

Activist Intimidation¹

Surveillance and Intimidation of Tamil Diaspora Activists and their Supporters

Tamils Against Genocide, 13 March 2013



ABOUT TAMILS AGAINST GENOCIDE

Tamils Against Genocide Inc [TAG] is a non-profit litigation advocacy organization incorporated in the United States. TAG is involved in evidence gathering and in bringing litigations on behalf of victims of war crimes, crimes against humanity and genocide against perpetrators from Sri Lanka under universal jurisdiction provisions in countries including the United States.

TAG's mission statement is on its website at <http://www.tamilsagainstgenocide.org/AboutTAG.aspx>.

More information can be obtained on the website <http://www.tamilsagainstgenocide.org/> or by emailing advocacy@tamilsagainstgenocide.org.

¹ Version 2.2.

EXECUTIVE SUMMARY

This report is in part an update to the TAG report “Returnees at Risk: Detention and Torture in Sri Lanka” (hereafter ‘Returnees at Risk’) published 16 September 2012.² The focus of this report is the Government of Sri Lanka (hereafter GoSL) surveillance and intimidation of Tamil diaspora activists. We include in this broad category of ‘activists’ protesters who campaign for political objectives, such as devolution of the North and East of Sri Lanka, but also those who campaign for accountability for violations of International Humanitarian Law (IHL) including war crimes, crimes against humanity and genocide.

The report analyses afresh the data sets from the ‘Returnees at Risk’ report but also presents and analyses material that has been collected by TAG since that report, namely, five interviews with activists conducted in January 2013, and a further eight successful asylum appeal determinations. The backdrop to analysis of these data sets is the changing context since September 2012, since events prior to that date are covered by the ‘Returnees at Risk’ report. Briefly listed, primarily for reference purposes, are particularly significant protests and activist events, predominantly in the UK.

In light of analysis of the above-mentioned data sets, and within the context elaborated upon in the ‘Returnees at Risk’ report and briefly updated here, we find as follows:

- The GoSL defines ‘traitor’ and ‘terrorist’ broadly to include both those who call for an independent international process of accountability for the crimes committed during the Sri Lankan conflict and human rights abuses since the end of the conflict³, and those who are considered to bring Sri Lanka into international disrepute, such as asylum seekers and protesters. Commensurate with its assessment of the threat, the GoSL allocates resources to collecting (both through surveillance and interrogations) and then acting upon that threat. Those accounts of interrogations under torture that are detailed in our data sets reveal the information requirements of GoSL officials.
- The findings from the data sets confirm that the diaspora is considered the locus of the ‘LTTE’ threat. Members of the diaspora are treated as suspicious, by virtue of the fact that they are in the diaspora.⁴ The risk to returning members of the Tamil Diaspora is further heightened when that member:
 - Is an actual or perceived member of an organisation that is (actual or perceived) to be critical of the GoSL

² <http://www.tamilsagainstgenocide.org/Data/Docs/TAG-Report-16-Sep-2012-Returnees-at-Risk.pdf>

³ These calls have been largely for an international process for accountability for allegations of war crimes in the final phase of the war, but in some instances they also include calls for accountability for IHL violations during the 60 years post independence. GOSL sees these calls as threatening its “sovereignty” and objects to any “international interference”

⁴ Indeed, where threat = capability + intent, Tamil diaspora have both the capability (since they are not in Sri Lanka) and the motivation (the crimes amply committed by successive Sri Lankan Governments.)

- Has been (or is perceived to have been) involved in protests and/or activist events against the GoSL
- Is believed to have brought the Rajapaksa Administration into disrepute in any way – this includes asylum seekers and witnesses of war crimes or human rights abuses who dare to speak out.

As diaspora groups have become increasingly better organised and more active, largely in response to the crimes committed in the final months of the conflict in 2009, the GoSL has responded by increasing its surveillance and intimidation of those groups and individuals. In the wake of the Petrie report⁵, and the international condemnation of the impeachment of the Chief Justice⁶, with the mounting international attention and pressure in the build up to Sri Lanka's review at the Human Rights Council this March 2013, the growing campaigns against the Commonwealth Heads of Government Meeting (CHOGM)⁷ being held in Colombo, and the growing media storm generated by the release of another Channel 4 documentary⁸, it is assessed that the collection and intimidation tactics of the GoSL are likely to increase.

The Data Sets

We detail the quantity and type of data and detail in turn key statistics from each. Data sets include two of the original data sets from the "Returnees at Risk" Report, here referred to as Sets A1, A2 and subsequent data collected since the production of that report, referred to as Sets B1 and B2.⁹

Set A1: Asylum Appeal Determinations

⁵ The Internal Review Panel Report on Sri Lanka (The Petrie Report), November 2012

⁶ International Crisis Group Blog, 17 January 2013, "Impeachment of the Sri Lankan Chief Justice", accessible at <http://www.crisisgroupblogs.org/srilanka-lastingpeace/2013/01/17/the-impeachment-of-sri-lankan-chief-justice/>.

⁷ "Call for Cameron to boycott Sri Lanka summit over human rights" BBC News, 15 November 2012, <http://www.bbc.co.uk/news/uk-politics-20323364>,

⁸ "Sri Lanka's Killing Fields" First Broadcast Tuesday 14 Jun 2011, and "Sri Lanka's Killing Fields: War Crimes Unpunished" First Broadcast Wednesday 14 Mar 2012. Accessible at <http://srilanka.channel4.com/>.

