2012 as follows:

Heavy Military Presence around Jaffna University, More Arrests Feared. With the academic activities of the Jaffna University coming to a grinding halt in protest of police and military atrocities during the past three days, Sri Lanka's defence authority has increased the military presence around the Jaffna University amid fears that there could be more arrests of University students on false charges of terrorism related activities.

It is reliably learnt that the Jaffna University administration has been given a wanted list of names of at least ten University students following the police-military joint attack on the students on November 27 and 28. Acting Vice Chancellor of the University Prof. Velnamby however, has refused to speak to the media in this regard.

According to media and academic sources in the island's north, the military which was drastically reduced following the raid on the ladies' hostels on November 27 and the unprovoked attack on the peaceful students' march on November 28, has been visibly increased in the vicinity of University from the early hours of today (02). "The University area looks virtually like a battlefield with the unusual presence of heavily armed military personnel. You could see hundreds of soldiers guarding all the roads and lanes leading to the Jaffna University and carrying out random checks using sniff dogs on almost all the commuters in a threatening manner," the sources told the JDS from Jaffna via phone. "This has increased a very tensed atmosphere in the area and instilled fear among the students using the hostel facilities, especially after the arrest of four students by the Terrorism Investigation Division (TID). The students in the hostels are facing great difficulties even in getting their food as a result," the sources said... Meanwhile, a police team has visited the house of Management Faculty Union leader, Paranthaman Sabeskumar in the early hours of Sunday (02) to arrest him. As he was not present at home at the time of the police visit, his parents were ordered that he be produced at the Jaffna police station before noon to avoid them being arrested.

Sri Lanka's police chief, DIG N. Illankakoon when contacted by the leader of the Tamil National Alliance (TNA) R. Sampanthan, had claimed no knowledge of the predawn move by the police to arrest Sabeskumar. DIG Ilankakoon however, has confirmed to the TNA leader during his conversation via phone the arrest of the four other university students on Saturday, informing him that they were being kept and interrogated by the TID at the Vavuniya prison. Secretary of the Jaffna Students' Union Paramalingham Darshananth (24) of Kantharmadam, Arts Faculty Union President Kanakasundaraswami Jenamejyan (24) of Puthukkudiyiruppu, Science Faculty Union member Shamugam Solomon (24) of Jaffna and Ganeshamoorthy Sutharshan (22) of Urumpirai were arrested by the police on Saturday.

Police spokesman SSP Prashantha Jayakody has told the media in Colombo that these University students have been arrested "on charges of throwing petrol bomb at a pro-government Tamil party office in Jaffna and pasting posters supporting the militarily defeated Tamil Tiger rebels". The academic sources of the University, however, have rejected these charges as "fake, fabricated and politically-motivated to stifle the independency and integrity of the Jaffna University". "The military, which virtually runs the daily affairs of the north and the east despite the presence of a so-called civil administration, is hell-bent on establishing its administration even in the Jaffna University. It is unacceptable for the military to practise its anti-terrorism tactics on the innocent students' society in the war-ravaged Jaffna," he told the JDS from Jaffna...

66. The Tamil Guardian reported on 8 December 2012, as follows:

An 18 year old student was abducted by the Terrorism Investigations Department (TID) whilst in Valveddithurai (VVT), in Jaffna, reports TamilNet. The studnet, Arulampalam Dhishokraj is believed to have been abducted on Wednesday. The parents of Dishokraj received a telephone call

from the TID the next day, informing them that their son was in custody.

67. The Tamil Guardian reported on 9 December 2012, the view of Rajavarothiam Sampanthan a leading Sri Lankan Tamil politician, Member of Parliament and leader of the Tamil National Alliance and Illankai Tamil Arasu Kachchi.

Sampanthan outlines his views on militarisation of the North-East in the Sri Lankan parliament on Friday:

"There seems to be a rather mistaken belief among some people in this country that the Tamil people want the armed forces out of the North and East, that's not correct. Let me put it on record, that we realise and we accept that the armed forces have got to be present in the North and East, as they are in the whole country. We only ask that the presence of the armed forces in the North and the East, is not in such a manner as to be oppressive of the Tamil people, as to subjugate the Tamil people, as to make them feel that being whole citizens in this country."

"We don't want them there in such large numbers, because when they are there in such large numbers, their presence is oppressive. Their presence is a humiliation to us, their presence has an impact on our self-respect and dignity, it makes us unequal. It makes us second class citizens, that is what we don't want..."

Current airport surveillance and treatment of failed asylum seekers returning to Sri Lanka.

68. A letter from the British High Commission in Colombo to the UK Home Office, dated 5 January 2012, provides detailed information on entry procedures at Bandaranaike International Airport, Colombo. Aside from those in transit to onward flights, all passengers must present their passport and arrival card at immigration. The High Commission provides the following advice regarding security measures at immigration:

The immigration officer will scan the details page of the passport. Three scanned images of the details page will then appear on the computer screen shown in normal, ultra-violet and infrared light, along with basic details regarding the document and the holder. This enables the immigration officer to identify if the document has been forged or tampered with in any way. Each immigration officer's desk has a terminal connected to the DIE Border Control System. This system contains border control, visa/ETA details, and citizenship and passport records and is networked to the DIE office in Colombo. It is not linked to any police or military database; however, there is an alert list containing information relating to court orders, warrants of arrest, jumping bail, escaping from detention, as well as information from Interpol and the State Intelligence Service (SIS) computer system. The immigration officer will check for any data matches, check that the document is genuine and unaltered, and look through the passport for visas and/or endorsements. Dependent on the circumstances of the individual passenger, the immigration officer may ask questions to ascertain the purpose of the visit. Once satisfied that the passenger qualifies for entry, the immigration

officer will endorse the passport with an arrival stamp and hand back to the passenger. They will also endorse the arrival card which they retain.

