



Urgent report

concerning the detention and deportation of Pakistani refugees in Sri Lanka

September 2014



A report by Human Rights organisation **Jubilee Campaign**, in cooperation with **Pakistan European Christian Alliance**, G.S.Lakshan J.S. Dias (Attorney at Law, Chairman SANRIM - Sri Lanka), Ali Naqvi (LL.M., Canadian Immigration and Refugee Counsel) and Raisa Sharipova (Barrister and Solicitor - Ontario, Canada; Attorney at Law - New York, USA).



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1. Background information



Jubilee Campaign and partners spent a relevant amount of time 'on the ground' to verify the facts as stated in this report.

Currently, a group of approximately 1,562¹ asylum seekers in Sri Lanka are facing adversity and experiencing violations of key human rights on a daily basis. The group is primarily comprised of Pakistani people (1,433)² and others from Afghanistan, Yemen, Iran and elsewhere. These asylum seekers are generally part of the Christian, Shia or Ahmadiyya minorities which, according to the UNHCR guidelines, may need protection and who require particularly careful review of their asylum claims.³ The government of Sri Lanka, however, has not been attentive to possible risks faced by said asylum seekers.

The understanding of the Sri Lankan Lawyers Collective is that the Sri Lankan police and the Department of Immigration, under the direction of the Ministry of External Affairs, are responsible for the actions in question.⁴

These asylum seekers had been waiting for their applications to be processed by the UNHCR when, during the week of June 9, police apprehended around 140 men⁵. On August 2, the UNHCR reported that 214 Pakistani and Afghan people had been arrested and detained.⁶ Subsequently, on August 1, and for almost a month, the Sri Lankan government deported an average of 10 asylum seekers per day, including women and children.

1 <http://www.dawn.com/news/1129238>

2 <http://www.economist.com/blogs/banyan/2014/07/asylum-seekers-sri-lanka>

3 <http://www.news.va/en/news/sri-lanka-court-gives-green-light-to-deport-pakist>

4 <http://www.humanrights.asia/news/forwarded-news/AHRC-FST-064-2014>

5 <http://www.economist.com/blogs/banyan/2014/07/asylum-seekers-sri-lanka>

6 <http://www.unhcr.org/53df35459.html>

A Pakistani asylum seeker whose husband, brother and father were arrested had filed a petition with the court. An injunction was issued on August 15 halting the deportations until August 29, which was later extended to September 1. On that date, the Court of Appeals withdrew the interim order issued earlier which suspended the deportations, ruling that Sri Lanka has a right to deport foreign nationals living in the country without visas. The court agreed with the Deputy Solicitor General's arguments that there is evidence of Pakistani asylum seekers committing crimes and they are a threat to national security and public health. The government stated that asylum seekers might bring malaria into the country, while Sri Lanka is otherwise virtually free of disease.⁷

That same day, on September 1, at least 56 Pakistani asylum seekers were released from the Boosa detention camp in the Southern Province, although their passports remained with the authorities. That day, the UNHCR met with Mr. Gotabaya Rahapaksa, the secretary of the Ministry of Defense.

After the release of the Pakistanis from the Boosa camp, the UNHCR expected that the government would discharge the Afghans and Iranians as well. The UNHCR, from September 1 onward, began work on a plan—submitted some time ago to the government—which would enable a more rapid review of asylum cases. The UNHCR had been unable to function normally due to the extraordinary situation stemming from the commencement of detentions and deportations; their time had been spent on resolving the immediate situation. On September 1, the UNHCR had the impression that there would be time to work on the asylum cases and commence the resettling process. However, on September 3, 14 Pakistani asylum seekers were arrested at their homes (two families and two individuals). The UNHCR contacted the government of Sri Lanka and wrote letters expressing its concerns. On September 5, approximately ten more people were deported, leaving them and the UNHCR in a very uncertain and unnerving situation.

Furthermore, the government of Sri Lanka has historically used some alarming strategies. The Lawyers Collective in Sri Lanka has noted that the laws under which the arrests and detentions have taken place have been unclear. Victims and their families have not been informed of clear and specific reasons for their arrest. No arrest receipts have been provided nor have the arrestees been taken to a competent court. They have also noted that access to lawyers has been denied.⁸ The UNHCR was never granted access to the detainees despite several requests being made.