⁹ It is pertinent here to add that the three primary data sets in the Returnees at Risk report are discrete from the data in the Freedom From Torture (FFT) report. FFT "Sri Lankan Tamils tortured on return from the UK", 13 September briefing, and FFT "Submission to the Committee against Torture for its examination of Sri Lanka in November 2011", October 2011, and "Out of the Silence, New Evidence of Ongoing Torture in Sri Lanka 2009–2011" November 2011 which was based on the submission to the UN Committee against Torture. The 13th September briefing (made public on the 14th September) detailed 24 cases of Tamils tortured in Sri Lanka after returning voluntarily from the UK in the post conflict period. 6 of those 24 cases had previously been included in the sample of 35 cases covered by the UN Convention Against Torture submission in November 2011 (and the "Out of the Silence" report). The remaining 18 cases had not been detailed in the previous FFT publications.

Two of TAG's cases were the same as two of the cases used in the Human Rights Watch report. HRW – Press Release "United Kingdom: Halt Deportation Flight to Sri Lanka. Urgently Review Tamil Allegations of Torture", 15 September 2012. The report referenced 13 cases of alleged torture of failed Tamil asylum seekers. The extent of overlap was ascertained through cross referencing between the three organisations in Jan 2013. Representatives of HRW, FFT and TAG have signed a statement to this effect.

Of 26 successful asylum appeal determinations of returnees¹⁰, all of whom allege they were tortured,¹¹ 15 were questioned about foreign ‘activity’, 10 were specifically questioned about protests/demonstrations, with 5 being shown images of protests, and a further 1 being shown an image though of what was not qualified. 11 of the 26 applicants knew that their families in Sri Lanka had either received a visit from, been threatened, or been physically abused by GoSL officials or associates since their escape from detention and/or leaving Sri Lanka.¹²

Set A2: Asylum Interviews

Of the 11 interviews¹³ claiming torture in the period 2011–2011, the results of which had not been determined at date of publication of the initial report, we now know 4 were successful and were granted leave to remain in the UK. The results of the remaining 7 are not yet known.¹⁴ Of the 11 interviews, 7 were questioned about having being abroad, 2 specifically questioned on protests and in 1 a video of a protest was shown.

Set B1: Asylum Appeal Determinations

A further 8 successful determinations all of whom were returnees¹⁵; 7 were voluntary, 1 was a Failed Asylum Seeker from Europe. Of the 8, we only know of 1 who was questioned about protests. What is significant however is the low levels of LTTE association. 2 claimed to have no LTTE links, of which one was not politically active and yet was questioned about protests. 4 had some small degree of association with the LTTE, for example, through a family or friend connection, and only 1 had been an LTTE member. The LTTE links of the remaining case were not elaborated upon in the determination. Given these negligible links, their detention and torture seems unlikely to have been the result of these associations alone. Aside from the financial motivation for GoSL officials, the common denominator is that all were tortured after visiting the UK, which we contend in the GoSL eyes dramatically increases the likelihood of being a ‘terrorist’.

Set B2: Interviews with Activists

During January 2013, TAG researchers conducted 5 interviews with activists, 4 of which are anonymised. All 5 had experienced or had witnessed intimidation. All were aware of or had themselves been photographed by believed-to-be GoSL

¹⁰ These are judgements in asylum appeal proceedings before British immigration tribunals.

¹¹ All 26 were found credible by the UK Immigration and Asylum Tribunal.

¹² Of note, several of the determinations made no mention of the types of questions that an applicant endured in detention and under torture. In some cases, we have had access to the background material such as witness statements and interview notes and have found in those documents examples of these questions. In other cases we neither had access to the background data, or the questions were never asked of the applicant. Consequently it is assessed that the statistics here border on the conservative side. This assessment applies alike to Data Sets A2, and B1.

¹³ Asylum interviews conducted by the UK Border Agency, a government department.

¹⁴ At time of writing, TAG remain in the process of chasing the status of these cases.

¹⁵ The focus on returnees is partly a capacity decision. There is a call to look at cases of torture of non-returnees in order to identify the GoSL Information Requirements from the questions asked in interrogation – such as is the victim interrogated about links with diaspora groups, protesters abroad etc. Of note the GoSL reportedly were prepared to release the Jaffna students detained in December 2012 on the condition that they cease their links with Tamil Diaspora groups.

<http://onlineuthayan.com/english-news/uthayannews/x2146363h1h1r2p2>.

officials or associates. All were of the opinion that the GoSL surveillance of Tamil Diaspora activists and their supporters was on the increase. The cause of this increase was understood to be proportional to the increase in diaspora activities including protests.

Secondary Sources and Methodology

Having extracted from the data sets detailed above with a particular focus upon protesters, activists and GoSL response to protesters, it is necessary to foreground the findings against the context, namely of persecution of Tamils in Sri Lanka since Independence in 1948. Here we refer to the 'Returnees at Risk' report, restricting further discussion of that context to developments since September 2012, after the publication of that report. Below, we detail the character of the UK Tamil diaspora , and, for reference, name the larger of the diaspora protests and events, predominantly in the UK.

