

# **AUSTRALIA REFUSING TO ACCEPT ASYLUM SEEKERS OR SENDING THEM BACK <sup>1</sup>**

## **Brian Senewiratne**

MA (Cantab). MBBChir (Cantab). MD (Lond). FRCP(Lond). FRACP  
Consultant Physician  
Brisbane, Australia.

### **The public protest**

The Australian government is using the profoundly flawed “fast track” refugee processing system to return many Tamils and others to danger. The system is flawed as there is no judicial oversight. Of crucial importance is that it disregards the well-documented harm and violence that Sri Lankan Armed Forces do with impunity. The Australian government refutes credible and current reports of human rights abuses and uses a document prepared by its own agency, the Department of Foreign Affairs (DFAT), to claim that it is safe to return Tamils to Sri Lanka.

The facts are that no part of Sri Lanka is safe for Tamils to return. The Tamil areas in the North and East remain heavily militarized and any Tamil moving into the area (or for that matter, to any other part of the country), becomes a target for persecution with deadly consequences. The Amnesty International 2015/16 report on Sri Lanka states that despite the claims of the Sri Lankan government that it is safe for Tamils to return, the risks for Tamil remains considerable *“including persistent use of arbitrary arrest and detention, torture and other ill-treatment, enforced disappearances and deaths in custody, and a long-standing climate of impunity for these and other violations”*.

What is happening to the Tamils and other asylum seekers amounts to refoulement under the UN Refugee Convention. There has to be an immediate moratorium on both forced deportations and so-called “voluntary” returns. This is a demand for basic human rights for people who have no rights in Sri Lanka.

### **A gross violation of the UN Refugee Convention**

Australia refusing to accept asylum seekers or sending them back to where they came from (or somewhere else) is a gross violation of the UN Refugee Convention, signed and ratified by Australia.

If Australia signs the Refugee Convention (which it has) and then violates it (which it has), protest we must and we will, because it is illegal, wrong, disgraceful, and damages the good name of Australia. I therefore appeal to all of you to support us.

### **Who is a ‘Refugee’ or ‘Asylum seeker’?**

Australia cannot make up its own definition of who are ‘Refugees’ or ‘Asylum seekers’. These have been clearly defined in the UN Refugee Convention and the UN High Commissioner for Refugees (UNHCR).

### **UN Refugee Convention Article 1. Section A - A Refugee**

A ‘refugee’ is any person who has:-

*“a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.*

---

<sup>1</sup> Address at a public rally in Brisbane on 12 November 2016, **“No Returns to Danger. Sri Lanka is Not Safe”. No deportations. No ‘voluntary’ returns.** Organised by the Tamil Refugee Action Group.

This has been put into straight-forward language in the UNHCR [: -](#)

*“Refugees are forced to leave their countries because they have been persecuted or have a well-founded fear of persecution. Refugees run away. They often do not know where they will end up. Refugees rarely have the chance to make plans for their departure such as packing their personal belongings or saying farewell to loved ones. Many refugees have experienced severe trauma or have been tortured.”*

It goes on to spell out the “Most important parts of the refugee definition” as:-

- *Refugees have to be outside their country of origin;*
- *The reason for their flight has to be a fear of persecution;*
- *The fear of persecution has to be well-founded;*
- *The persecution has to result from one or more of the 5 grounds listed in the definition, that is race, religion, nationality, membership of a particular social group, or political opinion;*
- *They have to be unwilling or unable to seek the protection of their country.*

### **Asylum seekers**

The UNHCR defines an asylum seeker:-

*“An asylum seeker is a person who has left his or her country of origin, has applied for recognition as a refugee in another country, and is awaiting a decision on their application”.*

Tamils fleeing the murderous regime in Sri Lanka are ‘Refugees’ or ‘Asylum seekers’, or both. As such, they have Rights which the Convention is there to protect.

### **The responsibility of the country that signs the Convention**

I will not go into this large document. It is on the net under UN Refugee Convention 1951. I will only quote the relevant section on the return of refugees:

#### *“Article 33 Prohibition of expulsion or return (“refoulement”)*

*No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.*

I suggest that you download the Refugee Convention and see how many of the Articles have been violated by your country – be it Australia, the UK, Canada, or the USA. You will be shocked at what these countries have got away with. It is time that you told your politicians that they simply cannot do this and get away with it.

### **Sri Lanka – how safe is it?**

The best way to answer this is to look at the advice given by the Australian government to travellers to Sri Lanka based on information received from its well-informed Embassy in Colombo. Here it is on 12 August 2016<sup>2</sup>:

---

<sup>2</sup> [http://www.smartraveller.gov.au/zw-cgi/view/advice/sri\\_lanka](http://www.smartraveller.gov.au/zw-cgi/view/advice/sri_lanka)

## **“Advice levels**

### **Sri Lanka overall, exercise a high degree of caution**

*This advice has been reviewed and reissued with minor editorial amendments. The level of the advice has not changed. We continue to advise Australians to exercise a high degree of caution in Sri Lanka.*

*Pay close attention to your personal security at all times and monitor the media about possible new safety or security risks”.*