The State Intelligence Service has an office in the immigration arrivals hall and officers from SIS usually patrol the arrivals area during each flight arrival. Invariably, if they notice a person being held up by DIE they approach them and take details in order to ascertain if the person may be of interest to them. Their office contains three computer terminals, two linked to SIS records and one belonging to the airport containing flight information.

69. Additionally, the British High Commission clarifies that people leaving Colombo airport do not encounter any permanent checkpoints on the airport link road connecting to the main A3 road. The first permanent checkpoint is on the bridge at Peliyagoda/Grandpass on entering the city; the number of vehicles stopped at this checkpoint had “significantly reduced” in the months prior to the High Commission’s advice.¹⁴ There is, however, a permanent checkpoint for vehicles entering the airport, on the road leading to the terminal buildings. At that checkpoint, “departing passengers often have to produce confirmation of ticketing and/or a passport”.¹⁵

Failed Asylum Seekers

70. Information from the Canadian, British and Australian governments states that all Sri Lankan nationals are treated in the same manner with regard to entry procedures into Sri Lanka. This information also indicates that failed asylum seekers and Tamils are not specifically targeted for adverse attention from the Sri Lankan authorities at the time of entry.¹⁶ Australian government information does indicate that non-voluntary returnees to Sri Lanka are likely to be interviewed by the police, the State Intelligence Service (SIS), or both.¹⁷ In July 2012, *The Australian* reported that the first failed Tamil asylum seeker to be deported from Australia to Sri Lanka following the end of the civil conflict was questioned on arrival for sixteen hours, before appearing at a press conference where he recanted claims of ill treatment by the Sri Lankan authorities.¹⁸ However, there is alternative information available from non-government organisations (NGOs), academics and media reports indicating that failed asylum seekers are specifically held for questioning, detained and arrested at the airport on return to Sri Lanka.¹⁹

¹⁴ UK Home Office 2012, *Sri Lanka: Country of Origin Information Report*, 7 March, pp.197-198

¹⁵ UK Home Office 2012, *Sri Lanka: Country of Origin Information Report*, 7 March, pp.195-198

¹⁶ Immigration and Refugee Board of Canada 2011, *Sri Lanka: Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport*, LKA103815.E, 22 August <http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e> Accessed 18 November 2011; Rutnam, E 2011, ‘UK satisfied with Lankan deportation’, *The Sunday Leader*, 26 June

<<http://www.thesundayleader.lk/2011/06/26/uk-satisfied-with-lankan-deportation/>> Accessed 18 November 2011; DIAC Country Information Service 2010, *Country Information Report No. 10/58 – Sri Lanka: Treatment of Tamils: CIS Request No LKA10612* (sourced from DFAT advice of 20 September 2010), 21 September

¹⁷ DIAC Country Information Service 2010, *Country Information Report No. 10/58 – Sri Lanka: Treatment of Tamils: CIS Request No LKA10612* (sourced from DFAT advice of 20 September 2010), 21 September

¹⁸ ‘Tamil man Dayan Anthony questioned, recants on torture claims’, *The Australian*, 27 July

<<http://www.theaustralian.com.au/national-affairs/immigration/tamil-man-dayan-anthony-questioned-recants-on-torture-claims/story-fn9hm1gu-1226436367903>> Accessed 14 August 2012

¹⁹ Immigration and Refugee Board of Canada 2011, *Sri Lanka: Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport*, LKA103815.E, 22 August <http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e>

71. The British High Commission provided advice to the UK Home Office on 5 January 2012 regarding the screening process for returnees at Bandaranaike International Airport, Colombo. The advice stated that security procedures for all returnees appeared to have relaxed, regardless of ethnicity. Relevant information regarding the screening process at the airport for involuntary returnees is included in full, below:

Returnees who are being escorted will be presented to the duty Chief Immigration Officer in the immigration arrivals hall by the escorting officers. Those who are not escorted should be presented to the duty Chief Immigration Officer by an airline official, although this does not happen in all cases. All returnees must be in possession of either a valid passport or an Emergency Passport issued by the Sri Lankan High Commission in London. They must also complete an arrival card, which they should have been given on the plane, and present this to immigration along with their passport.

UK returnees escorted or presented by the airline are immediately identifiable as returnees to DIE. Unescorted returnees travelling on Emergency Passports issued by the Sri Lankan High Commission in London will be questioned by DIE to ascertain if they are returnees. However, unescorted returnees travelling on their original passports will in all probability not even be questioned by DIE unless they bring themselves to the immigration officers' attention in some other way e.g. presenting a document containing forged or unauthorised endorsements.

DIE procedures are the same for all deported and returned Sri Lankan nationals and they will interview them merely to confirm their Sri Lankan nationality. They record the details of all returnees in a register (logbook) which is held in the duty Chief Immigration Officer's office. Once satisfied that a returnee is a Sri Lankan national in many cases they refer them to the State Intelligence Service (SIS) and the Criminal Investigations Department (CID). If DIE is not satisfied that a returnee is Sri Lankan, for example they suspect they are a national of another South Asian country, then [sic] under the UK–Sri Lanka bilateral readmission agreement, the person would be sent back to the UK. The State Intelligence Service (SIS) is often notified by the Sri Lankan High Commission in London about planned enforced returns from the UK. SIS interviews every deportee and ascertains the grounds for their deportation/removal, how they left Sri Lanka and their background. SIS keeps paper and computerised records. SIS paper records date back 60 years and are currently being put onto a computer database. SIS computer records are available at the airport to both SIS and (on request) CID officers.