Eighty-four (84) civil society organisations have sent a letter to the National Human Rights Commission of Sri Lanka claiming that those deported include at least eleven women and eight children; in a few cases, families have been separated. A pregnant woman was left behind after her husband was deported. The statement also asserted that deportations continued unabated, despite the Sri Lankan court ruling of August 15.⁹

Sri Lanka's Ministry of External Affairs stated that these asylum seekers have been encouraged to return home, in the vital security interests of Sri Lanka and the region.¹⁰ The Sri Lankan government made it seem like the deportations were voluntarily. However, a letter from a detainee in the Boosa camp showed that deportations were forced upon the detainees and that they were not properly informed.

7 <http://pakistan.shafagha.com/from-news/item/27903-un-slams-sri-lanka-for-deportation-of-pakistani-afghan-asylum-seekers.html>

8 <http://www.humanrights.asia/news/forwarded-news/AHRC-FST-064-2014>

9 <http://www.humanrights.asia/news/forwarded-news/AHRC-FST-064-2014>

10 <http://www.reuters.com/article/2014/08/02/us-sri-lanka-refugees-idUSKBN0G20JX20140802>

This letter states:

“We have information that we would be deported at any day. Please take urgent action or find any urgent help for us if it is required. Also inform each family. Inform families, churches, NGOs, Geneva UNHCR. They have forcibly taking us to somewhere else, maybe back to Pakistan. They already deported 20 people.”

Some of the asylum seekers confirmed that family members in detention were cuffed and taken to the airport to be deported. They also had contact with some deportees that had already arrived in Pakistan who were willing to testify that they were forcefully deported. Without exception, they state that they had not, in any way, decided to voluntarily return to Pakistan. Conjointly, the UNHCR has confirmed that the deportations were forced.¹¹

Some civil society organisations were disturbed by news concerning asylum seekers who were “slapped” in order to force them to sign deportation papers.¹²

The statement of the 84 civil organisations subsequently mentioned that, after the court order, police had gone in search of a female Pakistani asylum seeker who had petitioned the Court. Police had also visited and questioned several Christian clergy and employees at church-based institutions who have been supporting asylum seekers.¹³

According to a statement from the UNHCR on September 5, 139 Pakistanis and 19 Afghans had been deported since August 1. Furthermore, they had been denied access to others waiting deportation.

The UNHCR stated, on August 5, that they were unable to monitor the return conditions of the asylum seekers. They appealed to Sri Lankan authorities to respect the principle of *non-refoulement* by not sending people back to a place where their lives could be in danger without the opportunity to assess their needs for international protection.¹⁴ The Sri Lankan government, however, provided arguments to justify their actions.

Chulananda Perera, the controller of Sri Lanka’s Immigration and Emigration Department, said authorities were deporting at least ten people every day because they had entered on tourist visas and had overstayed. “They are not sent forcibly. It is the practice all over the world. If they have overstayed, we have to send them back.”¹⁵

In June, Sri Lankan authorities cancelled an on-arrival visa facility for Pakistani nationals after stating that they found asylum seekers misusing the facility to enter Sri Lanka. Earlier this month, Sri Lanka’s Foreign Ministry said the number of refugees or asylum seekers had risen by 700 percent in the 2013/14 period. There were 1,562 asylum seekers and 308 refugees as of June 30, it added.¹⁶

11 <http://www.reuters.com/article/2014/08/12/us-sri-lanka-refugees-un-idUSKBN0GC1JO20140812>

12 The statements mention that some of the detainees have been subjected to torture and inhumane and cruel treatment.

<http://www.humanrights.asia/news/forwarded-news/AHRC-FST-064-2014>

13 <http://www.humanrights.asia/news/forwarded-news/AHRC-FST-064-2014>

14 <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=53e0c0ae9&query=sri%20lanka%20pakistan>

15 <http://www.reuters.com/article/2014/08/12/us-sri-lanka-refugees-un-idUSKBN0GC1JO20140812>

16 <http://www.mea.gov.lk/index.php/en/media/media-releases/5047-response-to-inquiries-on-asylum-seekers>

The Sri Lankan government states that asylum seekers are part of an influx of economic immigrants from Pakistan who are straining country's limited resources and pose a potential threat to regional security. According to a statement from the Ministry of External Affairs, more people fell victim to commercially-driven human trafficking networks which were abusing the liberal visa policy of Sri Lanka.

