

The following report is from the Department of Foreign Affairs and Trade and is provided for the exclusive use of decision makers in the migration/refugee determination process in the Migration Review Tribunal-Refugee Review Tribunal (MRT-RRT). DFAT acknowledges that this document may be released to an applicant and/or their legal advisor.

DFAT REPORT: 1478
INITIAL REPORT RELEASED TO THE MRT/RRT: 28 February 2013
MRT/RRT INFORMATION REQUEST: LKA41452

Background:

These questions arise from issues arising from a number of cases being considered by RRT members, and represent collective requirements to assist them in completing similar IMA cases. It also follows up previous DFAT report provided to the RRT on 22 October 2012 (LKA40999).

Questions:

Post appreciates the extension given to answer this request and regrets the delay in responding.

A. In a DFAT report provided to the RRT on 22 October 2012 (LKA40999) post indicated it may be able to seek information from NGOs and others working in the north and east to obtain further information about the treatment of Tamils returning to those areas. If that remains the case, could post seek such information?

§ 33(a)(iii) not raised with us specific issues regarding the treatment of Tamils returning to the north and east. In regard to the treatment of recently resettled internally displaced persons (IDPs), § 33(a)(iii) not indicated that they are treated any differently from Tamils anywhere else in the north or east. § 33(a)(iii) indicated that any gatherings of people in the north are monitored, including community meetings and events, either by plain-clothes, or sometimes uniformed, military figures. § 33(a)(iii) said that people may be questioned if they are visited by politicians such as the Tamil National Alliance (TNA), foreigners, or NGO workers.

B. Could post also inquire of NGOs or other informed bodies on the Sri Lankan military or other paramilitaries' treatment of Tamils returning to the north and east. This includes any information on both LTTE cadres being rehabilitated as well as others returning from periods abroad, including India. Who do NGOs report are being targeted, and why?

§ 33(a)(iii) told us that the Sri Lankan military monitors inhabitants of the north and east (though § 33(a)(iii) raise issues regarding military involvement in the Northern Province, rather than the Eastern Province). § 33(a)(iii) said that monitoring may consist of one or two plain-clothes or uniformed military or police standing outside community meetings or gatherings, filming or watching them. § 33(a)(iii) claim that Tamils, or others in the Northern Province, may be questioned if they are visited by politicians such as the TNA, foreigners, or NGO workers. § 33(a)(iii) indicate that Tamils, or others in the Northern Province, who are political activists,

journalists or human rights defenders are likely to be questioned about their activities. s 33(a)(iii) indicated that such questioning may involve a visit by the military or police to the person's house; or it may involve asking them to report to the police station for questioning. s 33(a)(iii) indicated that rehabilitated LTTE cadres may need to report to the local military base on a regular basis (according to some reports, as frequently as once a week). Apart from this, s 33(a)(iii) not raised issues regarding the monitoring of rehabilitated LTTE cadres.

On 17 February 2013 "The Sunday Leader" newspaper published an interview with three rehabilitated LTTE cadres who have joined the Civil Defence Force. Please find it attached.

C. Can post provide any information concerning the treatment of Tamils who have lived in India for extended periods? Can post comment on any assumptions made by authorities about their support for the LTTE?

s 33(a)(iii) not raised with us issues concerning the treatment of Tamils who lived in India for extended periods in Sri Lanka and have returned to Sri Lanka. We note that returns from India are voluntary. India does not return Sri Lankan refugees involuntarily.

D. Can post provide any information concerning the treatment of Sri Lankan Tamils who have lived for extended periods in other countries where the LTTE was known to be active?

s 33(a)(iii) not raised with us issues concerning the treatment of Tamils who lived in other countries where the LTTE was active for extended periods and have returned to Sri Lanka. We have heard reports that Tamils visiting from western countries with a large Tamil diaspora, such as Norway, may be followed, or questioned, by police.

E. What is the situation for such Tamils returning from abroad who have lost family or similar links with their former village or place of residence? What prospects do they have for settlement in Colombo or other places?

Tamils, like all Sri Lankans, are able to reside in any part of Sri Lanka they choose. s 33(a)(iii)

some Tamils choose to reside in Colombo rather than return to their former place of residence. s 33(a)(iii) said there are better job prospects in Colombo but the cost of living is higher.

F. The DFAT report provided to the RRT on 22 October 2012 ((LKA40999) notes that in post's experience no failed asylum seekers returned from Australia had been charged under the Immigration and Emigration Act with offences related to their illegal departure from Sri Lanka. Can post provide an update on this in light of the ABC report of 16 November 2012 which suggested that some asylum seekers had been arrested (copy of report attached) and the Sydney Morning Herald report of 8 December 2012 (copy attached), which reports on the incarceration of Sri Lankan asylum seekers deported from Australia at the Negombo prison and alleges that most of those deported have been charged with illegally leaving Sri Lanka?

Attachments not included as out of scope of the request.

As reported in CL612972 of 27 November 2012 responding to a CIS request, since 2 November 2012, Sri Lankan irregular maritime arrivals non-voluntarily returned from Australia have been charged under Immigration and Emigration Act for offences related to their irregular departure from Sri Lanka. Sri Lankans who depart Sri Lanka without proper authority commit a criminal act under Section 45 of the Immigration Act 1998 (1) (b). This is in fact two offences: the first being departure from the country from other than an approved port (Section 34) and departing from the country without a valid passport (Section 35 (a)).

