

## **Sri Lankan Tamil Refugees: Tamil Nadu, India**

by David Matas

I went to visit Chennai, Tamil Nadu, India the week of February 7th to 14th for the NGO I-TRAN (International Tamil Refugee Advocacy Network). The I-Tran delegation consisted of Sam Ratna and myself.

### **Meetings**



**Visited at Loyola College on Feb 10, 2015**



**Meeting with NGO, OfERR on Feb 11, 2015**



**David Matas lectured at Madras University on Feb 12, 2015**

1. On Monday February 9th, we visited Professor Ashok Xavier Gladstone at Loyola College. We then met with Professor Ramu Manivannan at Madras University.

2. On Tuesday, February 10th, we visited retired Professor Anthonisamy Marx at his home. We then met with the Government of Tamil Nadu Rehabilitation Commissioner for non-resident Tamils, B. Anand at his office.
3. On Wednesday February 11th, we visited the office of the NGO Organisation for Eelam Refugees' Rehabilitation (OfERR). While there, we interviewed various refugees working in the office.
4. On Thursday February 12th, I lectured at Madras University at a class hosted by Professor Manivannan.
5. On Friday February 13th, we went to the refugee camp Gummindipoondi. We again interviewed some refugees, at the camp.



**Visited Refugee camp Gummindipoondi on Feb 13, 2015**

**Protection and resettlement**

The Sri Lankan Tamil refugee population in Tamil Nadu is large, far larger than anywhere else. At the time of our visit, there were 65,000 refugees living in 107 camps strewn throughout Tamil Nadu.

There are an additional 40,000 refugees living outside the camps. Overall, since the start of the civil war in Sri Lanka in 1983, about 335,000 refugees have come from Sri Lanka to Tamil Nadu.

Sri Lankan Tamil refugees in Tamil Nadu have several distinctive features. One is that the Government of India considers them refugees without refugee determinations.

For refugee determination, there are two sorts of countries - signatory states to the Refugee Convention and non-signatory states. Signatory states make their own refugee status determinations. Non-signatory states leave refugee determination to the Office of the United Nations High Commissioner for Refugees (UNHCR). In India, the UNHCR will make refugee determinations for those who approach the office.

For Sri Lankan Tamils in Tamil Nadu, that does not happen. The UNHCR does have an office in Chennai, but its focus is assisting in requests for repatriation.

There is no need to ask the UNHCR to make refugee determinations of Sri Lankan Tamil refugees in order for these refugees to stay in India. India does not, in general, remove to Sri Lanka those who have fled Sri Lanka. There were active Government of India attempts to prod and organize refugees to return after the assassination of Rajiv Gandhi, leading to the repatriation of about 54,000 refugees. The Government of India has also ordered the removal of some refugees to Sri Lanka where there was evidence of connections to the LTTE. In today's context, those removals/repatriations can be considered exceptions.

A positive refugee determination would be pre-condition for a Sri Lankan Tamil refugee in

Tamil Nadu who seeks resettlement to a third country. However, such an effort is likely to go nowhere because, despite the difficulties Sri Lankan Tamil refugees face in Tamil Nadu, both the UNHCR and resettlement states would consider this population to have a durable solution in Tamil Nadu to their refugee problems.

### **Local Integration**

In Tamil Nadu, Sri Lankan Tamils can work, go to school and access medical care. In that state, they are amongst people who speak the same language the refugees speak. The overall population of Tamil Nadu is 69 million.

There is a difference between those in the camps and those outside the camps. The camps are state government institutions. The government provides subsidised living for those in the camps. Residents are given money - a cash dole, land on which they can build their own accommodations, and the opportunity to buy food at reduced rates. Those in the camps are given identity cards which describe them as refugees even though there has been no refugee determination.

Those outside the camps do not get the financial benefits of those in the camps. They are registered with the local police as temporary residents. Their residence permission has to be periodically renewed. Their documentation does not describe them as refugees, but they too are allowed to stay without refugee determinations.

Sri Lankan Tamil refugees are not forced to stay in the camps, but they have a financial incentive to do so. Once they submit themselves to camp life, they are subject to its strictures. If they break the rules of the camp, they can have their benefits reduced or they can be expelled from the camp.