The influx had resulted in serious problems for law and order, security and health, the Ministry said.

"In April 2014, 10 cases of malaria were detected among these asylum seekers. This detection was made at a time when Sri Lanka, having achieved zero indigenous cases of malaria for the past several years, was under consideration for obtaining WHO certification," it said in a statement.

The Ministry also said the UNHCR had not helped Sri Lanka to speed up the process of dealing with refugees and asylum seekers, and had not provided financial help or housing. Some applications for resettlement of refugees in third countries had been pending for five years, it said.¹⁷

The UNHCR had not anticipated on the influx of asylum seekers and cases have been pending for long periods of time, which causes the Sri Lankan government to grow impatient.

Statement from the Sri Lankan government, August 2, 2014:

<http://www.mea.gov.lk/index.php/en/media/media-releases/5047-response-to-inquiries-on-asylum-seekers>

The Government of Sri Lanka, in keeping with its obligations under customary international law, has been engaging consistently with UNHCR to address and manage the asylum seeker population, particularly its increase. In March 2013, when these numbers began to increase, the Sri Lankan Government authorities requested the United Nations High Commissioner for Refugees (UNHCR) in Sri Lanka to assist by taking certain measures [...]

However, UNHCR has not addressed these requirements. Neither has UNHCR managed to expedite the twin processes of (i) status determination of asylum seekers; and (ii) resettlement of those identified as refugees in third countries. Refugee receiving countries have also been slow in processing resettlement applications. In fact, only at the very recent discussions, has UNHCR indicated the need for additional financial and human resources to expedite the processing of their claims. Having examined the UNHCR's proposed Action Plan for this purpose, it is evident that the timeline on the final resolution remains unchanged from the current practice. It may be noted that in some cases, resettlement applications have been pending for over 5 years.

State responsibility on its international obligations are nuanced and balanced in the context of domestic compulsions. A State cannot be expected to carry a burden of this nature for an indefinite period of time. Therefore, these asylum seekers are being encouraged to return, in the vital security interests of Sri Lanka and the region..

The 84 civil society organisations noted in their statement¹⁸ that the claims of the Ministry of External Affairs are unsubstantiated, pertaining that the increase in the number of asylum seekers is due to people falling victim to commercially-driven human trafficking networks which abuse the liberal visa policy of Sri

¹⁷ <http://www.reuters.com/article/2014/08/02/us-sri-lanka-refugees-idUSKBN0G20JX20140802>

¹⁸ <http://www.humanrights.asia/news/forwarded-news/AHRC-FST-064-2014>

Lanka. The only way to determine who is genuinely fleeing persecution is a comprehensive case by case assessment by the nationally- and internationally-recognised agency UNHCR. All asylum seekers have a right to this due process under international customary law. Thus deportations deny asylum seekers this opportunity.¹⁹

They state that there is a delay on the part of the UNHCR in processing the asylum claims and other countries accepting resettlement of those recognized refugees. However, the Sri Lankan government should not penalize asylum seekers or refugees.

Furthermore as stated previously, the government of Sri Lanka is deporting asylum seekers forcibly. Usage of the words 'encouraging the asylum seekers' does not reflect the true nature of actions taken by the government. Subsequently it is not merely a problem of persons overstaying their visa. The group consists of people who are asylum seekers registered at the UNHCR and the government should treat them accordingly.



¹⁹ <http://www.humanrights.asia/news/forwarded-news/AHRC-FST-064-2014>

2. Assessment of international law

The detention and deportation of asylum seekers is objectionable from a human rights perspective. It is a violation of Articles 6, 7, 9 and 10 of the ICCPR²⁰:

Article 6: Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 9: Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Article 10: All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.



Subsequently, some of these asylum seekers will almost certainly risk persecution, including torture, upon returning to Pakistan, which is the basis for the UNHCR to consider their right to asylum. The incarcerations and deportations indicate that Articles 3 and 15 of the UN Convention against torture will be violated:

Article 3: No state Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

Article 15: Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

The Sri Lankan government ratified both treaties.²¹

Subsequently, the deportation of asylum seekers is a violation of the principle of no forced return, or *non-refoulement*, enshrined in international customary law.²² This principle is binding for all States that have ratified the treaties and precludes them from sending asylum seekers and refugees to a country where their life or freedom would be threatened.²³

²⁰ <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

²¹ [http://www.documents.gov.lk/Acts/2007/International%20Covenant%20on%20Civil%20&%20Political%20Rights%20\(Iccpr\)%20-%20Act%20No.%2056/English.pdf](http://www.documents.gov.lk/Acts/2007/International%20Covenant%20on%20Civil%20&%20Political%20Rights%20(Iccpr)%20-%20Act%20No.%2056/English.pdf), http://www.lawnet.lk/section.php?file=http://www.lawnet.lk/docs/statutes/stats_1956_2006/indexes/Vol2/1994YOVOC22A.html

²² See E. Lauterpacht and D. Bethlehem (2001, §§ 196-216).