Key Protests and Activist Events

- May 2009 – global protests and hunger strikes. In London the protest lasted for 73 days.¹⁶
- Geneva – demonstrations outside the UN Head Office during the HRC sitting in March 2012. It was the culminations of a month long “Walk for Justice by three Tamils which started in Brussels.¹⁷
- Two protests in London against the visit of Sri Lankan President Mahinda Rajapaksa. The first in December 2010.¹⁸ The second in June 2012.¹⁹ Simultaneous to the protests that called for him to be excluded from the UK and/or arrested on account of war crimes, attempts were made to secure an arrest warrant for him and/or his entourage.²⁰
- July 2012, activists gathered to protest against President Rajapaksa’s invitation to the Olympics opening ceremony.²¹
- Protests at cricket matches when the Sri Lankan team are playing are held in the UK²² and globally.²³
- Annual Memorial events, include:

¹⁶ “Tamil protest ends after 73 days” BBC News, 17 June 2009, <http://news.bbc.co.uk/1/hi/england/london/8105879.stm>

¹⁷ <http://walk-for-justice.org/blog/blog/2012/03/07/eelam-tamils-demonstrate-outside-un-in-geneva/>

¹⁸ President Rajapaksa was due to deliver a talk before the Oxford University Union, the Union unilaterally cancelled.

¹⁹ <http://www.guardian.co.uk/world/2012/jun/06/sri-lankan-president-london-protest>

²⁰ “War crimes lawyers seek arrest of Sri Lankan president in Oxford” 20 November 2010, <http://www.guardian.co.uk/world/2010/nov/30/sri-lanka-president-arrest-war-crimes>

²¹ 22 July 2012, <http://www.tamilguardian.com/article.asp?articleid=5337>

²² <http://www.tamilnet.com/art.html?catid=13&artid=34140>

²³ Trevor Grant, Head of Boycott Sri Lanka Cricket Campaign (BSLCC) in Australia, announced 28 Jan 2012 that BSLCC were going global. <http://www.tamilnet.com/art.html?catid=13&artid=35996>

- Heroes Day on 27th November
 - Mullivaikal Memorial Day in May
 - Black July
 - the anniversary of the death of Prabhakaran's mother
- Sri Lankan Independence Day, 4 February.
 - Pongu Tamil and other cultural events/days with political significance

The Tamil Diaspora

A comprehensive study on the Tamil diaspora can be found in a paper by Madurika Rasaratnam from 2011.²⁴ It is introduced as follows,

“Recent years have seen marked changes in the scope, modes and scale of Tamil diaspora mobilization in Western states (see Vimalarajah and Cheran 2010) which have prompted new scholarly and policy-related research agenda. The changes in Britain are particularly significant. Since 2006, British Tamils have participated in marches, protests, election campaigns and other forms of political activity in unprecedented numbers. Concomitantly, there have been major changes in the diaspora political landscape in terms of the organisations, tactics, strategies and rationales of mobilization. These changes have resulted, in part, from developments in Sri Lanka, including the resumption and intensification of the armed conflict in 2006 and its conclusion in May 2009 with the defeat of the Liberation Tigers of Tamil Eelam (LTTE). Just as importantly, these changes have also been heavily influenced by the embedding of the diaspora, and in particular the second generation and recently emerged organisations, in Western domestic political processes and emergent international praxis over the past two decades in relation to human rights, laws-of-war, democratisation, state reform and so on. In short, diaspora mobilization is increasingly shaped by distinct identities – political, social, and cultural – which have formed over time and are emblematic of a community long resident in the West, but closely tied to its places of origin.”

A footnote to this opening reads:

“The political identity of the British Tamil diaspora is not unitary; there continues to be a diversity of political projects which promote a range of political positions. However, the events and trends examined here are critical to understanding mainstream Tamil identity for the fact that they attracted the support of the majority of the British Tamil diaspora. For example, a mass demonstration in April 2009, during the final stage of the war in Sri Lanka, is illustrative of contemporary sentiment, drawing over 200, 000 participants – 100,000 according to police figures (BBC, 2009) i.e. half to two thirds of the estimated people of Sri Lankan Tamil descent living in Britain. By way of comparison, the biggest march in British history – in February 2003, against

²⁴ Madurika Rasaratnam, “Political Identity of the British Tamil Diaspora: Implications for Engagement”, *Diaspora Dialogues for Development and Peace Project*, Berlin: Berghof Peace Support/Luzern: Centre for Just Peace and Democracy, 2011

the impending invasion of Iraq – was attended by over one million of Britain’s population of 62 million.”

The GoSL perception of the Tamil Diaspora is of a threat. There is,

“a belief, routinely articulated by senior GoSL figures, that diaspora Tamils’ political activities (lobbying, campaigning, etc) in the West are much to blame for the increasingly critical attitudes towards GoSL of (host) governments, UN bodies, international NGOs, media and other actors; and, secondly, a belief that ‘the diaspora’ is supporting and collaborating with opposition political parties and civil society groups, especially in the Northeast, to this end.”²⁵

“... rather than the diaspora’s actual or potential support for further violence by the LTTE (or other armed groups), though not an unwarranted concern, what has become a more serious threat for GoSL since the war’s end is the diaspora’s perceived ability to mobilise international pressure on and action against the government and support political and civil society-based opposition to it within Sri Lanka.”

So, in his opening address at the 22nd session of the HRC, Minister Samarasinghe stated,

“Despite these gains within Sri Lanka, remnants of the terrorist organization remain very active in some countries in the Western hemisphere, where their proxies are continuing to lobby host governments, opinion makers in the media and elsewhere, to undermine the peace and reconciliation process that is ongoing. It is regrettable that some part of the international community has fallen prey to these efforts based on disinformation, outright falsehood and pressure tactics. This has at times, resulted in biased and unequal treatment of Sri Lanka.”²⁶

With the military defeat of the LTTE, it is the Tamil diaspora that has replaced the LTTE as the greatest threat. It has emerged as;

“...the most effective Tamil challenge to Sinhala majoritarian and nationalist rule. While within Sri Lanka the drive for constitutional and governance changes are well constrained by the security, legal and structural difficulties the GoSL can impose on opposition Tamil parties and civil society, the diaspora is beyond these. Moreover, amid the global transformations of the past two decades, in which an international system based on state sovereignty is being transformed, sometimes forcefully, to one based on liberal governance, the diaspora is today a novel and potent ‘foreign’ enemy, one able to draw on international sources of power, legitimacy and law in ways that the LTTE, an armed and proscribed organisation, never could.”