It goes on to spell it out in no uncertain terms:

#### **“ Summary**

- *We advise you to exercise a high degree of caution in Sri Lanka at this time because of the unpredictable security environment.*
- *While significantly reduced since the end of the conflict, security forces maintain a visible presence, particularly in the Northern Province. Military and police checkpoints can be established and road closures can occur without warning.*
- *Avoid all demonstrations and large public gatherings as they may turn violent or be a target for politically-motivated attacks. Police have used tear gas in response to protests.*
- *In the Northern Province of Sri Lanka, which includes Mannar, Vavuniya, Mullaitivu, Kilinochichi and Jaffna Districts, post-conflict security force activity is ongoing.*
- *In both the Northern and Eastern Provinces you should stay on main roads and pay close attention to signs warning of danger from landmines.*
- *Pay careful attention to the type of visa you apply for. Travellers risk deportation if they engage in activities outside their visa conditions.”*

This is the country (Sri Lanka) to which asylum seekers are being returned from Australia (and elsewhere).

For those unfamiliar with the geography of Sri Lanka, the 5 areas specifically mentioned in the ‘Summary’ ie Mannar, Vavuniya, Mullaitivu, Kilinochichi and Jaffna are from where all the asylum seekers come, and to where they are being returned. It is absolute hypocrisy for the Australian government to ask people going to Sri Lanka to exercise a high degree of caution (emphasis not mine) and then send asylum seekers and refugees to these very area with no monitoring of what happens to them.

There is reliable information as to what happens to them. Yasmin Sooka has documented this in her publication: *“An Unfinished War: Torture and Sexual Violence in Sri Lanka 2009-2014”* (March 2014). Yasmin Sooka is the Executive Director, Foundation for Human Rights, South Africa and a member of the UN Secretary General’s Panel of Experts into Accountability in Sri Lanka during the last period of the armed conflict.

Her paper consists of carefully conducted interviews by reputed lawyers in the United Kingdom obtained from 40 Tamil victims who testified to their experiences of abduction, torture and sexual violence by members of the Sri Lankan Security Forces in the post-war period – May 2009-February 2014. They had escaped from Sri Lanka, gone to the UK, been sent back to Sri Lanka, been tortured and raped, and had got back to the UK. More than half the cases occurred in the period of 2012-14. It is important evidence that sexual violence, torture and abductions are not just on-going but escalating problems.

She stated:

*“We call upon the UN Security Council to refer this report ....to the Prosecutor of the International Criminal Court for further action against those who bear the greatest responsibility. Alternatively, we urge the ICC Prosecutor to explore the cases of individuals who bear the greatest responsibility and who hold a nationality of a State Party to the Rome Statute”.*

Note – Gotabaya Rajapaksa, the former Defence Secretary and brother of the previous President, who has been seriously involved in these criminal activities, is a Sri Lankan and US citizen. Sri Lanka has not signed the Rome Statute but the US has. As such, he can be charged in the International Criminal Court (ICC). So is General Sarath Fonseka the former commander of the Armed Forces. That neither of them has been charged is outrageous and indicate that the new Sri Lankan government is no different from the one it has replaced. It is also a reflection of the apathy incompetence of expatriate Tamils and concerned people in the USA.

Let alone read what this internationally credible human rights authority (Yasmin Sooka) has written, I doubt whether the Australian government and others involved in sending asylum seekers back to Sri Lanka even know of this critically important Report.

By stating that it is safe for asylum seekers and refugees to return to Sri Lanka, the Australian government is simply repeating the line of the Government of Sri Lanka (GoSL) without looking at the extensive evidence to the contrary which is readily available.

On 8 March 2010, UN Secretary-General Ban ki-Moon expressed concerns<sup>3</sup> about the lack of progress on political reconciliation, the treatment of internally displaced persons (IDPs) and the setting up of an accountability process in Sri Lanka. On 22 July 2010, despite intense lobbying against it by the Sri Lanka, Ban ki-Moon appointed an “Advisory Panel” to *“advise him on the issue of accountability with regard to any alleged violations of international human rights and humanitarian law during the final stages of the conflict in Sri Lanka.”*

The panel was chaired by Indonesia's former Attorney General **Marzuki Darusman**, who was the U.N. special Rapporteur for human rights in North Korea, **Yasmin Sooka**, a human rights expert from South Africa, and **Steven Ratner**, a U.S. lawyer who advised the United Nations on how to bring the Khmer Rouge to justice in Cambodia. Ban ki-Moon put their extensive and comprehensive report on a shelf where it is gathering dust.

Little has changed after Maitripala Sirisena took over from Mahinda Rajapaksa (8 January 2015). Nothing has changed for the Tamils in the North and East who remain under the Sri Lankan (Sinhalese) military.

As John Heywood noted as far back as 1546: *“There are none so blind as those who will not see”*. It resembles the Biblical verse Jeremiah 5:21 *“Hear now this, O foolish people, and without understanding; which have eyes, and see not; which have ears, and hear not”*.

It is obvious that the Australian authorities do not want to see or hear what needs to be seen and heard as to what happens to asylum seekers and refugees who are returned to Sri Lanka. They are, however, not *“foolish people”* as the Biblical verse states. They are anything but foolish. They are people whose integrity, honesty and decency are utterly contemptible.