Camp life means mostly living in remote, rural areas. The Gummindipoondi camp which we visited adjoins a town of about 33,000; it was situated at 50 kilometres from Chennai. It has 3,000 refugees. Camp residents can work in the town; the children can go to school in the town school.

Sri Lankan Tamil refugees have some restrictions in terms of work and education. They can access private sector jobs but not government jobs. This is a substantial limitation, given the size of the public sector. As well, government jobs tend to be more stable and better paying than private sector jobs.

The argument to the contrary, that government jobs should be reserved for Indians, is inhospitable. There are some jobs which by their very nature (for instance, serving in the diplomatic corps) should be reserved for Indian nationals. But most government jobs do not fit that description.

**Recommendation:** Sri Lankan Tamil refugees should be allowed access to government jobs.

Sri Lankan Tamil refugees also can not access medical school education. While the number of Sri Lankan Tamil refugees who have the qualifications for eligibility for medical education are few, the exclusion has symbolic significance.

Since spots at medical schools are hotly contested, there are inevitably some who would argue that the spots should be reserved for locals. Yet, Sri Lankan Tamil refugees are not really foreigners. They have lived in Tamil Nadu for years. In some cases, they were born in Tamil Nadu and lived all their lives there.

**Recommendation:** Sri Lankan Tamil refugees should be eligible for placement in Tamil

Nadu medical schools.

A Sri Lankan population has many elements who have been in India for decades, since the start of the civil war in Sri Lanka in 1983. Many of the problems this population faces relates to their long term refugee situation without formal status.

The quality of the camps varies considerably. Some have very poor living conditions; they are makeshift slums. Others are more habitable. What they share in common is that they are government run. Even the best of them lack independent living.

Refugees who live in the camps can move out of the camps, or move to another camp, with permission. Sri Lankan Tamils move both from the camps to the cities and vice versa. The reason a person would move from the city to a camp is financial. In the city, the refugees pay rent. In the camp, the land is free.

Some of the refugees, if given the same cash dole and ration subsidies inside and outside the camps, would nonetheless remain in the camps because accommodation is rent free. Others though, given more flexibility, would move out. They should be given the choice.

Indian citizens do not receive a cash dole and ration subsidies. Refugees, who are not citizens, lack a connection to the community in which they live which makes their situation more precarious and their lives harder to negotiate. It is justifiable to dispense a cash dole and ration subsidies to refugees living in the community even when citizens do not get them. Giving refugees this option would help to foster independent living of this community.

**Recommendation:** The Government of Tamil Nadu should give refugees the option of living outside the camp and still receiving the cash dole and ration subsidies.

Indian citizens can not move into the refugee camps and most would not want to do so. There is however an exception. An Indian woman who marries a Sri Lankan Tamil refugee living in the camp can move into the camp with her husband. The converse is not true. An Indian man who marries Sri Lankan Tamil refugee cannot move into the camp with his wife. The wife is expected to leave the camp.

The camp system bears similarities to the Canadian aboriginal reserve system, and this is one of them. Canadian aboriginal reserves at one time had similar sexist rules. The UN Human Rights Committee found that this sexism violated the International Covenant on Civil and Political Rights<sup>1</sup>. India is a state party to this Covenant. The Indian camp system for Sri Lankan Tamil refugees needs also to break out of this sexist mould.

**Recommendation:** Indian men married to Sri Lankan Tamil refugee women who live in a camp should themselves be allowed to live in a camp with their wives.

Life cycle documentation is a problem for Sri Lankan Tamil refugees. They can obtain birth certificates, without nationality, and marriage certificates. Adoption is an issue. There are several unaccompanied minors in the camps, either who came without parents or whose parents have died. These minors are being taken care of by friends or relatives. However, there is no easy avenue for adoption of these children by the adults who take care of them. There should be.

**Recommendation:** An avenue should be made available for adoption of unaccompanied Sri Lankan Tamil refugee children by the adults in the camps who are taking care of them.