²³ <http://reliefweb.int/report/sri-lanka/unhcr-urges-sri-lanka-stop-deporting-asylum-seekers-pakistan>

Furthermore, Article 14(1) of the Universal Declaration of Human Rights states that everyone has the right to seek and enjoy asylum from persecution in other countries.

Subsequently, as some of the civil society organisations have stated, some detainees have been “slapped”. This would constitute a violation of Article 5 of the Universal Declaration, stating that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Moreover, two United Nations human rights experts²⁴ have expressed grave concern at the situation of Pakistani asylum seekers in Sri Lanka who are being detained and forcefully deported to Pakistan without an adequate assessment of their asylum claims.

“States must guarantee that every single asylum claim is individually assessed with due process and in line with international law,” stressed the UN Special Rapporteurs on minority issues, Rita Izsák, and on freedom of religion and belief, Heiner Bielefeldt.²⁵

The UN human rights experts called on the Government of Sri Lanka to comply with the principle of *non-refoulement* (no-forced-returns) when there is a credible potential threat against an individual and to stop the deportations immediately in order to allow the completion of the entire asylum claim process.

“The risks faced by the deportees should never be underestimated but must be adequately assessed,” stressed the Special Rapporteurs. “It is our hope that the Government of Sri Lanka will collaborate with the UN Refugees Agency in its work to guarantee the rights of asylum seekers, and avoid any actions that could lead to possible tragic consequences.”

Authorities deny violating any international laws, saying Sri Lanka is not a signatory to the 1951 U.N. Refugee Convention,²⁶ nor does the government recognise the principle of *non-refoulement* to be part of customary law.

The 84 civil society organisations noted in their statement²⁷ that the claims of the Ministry of External Affairs are unsubstantiated, pertaining that the increase in the number of asylum seekers is due to people falling victim to commercially-driven human trafficking networks which abuse the liberal visa policy of Sri Lanka. The only way to determine who is genuinely fleeing persecution is a comprehensive case by case assessment by the nationally- and internationally-recognised agency UNHCR. All asylum seekers have a right to this due process under international customary law thus deportations deny asylum seekers this opportunity.²⁸

They state that there is a delay on the part of the UNHCR in processing the asylum claims and other countries accepting resettlement of those recognized refugees. However, the Sri Lankan government should not penalize asylum seekers or refugees.

24 The United Nations **human rights experts** are part of what it is known as the **Special Procedures** of the Human Rights Council. Special Procedures, the largest body of independent experts in the UN Human Rights system, is the general name of the independent fact-finding and monitoring mechanisms of the Human Rights Council that address either specific country situations or thematic issues in all parts of the world.

25 <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=14942&LangID=E>

26 <http://www.reuters.com/article/2014/08/15/us-sri-lanka-refugees-pakistan-idUSKBN0GF1PK20140815>

27 <http://www.humanrights.asia/news/forwarded-news/AHRC-FST-064-2014>

28 <http://www.humanrights.asia/news/forwarded-news/AHRC-FST-064-2014>

Violations of Sri Lankan national law

In the context of the Fundamental Rights Chapter III of the Sri Lankan Constitution²⁹, Article 10 states that every person is entitled to freedom of thought, conscience and religion. Article 11 states that no person shall be subjected to torture or to cruel or inhuman treatment. However, having seen the case files of some of the asylum seekers in question, it is certain that these rights cannot be guaranteed and could be violated upon their return to Pakistan.

Under article 12(1) of the Sri Lankan constitution, everyone (including non-citizens) is entitled to equal protection of the law, irrespective of citizenship and immigration status. These are rights made available to all people in Sri Lanka, irrespective of their nationality and immigration status.