“...As Neville de Silva, a well-known Sri Lankan political commentator and journalist recently appointed deputy High Commissioner in London, warned in

²⁵ Suthaharan Nadarajah, January 2013, unpublished manuscript.

²⁶ Minister Samarasinghe delivers Sri Lanka national statement at the 22nd session of the HRC, 27 February 2013, full text available at, <http://www.lankamission.org/content/view/2930/2/>

May 2010, the first anniversary of the war's end: "For Sri Lanka, the scenario has thus shifted from the battlefields of the north ... to the diplomatic frontlines in Western capitals, where it would need to combat an entrenched Tamil diaspora with influential links to political establishments."²⁷

'Returnees at Risk'

We briefly summarise the proposed re-evaluation in 'Returnees at Risk', upon which this report relies and updates, of the four assumptions that inform the rationale behind the 2009 UK Country Guidance Asylum Case.²⁸ Namely:

I. The Nature of the State.

It was argued that, 'When understanding the risk of return for failed asylum seekers re-entering Sri Lanka, it is essential to first understand the broader nature of the judicial, political and security institutions of the Sri Lanka state as well as key events in the international community impacting levels of surveillance and repression.' A post 2009 upsurge in Sinhalese nationalism and anti-western rhetoric was traced as was Sri Lanka's hostile response to calls for accountability. It was concluded that, "Levels of state repression and violations of civil rights have remained as high, if not higher, in the post-war period as during ongoing military hostilities".

II. Surveillance Mechanisms and Interrogation

This section was summarised, "Screening and subsequent torture is based on broad determinants such as participation in political activity or protests that oppose the government".

III. Involvement with the LTTE

It was found that of the determinations (Data Set A1) 40% had only tenuous links to the LTTE, and yet all were arrested, detained and experienced some form of abuse. Who the GoSL understood to be "LTTE" or a supporter of, was revealed to cover a "broad nexus of real or imagined political activity". It was concluded that "Variation in levels of association with the LTTE, or perceived linkages, does not explain the likelihood of arrest and subsequent torture".

IV. Rule of Law

"Returnees will not be offered a fair trial due to the provisions within the PTA, and a highly politicised and corrupt state-controlled judiciary branch".

'Returnees at Risk' on Protesters

Page 10 of the report details, "The topics of interrogation under torture featured in the sampled cases show a significant interest in political activity in London, including protests. Of the 26 cases found to be credible, 10 claimants were interrogated under torture about protests against the Sri Lankan government. Of these, one was arrested initially in a case of mistaken identity: he was thought to be a British Tamil who had participated in a protest at the United Nations in Geneva.

²⁷ Suthakaran Nadarajah, January 2013, unpublished manuscript.

²⁸ TK (Tamils - LP updated) Sri Lanka CG [2009] UKAIT 00049

Another was interrogated on his work for assisting the media during protests against President Rajapaksa's December 2010 visit to London. A further torture victim was interrogated on the activities of a well-known European NGO. Increased surveillance by Sri Lankan embassies abroad is primarily done through photographs and videos.....At least five of our determinations found that appellants had been shown photos of protests including photos of themselves at the protests and/or photos of their other activities. For example one appellant was shown a photo of himself taken with the Head of the Tamil Rehabilitation Organisation in London."

Data Set Analysis

A1 – Asylum Appeal Determinations

Cases Questioned about foreign activity:

Case 0-000 – (Returned to Sri Lanka in 2009)

Applicant had been present at protests in London in 2009. The CID officers who detained him/her "showed video clips of demonstrations which showed him/her holding a banner that criticised the Sri Lankan government and its inhumane attitude". He/she was accused of "being a supporter and fund raiser for the LTTE in the United Kingdom".

The determination, reiterating the appellant's account, detailed, "They treated him/her as a conspirator tarnishing the image of Sri Lanka abroad by having claimed asylum and working with the LTTE in the United Kingdom" and, "At the beginning of the interrogation they expected him/her to divulge information about his/her asylum claim".

Upon seeking further information from the appellant it has been clarified that the videos were not clips from the internet but were from a video camera. The appellant believes that they must have been taken by someone associated with the GoSL such as the Sri Lankan High Commission in London.

Case 0-004 – (Returned to Sri Lanka in Q4 2011)

Applicant was "shown photographs of persons and asked whether (s)he knew the individuals concerned". (S)he had been asked additionally, who (s)he had been helping abroad and "who spent money for my foreign trip".

Case 0-005 – (Returned to Sri Lanka in Q3 2011)

"Accused of being a member of the LTTE, of coming back to Sri Lanka to collect information for the LTTE and of working for the LTTE in London against the Sri Lankan government....(S)he was asked how many LTTE people there were in London and questioned about why (s)he had returned."

Case 0-006 – (Returned to Sri Lanka in 2011)

"On one occasion an army officer showed the appellant his/her NHS donor card and asked him what he was doing in the UK. It was suggested that the appellant was engaged in activities in the UK against Sri Lanka".