Once SIS has completed their interview the returnee is then passed to CID. The main CID offices are on the ground floor adjacent to the DIE embarkation control, and underwent a complete refurbishment in 2010 funded by the Australian government. The office suite has three purpose built interview rooms, and facilities where returnees can relax and eat meals. All returnees/deportees passed to CID are interviewed, photographed and wet fingerprinted. The main objective of these interviews is to establish if the returnee has a criminal record, or if they are wanted or suspected of committing any criminal offences. The photographs are stored on a standalone computer in the CID office at the airport and the fingerprints remain

cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e> Accessed 18 November 2011; 'Tamils heavily victimised at Colombo airport' 2011, *Sri Lanka Guardian*, 5 January <<http://www.srilankaguardian.org/2011/01/tamils-heavily-victimised-at-colombo.html>> Accessed 18 November 2011; Edmund Rice Centre 2010, *One year after the war Sri Lanka is not safe*, 19 May <http://www.erc.org.au/index.php?module=documents&JAS_DocumentManager_op=viewDocument&JAS_Document_id=260> Accessed 18 November 2011

amongst paper records in the same office. Checks are initiated with local police, but returnees are released to a friend or relative, whom CID refers to as a surety. The surety must provide their personal details and accept responsibility for the returnee. They are not required to lodge any money with CID. Some returnees have subsequently informed the British High Commission that around a week after they have returned to their home address they receive a follow-up visit from their local police to confirm their presence. On completion of their procedures CID will walk the returnee back to DIE. The duty immigration officer will then endorse the returnee's passport/emergency passport with an immigration arrival stamp and hand it back to the returnee. The returnee will then be allowed to proceed to the Duty Free area, baggage reclaim and Customs. Emergency passports are considered full official documents issued by the Sri Lankan authorities. They are a proof of identity and are valid to go through any checkpoints.

72. The British High Commission noted six instances of returnees from the United Kingdom being detained on arrival. Two were arrested for forgery offences in 2010, three for forgery offences in 2011 and one was arrested due to an outstanding arrest warrant in 2011.²⁰
73. In August 2011, the Research Directorate of the Immigration and Refugee Board of Canada (IRB) published a research response which provided information from a number of sources on the treatment of Tamil returnees, including failed asylum seekers, on their return to Sri Lanka.²¹ It was reported that an official from the Canadian High Commission in Sri Lanka had sought information “from Sri Lankan government officials, mission staff and other in-country stakeholders” and had provided the information that had been gathered to the IRB on 16 August 2011. This information indicated that Sri Lankan nationals are subject to the same screening process on their return to Sri Lanka, regardless of their ethnicity. It was noted that persons removed to Sri Lanka are interviewed at the airport by security forces to obtain information in relation to human trafficking and smuggling. In addition, it was stated that criminal background checks of returnees are also conducted which may take 24 to 48 hours to complete.²² A Canadian High Commission official stated that the High Commission was aware of “only four cases” of persons being detained upon arrival. The official indicated that these cases “involved outstanding criminal charges in-country and were not related to their overseas asylum claims or their ethnicity”.²³
74. An article from the *Sunday Leader*, published on 26 June 2011, included the transcript of an interview with Chris Dix, South Asia Regional Director of the UK Border Agency. This interview took place in the immediate aftermath of 26 failed asylum seekers from Sri Lanka being returned from the United Kingdom. In response to a

²⁰ UK Home Office 2012, *Sri Lanka: Country of Origin Information Report*, 7 March, pp.202-203

²¹ Immigration and Refugee Board of Canada 2011, *Sri Lanka: Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport*, LKA103815.E, 22 August <http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e> Accessed 18 November 2011

²² Immigration and Refugee Board of Canada 2011, *Sri Lanka: Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport*, LKA103815.E, 22 August <http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e> Accessed 18 November 2011

²³ Immigration and Refugee Board of Canada 2011, *Sri Lanka: Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport*, LKA103815.E, 22 August <http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e> Accessed 18 November 2011

question regarding the monitoring that was conducted by British authorities of persons deported to Sri Lanka, Dix expressed the view that there was no evidence of safety issues on return for deportees.²⁴

75. In September 2010, DFAT provided the following information to DIAC regarding the checks that were being undertaken at that time on Tamils returning to Sri Lanka. DFAT also stated that Tamils were subject to the same entry procedures as other Sri Lankan citizens. It was noted, however, that non-voluntary returnees would be likely to be interviewed by the police, the State Intelligence Service (SIS), or both. DFAT noted that a person may be held by the CID for up to approximately twelve hours until checks were finalised²⁵
76. There is alternative information available which indicates that Tamils and failed asylum seekers are being specifically targeted by the Sri Lankan authorities on their return. For example, according to a September 2011 *BBC Sinhala* report, Amnesty International reportedly stated that “the end of the conflict two years ago had not diminished the risks faced by failed Sri Lankan asylum seekers” Amnesty International were also said to be maintaining “that deportees face arrest and detention upon their return”.²⁶
77. In its aforementioned August 2011 research response, the IRB indicated that a joint submission had been prepared for its Research Directorate which provided information regarding the treatment of deportees and failed asylum seekers on their arrival in Sri Lanka. The joint submission, dated 18 July 2011, was prepared by four parties: the Law and Society Trust,²⁷ the INFORM Human Rights Documentation Centre,²⁸ Networking for Rights in Sri Lanka,²⁹ and “a human rights lawyer in the United Kingdom”.³⁰ The submission indicated that immigration authorities were alerted about the impending arrivals of failed asylum seekers, and that persons who are deported to Sri Lanka or returned as a failed asylum seeker were subjected to “special questioning” by police and members of the TID at the airport on arrival. The submission also indicated that such persons were “almost always detained” for varying periods “until security clearance is obtained”. The submission also indicated that Tamil returnees were particularly vulnerable if they arrived individually and no one knew they were arriving.³¹

