

Torture, rape and ill-treatment suffered by Sri Lankans who return home



In its rush to expel Sri Lankans who arrive in Australia by boat, Australia places those people at risk of torture, rape and ill treatment in Sri Lankan custody.

Since October 2012, Australia has returned 1248 Sri Lankans to their country using the “enhanced screening process”.ⁱ Applied only to Sri Lankans, enhanced screening is an unfair, short cut process that expedites the removal of asylum seekers and sidesteps more rigorous assessment of their protection claims.

Returning to Sri Lanka, whether from Australia or elsewhere, involves grave risks to people suspected of having links to the Liberation Tigers of Tamil Eelam (**LTTE**) or to people smuggling networks. Upon return to Sri Lanka, the people are generally held in police custody, subject to prosecution for illegal migration and, if released, find themselves under the constant surveillance of security forces.ⁱⁱ There are increasing reports of torture, rape and other ill-treatment in custody of Sri Lankans who return home from a period abroad, whether the return is voluntary or not.

Despite these risks, Australia fails to provide Sri Lankans who arrive in Australia by boat with a fair opportunity to make protection claims, in violation of Australia’s international obligations. Australia has also failed to adequately monitor the wellbeing of the people it returns. Disturbingly, Australian officials have even turned a blind eye to complaints of serious torture made by a Sri Lankan returned from Australia.

Evidence of torture, rape and ill treatment of Sri Lankans who return home

Despite inherent difficulties in documenting and reporting on the ill-treatment of Sri Lankan returnees,ⁱⁱⁱ there have been numerous reports of the torture, rape and other serious ill treatment of Sri Lankans who return home.

- In 2010, three Sinhalese men reported being detained, interrogated and tortured by Sri Lanka Police Criminal Investigation Division (**CID**) following their forced return to Sri Lanka from Australia.^{iv} One of the men sustained severe ear injuries from torture in CID custody.^v His brother was horrifically beaten in his home in front of his four year old son.^{vi} The men are accused of being involved in people smuggling, a claim they deny.
- In July 2012, the Sydney Morning Herald reported that one Tamil man was held for 55 days without charge after being returned by Australia. During that time he says he was accused of being a member of the LTTE and tortured including being hung upside down and beaten.^{vii}
- In 2013, Human Rights Watch reported ten cases of rape, sexual violence, torture and other ill treatment by Sri Lankan security forces against Tamils who returned home from abroad after the end of the war.^{viii} Some of the returnees had been deported whilst others had returned voluntarily, but all were arrested immediately or soon after their arrival, interrogated about their links to the LTTE and were subjected to torture, including rape, whilst in custody. These people reported a range of torture including being stripped for interrogation, burned with cigarettes, beaten with batons and hot metal rods and being hung upside down whilst having their head submerged in water.
- In April 2013 a Sri Lankan Tamil living in Australia reported being abducted, raped and tortured for four days by Sri Lankan army officers when he returned to Sri Lanka to see his sick uncle.^{ix}

“Kumar” reports being beaten with a scalding iron bar and says that his ordeal only ended after he signed a document admitting he was part of the LTTE.^x Media reports included photographs of Kumar’s scars inflicted by the iron bar.^{xi}

- In March 2014 the *Stop-Torture* report documented disturbing testimony from 40 Sri Lankan victims of torture and sexual violence, many of whom were tortured after leaving Sri Lanka and returning following the end of the war.^{xii} For example, Nitharsan was abducted, detained, tortured and raped after returning to Sri Lanka from the UK to see his sick father.^{xiii} Nitharsan reports being beaten with plastic pipes filled with sand and being accused of working to re-build the LTTE abroad. Other witnesses who had unsuccessful asylum applications abroad were also abducted by security forces and detained, tortured and sexually assaulted until their families could pay a bribe for their release.^{xiv}
- In August 2014, it was reported that the Tamils among the group of 41 asylum seekers returned at sea by Australia to Sri Lanka were beaten by CID in custody, interrogated about their connections to the LTTE, and continue to be surveilled after being released from custody.^{xv}
- In 2014 Freedom from Torture reported heightened concerns that Sri Lankans returning voluntarily from the UK were subject to torture. It reported, based on medico-legal assessments of survivors, 35 cases of torture of Sri Lankans who returned home since the end of the war. Twenty three of those cases occurred between 2011 and 2013. In fact FFT’s concludes that its evidence suggests that the risk of torture for Sri Lankan Tamils returning from the UK may be increasing.^{xvi}

Australia maintains that there are no substantiated claims of torture by Sri Lankans returned by Australia. Australia’s claim is undermined by the fact that there is no effective or open process for monitoring the wellbeing of Sri Lankans that are returned. It also fails to acknowledge relevant documented abuses of Sri Lankans returned home from countries other than Australia.