Case 0-009 – (Returned to Sri Lanka in 2011)

Applicant was “approached by the terrorist investigation division at the airport and question about the anti-president demonstration in London”

Case 0-014 – (Returned to Sri Lanka in 2010)

“(S)he was asked his/her reason for returning to Sri Lanka....they kept asking him/her whether (s)he had any connection with the LTTE” and, “They alleged that (s)he was an LTTE member who had been sent overseas by the organisation and had now returned to Sri Lanka to re-organise the LTTE and launch attacks in Colombo”

Case 0-015 – (Returned to Sri Lanka in 2011)

A case of mistaken identity, the applicant was questioned “about his/her travel from London to Geneva and participation in protests in Geneva against GOSL”.

Case 0-017 – (Returned to Sri Lanka in Q3 2011)

In the UK the applicant had participated in events organised by Tamil organisations including Student Organisations and the British Tamil Forum (BTF). His/her photographs from participating in events were on the internet. Under interrogation “One of the men said he recognised the appellant from photographs on a website, that he knew (s)he performed in Tamil programmes and that (s)he was an LTTE supporter.” (S)he was again questioned and asked about his participation in protests in the United Kingdom during the visit of the Sri Lankan President in 2010.”

Case 0-018 – (Returned to Sri Lanka in Q4 2010)

The applicant had “participated in demonstrations against the Sri Lankan government in London”. “(S)he was interrogated about participating in demonstrations in the United Kingdom and about fundraising for the LTTE.”

Case 0-020 – (Returned to Sri Lanka in Q4 2010)

The applicant was questioned about London and accused of being an LTTE spy. “They said that he used to work for the LTTE and now he works for an NGO – spying for the Tigers”

Case 0-021 – (Returned to Sri Lanka in 2011)

(S)he was interrogated about ‘activities in London’.

Background material in this case indicates (s)he was shown photographs of protests and asked about these protests.

Case 0-022 – (Returned to Sri Lanka in 2011)

Taken from interview notes: “One person came and asked me when did I come from the UK. And also he said ‘you stopped our president Mahinda to deliver a speech at Oxford University” “Another person asked me when did I go to London, I said 26th November then he said on the following day LTTE celebrated great Hero’s day so I was sent for that function by LTTE”

Case 0-023 – (Returned to Sri Lanka in 2011)

(S)he was accused of having links to the LTTE in London. (S)he was asked about what was going on in London and taken to a camp where they showed him/her videos from Hyde Park²⁹ and a local Sri Lankan College.

Case 0-26 – (Returned to Sri Lanka in 2011)

Background material in this case records that the interrogators “wanted to know what involvement I had in UK demonstrations”.

Case 0-027 – (Returned to Sri Lanka in 2011)

“(S)he was forced to sign a form saying (s)he had abandoned the LTTE. (S)he was also questioned about whether (s)he was working for the LTTE in London.

Case 0-028 – (Returned to Sri Lanka in 2011)

The applicant had participated in two protests against the visit of the President of Sri Lanka, Mahinda Rajapaksa, to the UK. During the protest on 2 December 2010 outside the Dorchester Hotel in Hyde Park Corner, (s)he held placards accusing the President of being a war criminal.

CID officials “Accused him/her of being sent to London by the LTTE” and later, “the Appellant was shown a photograph of himself/herself, his/her friend and his/her uncle and was asked about the names of others who had attended the demonstrations”

Follow up on escape by GoSL authorities and cases where families are known to have suffered intimidation after the escape of the applicant:

Case 0-001 – (Returned to Sri Lanka in Q3 2011)

The “Authorities” went to his/her parents’ house to enquire as to his/her whereabouts.

Case 0-004 – (Returned to Sri Lanka in Q4 2011)

The applicant’s father was subsequently arrested and tortured by CID who had been searching for the appellant.

Case 0-007 – (Returned to Sri Lanka in Q3 2011)

CID since been to family home and threatened to arrest her/him if (s)he returned.

Case 0-008 – (Returned to Sri Lanka in Q3 2011)

Authorities have since been to his/her father’s home and placed him on monthly reporting.

Case 0-010 – (Returned to Sri Lanka in 2011)

Government troops have since visited the family home.

Case 0-014 – (Returned to Sri Lanka in 2010)

His/her father was attacked by unknown men the day (s)he left the country.

Case 0-018 – (Returned to Sri Lanka in Q4 2010)

²⁹ The protests against the visit of President Mahinda Rajapaksa in December 2010 were held outside the Dorchester Hotel on the corner of Hyde Park, London.

Appellant's spouse suffered harassment from authorities. Members of the security forces went to his/her house looking for him/her.

Case 0-020 – (Returned to Sri Lanka in Q4 2010)

His/her family have been questioned about his/her whereabouts and beaten by CID officials.

Case 0-025 – (Returned to Sri Lanka in 2011)

Members of the CID have been looking for him/her at the family home.

Case 0-026 – (Returned to Sri Lanka in 2011)

GoSL authorities have been to his/her parent's house causing them to move.

Case 0-027 – (Returned to Sri Lanka in 2011)

His/her brother told him/her that authorities had visited his/her home looking for him/her.

A1 Summary:

Thus we see that more than 50% were questioned about foreign 'activity'; the focus upon the international arena is readily apparent. Indeed the interrogation questions reveal the GoSL' perception of what constitutes a 'threat', from where that threat emanates, and the information requirements, and potentially information gaps that the questioning is designed to fill. That 10 were specifically questioned about protests reveals the extent to which protests are a concern to the Sri Lankan State. That attendance at a protest is accepted as justification for torture speaks to the GoSL association between legitimate peaceful protest and terrorist activity.

That some of the victims were shown photos or images of protests and demonstrations is evidence of the GoSL collection of and use of surveillance product.