Subsequently, Article 13 states that no person shall be arrested except according to procedures established by law. The fact that the Pakistani asylum seekers are not Sri Lankan nationals is irrelevant, as these articles mention no exception to the term “person” as used.

The Lawyers Collective in Sri Lanka has noted that the laws under which the arrests and detention have taken place are unclear. Victims and their families have not been informed of clear and specific reasons for arrests and no arrest receipts have been provided. Subsequently, arrestees have not been produced before a competent court. They have also noted that access to lawyers has been denied and that there are indications that they have been arrested under the Prevention of Terrorism Act, as arrestees are being held at the Boosa detention facility run by the Terrorist Investigation Department (TID). According to lawyers, if they have been arrested under immigration law, they should have been detained in the Immigration Detention facility in Mirihana.³⁰

Lawyers and Christian clergy have been informed by asylum seekers (specially women and children) that their passports and UNHCR documents have been confiscated by force and threats by immigration officials, which could lead to the violation of equal protection under the law.

Lawyers have also been informed by some family members of those detained that their family members have been “slapped” by authorities. No further information was confirmed. However that would constitute a violation of Article 11 of the Sri Lankan constitution.

Risk of persecution in Pakistan

Source: Human Rights Watch

<http://www.hrw.org/news/2014/07/02/sri-lanka-don-t-summarily-deport-pakistani-minorities>

The Pakistani government has failed to investigate instances of discrimination or violence against ethnic and religious minorities. Members of the Ahmaddiya, Christian, and other religious minority communities are at acute risk of violent persecution and discrimination in Pakistan. Both Human Rights Watch and the Asian Human Rights Commission have noted that these communities face increasing risk and social discrimination due to threats by militant groups.

²⁹ http://www.priu.gov.lk/Cons/1978Constitution/Chapter_03_Amd.htm

³⁰ <http://www.humanrights.asia/news/forwarded-news/AHRC-FST-064-2014>

Recent acts of discrimination against the Ahmaddiya community include, for example, targeted killings of prominent members, registration of false cases, and desecration of community sites. In some instances, provincial officials have supported militants rather than provide adequate protection to members of religious minority communities.

On June 30, 2014, Human Rights Watch released a report on the persecution of Shia Muslims in Pakistan. Human Rights Watch documented that Pakistan's Shia Muslim community has been the target of an unprecedented escalation in sectarian violence as Sunni militants have killed thousands of Shia across the country since at least 2008.

Christian churches and residential areas have faced similar attacks, such as the September 2013 attack on a Peshawar church that killed 85 people. At least three Christians have been sentenced to death in 2014 for blasphemy.

The persecution of religious minorities is wholly legalised by the Pakistani government. Pakistan's penal code explicitly discriminates against religious minorities, and in particular targets Ahmadis by prohibiting them from "indirectly or directly posing as a Muslim." Ahmadis are prohibited from declaring or propagating their faith publicly, building mosques, or even referring to them as such, or making the call for Muslim prayer.

Pakistan's "blasphemy law," as section 295-C of the penal code is known, makes the death penalty effectively mandatory for blasphemy. In 2009, at least 50 Ahmadis were charged under various provisions of the blasphemy law across Pakistan. Many of them remain imprisoned. Several Christians have also been targeted and charged under the blasphemy law.

Despite the persecution of religious and ethnic minorities in Pakistan, the Pakistani government has shown nothing but contempt toward those who have fled the country and sought asylum abroad. The Pakistani newspaper, *The Dawn*, quoted foreign office spokesperson Tasnim Aslam as saying, "These people obtained asylum in Sri Lanka by badmouthing Pakistan."

Conjointly with the article of HRW, two special rapporteurs of the UN have written a communal statement explaining that violent attacks against religious minorities have increased significantly in recent years, according to Pakistani sources. Last year, 687 people belonging to religious minorities were reportedly killed in over 200 separate attacks.³¹

"Such violence is fueled by existing blasphemy legislation, particularly targeting minorities and lack of protective measures for them in Pakistan," Mr. Bielefeldt said. "The personal security and safety of Ahmadiyya Muslims, Christians and Shias who are being returned to Pakistan from Sri Lanka is a matter of serious concern, due to the large number of cases of violent attacks and threats against members of those religious communities by militant extremists in Pakistan," he highlighted.