²⁴ Rutnam, E 2011, ‘UK satisfied with Lankan deportation’, *The Sunday Leader*, 26 June <<http://www.thesundayleader.lk/2011/06/26/uk-satisfied-with-lankan-deportation/>> Accessed 18 November 2011

²⁵ DIAC Country Information Service 2010, *Country Information Report No. 10/58 – Sri Lanka: Treatment of Tamils: CIS Request No LKA10612* (sourced from DFAT advice of 20 September 2010), 21 September

²⁶ ‘Deported asylum seekers released’ 2011, *BBC Sinhala*, 29 September <http://www.bbc.co.uk/sinhala/news/story/2011/09/110929_returnees.shtml> Accessed 18 November 2011

²⁷ The Law and Society Trust is “a non-profit organization based in Colombo that is “conducting human rights documentation, research and advocacy” work.

²⁸ The INFORM Human Rights Documentation Centre is a Sri Lankan human rights organization that has been active since 1989 and that focuses on monitoring, documentation and networking

²⁹ Networking for Rights in Sri Lanka is “a group creating a national and international network of Sri Lankan human rights defenders” .

³⁰ Immigration and Refugee Board of Canada 2011, *Sri Lanka: Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport*, LKA103815.E, 22 August <http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e> Accessed 18 November 2011

³¹ Immigration and Refugee Board of Canada 2011, *Sri Lanka: Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government*

78. A *Sri Lanka Guardian* report, published on 5 January 2011, made reference to “the heavy presence of the intelligence officers” at Colombo International Airport. In addition, it stated that “Tamils travelling from overseas are being systematically targeted and put through extensive interrogative processes for several hours”. Terrorism Investigation Department (TID) officials were reportedly “armed with airline passenger lists single out individuals and take them into custody. Some of them are held at the airport for several hours and interrogated whilst some are taken away in unmarked white vans to unknown destinations” In relation to what happens to persons taken away in “unmarked white vans”, it was stated that “according to airport sources, some of those taken in unmarked vehicles are taken to unknown places and their fate is not known unless they are released”. It was reported that there had been an increase in the arrest of “Tamils from London” after “the failed visit of the President Mahinda Rajapakse to the UK”.³²
79. Reports refer to specific examples of both failed asylum seekers from Sri Lanka and Tamils being detained at the airport on arrival in that country. For example, in September 2012, Human Rights Watch claimed to have documented thirteen cases whereby failed Tamil asylum seekers had been subjected to arbitrary arrest and ill treatment, including torture and sexual assault, on their return to Sri Lanka. In several cases, returnees were detained at the airport by CID officials.³³ Non-government organisation Freedom From Torture has also published a report in September 2012, documenting 24 cases whereby Tamils who returned to Sri Lanka from the United Kingdom voluntarily were allegedly detained and tortured. In many cases, the returnees were detained within a month of their return, often at their homes or at checkpoints.
80. One case involved detention on arrival. Many of the returnees had real or perceived associations with the LTTE, and were interrogated about these links during detention. Five detainees were reportedly interrogated about “their own activities and/or the activities of other Tamils in the UK in support of the LTTE”.³⁴ This report builds on an earlier Freedom From Torture report published in 2011, which concluded that “notwithstanding the formal conclusion of hostilities, Tamils with an actual or perceived association with the LTTE remain at particular risk of detention and torture in Sri Lanka”.³⁵
81. A report from *BBC Sinhala*, published on 29 September 2011, makes reference to the case of 50 Sri Lankan nationals who had been deported back to Sri Lanka from the United Kingdom. It was stated in this report that most of the deportees were “ethnic

authorization to leave the country, such as a passport, LKA103815.E, 22 August <http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453562&l=e> Accessed 18 November 2011

³² ‘Tamils heavily victimised at Colombo airport’ 2011, *Sri Lanka Guardian*, 5 January <<http://www.srilankaguardian.org/2011/01/tamils-heavily-victimised-at-colombo.html>> Accessed 18 November 2011

³³ Human Rights Watch 2012, *United Kingdom: Document containing cases of Sri Lankan deportees allegedly tortured on return*, 15 September <<http://www.hrw.org/news/2012/09/15/united-kingdom-document-containing-cases-sri-lankan-deportees-allegedly-tortured-ret>> Accessed 27 September 2012

³⁴ Freedom from Torture 2012, ‘Sri Lankan Tamils tortured on return from UK’, 13 September <http://www.tamilnet.com/img/publish/2012/09/Freedom_from_Torture_briefing92012.pdf> Accessed 17 September 2012

³⁵ Freedom from Torture 2011, *Out of the Silence: New Evidence of Ongoing Torture in Sri Lanka 2009-2011*, p.23 <http://www.freedomfromtorture.org/sites/default/files/documents/Sri%20Lanka%20Ongoing%20Torture%20Report_for%20release%208%20Nov%20-%20with%20cover.pdf> Accessed 12 September 2012

Tamil asylum seekers”,³⁶ while a report from *The Island* stated that all 50 of the deportees had been “denied political asylum”.³⁷ On their return to Sri Lanka, the deportees were reportedly “initially detained by the police at Colombo international airport”, but were then released after questioning.³⁸