That the families of 11 of the 26 have subsequently suffered intimidation to some degree, after the escape from detention and/or Sri Lanka, reveals the extent to which the GoSL is monitoring those with links to the diaspora. Additionally by intimidating the families in Sri Lanka, the government is, by proxy, exercising some control over the members of that family abroad.

A2 – Asylum Interviews

1-005 – “they thought I had left the country at the request of the LTTE and came back to the country to revive the survived LTTE elements with the help of finance from abroad.

1-006 – “they asked what kind of jobs I did for the LTTE, what I am doing for them now, if I joined them in any protests held in London”

1-008 – (S)he was asked “why I returned and who sent me back”

1-011 – “they accused me of being LTTE and that I had returned to work for the LTTE. They played videos of protests from the UK and were trying to match my face to people in the video and accused me of taking part in the protests”

1-016³⁰ – “when I entered his room the first question was why I had participated at the protest when the president came to visit UK. He told me that I was in the middle of the protesters holding the flag and they have got evidence of it.” The interrogator questioned, “For what purpose or with what plans had you gone to the UK. You will have LTTE friend in the UK, – give their names to me”

1-017 – “they asked if I was working for the LTTE in London”

1-018 – “they asked me why did you go to the UK, what did you do there, who did you meet”

1-019 – “first day they came and asked me when I came to London and what I was doing....they asked me how much I earned and whether I brought any money back with me. Suddenly they asked me what I did for the LTTE”.

A2 Summary:

In line with the findings for Data Set A1, A2 provides evidence that interrogations are an information collection platform for the GoSL, reveals the dominant concerns and information requirements of the state, and demonstrates through example the association made by the GoSL between the UK and protests, with being LTTE or a supporter of the LTTE.

Developments since Returnees at Risk

B1 – Asylum Appeal Determinations

2-01

– historic involvement in the cultural unit of the LTTE only.

2-02

– Worked for a UN agency. Neither (s)he nor his/her family had ever previously been involved with the LTTE nor the authorities.

2-03

– Applicant’s first spouse and sister had been involved with the LTTE

2-04

– Applicant had lived in India for some years with an LTTE supporter. (S)he was abducted with that friend.

– questioned “how long she had known X, in what way the appellant had helped X, if the appellant has taken any LTTE training, and what help the appellant had given from abroad”

2-05

³⁰ 1-016, 1-017, 1-019 we now know were all granted leave by the UKBA to remain in the UK.

- Accused of LTTE involvement in 2005 and was subsequently forcibly recruited into the LTTE

2-06

- Applicant had limited involvement between 2007 and 2009 with the ITTE. His/her two older brothers were more involved

2-07

- some LTTE associations but these are not expanded upon in the determination

2-08

- not politically active, not a member of the LTTE. (S)he was involved with the red cross when in Sri Lanka - caring for displaced Tamils.

- "(S)he was photographed and asked questions if (s)he had attended any rallies in London against Mr M Rajpaksa.....His/her interrogators manipulated the photograph taken moments earlier by superimposing winter clothes, such as hats and coats and they attempted to identify amongst the scores of photographs taken at the Rajapaksa visit to London" they had "scores of photographs...on their computer system"

- "The impression (s)he got from (them) is that London is full of LTTE and (s)he is one of them"

B1 Summary:

One of the above was questioned about protests.³¹ None had more than low level LTTE links. There are however a few common denominators, namely all of them were detained and tortured, and significantly all returned from abroad.

B2 - Interviews with Activists

PI-101 - London born politically active Tamil female

PI-102 - Europe based exiled journalist and human rights activist. Male. Tamil

PI-103 - Indian born Tamil, lives in UK, politically active

PI-104 - Trevor Grant, Australian Freelance Journalist, organiser within Boycott Sri Lanka Cricket Campaign (BSLCC), Refugee Action Collective (RAC) and Tamil Refugee Council (TRC)³²

PI-105 - Sri Lanka born Tamil. Affiliated with TGTE, BTF inter alia

On Surveillance and Intimidation

PI-101

- Participated in numerous protests including the Dorchester Hotel protest in 2010 at which Sri Lankan High Commission members were taking photos shielded by the metropolitan police.

PI-102

³¹ We do not know if the others were not questioned about protests.

³² "Sri Lanka Cricket protests to go global", 28 January 2013, Official press release from Boycott Sri Lanka Cricket Campaign.

- “taking part in protests abroad endangers families because the Sri Lankan government is actively videoing protestors and they were even videoing the Australians who were boycotting Sri Lanka.”
- PI-102 believes his phone calls back to Sri Lanka are monitored; after one call home his house was burgled and documents about which he had been talking were taken.
- “The Sri Lankan Government is trying to surveil... They try to bring spies into each organization; they are active, but invisible. I communicate with one or two people who are really trust worthy. There is a possibility of infiltration by the government even within our information. They can get information from anywhere. The information the government is receiving is even from people of our own.”
- “The videographers are according to my sources examined by the defence ministry, and each and every embassy, even the intelligence section monitor Tamil websites and dissenter Sinhalese sides. They had even Tamil people hired who worked with the Sri Lankan embassy to monitor. Even the foreign ministry is coordinated by the Defense ministry.”
- “In Germany, there are situations where people are suspected to be working for the government. In Europe, where a considerable number of Tamils live, UK, Germany, France, Italy, Netherlands, Norway, Switzerland, Canada and even in Tamil Nadu they are trying to create such situations.”

