

2 July 2014

Office of the High Commissioner for Human Rights
United Nations Office at Geneva
8-14 Avenue de la Paix
1211 Geneva 10
SWITZERLAND

By email: urgent-action@ohchr.org

To: Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment
Mr Juan Ernesto Méndez

Copy: The Hon Scott Morrison, Minister for Immigration and Border Protection
The Hon George Brandis, Attorney-General for Australia

Dear Sir

Request for urgent action on the incommunicado detention and potential refoulement of asylum seekers in Australia's custody

We write in relation to two groups of Sri Lankan asylum seekers, including at least 37 children, who were reportedly travelling to Australia to claim protection. Circumstantial evidence and logical inference suggest that these asylum seekers have been intercepted at sea by Australian officials and are being held incommunicado with a view to transferring them to the custody of Sri Lankan officials.

We are concerned that both groups will be returned to Sri Lanka without any opportunity to make a protection claim and in contravention of Australia's non-refoulement obligations.

The first boat

There are reports that a boat carrying 153 Tamil asylum seekers has been intercepted by Australian authorities and that those aboard are going to be handed over to the Sri Lankan military.¹

The attached statement from Mr Ian Rintoul (see **Attachment 1**) outlines the information provided to him by asylum seekers on the boat. The asylum seekers had advised they were Tamils from Sri Lanka who were coming to Australia via the Indian state of Tamil Nadu.

Despite previous contact, the asylum seekers have not been heard from for three days. The Australian Government will not disclose the current whereabouts of the asylum seekers, whether they are in Australian custody and, if so, where they will be sent, citing its policy of not commenting on “on water matters”.² The circumstantial evidence and logical inference strongly suggest that they are being held incommunicado by Australia, in violation of Article 9 of the *International Covenant on Civil and Political Rights*.

We are gravely concerned that these asylum seekers will be denied the opportunity to make a protection claim and will be returned to Sri Lanka in contravention of Australia’s non-refoulement obligations under the *Refugee Convention*, the *International Covenant on Civil and Political Rights* and the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

The second boat

There are reports that a second boat carrying 50 Sri Lankan asylum seekers has also been intercepted by Australian authorities after departing from Sri Lanka. As with the first boat, the Australian Government refuses to confirm the whereabouts of the asylum seekers and will not disclose where it plans to send them.

There are reports that these asylum seekers have been subjected to a dramatically abbreviated ‘screening’ process involving a single, four-question interview conducted on the high seas without any legal assistance.³

Such a truncated and unfair process is no substitute for a more comprehensive refugee status determination and carries inherent risks of refoulement.

Imminent human rights violations

There are reports that Australia may involuntarily return the asylum seekers to Sri Lanka, despite the very real prospect that such action would expose them to a risk of torture, persecution or other serious human rights violations. Doing so would place Australia in clear breach of its non-refoulement obligations under Article 33(1) of the *Refugee Convention*, Article 7 of the *International Covenant on Civil and Political Rights* and Article 3 of the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

Many of the asylum seekers facing return to Sri Lanka are likely to have valid protection claims. Historically, 90 percent of Sri Lankan boat arrivals to Australia have been found to be refugees.⁴ In

¹ See Sarah Whyte, ‘Tamil asylum seekers handed over to Sri Lankan navy, according to reports’ *The Age*, available at <http://www.theage.com.au/federal-politics/political-news/tamil-asylum-seekers-handed-over-to-sri-lankan-navy-according-to-reports-20140701-zssnn.html>

² See Oliver Laughland, ‘Morrison silent on details of boats carrying more than 200 asylum seekers’, *The Guardian*, available at <http://www.theguardian.com/world/2014/jun/30/morrison-silent-asylum-seeker-boats>

³ See Sarah Whyte, ‘Immigration Department officials screen asylum seekers at sea via teleconference-20140702-3b837.html’ <http://www.theage.com.au/federal-politics/political-news/immigration-department-officials-screen-asylum-seekers-at-sea-via-teleconference-20140702-3b837.html>

2012-13, during which time the number of boat arrivals from Sri Lanka increased significantly, the Department of Immigration and Border Protection (DIBP) reported a 52 percent final grant rate of protection visas for Sri Lankans arriving by boat.⁵

The Australian Government's own data reveals that the majority of Sri Lankan asylum seekers arriving by boat are found to have genuinely fled the risk of persecution. Returning up to 200 Sri Lankan asylum seekers without any fair, thorough or accountable assessment of their claims creates a clear risk that Australia will be returning people to serious harm.