UN human rights experts called on the Government of Sri Lanka to comply with the principle of *non-refoulement* (no-forced-returns) when there is a credible potential threat against an individual and to stop deportations immediately in order to allow the completion of the entire asylum claim process.

31 <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14942&LangID=E>

Bill Frelick, Refugees Director from the UNHCR, furthermore states in a HRW article that “Sri Lankan authorities should know that Pakistan fails to protect its minority communities from persecution”. “Sri Lanka must honor its international obligations, and allow UNHCR access to ensure that no detainee is deported to face the risk of persecution or torture.”³²

The UNHCR has appealed to the Sri Lankan authorities to uphold their responsibilities under international law and ensure full respect for the rights of people in need of international protection. The organisation is willing and ready to work closely with the Government of Sri Lanka in addressing refugee-related matters.³³

Conclusion and requests

There are only 3,000 or slightly more asylum seekers, refugees and failed cases living in Sri Lanka. However, more than 400,000 Sri Lankans from Singhalese, Tamil and Muslim communities live in various countries. They fled the country during 1988–90 as well as during the 30 years of war. In southern India, nearly 100,000 Sri Lankans live as refugees; some are stateless due to registration of birth and citizenship issues.

Including these facts, and accordingly, keeping in mind that more detainees are being deported, we urgently request for the international community, and the European Union in particular, to:

- request that the Sri Lankan government respect international treaties and procedures concerning asylum legislation and, therefore, release the detainees
- request that the Sri Lankan government terminates the deportations
- request the Sri Lankan government to work more closely with the UNHCR
- call for the UNHCR to make further efforts to solve the serious backlog in the processing of asylum applications and process new applications more effectively.
- Request the governments and the UNHCR ensure individuals are protected
- Request that those who are deported are supported and might be resettled to a third country if needed

Numerical overview

- There are 1,562 asylum seekers in Sri Lanka. 1,433 of them are Pakistanis; the rest are Afghans, Palestinians, Iranians and others.³⁴
- There are an additional 308 people listed as refugees.³⁵
- 214 Afghan and Pakistan nationals were arrested in an operation beginning on June 9. How many people remain in detention is not certain.³⁶
- On September 5, a total of 139 Pakistani and 19 Afghans had been deported.

32 <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14942&LangID=E>

33 <http://www.unocha.org/aggregator/sources/77>

34 <http://www.mea.gov.lk/index.php/en/media/media-releases/5047-response-to-inquiries-on-asylum-seekers>

35 <http://www.mea.gov.lk/index.php/en/media/media-releases/5047-response-to-inquiries-on-asylum-seekers>

36 <http://www.unhcr.org/53df35459.html>

Appendix 1

*The Lawyers Collective, letter addressed to the National Human Rights Commission of Sri Lanka,
August 13, 2014*

13th August 2014
The Chairman
National Human Rights Commission of Sri Lanka
165 , Kinsey Road , Colombo 08

Dear Sir / Madam,

The Lawyers Collective (As Sri Lankan Human Rights Defenders,) we are requesting you to investigate the reported arbitrary arrest and deportation of asylum seekers presently in Sri Lanka, which appear to violate the Fundamental Rights Chapter of the Sri Lankan constitution and Sri Lanka's international human rights obligations.

Given the immediate risks the victims face and continuing violations, we ask you to intervene on this on an urgent basis, and provide immediate protection and relief.

Arrests:

1. According to UNHCR, as of 5th August, 205 Pakistani, Afghan and Iranian asylum seekers and refugees remain detained in Sri Lanka[1].
2. Under article 12(1) of the Sri Lankan constitution, everyone (including non-citizens) are entitled to equal protection of the law, irrespective of their citizenship and immigration status.
3. The laws under which the arrests and detention has happened is not clear. Victims and their families have not been informed clear and specific reasons for arrests. No arrest receipts have been provided. They have not been produced before a competent court. Access to lawyers have been denied. Indications are that they are arrested under the Preventive of Terrorism Act, as arrestees are being detained at Boosa detention facility run by the Terrorist Investigation Department (TID). If they have been arrested under the Immigration laws, they should be detained in the Immigration Detention facility in Mirihana.
4. Lawyers and Christian clergy have been informed by asylum seekers (specially women and children) that their passports and UNHCR documents have been confiscated by force and threats, by Immigration officials, which could lead up to the removal of equal protection of the law.
5. Based on information we have been provided with, irrespective of under what laws arrests have been made, their rights under 12 (1) of the Sri Lankan constitution appear to have been violated.
6. Lawyers have also been informed by some families of those detained that their family members have been tortured and subjected to cruel, inhumane and degrading treatment while in detention, which will be an violation of article 11 of the constitution.