82. According to a 2012 article on Tamil Net, a “28-year-old Tamil man, recently deported from the UK was found killed in Trincomalee on 18 April” The man had reportedly seen “strange persons” wandering around his house earlier in the day, and had warned relatives not to go out. The report noted another returnee, had been “knifed to death by a motorbike squad in a Sri Lanka Army camp in Vadamaraadchi on Tuesday”, and that while ‘white-van’ disappearances were well-known, “the present trend seems to be the use of a knife”.³⁹
83. A May 2010 press release from the Edmund Rice Centre “an Australian research, advocacy and networking organization that also works with refugees and asylum seekers”, al provides information indicating that Tamils and failed asylum seekers from Sri Lanka are at risk of mistreatment on their return to that country. Phil Glendenning, the Director of the Centre, was quoted as stating that “the attitude held by the authorities is that any Tamil who fled the country in an unauthorized way must be an LTTE sympathizer, or if they are Sinhalese, then they must be a traitor. Glendenning also indicated that failed asylum seekers returned to Sri Lanka were being taken into custody by Sri Lankan security forces, with some being detained or assaulted. “One man who is still in jail has lost the hearing in one ear given the severity of the assault he suffered, and another has received damage to his sight.”
84. A report from Amnesty International, published on 17 June 2011, refers to 26 failed asylum seekers from Sri Lanka, “most of them Tamil”, being taken in for questioning on their arrival in Colombo. Yolanda Foster, Amnesty International’s Sri Lanka researcher, was quoted as stating that “the government of Sri Lanka have a history of arresting and detaining rejected Sri Lankan asylum seekers upon their return and we are aware of cases of people being tortured”.⁴⁰ Immediately prior to the deportation of these failed asylum seekers to Sri Lanka, Human Rights Watch had expressed the view that “Sri Lankan nationals who have been affiliated with or are considered to be supporters of the Liberation Tigers of Tamil Eelam (LTTE), would be at significant risk of persecution if deported back to Sri Lanka”.⁴¹ The *Sunday Observer* reported on 19 June 2011 that Sri Lanka Police had found “no criminal charges” against the 26 failed asylum seekers. A police spokesman reportedly stated that none of these failed asylum seekers had been arrested and they had all “already returned to their homes” The report

³⁶ ‘Deported asylum seekers released’ 2011, *BBC Sinhala*, 29 September

<http://www.bbc.co.uk/sinhala/news/story/2011/09/110929_returnees.shtml> Accessed 18 November 2011

³⁷ Gunasekara, L & Nivunhella, S 2011, ‘Fifty deportees arrive from UK’, *The Island*, 29 September

<http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=35789> Accessed 18 November 2011

³⁸ ‘Deported asylum seekers released’ 2011, *BBC Sinhala*, 29 September

<http://www.bbc.co.uk/sinhala/news/story/2011/09/110929_returnees.shtml> Accessed 18 November 2011

³⁹ Tamil Net 2012, ‘UK deportee killed while Tamil Nadu returnees arrested in Trincomalee’, 28 April

<<http://www.tamilnet.com/art.html?catid=13&artid=35136>> Accessed 30 April 2012

⁴⁰ ‘Sri Lanka must not torture rejected asylum seekers’ 2011, *Amnesty International*, 17 June

⁴¹ Human Rights Watch 2011, *Letter to United Kingdom’s Home Secretary Theresa May and Foreign Secretary William Hague on Deportation of Rejected Asylum*, 16 June <<http://www.hrw.org/news/2011/06/16/letter-united-kingdom-s-home-secretary-theresa-may-and-foreign-secretary-william-hag>> Accessed 18 November 2011

indicated that the group of 26 comprised 15 Tamils, seven Muslims and four Sinhalese.⁴² A report from *The Sunday Leader* stated that not all of the 26 were asylum seekers, referring to a claim by one of the deportees that he and others among the group were student visa over stayers instead.⁴³

Current information regarding young Tamils suspected of supporting the LTTE returning to Sri Lanka.

85. The USDOS reported a drop in extrajudicial killings during 2011. There were, however, reports from non-government organisations that the Sri Lankan government maintains undisclosed detention facilities where suspected LTTE sympathisers have been detained, interrogated, tortured and sometimes killed. Up to 3,000 detainees were thought to be held in undisclosed detention facilities, police stations, army or paramilitary camps, and other CID or TID facilities. Many of these people have reportedly been “detained incommunicado without charge or trial”. Additionally, the USDOS noted that some killings during 2011 appeared to be politically motivated and target LTTE supporters.⁴⁴
86. By contrast, the USDOS also reports that 10,200 people formerly detained as LTTE combatants had been released from the government’s “rehabilitation centres” by the end of 2011. An additional 700 “hard core” LTTE supporters were reportedly transferred to the criminal justice system. Detainees tended to face military surveillance, social stigma and employment difficulties after their release.⁴⁵
87. Amnesty International reported in 2011 that detainees suspected of belonging to the LTTE continued to face heightened risk of torture and other forms of ill-treatment at the hands of the TID and CID⁴⁶. Freedom House stated in 2012 that “there has been no decline in the use of torture against LTTE suspects over the last two years.”⁴⁷

The current situation in Colombo for a young Tamil male with suspected LTTE links

88. Major reports from non-government organisations allege that torture and other ill treatment of suspected LTTE sympathisers remains widespread.^{48 49} Two of the cases of detention and interrogation documented by Freedom from Torture, referred to in the preceding pages, involved detainees from Colombo.⁵⁰ Several of the cases documented

⁴² Yatawara, D 2011, ‘All UK deportees now in their homes in Sri Lanka’, *Sunday Observer*, 19 June <<http://www.sundayobserver.lk/2011/06/19/sec02.asp>> Accessed 18 November 2011

⁴³ Anver, G & Wickrematunge, R 2011, ‘Deportees return to Lankan soil’, *The Sunday Leader*, 19 June <<http://www.thesundayleader.lk/2011/06/19/deportees-return-to-lankan-soil/>> Accessed 18 November 2011

⁴⁴ US Department of State 2012, *Country Reports on Human Rights Practices 2011 – Sri Lanka*, 24 May, Section 1

⁴⁵ US Department of State 2012, *Country Reports on Human Rights Practices 2011 – Sri Lanka*, 24 May, Section 1

⁴⁶ Amnesty International 2011, *Sri Lanka: Briefing to the UN Committee against Torture*, October, p.10.