The Q Branch of the police criminal investigation division of Tamil Nadu, constituted to address extremist activities, keeps an eye on Sri Lankan Tamils both outside and inside of the

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<sup>1</sup> *Lovelace v. Canada*, Case 24/1977, 30 July 1981, paragraphs 15 and 16.

camps, looking for linkages to the LTTE. If refugees leave the camp for more than daytime work, they need permission. Leaving the camp without permission or staying outside beyond the duration of permission granted generates Q branch suspicion and threats.

Different Q Branch officials with different personalities pose different problems and in some cases no problems at all. The general atmosphere the Q Branch generates is one of bullying, intimidation and harassment. The Q Branch needs to lighten up. They have an inordinate influence over the day to day mechanics of what goes on in the camp.

A security perspective is, of course, legitimate. But it should not be the only or even the controlling perspective. The Q Branch can be overly rigid and domineering in controlling the day to day lives of innocents.

To suspect that someone is a Tamil Tiger merely because he or she is a Sri Lankan Tamil refugee is a form of bigotry. Q Branch operatives do not operate according to the presumption of good faith, which should prevail when the government deals with civilians of whom there are no reasonable grounds to suspect anything.

**Recommendation:** Q Branch control of the camps needs to be subjected to civilian supervision which would attempt to ensure that the Q Branch applies the presumption of good faith and does not enforce on camp residents overly rigid security requirements.

There are two sorts of camps for Sri Lankan Tamil refugees, general and special. The special camps house those suspected of complicity with the LTTE. Being consigned to a special camp is a form of arbitrary detention without due process.

**Recommendation:** There should a legal procedure established with due process to determine whether a person will be detained in one of the special camps in cases where the



Q Branch believes that relocation to a special camp is appropriate. The decision to relocate to a special camp, once made, should be subject to periodic independent judicial or quasi-judicial review.

## **Citizenship**

Within the overall Sri Lankan Tamil refugee population, there is a difference between the population variously called up country or plantation or Indian or hill country Tamils and other Sri Lankan Tamils. Up country Tamils were brought from Tamil Nadu to Sri Lanka by the British during colonial days to work plantations.

The first prime minister of Sri Lanka, D. S. Senanayake, and his party the United National Party (UNP) in 1948 disenfranchised this population through legislation, creating about one million stateless people in one fell swoop. This artificial generation of statelessness created a problem for India, Sri Lanka and this group of people which continues till this day.

The prime ministers of India and Sri Lanka in 1964, Sirimavo Bandaranaike for Sri Lanka and Lal Bahadur Shastri for India, agreed to divide up this population, with India and Sri Lanka each to give citizenship to agreed numbers. Before the Sri Lankan civil war began in 1983, most up country Tamils wanted to stay in Sri Lanka, which was contrary to the agreed division between the Indian and Sri Lankan governments.

The result was that many of the group were given neither Indian nor Sri Lankan citizenship. About 30% of the Sri Lankan Tamil refugees in the camps in Tamil Nadu consist of this group, stateless up country Tamils.

The international community has a general interest in eradicating statelessness. The up country Tamils without citizenship in either Sri Lanka or India should be given a choice. If

they want repatriation to Sri Lanka, they should be given Sri Lankan citizenship. If they want to remain in India, they should be given Indian citizenship.

**Recommendation:** Up country Sri Lankan Tamil refugees in Tamil Nadu who are now stateless should be given a choice between Sri Lankan or Indian citizenship.

Other up country Tamils, those who opted for and got Sri Lankan citizenship, fled Sri Lanka after the start of the civil war and regretted their initial choice of Sri Lanka over India. The up country Tamils who chose Sri Lankan citizenship and then became refugees in Tamil Nadu should be allowed to reconsider their choice. Circumstances have changed to the point where their previous choice should no longer be considered binding upon them. India does not allow dual citizenship but could allow this population to become citizens of India if they renounced Sri Lankan citizenship.

**Recommendation:** Up country Sri Lankan Tamils who opted for Sri Lankan citizenship and who are now refugees in Tamil Nadu should be allowed to switch from Sri Lankan to Indian citizenship.

Because of the protracted nature of the conflict in Sri Lanka, there is a substantial number of Sri Lankan Tamil refugees who have been born in India. A person does not become a citizen of India simply because the person is born in India.

It may be possible for this population to acquire Sri Lankan citizenship. Yet, many of them are no longer children. They have grown up in India and know only India. They too should be offered an option of Indian citizenship.