Deportations:

7. According to UNHCR, 66 Pakistani asylum seekers have been deported between 1st and 8th August 2014[2]. And that more, including women and children, could be deported. This also confirms information provided by some asylum seekers to lawyers, human rights defenders and clergy.

8. Although the Sri Lankan Ministry of External Affairs has claimed[3] that asylum seekers have been “encouraged to return”, in practice, they have been forcibly been deported, as confirmed by UNHCR.

9. The MEA claims without presenting any evidence, that the sudden increase in number of asylum seekers in Sri Lanka is due to people falling victim due to commercially driven human trafficking networks which abuse liberal visa policy of Sri Lanka. We assert that the persecution faced by religious minorities and life threats faced by such communities in their countries of origin, is the main reason for increase in asylum seekers. It is only comprehensive asylum case processing by the competent agency (UNHCR) on a case by case basis, and not unsubstantiated assertions by the MEA, that can determine whether a person is entitled to refugee claims or not. What the deportations have done is to deny the asylum seekers an opportunity for this due process.

10. Even if there is a delay on the part of the UNHCR in processing such claims and other countries accepting resettlement of those recognized as refugees[4], the Sri Lankan government should not penalize asylum seekers or refugees.

11. It is our contention that these deportation violates:

- a. Article 3 of the UN Convention Against Torture, to which Sri Lanka is a party
- b. The principle of no forced return, or non-refoulement, enshrined in customary international law, which is binding on all States and precludes them from sending asylum-seekers and refugees to a country where their life or freedom would be threatened.
- c. Article 14 (1) of the Universal Declaration of Human Rights, which is also part of international customary law. We are also disappointed that despite the urgency of the situation and availability of information in the public domain, including official statements by UNHCR and Ministry of External Affairs, the NHRC doesn't seem to have initiated an investigation.

We are alarmed that when a lawyer contacted the hotline of the NHRC (1996) the NHRC officer answering the phone refused to accept the complaint instead ask a written complain.

Given the refusal of authorities to allow detainees to meet lawyers, the lack of a formal mandate like the NHRC to undertake monitoring visits to detention facilities and the great fear amongst the asylum seeker / refugee community, we are unable to obtain more updated, accurate and comprehensive information.

Our understanding from information made available to us is that the Sri Lankan Police and the Department of Immigration is responsible for all the above violations, under the direction of the Ministry of External Affairs.

Given the urgency of the situation, we urge you to:

1. Issue an urgent directive to stop any further deportations, until a full inquiry is conducted by the NHRC
2. To initiate an urgent investigation into the above facts and summon the Inspector General of Police, The controller of Immigration, the Minister of External Affairs and other relevant authorities to the NHRC.
3. To call for the "Order of the Minister" under which persons can be deported (as per article 31 of the Immigration and Emigration Act of 1948) in order to ensure on what basis and whose direction these deportations have been carried out.
4. To ensure that due process is followed as per Sri Lanka's constitution and international treaty and customary law obligations, in relation to all asylum seekers, particularly those who have been detained (including access to lawyers) and any persons who maybe to arrested in the coming days.
5. Undertake an urgent fact finding mission to detention centres that hold these detainees, and also to the community which is facing imminent arbitrary arrest and detention and publish findings and recommendations.
6. Urge authorities to allow UNHCR full access to all asylum seekers and refugees in detention.



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[1] See official UNHCR briefing notes of 5th August, available at <http://www.unhcr.org/53e0c0ae9.html>

[2] See official UNHCR briefing notes of 5th August, available at <http://www.unhcr.org/53e0c0ae9.html>

[3] See <http://www.mea.gov.lk/index.php/en/media-media-releases/5447-responses-to-inquiries-on-asylum-seekers>

[4] As claimed by the MEA Media Release of 2nd August, available at <http://www.mea.gov.lk/index.php/en/media-media-releases/5447-responses-to-inquiries-on-asylum-seekers>

Appendix 2

Statement of 84 civil society organizations, August 20, 2014.