⁴⁷ Freedom House 2012, *Countries at the Crossroads 2012 – Sri Lanka*

⁴⁸ Amnesty International 2012, *Annual Report 2012 – Sri Lanka*, 24 May

⁴⁹ Freedom House 2012, *Freedom in the World 2012 – Sri Lanka*, UNHCR Refworld, 22 August <<http://www.unhcr.org/refworld/docid/503c7222b.html>> Accessed 18 September 2012

⁵⁰ Freedom from Torture 2012, ‘Sri Lankan Tamils tortured on return from UK’, 13 September <http://www.tamilnet.com/img/publish/2012/09/Freedom_from_Torture_briefing92012.pdf> Accessed 17 September 2012, pp, 4; 9

<file://ntssyd/refer/Research/2012/Web/LKA%20Sri%20Lankan%20Tamils%20tortured%20on%20return%20from%20the%20UK.pdf>

by Human Rights Watch also involved returnees who were either from Colombo or detained shortly after arriving in Colombo.⁵¹

89. In January 2012, *The Economist* reported that “white van abductions” have continued to occur in Colombo.⁵² A December 2011 article from *Lakbima News*⁵³ stated that rather than targeting suspected LTTE supporters, white van abductions had begun targeting criminals and drug traffickers.⁵⁴ On 8 January 2012 *Lankaenews*⁵⁵ reported five abductions by white vans within the first six days of the New Year, one of which occurred in Colombo.⁵⁶ A Tamil businessman from Wellawatte, Colombo was reportedly abducted in February 2012. The businessman was reportedly due to testify before the Supreme Court in a case filed regarding his treatment by authorities when he was detained during 2009-2011 on suspicion of being an LTTE supporter.⁵⁷
90. In January 2012, an adjunct professor advised the Immigration and Refugee Board of Canada (IRBC) that reporting abductions to the police can be difficult as police officers in Colombo do not generally speak Tamil, and because police may suspect those reporting an abduction of having LTTE connections.⁵⁸
91. A December 2010 posting on the Sri Lanka Defence Forum blog site alleged that Tamil businessmen in Jaffna and Colombo had been targeted for interrogation by police as to whether they had paid the LTTE while supplying goods to areas under its control during the civil war. According to a Tamil spokesperson quoted in the article, every trader in the area had been obliged to pay money to the LTTE during this time regardless of their ethnicity.⁵⁹

Registration Requirements

92. Forced registration projects targeting Tamil areas of Colombo have occasionally occurred in Tamil neighbourhoods. According to the UNHCR, from July 2008, citizens arriving in Colombo from war-affected regions were required to register with the

⁵¹ Human Rights Watch 2012, *United Kingdom: Document containing cases of Sri Lankan deportees allegedly tortured on return*, 15 September <<http://www.hrw.org/news/2012/09/15/united-kingdom-document-containing-cases-sri-lankan-deportees-allegedly-tortured-ret>> Accessed 27 September 2012

⁵² ‘Murky business’ 2012, *The Economist*, 14 January <<http://www.economist.com/node/21542827>> Accessed 17 January 2012

⁵³ *Lakbima* is an online Sinhala language daily newspaper which is also published in English. It is published by the Sumathi Group of newspapers.

⁵⁴ ‘Weerasingha, G K 2011, ‘White vans now dole out justice!’, *Lakbima News*, 9 December, <<http://www.srilankabrief.org/2011/12/white-vans-now-dole-out-justice.html>> Accessed 13 January 2012

⁵⁵ *Lankaenews* claims to be an independent news source which aims to “record and disseminate information which will strengthen human rights, governance and democratic process for conflict transformation in Sri Lanka”.

⁵⁶ ‘White Van killing syndrome rages –Another Secretary of Mervyn abducted –no information on victim yet’ 2012, *Lankaenews*, 8 January <<http://www.Lankaenews.com/English/news.php?id=12603>> Accessed 13 January 2012

⁵⁷ Tamil Net 2012, *Abductions on rise in Colombo*, 15 February <<http://www.tamilnet.com/art.html?catid=13&artid=34881>> Accessed 16 February 2012

⁵⁸ Immigration and Refugee Board of Canada 2012, *Sri Lanka: Treatment of Tamils in Colombo by members of the Sri Lankan security forces and police; registration requirements in Colombo for Tamil citizens (2007-2008)*, LKA103960.E, 9 February, UNHCR Refworld <http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453825&l=e> Accessed 18 September 2012

⁵⁹ Balachandran, P K 2010, ‘TULF protests interrogation of Tamil traders’ Sri Lanka Defence Forum, 11 December <<http://srilankadefenceforum.blogspot.com/2010/12/tamil-leadership-solely-responsible-for.html>> Accessed 18 September 2012

police. There were allegations that the police used information gathered in these registration exercises to target Tamil civilians for arrest.⁶⁰ The British High Commission 2010 advice notes that in May 2010, the newly elected government announced that compulsory registration of household members would cease.⁶¹

93. In August 2011, the Sri Lanka Advocacy Group reported that the issue of registration in Colombo was “confusing” – whilst the May 2010 emergency regulations had been lifted and there was no legal requirement for visitors to register with local police, police still inquired as to registration from Tamils, and subjected them to scrutiny if they did not have a registration document.⁶² In August 2011, Tamil Net reported that military officers had been registering young Tamils who were staying temporarily in Colombo, particularly along Wellawatte-Galle road.⁶³ Tamil Net report also reported in November 2011 that registration was occurring in Kotahena police division.⁶⁴ According to February 2012 advice from the British High Commission, an unnamed “non-government organisation with offices in several parts of the country” reported that there is no mandatory system of police registration. There is, however, a voluntary system of police registration, and clients of the organisation who were staying in Colombo temporarily were sometimes advised to register with the police “just to cover themselves”.⁶⁵