**Recommendation:** Adult Sri Lankan Tamil refugees born in India should be allowed to choose between Sri Lankan and Indian citizenship.

Finally, there is the population of long stayers. Many Sri Lankan Tamil refugees have lived in India so long that there are ties that are effectively Indian. Especially living in a community that shares the same culture and language, expecting them to go back to Sri Lanka, no matter how safe they would be there, would mean uprooting them from what is now their home environment.

Local integration, according to UNHCR Resettlement Handbook involves "a progressively wider range of rights (similar to those enjoyed by citizens) leading eventually to permanent residency and, in some situations, to naturalization". Long stayers can be identified by a cut off date or period of stay. However identified, long stayers in the Sri Lankan Tamil refugee population in Tamil Nadu should be resettled in India, should they so wish. They too should be given an option of acquisition of Indian citizenship.

**Recommendation:** Long staying Sri Lankan Tamil refugees in Tamil Nadu should be given an option of acquiring Indian citizenship.

The absence of refugee status determination in India advantages those who would fail that determination. It disadvantages those who would succeed. The international legal protection that would normally accrue to UN Convention refugees is not available to Sri Lankan Tamil refugees because we do not know, within this population, who are UN Convention refugees.

Sri Lanka requires nationals without passports to return to Sri Lanka to apply for and obtain passports. This requirement is onerous for everyone, but impossible for Convention refugees. A person at risk cannot reasonably be expected to return to the country of danger fled simply in order to obtain a travel document.

The UNHCR will issue travel documents to Convention refugees. Those travel documents

are recognized world wide and are valid for travel to all countries except the country of danger fled. They are essential, for instance, for Sri Lankan Tamil refugee students in Tamil Nadu who want to travel abroad for postgraduate studies.

There are two solutions to this problem. One is to have the UNHCR engage in Convention refugee determinations for those elements of this population who wish to leave India but can not, for safety reasons, return to Sri Lanka. The other is to give this segment population of the Sri Lankan Tamil refugee population too an option of Indian citizenship, which would bring with it the opportunity to have an Indian passport.

**Recommendation:** The UNHCR should engage in Convention refugee determinations of those Sri Lankan Tamil refugees who wish to leave India for a third country. Alternatively, the Government of India should engage in risk determinations of this segment of the Sri Lankan Tamil refugee population and offer citizenship to those found to be at risk on return to Sri Lanka.

## **Repatriation**

There has been substantial discussion, in light of the change from the Rajapaksa to the Sirisena government in Sri Lanka, whether Sri Lankan Tamil refugees in Tamil Nadu should be encouraged to repatriate to Sri Lanka. The Government of Tamil Nadu has taken the position that it is too early to encourage this movement in light of the substantial number of internally displaced in Sri Lanka.<sup>2</sup>

There were, according to the Internal Displacement Monitoring Centre, up to 90,000 internally displaced persons (IDPs) in Sri Lanka as of May 2014. Repatriating refugees in

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<sup>2</sup> The Economic Times "Tamil Nadu CM asks Centre to defer meeting on repatriation of refugees" Jan 28, 2015

this context runs the risk of just adding to the IDP problem.

**Recommendation:** Sri Lankan Tamil refugees in Tamil Nadu should not be encouraged to return to Sri Lanka as long as the Government of Sri Lanka has not adequately addressed the problems faced by its internally displaced population.

For individual refugees, this issue too is complicated by the absence of refugee determination. For a person who never was a Convention refugee and just fled the cross fire of war, the risk on return is decidedly different from the risk a person faces who had a well founded fear of persecution at the time of flight, or developed such a fear since.

For Convention refugees, there should be no return to the country of danger fled under two circumstances. One is that the risk that precipitated either the flight or the decision to remain out of the country persists.

The other is that there are compelling reasons arising out of previous persecution to justify the continuation of refugee protection. There are some people who have suffered so badly that it would be inhumane to expect them to return to the country of their persecution, even if the risk of persecution has ceased to exist.

In the absence of either UNHCR or Government of India refugee inclusion and cessation decisions, we are left with self selection. No one should be encouraged to return who, on his or her own, comes to the conclusion that he or she faces risk on return or has compelling reasons arising out of previous persecution not to return.