PAKISTAN/SRI LANKA: Inhumane and illegal deportation of asylum seekers from Sri Lanka should be stopped

August 22, 2014

A Statement from the civil society in Sri Lanka forwarded by the Asian Human Rights Commission

As Sri Lankan citizens and Sri Lankan civil society organisations, we are appalled by the recent arrests and deportation of asylum seekers from Sri Lanka. According to the UN, 108 Pakistanis have been deported as of 14th August[i]. According to the UNHCR, this included at least 11 women and 8 children and families have been separated, including a pregnant woman that had been left behind after the husband was deported[ii].

These deportations are in breach of customary international law which requires all countries to abide by the principle of “non-refoulement” (no forced returns) to countries where people face imminent risks. It violates Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which the Sri Lankan government has ratified. UNHCR has noted that Ahmadiyya Muslims, Shia Muslims and Christians in Pakistan may need international protection and require particularly careful examination of their asylum claims.

The Ministry of External Affairs’ (MEA) claim that the increase in number of asylum seekers is due to people falling victim to commercially-driven human trafficking networks which abuse liberal visa policy of Sri Lanka[iii] is not substantiated. The only way to find out who is genuinely fleeing persecution is a comprehensive case by case assessment by the nationally and internationally recognized agency for this, UNHCR, and not any Sri Lankan government agency. All asylum seekers have a right to this due process, under international customary law and what deportations have done is to deny asylum seekers this opportunity. Although the MEA has claimed that asylum seekers have been “encouraged to return”, in practice they have been forcibly deported, as confirmed by UNHCR.

UNHCR has also said that some of the latest deportees had their passports and asylum seeker certificates seized last week, and told to go to Colombo airport, where they were placed on flights to Pakistan against their will.

According to UNHCR, there are 157 asylum seekers (84 Pakistanis, 71 Afghans and 2 Iranians) detained as of 12th August[iv]. They face imminent deportation. The Lawyers Collective in Sri Lanka has noted that the laws under which the arrests and detention has happened is not clear, that victims and their families have not been informed clear and specific reasons for arrests, that no arrest receipts have been provided, that arrestees have not been produced before a competent court[v]. They have also noted that access to lawyers have been denied and that indications are that they are arrested under the Preventive of Terrorism Act, as arrestees are being detained at Boosa detention facility run by the Terrorist Investigation Department (TID). According to lawyers, if they have been arrested under the Immigration laws, they should have been detained in the Immigration Detention facility in Mirihana.

Some of us have also heard that some asylum seekers have been subjected to torture, cruel, inhumane and degrading treatment, which would be a violation of Article 11 of the Sri Lankan constitution. The lack of due process also appear to be a violation of Article 12 (1) of the Sri Lankan constitution. These are rights made available to all people in Sri Lanka, irrespective of their nationality and immigration status.

To the best of our knowledge, the Sri Lankan government doesn't offer asylum seekers and refugees basic needs like housing or food. Neither does it offer them permanent resettlement. So these asylum seekers/ refugees will only be in Sri Lanka temporarily, for a few months or years.

We welcome the interim order of the Court of Appeal on 15th August that has prohibited deportations of all refugees and asylum seekers registered with UNHCR till 29th August when the case will be taken up.

We call on UNHCR to monitor and report on the implementation of the above court order and assist the courts when the case is taken up in any way possible, such as through expert input. We also call on UNHCR to take a more proactive role in responding to this crisis situation, such as by opening up 24 hour emergency hotlines in Sri Lanka and countries where asylum seekers have been deported, monitoring the situation of those who have been deported, initiating a fast track process to expedite the processing of pending asylum claims and appeals and identifying and engaging with potential countries which may offer fast track resettlement to those recognized as refugees.

We are alarmed to hear that after the court order, police officers have gone in search of the female Pakistani asylum seeker who had petitioned the Appeal Courts. Police had also visited and questioned several Christian clergy and employees at church-based institutions who have been supporting asylum seekers. We call on the government to strictly adhere to the interim court order and refrain from intimidating and harassing the petitioner, asylum seekers and those assisting them. We also call on the government make a public commitment to halt deportation and arrests of asylum seekers and adopt policies and practices that will offer them the protection and support that they deserve, in line with our spiritual-religious values and domestic and international legal obligations, including customary law.

We also demand that the government ensures right of due process to all those in detention, particularly access to lawyers and UNHCR to have their asylum claims processed.

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