The general situation for Tamils in Colombo

94. Regarding discriminatory treatment towards Tamil residents more generally, Freedom House reports that Tamils claim to have limited access to government employment, university education and access to justice. Freedom House also reports that the government does not take adequate measures to prevent or contain ethnic tensions.⁶⁶ In July 2012, *IRIN News* reported that it could still be difficult for Tamil speakers to obtain employment, a driving licence or passport, or attend a government hospital in Colombo. Police reports also apparently tend to be written in Sinhala.⁶⁷ There are few Tamil-speaking officers within the police force.⁶⁸
95. However, in a 2011 report, Minority Rights Group International noted that many Tamils in Colombo have been successful in business and other professions, and do not

⁶⁰ United Nations High Commissioner for Refugees 2009, *UNHCR eligibility guidelines for assessing the international protection needs of asylum-seekers from Sri Lanka*, April, pp. 13-14

<<http://www.unhcr.org/refworld/docid/49de0b6b2.html>> Accessed 15 April 2009

⁶¹ UK Home Office 2012, *Country of Origin Information Report – Sri Lanka*, 7 March, p.190

⁶² Sri Lanka Advocacy Group 2011, *Sri Lanka Asylum Seekers: New Challenges*, 17 August, <<http://www.srilankabrief.org/2011/08/sri-lanka-asylum-seekers-new-challenges.html>> Accessed 13 December 2011

⁶³ Tamil Net 2011, *SL Army begins registering Tamils in Colombo*, 22 August

<<http://www.tamilnet.com/art.html?catid=13&artid=34331>> Accessed 13 September 2012

⁶⁴ Tamil Net 2011, *Police launches re-registration of Tamil residents in Colombo*, 21 November

<<http://www.tamilnet.com/art.html?catid=13&artid=34631>> Accessed 21 November 2011

⁶⁵ UK Home Office 2012, *Country of Origin Information Report – Sri Lanka*, 7 March, pp.190-191

⁶⁶ Freedom House 2012, *Freedom in the World 2012 – Sri Lanka*, UNHCR Refworld, 22 August

<<http://www.unhcr.org/refworld/docid/503c7222b.html>> Accessed 18 September 2012

⁶⁷ ‘Bridging the language divide in Sri Lanka’ 2012, *IRIN News*, UNHCR Refworld, 23 July

<[http://www.unhcr.org/cgi-](http://www.unhcr.org/cgi-bin/taxis/vtx/refworld/rwmain?page=country&docid=501005892&skip=0&coi=LKA&querysi=Tamil%20Colombo&searchin=fulltext&display=10&sort=date)

[bin/taxis/vtx/refworld/rwmain?page=country&docid=501005892&skip=0&coi=LKA&querysi=Tamil Colombo&searchin=fulltext&display=10&sort=date](http://www.unhcr.org/cgi-bin/taxis/vtx/refworld/rwmain?page=country&docid=501005892&skip=0&coi=LKA&querysi=Tamil%20Colombo&searchin=fulltext&display=10&sort=date)> Accessed 18 September 2012

⁶⁸ US Department of State 2012, *Country Reports on Human Rights Practices 2011 – Sri Lanka*, 24 May, Section 2(d)

share views expressed by Tamils from conflict areas in the north that the President has an ethnic bias that affects equal access to development opportunities.⁶⁹

FINDINGS AND REASONS

96. The applicant travelled to Australia by boat and sought asylum. The Tribunal accepts, as did the delegate, that the applicant is a [age deleted: s.431(2)] old Tamil male from Jaffna in the North of Sri Lanka and has assessed his claims against Sri Lanka as his country of nationality.
97. The Tribunal finds that the applicant is outside his country of nationality as required by Article 1A(2). There is nothing in the evidence before the Tribunal to suggest that the applicant has a legally enforceable right to enter and reside in any country other than Sri Lanka. Therefore the Tribunal finds that the applicant is not excluded from Australia's protection by subsection 36(3) of the Act.
98. The Tribunal found the applicant to be a convincing witness who has given a reasonably consistent account of his experiences during the war and the experiences which led to his departure from Sri Lanka. The Tribunal accepts that the applicant is a young Tamil male from Jaffna in the north of Sri Lanka. The Tribunal accepts that he and his family were displaced during the war; that they lived in camps for displaced persons in [the mid and late 1990's] and that the applicant lived in a [hostel] for Tamil children for two years. The Tribunal accepts that the applicant was injured in a bomb blast [in] 2003 and this has left him with [scars]. It is noted that the applicant lived with his family in [Town 2] from 2003 until 2010 and then he returned with his family to their home in Jaffna.
99. The applicant claims, and the Tribunal accepts, that in [early] 2012, he was involved in a fight at a cricket match which led his being detained for 4 days, appearing in Court, and being required to report to the police on a weekly basis for a period of 6 months. The Tribunal also accepts that the applicant was subsequently questioned and later detained and interrogated by the CID and that during the course of the interrogation he was questioned about being an LTTE fighter during the war. He claims he was suspected of being an LTTE fighter because of the [scarring], his absence from his home for several years during the height of the war, and the accusations made against him by the people he fell out with at the cricket game and who did not support the LTTE. The Tribunal found the applicant's evidence in this regard to be consistent and convincing.
100. Various country reports support the applicant's claims of being questioned by the CID and later detained and interrogated by the CID regarding his links with the LTTE. For example, the United States Department of State (USDOS), reports that *harassment of young and middle-aged Tamil men by security forces and paramilitary groups frequently took place in Sri Lanka's northern and eastern regions during 2011*. In May 2012, the US Department of State reported paramilitaries in the east and north of Sri Lanka have assisted state security agencies to detect and apprehend "civilians suspected of LTTE connections" The report also states that interrogation of detainees sometimes included torture:

⁶⁹ Minority Rights Group International 2011, *No War, No Peace: The Denial of Minority Rights and Justice in Sri Lanka*, 19 January, p. 5 <<http://www.minorityrights.org/download.php?id=921>>Accessed 28 March 2011

In the east and the north, military intelligence and other security personnel, sometimes working with armed paramilitaries, were responsible for the documented and undocumented detention of civilians suspected of LTTE connections. Detention reportedly was followed by interrogation that frequently included torture. There were reports that detainees were released with a warning not to reveal information about their arrest or detention, under the threat of rearrest or death.⁷⁰

101. Amnesty International alleges that ill-treatment of people detained on suspicion of being LTTE sympathisers remains widespread,⁷¹ and Freedom House states that “there has been no decline in the use of torture against LTTE suspects over the last two years”. In addition there has been a sharp increase in the “kidnappings of Tamils” There were also reports from non-government organisations that the Sri Lankan government maintains undisclosed detention facilities where suspected LTTE sympathisers have been detained, interrogated, tortured and sometimes killed. Up to 3,000 detainees were thought to be held in undisclosed detention facilities, police stations, army or paramilitary camps, and other CID or TID facilities. Many of these people have reportedly been “detained incommunicado without charge or trial” Additionally, the USDOS noted that some killings during 2011 appeared to be politically motivated and target LTTE supporters.⁷² The information in these, and other reports, supports the applicant’s claims of having been questioned by the CID in [early] 2012 and later, in April 2012, having been detained, interrogated, physically mistreated and threatened by the CID.
102. The Tribunal has to assess whether or not the applicant has a well-founded fear of persecution in the reasonably foreseeable future in Sri Lanka. The applicant states that in Jaffna the Sri Lankan army is everywhere and it is impossible to avoid them. This is confirmed by independent reports, including those cited in paragraphs 65-67 above, which indicate that there is a heavy military presence in Jaffna. He also claims that he was told by the CID not to leave his home area, and if he did so, he was to leave information about his whereabouts at his home so that the CID would know where he had gone. The applicant claims to fear that he will be detained, interrogated, and hurt or killed by the CID if he returns to Sri Lanka.
103. The Tribunal finds, after assessing all the evidence, including very recent independent country information reports relating to the adverse treatment of Tamils in the north and east of Sri Lanka, that the applicant’s past detention, interrogation and physical assault, is a part of the *frequent harassment of young and middle-aged Tamil men by security forces and paramilitary groups*.
104. As it is accepted that the applicant has been questioned and threatened in [early] 2012 and detained and mistreated in early April 2012, and after considering the country information regarding the treatment of young Tamil males in Tamil dominated regions in the north and east of Sri Lanka, the Tribunal finds that there is a real chance the applicant will be detained and mistreated in the reasonably foreseeable future in Sri

⁷⁰ US Department of State 2012, *Country Reports on Human Rights Practices for 2011 – Sri Lanka*, 24 May, Section 1.c

⁷¹ Amnesty International 2012, *Annual Report 2012 – Sri Lanka*, 24 May

⁷² US Department of State 2012, *Country Reports on Human Rights Practices 2011 – Sri Lanka*, 24 May, Section 1

Lanka. The Tribunal finds that the treatment amounts to serious harm (s.91R(1)(b), s.91R(2)), and systematic and discriminatory conduct in that it is not random or arbitrary but targeted at Tamils and those perceived to be supportive of the LTTE (s.91R(1)(c)). Furthermore it is treatment based on the essential and significant reasons of the Convention grounds of race (Tamil ethnicity), imputed political opinion, and membership of a particular social group (young Tamil men in the Jaffna region) (s.91R(1)(a)). In the Tribunal's view this social group complies with the legal requirements for particular social groups in that all members of the group are identifiable by common characteristics or attributes which distinguishes the group from the society at large, namely their Tamil ethnicity, their youth and their geographical location. Whilst the applicant's fears of harm relate to his being a young Tamil male from Jaffna, this fear of harm is not the characteristic which is common to all members of the group and which makes it an identifiable group. The group is an identifiable social group because of the members' shared ethnicity, their shared age group and their shared geographical location. (See *Applicant S v MIMA* (2004) 217 CLR 387 at [36]).

105. The Tribunal considered whether relocation to another part of Sri Lanka, such as [Town 2] or Kandy where [some of his siblings] live, is a reasonable option for the applicant. However, given that the agents of persecution in this case are agents of the State, and given the relatively small size of Sri Lanka, the Tribunal accepts that the applicant faces persecution throughout Sri Lanka. This finding is supported by the country information which indicates that the applicant may have to register if he relocates to Colombo or elsewhere and that if he does not register, as a young Tamil male from Jaffna, he would be subject to scrutiny. Independent country reports also indicate that young Tamil men are at risk of detention and interrogation, and that detention involves torture. (see Amnesty International Report 2012; Freedom from Torture 2012; Human Rights Watch 2012; and United States Department of State 2012, Country Reports on Human Rights Practices 2011 – Sri Lanka).
106. After assessing all the evidence, the Tribunal is satisfied that the applicant has a well-founded fear of persecution in the reasonably foreseeable future in Sri Lanka and meets the criterion at s.36(2)(a).

CONCLUSIONS

107. The Tribunal is satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a).

DECISION

108. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s36(2)(a) of the Migration Act.