Current human rights situation in Sri Lanka

While the human rights situation in Sri Lanka has improved since the end of the civil war in 2009, it is well documented and accepted that serious human rights violations – including arbitrary arrest, detention and even torture – remain widespread in the country, particularly against the Tamil minority.⁶

In November 2011, for example, the United Nations Committee against Torture expressed concern at the “widespread use of torture and other cruel, inhuman, or degrading treatment of suspects in police custody”. The Committee also highlighted “reports that suggest that torture and ill-treatment perpetrated by State actors, both the military and the police, have continued in many parts of the country”.⁷

Leading international organisation, Human Rights Watch (HRW), reports that asylum seekers returned to Sri Lanka are at particular risk of human rights violations. HRW has documented at least 13 cases in which people who unsuccessfully sought asylum in the United Kingdom were returned to Sri Lanka and endured serious human rights abuses, including torture and rape.⁸ Some said they were beaten with batons and burned with cigarettes. In many of the cases the reports were corroborated by medical evidence. This is consistent with a May 2010 report by the Edmund Rice Centre which claimed that asylum seekers returned to Sri Lanka from Australia were detained and assaulted by Sri Lankan police.⁹

In May 2012, the US State Department Country Report on Sri Lanka documented unlawful killings by “the government, its agents or its paramilitary allies”, together with the continuance of “enforced and involuntary disappearances” and “frequent” arbitrary arrests and detention. It noted that it is difficult to obtain “reliable statistics” on many human rights violations because “complainants were killed and some families feared reprisals if they filed complaints”.¹⁰

⁴ Department of Immigration and Citizenship statistics, reported in Bianca Hall, ‘Boat people genuine refugees’, The Age, available at <http://m.theage.com.au/opinion/political-news/boat-people-genuine-refugees-20130519-2juvg.html>

⁵ Department of Immigration and Border Protection, Asylum Trends – Australia: 2012-13 Annual Publication, 2013, available at <http://www.immi.gov.au/media/publications/statistics/immigration-update/asylum-trends-aus-2012-13.pdf>

⁶ See, for example, International Crisis Group, *Sri Lanka's North 1: The Denial of Minority Rights* (2012).

⁷ Committee against Torture, *Concluding Observations on Sri Lanka*, UN Doc CAT/C/LKA/CO/3-4, para 6.

⁸ Human Rights Watch, *UK: Suspend Deportation of Tamils to Sri Lanka – Further Reports of Torture of Returnees Highlight Extent of Problem* (29 May 2012).

⁹ Edmund Rice Centre, *Sri Lanka Not Safe for Deported* (19 May 2010).

¹⁰ US Department of State, *Country Reports on Human Rights Practices for 2011: Sri Lanka* (May 2012).

The UNHCR advises that Sri Lankan people with certain profiles still require protection under the Refugee Convention.¹¹ In particular, people with links or suspected links to the LTTE, opposition politicians, journalists, human rights activists, witnesses to abuses and LGBTI people may be or are likely to be in need of protection. Sri Lankans continue to be at risk of reprisal for any criticism of the Government.

After her visit to Sri Lanka in August 2013, the UN High Commissioner for Human Rights encouraged Australia to consider each Sri Lankan asylum case on its merits.¹² However, the Australian Minister for Immigration and Border Protection, Scott Morrison, has been clear in his intention to return all Sri Lankans. At a press conference on 30 September 2013, the Minister said that Australia seeks “to ensure that people who may seek to come from Sri Lanka would be intercepted outside of our sea border and returned directly and all of them.”¹³

Request for urgent action

The Human Rights Law Centre requests that you take urgent action with a view to ensuring that:

- (a) Australia discloses the whereabouts of the asylum seekers and the legal basis for their detention or deprivation of liberty, and facilitates their communication with a legal adviser or representative;
- (b) Australia refrains from involuntarily returning the asylum seekers to Sri Lanka in potential violation of the non-refoulement provisions of the *Refugee Convention*, the *International Covenant on Civil and Political Rights* and the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*; and
- (c) the asylum seekers be permitted and facilitated to make a protection visa application in accordance with the Australian *Migration Act 1958*, including by ensuring that they have access to adequate legal advice and translation and interpretative services.

Yours sincerely

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¹¹ UNHCR, “Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka”, UN Doc. HCR/EG/LKA/12/04, 21 December 2012, available at <http://www.refworld.org/pdfid/50d1a08e2.pdf>.

¹² Navi Pillay, *ABC Lateline*, 27 September 2013, available at <http://www.abc.net.au/lateline/content/2013/s3858234.htm>.

¹³ Minister Scott Morrison, Operation Sovereign Borders press conference, 30 September 2013, transcript available at http://www.customs.gov.au/site/130930transcript_opderation-sovereign-borders.asp.