PI-103

- “At several protests there were people who we don’t know who they are. I don’t know whether they are government representatives or not. As a community we felt like they were not part of the community. They were standing separately, facing us. They didn’t wear any flags or other symbols to be identified. They didn’t shout, they didn’t take part in the protests. They didn’t obviously look Tamil either.”
- “Most recently at the Human Rights Council in March 2012. Both inside and outside the council, there were people taking photographs. This happened inside the plenary room and at the side events, there were gentlemen behind me taking photograph and there were cameras directed directly at people who were Tamil and participating at the council. During the plenary these people sat together with the Sri Lankan delegation.....”
- “I remember there was one protest outside the embassy and the embassy staff was taking photos of people who were standing outside.”

PI-104

- The Act of filming me and my fellow-protesters in an overt way at the protests is a form of intimidation. During the ABC Radio debate I had with the Sri Lankan High Commissioner, he said he had spoken to authorities about stopping our protests and that I was mixing with terrorists. I saw this as a threat”.
- My Co-Organiser of BSLCC, a Tamil-Australian, has received two death threats over the telephone since it started. Another helper, also a Tamil-Australian, has received a death threat.
- I also received an unsolicited request for a meeting from a man claiming to be a Sinhalese citizen of Melbourne, who had read an opinion piece I had written in the Melbourne Age Newspaper. He said I had written a lot of things that were wrong about Sri Lanka and he wanted to meet me to correct these falsehoods. I met him and talked with him for an hour. During our discussion he offered to organise a trip for me to Sri Lanka and also produced so-called LTTE documents which had

been obtained by Sri Lankan military from an LTTE hide-out in Vanni. They carried details of a supposed trained Tamil Tiger who lived in Australia. He also produced a document allegedly detailing the structure of the Tamil Tigers network operating internationally. It was then I realised this person was working for the Sri Lankan government. This might be low-level stuff but I still found it intimidating”.

PI-105

- (Do you, in your own estimation, think you have been filmed/photographed by them (GoSL)? If yes, when and where?)“Absolutely and definitely on numerous occasions. I have been filmed at Hyde park during the Sri Lanka President’s visit to the UK, also at the airport upon his arrival in terminal four, at the Meeting of Dr Vikrambahu, also when I have spoken publicly on numerous occasions.

On Motivation for the Surveillance and Intimidation

PI-101

- “To provide the SL government with intelligence on the Tamils involved in protests, so that ‘action’ could be taken on us if we ever decide to visit the island. Similar to how anti-Mugabe protestors in the UK were under surveillance by the Mugabe regime.”
- On why the protest was targeted, “We were identified as a threat to their international propaganda efforts.”

PI-102

- “In Jaffna you could be killed within seconds, in Colombo less so. But abroad they try to give a mental kind of harassment; it is difficult for them to give physical harassment. They are really trying to disturb our activities. Compared to Sri Lanka we feel relatively safety for our physical health. In Sri Lanka we can not work like this on things like genocide. In a long term perspective, we also think about our nation building process”
- “In my point of view, they are really scared because of what they did in the final stages of the war. People like me, activists, are trying to bring these culprits to international justice. The establishment knows one day they’ll be before trial but by harassing activist and targeting us they think they can delay justice and their punishment.”
- “They are scared also of being isolated from the international community. They don’t want Sri Lanka to be another North Korea, or former Burma. Sri Lanka is quite a smart country in negative trend. They know how to play a game without giving up.”

PI-103

- (with regard to the surveillance in Geneva, March 2012) “I think around the time it was quite obvious they were intimidated by our presence there. In terms of numbers, in terms that it were youth there, second generation Tamils who were part of the delegation. It hasn’t been going on for years and years. It’s a relatively new phenomenon. Especially post-2009. These younger people are more articulate in whatever language who are able to cause the most damage to the government. Having us there they would have wanted to stop us from doing what we are doing and taking photographs is one way of going about it.”
- (Why do you think you were targeted by the Sri Lankan state authorities?) “If you look at the things the government has been doing since 2009 it is to clamp down on any anti government criticism of what happened in 2009. Certainly anyone who

is advocating for Tamil rights, let alone autonomy, let alone self-determination is being clamped down upon within the island. What they can't do is physically clamp down the people who are outside of the island. So at the moment I argue that the diaspora is their biggest threat because they cannot physically clamp down on us."

On Security Measures in Response to GoSL Surveillance and Intimidation

PI-101

- "I have stopped directly contacting my family in the island. Yes, I no longer maintain contact with family members back home as I do not want to endanger their lives".

PI-102

- "Because I came to Europe I have become more cautious. I would rarely appear in public, as a journalist and since I have close connections with Sinhalese journalists, before I appear anywhere I check their background."
- "Some people think I am in Sri Lanka, some in the UK, some in..... or in Australia. I have given my mobile numbers to very few restricted people..... Sometimes I use my bike, sometimes public transport, I never park my bicycle at the same point. when I come out from the house, I come and go via different directions."

PI-103

- "I don't associate my name with my relatives because I am scared for their life".

On whether the GoSL surveillance has increased or decreased since the end of the war, and if so why?

PI-101

- "With the end of the war the Sri Lankan government and its intelligence agencies have shifted more focus and resources on to the Tamil diaspora as it is here where the call for Tamil self-determination and human rights is now heard the loudest."

PI-102

- It has increased, the GoSL "think the diaspora is powerful so all their resources are directed against the diaspora...They see the diaspora as a threat, internal threats they can manage somehow, but as long as there is a diaspora that is quite powerful they cannot live peacefully. As long as the diaspora is powerful and working on human rights issue, the government cannot sleep. Presidential speeches are very important and reflective, in these speeches he is always mentioning people trying to bring him to trial which really is important for him."