Refugee inclusion and cessation determinations are individual. Nonetheless, there are some general remarks that can be made. Although the head of government in Sri Lanka has changed, the rank and file of the government remains the same. Perpetrators remain in

power.

The best indicator of future abuse is the grant of immunity for past abuse and in Sri Lanka there are plenty indicators of the search for immunity. Particularly troubling is the postponement by Office of the United Nations High Commissioner for Human Rights at the request of the Government of Sri Lanka of the investigation mandated by the UN Human Rights Council into the human rights abuses committed in May 2009 at the end of the Sri Lankan civil war. This postponement is disconcerting for those who wish to pursue truth and justice. It is also a warning to refugees that they would face risk on return.

**Recommendation:** Sri Lankan Tamil refugees in Tamil Nadu who fear persecution on return should not be encouraged to return to Sri Lanka as long as the present Government of Sri Lanka seeks to avoid accountability for the crimes of the past.

Even if one could reasonably say that those who were persecuted no longer reasonably face a risk of persecution, that is not the end of the matter. Many were persecuted so badly that the only circumstance in which they could reasonably be expected to return to the island of Sri Lanka is the advent of an independent Tamil Eelam on the island. To return them to the hands and the lands of their former persecutors would be inhumane. Even to suggest that this population return to Sri Lanka today would be cruel.

**Recommendation:** Sri Lankan Tamil refugees in Tamil Nadu who have compelling reasons arising from previous persecution should not be encouraged to return to Sri Lanka unless and until an independent Tamil Eelam is formed on the island.

### **List of recommendations**

1. Sri Lankan Tamil refugees should be allowed access to government jobs.
2. Sri Lankan Tamil refugees should be eligible for placement in Tamil Nadu medical schools.

3. The Government of Tamil Nadu should give refugees the option of living outside the camp and still receiving the cash dole and ration subsidies.
4. Indian men married to Sri Lankan Tamil refugee women who live in a camp should themselves be allowed to live in a camp with their wives.
5. An avenue should be made available for adoption of unaccompanied Sri Lankan Tamil refugee children by the adults in the camps who are taking care of them.
6. Q Branch control of the camps needs to be subjected to civilian supervision which would attempt to ensure that the Q Branch applies the presumption of good faith and does not enforce on camp residents overly rigid security requirements.
7. There should a legal procedure established with due process to determine whether a person will be detained in one of the special camps in cases where the Q Branch believes that relocation to a special camp is appropriate.
8. The decision to relocate a Sri Lankan Tamil refugee to a special camp, once made, should be subject to periodic independent judicial or quasi-judicial review.
9. Up country Sri Lankan Tamil refugees in Tamil Nadu who are now stateless should be given a choice between Sri Lankan or Indian citizenship.
10. Up country Sri Lankan Tamils who opted for Sri Lankan citizenship and who are now refugees in Tamil Nadu should be allowed to switch from Sri Lankan to Indian citizenship.
11. Adult Sri Lankan Tamil refugees born in India should be allowed to choose between Sri Lankan and Indian citizenship.

12. Long staying Sri Lankan Tamil refugees in Tamil Nadu should be given an option of acquiring Indian citizenship.

13. The UNHCR should engage in Convention refugee determinations of those Sri Lankan Tamil refugees who wish to leave India for a third country.

14. Alternatively, the Government of India should engage in risk determinations of those Sri Lankan Tamil refugee population who wish to leave India for a third country. The Government of India should offer citizenship to those in this population found to be at risk on return to Sri Lanka.

15. Sri Lankan Tamil refugees in Tamil Nadu should not be encouraged to return to Sri Lanka as long as the Government of Sri Lanka has not addressed adequately the problems faced by its internally displaced population.

16. Sri Lankan Tamil refugees in Tamil Nadu who fear persecution on return should not be encouraged to return to Sri Lanka as long as the present Government of Sri Lanka seeks to avoid accountability for the crimes of the past.

17. Sri Lankan Tamil refugees in Tamil Nadu who have compelling reasons arising from previous persecution should not be encouraged to return to Sri Lanka unless and until an independent Tamil Eelam is formed on the island.

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