From late November 2012, the Sri Lankan Government started to enforce the law in all cases regardless of whether a person has been returned voluntarily or non-voluntarily. Since then returned Sri Lankan nationals who arrived in Australia by boat (and thus departed Sri Lanka illegally) have been charged and remanded for offences regarding their illegal departure.

G. Can post provide any information on whether the Sri Lankan authorities are making any distinction between failed asylum seekers and returnees who have been "screened out" and so found not to engage Australia's asylum obligations?

Sri Lankan authorities are given no information regarding Australian processing procedures but they are aware of the voluntary/non-voluntary status of returnees on arrival into Sri Lanka.

Post experience is that Sri Lankan authorities are not making any such distinction when processing Sri Lankan returns from Australia at the airport. They are focused on enforcing Sri Lankan law.

H. The report in the Sydney Morning Herald of 8 December 2012 quotes Joseph Jayasinghe, a lawyer who 'regularly represents failed asylum seekers' who asserts that asylum seekers are treated more harshly than people intercepted before departing Sri Lanka. Could post comment on this claim, including on this person's reliability as a source of information?

From a legal perspective, generally under Sri Lankan law the offence of attempting to commit a crime will carry a lesser penalty than that of committing the same crime. Under the Immigration and Emigration Act the penalty applied to departing Sri Lanka unlawfully (as in the case where Sri Lankans are intercepted on people smuggling boats in Sri Lankan waters) will attract less of a penalty compared to persons found to have committed the offence (those who return to Sri Lanka without having a record of departing Sri Lanka through an official port of exit or entry).

Joseph Jayasinghe has not previously come to post's attention.

I. Does post have any information concerning the level of post-arrival monitoring by Sri Lankan authorities of recently returned failed asylum seekers, from Australia, or from any other country? Separately, do any organisations or groups monitor their welfare after arrival?

Post is not aware of specific post-arrival monitoring by Sri Lankan authorities of recently returned failed asylum seekers.

Post is not aware of any organisations or groups who have a specific program to monitor the welfare of returned asylum seekers in Sri Lanka. The International Organisation of Migration maintains contact with returnees who have been given a re-integration package as part of their agreement to return to Sri Lanka.

J. Does post have any information concerning whether Sri Lankan authorities monitor criticism of Sri Lankan authorities by Sri Lankan nationals living abroad, how extensive that monitoring might be, and whether an individual returning to Sri Lanka from abroad having engaged in public criticism would be subject to surveillance or ill-treatment?

Post has not received any specific information concerning the monitoring of criticism of Sri Lankan authorities by Sri Lankan nationals living overseas by Sri Lankan authorities. We are not aware of Sri Lanka having an organised mechanism to monitor criticism of Sri Lankan authorities by Sri Lankan nationals living abroad.

The Sri Lankan government is known to pay close attention to criticism of a political nature, especially on post-war accountability issues. Government spokespersons generally provide a response to such criticism to local journalists which is reported in local newspapers. Some of the more vocal critics on Sri Lankan issues include the considerable number of Sri Lankan journalists who are living in exile overseas. Having fled Sri Lanka due to alleged threats resulting from adverse reporting of government actors or policies, some journalists continue to make public their views.

An individual returning to Sri Lanka from abroad having engaged in public criticism may be subject to surveillance should the person be considered of interest to local authorities. Post is aware of persons who have returned to Sri Lanka from abroad having engaged in public criticism who have not been subject to surveillance or ill-treatment.

Post notes there was a highly publicised consular case involving an Australian (of Sri Lankan origin) in 2012.

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DFAT REPORT: 1479

INITIAL REPORT RELEASED TO THE MRT/RRT: 4 March 2013

MRT/RRT INFORMATION REQUEST: LKA41452

Background:

This is a request for further clarification regarding post's response to LKA41452 (DFAT Report 1478).

Questions:

A: In question F (DFAT Report 1478 refers) post refers to individuals being charged and remanded for offences regarding their illegal departure. Does 'remand' in this sense mean an administrative process to appear at court at a later date? Or does it mean physically remanded and, if so, does it necessarily mean remanded in prison, or in some other type of facility?

Remand in this sense means physical remand as in the Australian legal context. Those held on remand are held in a prison. For those returning to Colombo International Airport, they would be remanded at the Negombo Prison's Remand Unit.

Post's experience with returnees from Australia is that persons are arrested by the Sri Lanka Police Service Criminal Investigation Department (CID) after being processed back into Sri Lanka by the Department of Immigration and Emigration. They are held in police custody at the CID Airport Office throughout the investigation period, which can last up to 24 hours under relevant legislation.

They are then produced before a magistrate and the Magistrate's Court will determine whether the person is to be released on bail, to appear before the court at a later date, or is remanded into custody.

If a person needs to be held for more than 24 hours as a result of a Magistrates Court not sitting, such as when a person arrives during a weekend or public holiday, arrested persons are transferred to the nearby Negombo Prison (Remand Section) until the Magistrates Court is in session.

We understand the current process for bail is that all persons are granted bail based on personal recognisance (on their own responsibility), with the requirement for a family member to stand as a guarantor. There is no payment required for bail.

However, we note that the court may decide not to grant bail if the returnee is found to be a facilitator/organiser of people smuggling, or the court may grant specific bail conditions if the person is a repeat offender.