PI-103

- "The second generation diaspora activists are less scared in terms of articulating their views. For example if I take the issue of the national flag it was the parents generation who were too scared to hold it because they were unable to articulate their views on it. Whereas it is our generation that is saying we believe in the flag and these are the reasons why we hold it and we don't think we are terrorist or any of that sort. Because we are maybe more braced in that respect it's going to provoke the government even more."
- "I think it has increased. I think pre-2009 knowing that the LTTE was there both in the island and outside the government were a little bit restrained on what they

could do in the fear of retaliation. Whereas now post 2009 back home it's fearless in terms of what the government does and the impunity it does it with."

- So if we look at what they did with the Jaffna university students, it was brutal, so many arrests, people still in detention. That's in the island, they can't do that outside."

PI-104

- "It has increased because the chauvinistic Sinhalese Government is continuing ethnic-cleansing of Tamils and believes that it needs to wipe out all Tamil Resistance, which it fears may re-form internationally".

B2 Summary:

The data sets of determinations had evidence of the use of images in the targeting, interrogation and torture of returnees. The above 5 interviews complete the picture through first hand accounts of GoSL or associates of the GoSL surveillance.³³

The interviewees offer their opinions on the motivation of the GoSL for conducting surveillance and intimidation of protesters and activists and why they believe both have increased. These include:

- in order to restrict or ultimately stop campaigns
- as a method of intimidation
- because the international is now perceived by the GoSL to be the most potentially threatening sphere
- in proportion to increased diaspora organisation and activity and mounting international calls for accountability

The extent of surveillance and intimidation and the protective security measures that need be adopted by each interviewee as a consequence of the actions of the GoSL, accounts for the difficulties faced by organisations and individuals who campaign for accountability for past and present crimes.

Developments post 16 September 2012

The findings detailed in the "Returnees at Risk" report, 16 Sept 2012, and the understanding of the Sri Lankan state also detailed therein, have subsequently been reinforced by the GoSL in its rhetoric and actions. Additionally it is calculated that

³³ TAG have previously been supplied a witness statement by a freelance photographer and activist that details the surveillance experienced at a protest outside the Sri Lankan embassy on the 4 February 2011, Sri Lankan Independence Day. "Individuals inside the embassy could soon be seen peeking out of the first and second floor windows and videoing or taking photographs of the protests" and later "the officials started coming out onto the balcony and outside the building and openly took pictures and videoed the protesters outside". The photographs of the Sri Lankan officials photographing and videoing are included as Appendix 1 to the Returnees at Risk Report".

events in the international sphere in recent months and forecast, will exacerbate the GoSL levels of surveillance and repression.

“Starting in 2005, the Government of Sri Lanka cast a wide net over individuals and organisations who might be considered LTTE supporter/sympathisers” (“Returnees at Risk”). This trend has continued. The actions of the Sri Lankan State to restrict peaceful political protests at Jaffna University reveals the close association by the State between political dissent and terrorist activity.³⁴ So too, the Sri Lankan Defence website links the “LTTE rump with organisations that serve its sinister motives” including Sri Lanka Campaign and International Crisis Group.³⁵ Minister Wimal Weerawansa went so far as to claim that “the Chief Justice is implementing Prabhakaran’s agenda”.³⁶

Indeed with the impeachment of the Chief Justice the Rule of Law in Sri Lanka has been further eroded. Whilst the possibility of securing justice domestically in Sri Lanka nears the impossible, internationally calls for accountability are growing louder. The British Tamil Forum hosted an “International Tamil Conference” in November 2012 in the Houses of Parliament, at which they called for “Justice through an International Independent mechanism for Truth and Accountability”.

The release of the UN Petrie report in the same month, and the media attention that generated, as well as admitting to the in-action of the UN, reminded the international community of the scales of the crimes committed by the Sri Lankan military and government. Meantime the GoSL continues to refute that war crimes were committed, accepting only that there was minimal collateral damage during the fighting, whilst continuing to deny the authenticity of the Channel 4 documentaries. Indeed Callum Macrae, the director of the “Killing Fields” and “No Fire Zone” issued a statement to counter statements from the Sri Lankan Military of Defence, 5 March 2013, and likely to mitigate against reprisals by the GoSL, to the effect that he has not paid any money for information nor been helped by any person in Sri Lanka in the making of the film.³⁷

It is in this context, and in anticipation of further pressure being applied to the GoSL at the HRC and beyond, that we assess the surveillance and intimidation of the kind that has been detailed in this report will increase. Though not the focus of this report, it is assessed that the risk to witnesses of war crimes will also increase. Indeed witnesses who speak are, in the eyes of the Sri Lankan state, protesting against the state. They are akin to asylum seekers and activists who campaign for accountability – all have the power to bring Sri Lanka into international disrepute.

³⁴ “Three Jaffna University students detained under anti-terrorism laws” JDS, 4 December 2012, <http://www.jdslanka.org/index.php/2012-01-30-09-30-42/politics-a-current-affairs/229-three-jaffna-university-students-detained-under-anti-terrorism-laws>

³⁵ http://www.defence.lk/new.asp?fname=The_Modern_Day_Mercenaries_LTTE_Foreign_NGO_links_revealed_20121213_07

³⁶ “Minister Wimal Weerawansa reveals of another LTTE conspiracy to destabilise the country” 9 January 2013, <http://v3.itnnews.lk/?p=7013>

³⁷ <http://nofirezone.org/blog> entry March 5 2013