There is also evidence of the poor manner in which Australia investigates complaints of mistreatment by Sri Lankans who it returns. In one instance, an Australian Federal Police officer in Sri Lanka declined an offer to interview a Sri Lankan asylum seeker sent back from Australia who claimed that he had been severely tortured. Rather than assessing the man’s wellbeing, the AFP said: “In the interests of keeping our distance from the Sri Lankan investigations, we do not intend to take up the offer to meet with him.”^{xvii} This incident reveals a wilful blindness to the ongoing harm done to returnees in Sri Lankan custody.

Detention in Sri Lanka poses a significant risk of torture

Detention by Sri Lankan authorities places some asylum seekers at risk of harm. The Sri Lankan security forces have a long and well-documented track record of torture and mistreatment in custody, including the rape of men and women.^{xviii} Australia is well aware of Sri Lanka’s track record, having raised torture as a matter of concern at the United Nations in 2012.^{xix}

All Sri Lankans returned by Australia are detained and investigated by police. The United Kingdom acknowledges that if a person is detained by the Sri Lankan security services ‘there remains a real risk of ill-treatment or harm requiring international protection’.^{xx} Sri Lankan security forces are extremely well-networked to identify people of interest to the Sri Lankan authorities.^{xxi} Sri Lankans associated with the LTTE or with scarring on their body are particularly vulnerable to mistreatment in

detention.^{xxii} Human Rights Watch's 2013 report concludes that there is no category of Tamil that is immune from rape and sexual violence once they are in custody.^{xxiii}

Enhanced screening places Sri Lankans at greater risk

Australia's policies and practices of processing asylum seekers' claims for protection must be informed by the reality of the risk of harm faced by the people we return. Instead, Australia continues to use the unfair, truncated "enhanced screening" system for all Sri Lankan boat arrivals. This is despite the fact that Australia's own refugee determination processes find that the majority of Sri Lankans that arrive by boat are refugees.^{xxiv} Most recently, 41 Sri Lankans were handed over at sea after being asked 4 cursory questions about their reasons for fleeing.^{xxv}

Under international law, Australia cannot return a person to any place where they risk serious harm, including a risk to their life or their freedom or a risk of torture and cruel, inhuman and degrading treatment (***non-refoulement obligation***). *Non-refoulement* is a cornerstone of international refugee protection.^{xxvi} Enhanced screening only enhances the risk that Australia returns Sri Lankans to torture, in violation of Australia's international law obligations not to return people to harm.

At a broader level, Australia also denies any ongoing human rights abuses in Sri Lanka. Prime Minister Tony Abbott even excused torture in "difficult circumstances" during his visit to Sri Lanka in November 2013.^{xxvii}

Recommendations to the Australian government

1. The Department of Immigration and Border Protection should stop subjecting Sri Lankans to 'enhanced screening', which, despite its name, is an unfair, truncated and inadequate short cut designed to send people to Sri Lanka without giving them access to a fair refugee determination process.
2. The Prime Minister should make a statement that Australia condemns torture in all circumstances.
3. The Department of Foreign Affairs should immediately convene a working group, comprised of human rights organisations, UN agencies, academics and civil society to develop a process for properly monitoring the well-being of Sri Lankans returned from Australia.
4. The Australian Government should undertake stronger public and private diplomacy that acknowledges serious ongoing human rights abuses in Sri Lanka.

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ⁱ Immigration and Border Protection, Answer to Question Taken on Notice, 25 February 2014, <http://www.aph.gov.au/~media/Estimates/Live/legcon_ctte/estimates/add_1314/DIBP/AE14-391.pdf>

ⁱⁱ See discussion in Human Rights Law Centre, *Can't flee, can't stay: Australia's interception and return of Sri Lankan asylum seekers*, March 2014, part 6.3, < http://www.hrlc.org.au/wp-content/uploads/2014/03/HRLC_SriLanka_Report_11March2014.pdf >.

ⁱⁱⁱ Research in Sri Lanka is dangerous, given the threats and intimidation meted out to journalists, human rights workers and lawyers, or anyone who is critical of the government, see for example Amnesty International, *Sri Lanka's assault on dissent*, 30 April 2013, <<http://www.amnesty.org/en/library/asset/ASA37/003/2013/en/338f9b04-097e-4381-8903-1829fd24aabf/asa370032013en.pdf>>

