

**Mandates of the Special Rapporteur on the human rights of migrants and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.**

REFERENCE: UA  
AUS 2/2014:

8 July 2014

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the human rights of migrants and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 17/12 and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the situation of two groups of Sri Lankan asylum seekers and migrants (203 in total), including a significant number of Tamils, and their incommunicado detention and imminent deportation to Sri Lanka by the Australian government, in contravention of Australia's non-refoulement obligations. These persons risk to be handed over to the Sri Lankan military, and may face serious human rights violations including arbitrary arrest, detention and torture or other cruel, inhuman or degrading treatment or punishment.

According to the information received:

On 26 June, 2014, two boats carrying 153 and 50 Sri Lankan asylum seekers and migrants, were reported travelling to Australia, where the people on board intended to claim protection. These asylum seekers and migrants were intercepted at sea by Australian officials and are being held incommunicado with a view to transferring them to the custody of Sri Lankan officials.

On 1 July 2014 it has been reported that the Australian government has embarked the asylum seekers and migrants onto an Australian customs vessel and is planning to handover them mid-ocean to the Sri Lankan Navy.

It is reported that the first boat was carrying 153 asylum seekers and migrants, including 37 children and 32 women. The youngest child on board was one year

old. Between Thursday, 26 night and the morning of Saturday 28 June 2014, they have advised an Australian citizen by radio that they were Sri Lankan Tamils who had left the port of Pondicherry, India on 13 June 2014, and that they were on their way to Christmas Island, Australia. On 28 June 2014, during the last radio contact with the boat, the passengers told to be 175 nautical miles from Christmas Island and that an Australian navy vessel had been dispatched to meet them.

It is reported that the Australian Maritime Rescue Authority (AMSA) and relevant Australian government authorities were aware of the boat and its position by GPS coordinates. The AMSA representative reassured the Australian citizen who was communicating with the boat to be in direct contact with the passengers.

Despite previous radio communications, the Australian citizens did not hear from the asylum seekers and migrants for three days. The Australian Government did not disclose the whereabouts of the asylum seekers and migrants, nor where they will be sent to, citing its policy of not commenting on “on water matters”. Since their interception more than a week ago, the individuals on this vessel have not been able to make contact with family members or refugee organizations.

It is alleged that a second boat carrying 50 Sri Lankan asylum seekers and migrants was also intercepted by Australian authorities after departing from Sri Lanka. As with the first boat, the Australian authorities refused to confirm the whereabouts of the asylum seekers and migrants, and did not disclose whether they will be transferred to the Sri Lankan navy.

The asylum seekers and migrants have allegedly been subjected to a dramatically abbreviated ‘screening’ process involving a single, four-question interview conducted on the high seas without any legal assistance. Without a proper and individual screening and determination of refugee status, already vulnerable individuals are put at grave risk of imminent deportation and subsequently at risk of persecution, torture and other serious human rights violations.

On 7 July 2014, the Minister of Immigration confirmed the decision to hand 41 asylum-seekers and migrants back to Sri Lankan authorities during a transfer at sea. He confirmed the government had “swiftly” returned the boatload of asylum-seekers and migrants to Sri Lanka. However, he did not reveal the fate of the other asylum seekers and migrants.

Furthermore, it is reported that the same day, the Australian Government’s attempt to return 153 asylum seekers and migrants, including 37 children, has been blocked by an interim injunction by the High Court of Australia.

*Background information:*

In the past three months, three Sri Lankan Tamil asylum seekers on temporary visas in Australia, facing the prospect of being returned to Sri Lanka, have set themselves on fire, two of them died.

After the war against Tamil separatists which ended in 2009, it is well documented that serious human rights violations remain widespread in the country, particularly against the Tamil minority. Anyone suspected of having ties to the former Liberation Tigers of Tamil Eelam (LTTE) rebels would face persecution, torture or other serious human rights violations if returned to Sri Lanka.

The report of the UN High Commissioner for Human Rights to the 25th session of the Human Rights Council (A/HRC/25/23) raised several human rights concerns, including on the situation Sri Lankans of Tamil origin, including ongoing human rights issues in the North and East of the country.

After a visit to Sri Lanka in August 2013, the High Commissioner for Human Rights encouraged Australia to consider each Sri Lankan asylum case on its merits. However, it is reported that the Australian Minister for Immigration and Border Protection has been clear in his intention to return all Sri Lankans and to ensure that people who may seek to come from Sri Lanka would be intercepted outside of the sea border and returned directly. It is also reported that on 30 June 2014, the former commander of the Sri Lankan navy and current Sri Lankan High commissioner in Australia reaffirmed the Government's support of forced deportation by Australia of asylum seekers to Sri Lanka.

We are gravely concerned that these two groups of asylum seekers and migrants will be returned to Sri Lanka after being denied the opportunity to make a proper protection claim for protection and may face persecution, torture or other cruel, inhuman or degrading treatment or punishment or other serious human rights violations in case of deportation to Sri Lanka. We are also concerned about the alleged incommunicado detention of the two groups of asylum seekers and migrants.

While we do not wish to prejudge the accuracy of these allegations, they appear to be in contravention of the principle of non-refoulement as set forth article 3 of the Convention against Torture (CAT), signed by Australia on 8 August 1989, which provides that no State party shall expel, return (refouler), or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. We would also like to refer to paragraph 9 of the General Comment No. 20 of the Human Rights Committee. We would also like to remind your Excellency's Government, that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture or other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations related to the imminent handover of the two groups of asylum seekers and migrants to the Sri Lankan authorities and how this measure would be in accordance with the international standards mentioned above.

2. Please provide information on the whereabouts of the asylum seekers and migrants and the legal basis for their detention.

3. Please provide information on whether access to legal representatives has been facilitated by the authorities. If not, please explain why.

4. Please indicate if screening has been undertaken for refugee status determination as well as to identify other protection needs including possible victims of trafficking, unaccompanied children, or persons with health issues.

5. Please provide details, and where available the results, of any investigation, judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

6. Please provide information on the risk assessment carried out in relation to the two groups of asylum seekers and migrants' situation, the decision to do not provide information on their whereabouts and conditions and how this policy is compatible with the international standards mentioned above.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

François Crépeau  
Special Rapporteur on the human rights of migrants

Juan E. Méndez  
Special Rapporteur on torture and other cruel, inhuman or degrading  
treatment or punishment