

Position Paper: Sri Lankan Tamil Refugees

by David Matas

Sri Lankan Tamil Refugees are victims of human rights violations in Sri Lanka which cause them to flee. They are brutalized and denied democratic rights. Women and girls are systematically raped

Suspects are routinely detained indefinitely without charge or trial. The Government continues to use torture and ill treatment of those in administrative detention.

Enforced disappearances and extrajudicial executions endure. A culture of impunity exists because of the failure to prosecute those responsible for the massacres of the civil war.

Denial of access by journalists and human rights NGOs prevents the victimization from becoming widely known. The crackdown on human rights activism extends to lawyers and the courts. Human rights defenders become themselves victims.

The countries of proximate refugee are not signatories to the Refugee Convention and do not make refugee determinations. Refugee determination is done by the local branches of the Office of the United Nations High Commissioner for Refugees with inconsistent results.

Those who manage to get to a Refugee Convention signatory country may fall sway to pressure from the Government of Sri Lanka which wants Tamil refugees returned, the better to repress them. Those deciding Tamil Sri Lankan refugee claims in many cases are unaware of the continuing human rights violations to which this population is subject. Refugee determination officials all too often consider the Tamil Sri Lankan refugees safe on return now that the civil war is over.

Some Sri Lankan Tamil asylum seekers are excluded from refugee protection because of

only tangential association to the Tamil Tigers, the LTTE, once the armed component of the Tamil independence movement, now defeated in battle and no longer in existence. The LTTE has been characterized in many countries as a terrorist organization.

There is as well the usual run of false negative decisions issued by sceptical refugee determination officials, who assert that the claimants are not credible. While unfounded scepticism taints the whole refugee determination field, it is particularly rife in claims from a country like Sri Lanka where a civil war has ended and information about the true extent of continuing human rights violations is suppressed.

In countries of proximate refuge to Sri Lanka not signatory to the Refugee Convention, the rights the Refugee Convention grants to refugees are not respected for this population, Tamil Sri Lankan refugees. Refugees work illegally underground in exploitative conditions, if at all. Their children are denied access to public schools. They are not given local documentation. Access to health care is available only on paying what for the refugees are exorbitant fees.

They are often stuck in refugee camps and subject to forced idleness. The camps have poor sanitation, inadequate housing, insufficient food supplies and scant health care facilities.

These refugees are frequently victims of corrupt local police who extract bribes for turning a blind eye to their lack of local status, their working without permission, or their presence outside of the camps. These refugees are as well subject to arbitrary detention. Once in detention, they are denied access to courts and lawyers. Their conditions of detention fail to meet basic minimum standards.

Tamil refugees, in some cases, are returned to Sri Lanka against their will. Alternatively they

are subject to such mistreatment in the countries of refuge that the willingness to return that they indicate is, in substance, forced.

Countries of traditional resettlement are not doing enough to resettle refugees. This failure is in part attributable to the same faulty reasoning for refugee determinations at visa posts as for determinations made in the country of destination. The more general global failure is exacerbated at visa posts by the lack of due process and refugee determination expertise, as well as the effective denial of access to the courts of the visa post countries to review and overturn faulty results.

Traditional resettlement countries resettle this group of refugees in nowhere near the number which is commensurate with the extent of the need. The UNHCR and traditional resettlement countries tend to the view that countries of proximate refuge should be doing more to help this population. While this view is fine in theory, it does not change the practice of countries of proximate refuge, who fail to provide local integration.

This combination of factors leads to a brisk trade in smuggling. Refugees liquidate all their assets and pay smugglers virtually their whole net worth in order to get from countries of proximate refuge to countries of traditional settlement. Refugee passage is fraught with peril and uncertain success.

The trade in smuggling has led to a counter effort to prevent and stop it. Refugees end up in detention part way through their smuggling trajectory or on arrival at the intended destination and become subject to particularly harsh treatment because of their manner of attempted arrival.

A multilateral process, the Bali process, coordinates the efforts of enforcement officials to address this smuggling. This process is long on police enforcement and short on refugee

protection.

This matrix of difficulties requires a web of solutions. The United Nations Human Rights Council Universal Periodic Review Working Group in December 2012 produced a report of 204 recommendations to improve the human rights situation in Sri Lanka. The Government of Sri Lanka accepted 110 of the recommendations and rejected 94. The Government should implement the recommendations it accepted and reverse its position of rejection on the others.

The UNHCR, visa posts of resettlement countries and signatory states all need refugee determination procedures which meet basic standards of fairness or due process. As well, determinations must be made by people knowledgeable in country conditions and refugee law.

Countries of proximate refuge need to respect basic rights of refugees and asylum seekers. Ideally they should all sign the Refugee Convention. Even in the absence of signature, the rights granted to refugees in that Convention should be respected.

Countries of traditional resettlement, even if they can not reasonably be expected to resettle every Sri Lankan Tamil refugee, need to do better in resettlement than they are currently doing. Numbers should match the gravity of the situation.

There is a need for a multilateral process where countries of proximate refuge and traditional resettlement can discuss their share of responsibility in protecting, integrating and resettling Tamil Sri Lankan refugees. The Bali process could potentially be used to serve this purpose.

The Tamil Sri Lankan refugee plight then is not one problem, but rather an interconnected

set. To ameliorate the plight of this population, the whole set of problems must be addressed and solutions sought.

.....