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- ^{iv} AAP, "Asylum seekers tortured upon return, Amnesty International says", *The Australian*, 3 September 2010, available at <http://www.theaustralian.com.au/news/latest-news/asylum-seekers-tortured-upon-return-amnesty-international-says/story-fn3dxity-1225913890576>.>
- ^v Amnesty International, "Sri Lanka urged to ensure safety of detained former asylum seekers" 3 September 2010, <<http://www.amnesty.org/en/news-and-updates/sri-lanka-urged-ensure-safety-detained-former-asylum-seekers-2010-09-03>>.
- ^{vi} Ben Doherty, "Sent home to 'arrest, torture'", *Sydney Morning Herald*, 24 July 2012, <<http://www.smh.com.au/federal-politics/political-news/sent-home-to-arrest-torture-20120723-22kur.html>>.
- ^{vii} Ibid
- ^{viii} Human Rights Watch, *We Will Teach You a Lesson*, February 2013, pp 35-36. All of the people interviewed for the report were outside of Sri Lanka at the time.
- ^{ix} Heather Ewart, "Man claims rape and torture upon return to Sri Lanka," *ABC*, 25 April 2013, available at <http://www.abc.net.au/news/2013-04-24/sri-lankan-details-claims-of-rape-and-torture-by-army/4649954>.
- ^x Michael Gordon, "Scarred by Sri Lankan torture," *Sydney Morning Herald*, 24 April 2013, available at <<http://www.smh.com.au/federal-politics/political-news/scarred-by-sri-lankan-torture-20130424-2if16.html>>.
- ^{xi} Ibid
- ^{xii} Yasmin Sooka, UK Bar Human Rights Committee of England and Wales and the International Truth & Justice Project, *Sri Lanka, An Unfinished War: Torture and Sexual Violence in Sri Lanka 2009-2014*, March 2014, p 62.
- ^{xiii} Ibid, p 40.
- ^{xiv} Ibid, p19.
- ^{xv} Francis Wade, "Beaten and spied on, asylum seekers reveal oppression of being returned", *The Guardian*, 6 August 2014, <<http://www.theguardian.com/world/2014/aug/06/beaten-spied-on-asylum-seekers-reveal-oppression>>.
- ^{xvi} Freedom from Torture updated submission to the Human Rights Committee for the 5th periodic review of Sri Lanka in October 2014, available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LKA/INT_CCPR_CSS_LKA_18229_E.pdf.
- ^{xvii} DFAT document, obtained under the *FOI Act*, copy on file with the HRLC.
- ^{xviii} Human Rights Watch has documented and published at least 50 cases of rape and sexual violence of men and women, accompanied by other forms of torture and cruel, inhuman and degrading treatment by Sri Lanka's security forces against persons in custody since the conflict's end. See Human Rights Watch, above vii. The United Nations Committee against Torture is 'seriously concerned' about widespread use of torture and other cruel, inhuman and degrading treatment of suspects in police custody, including after the end of the civil war. Committee Against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention – Concluding observations of the Committee against Torture: Sri Lanka*, 47th sess, 1050th-1052nd mtgs, UN Doc CAT/C/LKA/CO/3-4 (8 December 2011) [6].
- ^{xviii} *GJ and Others (post-civil war: returnees) Sri Lanka CG v Secretary of State for the Home Department* (Unreported, United Kingdom Upper Tribunal (Immigration and Asylum Chamber), 3 July 2013) [356(4)].
- ^{xix} Commonwealth of Australia, *Universal Period Review of Sri Lanka – 14th Session, Statement by Australia* (1 November 2012) <www.geneva.mission.gov.au/gene/Statement391.html>.
- ^{xx} *GJ and Others above*, n xviii, [356(4)].
- ^{xxi} *GJ and Others above*, n xviii, 3 July 2013) [356(6)]-[356(9)].
- ^{xxii} See Freedom from Torture, *Out of the Silence: New Evidence of Ongoing Torture in Sri Lanka, 2009-2011* (September 2012) <www.freedomfromtorture.org/sites/default/files/documents/Sri%20Lanka%20Ongoing%20Torture%20Report_for%20release%208%20Nov%20-%20with%20cover.pdf> which documents the torture from medico-legal reports prepared for asylum seekers in the United Kingdom. "Those who bore scars (even if they were incurred during shelling) were told that this was evidence of LTTE membership and were then removed to a separate place of detention": at 8-9.
- ^{xxiii} Human Rights Watch, above n vii, p 36 <www.hrw.org/sites/default/files/reports/srilanka0213webwcover_0.pdf>.
- ^{xxiv} This statistic takes into account the overturn rate at the review stage. 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>.
- ^{xxv} Sarah Whyte & Jason Koutsoukis, "Boats screened at sea", *Sydney Morning Herald*, 3 July 2014, <<http://www.smh.com.au/federal-politics/political-news/boats-screened-at-sea-20140702-3b8vz.html>>.
- ^{xxvi} Article 33, *Convention relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, and *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267 (collectively, **Refugee Convention**); Article 3, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85, entered into force 26 June 1987 and Article 7, *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171, entered into force 23 March 1976.
- ^{xxvii} Amanda Hodge, "'Difficult things happen': Tony Abbott defends Sri Lanka", *The Australian*, 16 November 2013, <<http://www.theaustralian.com.au/national-affairs/difficult-things-happen-tony-abbott-defends-sri-lanka/story-fn59niix-1226761423014>>.