---

<sup>3</sup> <http://www.unhcr.org/refworld/country,,,LKA,,4b9a09fc14,0.html>

A damning Report<sup>4</sup> on Sri Lanka, the CORI Report (Country of Origin Research and Information), commissioned by the United Nations High Commissioner for Refugees, Division of International Protection, was released only a few days after the decision by the Australian government to return asylum seekers to Sri Lanka.

This was followed by one of the most irresponsible reports ever published by an important international organisation, the UN High Commission for Refugees (UNHCR). The Report<sup>5</sup> *UNHCR Eligibility Guidelines for Assessing the International Protection Needs for Asylum – Seekers from Sri Lanka 5 July 2010* claims that the human rights situation in the Tamil areas had “*improved markedly*”. It is an outrageous document that is at variance with several reports from internationally credible human rights organisations across the world e.g. Amnesty International, Human Rights Watch and International Crisis Group, none of whom have stated that the human rights situation had “*improved markedly*”.

To make matter worse, the UNHCR Report states it was “*intended for the use of UNHCR and State adjudicators in the assessment of claims by Sri Lankan asylum-seekers.*”

It is a thoroughly irresponsible document which has done, and will continue to do immense damage to already brutalised people. It is, in fact, a collection of half-truths, untruths and frank lies based on hearsay, not from direct observation by visiting the Tamil areas and collecting reliable data. Almost every claim made can be challenged.

The facts are that:-

- 1) In 2008, Sri Lanka was thrown out of the position it held on the UN Human Rights Council because of its poor human rights record.
- 2) In February 2010, the European Union suspended the GSP+ facility of trade concessions<sup>6</sup> which is tied to the human rights record of the recipient country.
- 3) The human rights situation in the Tamil areas under President Sirisena’s government is no different to what it was under the Rajapaksas.

#### Some fallacious statements by the Australian government

Here are some fallacious statements made by Australian governments irrespective of their political hue:

- *The Australian Government believes that asylum seekers should only be granted the right to live in Australia if they are genuinely in need of protection.*

What the Australian government “*believes*” is not the issue. The issue is what the Australian government has signed regarding the handling of asylum seekers i.e. the UN Refugee Convention.

- *These measures will ensure that Australia's refugee processing system continues to recognise those genuinely in need of our protection.*

---

<sup>4</sup> <http://www.unhcr.org/refworld/pdfid/4bd1aa632.pdf>

<sup>5</sup> <http://www.unhcr.org/refworld/docid/4c31a5b82.html>

<sup>6</sup> Generalized System of Preferences (GSP+) is a unilateral, preferential trade scheme from the EU to Sri Lanka that allows businesses in Sri Lanka to export 7,200 items to the EU, duty free. It is tied to the human rights of the country. In February 2010, the EU decided to temporarily withdraw this facility because of Sri Lanka’s poor human rights record, – <http://trade.ec.europa.eu/doclib/press/index.cfm?id=515>

Australia is in no position to judge who is 'genuine' and who is not. There are people and groups with the necessary expertise to do this. Australian bureaucrats and politicians in Canberra who have vested interests and an agenda that has nothing to do with humanitarian problems, are hardly an alternative.

Let me clarify the 'refugee processing system' in Australia. An application for asylum is lodged by an asylum seeker who arrives by boat. It is looked at by an Immigration Officer. If he/she rejects it, it is looked at by another Immigration Officer, slightly more senior than the first. If he/she rejects it, that is it. Two Officers from the same office are hardly independent opinions. There is now only one more thing that can be done – a direct appeal to the Minister on humanitarian grounds. Whom does the Minister consult? The Immigration Officer! Not surprisingly, the Minister rarely, if ever, reverses what his officials have decided. It is a 'home-and-home' match, with not even the pretence of impartiality. That is 'justice' – Australia-style. It is not much different from that in Sri Lanka.

The UN Convention does not distinguish between "genuine" and "non-genuine" asylum seekers. If they seek asylum, and have grounds for doing so, they are asylum seekers. The UNHCR has set this out in the clearest possible language:- "*An asylum seeker is a person who has left their country of origin, has applied for recognition as a refugee in another country, and is awaiting a decision on their application*".

Asylum seekers are not doing anything illegal. On the UN Refugee Convention and on Australian Law, it is clear that it is legal to seek asylum.

- *Irregular maritime arrivals claiming asylum will continue to be subject to mandatory detention, including those subject to the suspension.*

There is nothing called "Irregular ..... arrivals". Refugees and asylum seekers flee repressive and dangerous regimes. "Irregular" implies that there are "Regular" arrivals. There is no queue when people are fleeing murderous regimes.

As for "maritime arrivals", the mode of arrival of refugees is irrelevant. They can come by boat, or plane, or walk (if there is an adjoining land mass). It has no relevance where seeking asylum is concerned.

An important point about 'maritime arrivals' is that where unauthorized entry or residence in Australia is concerned, asylum seekers who arrive by boat or plane are vastly outnumbered by people who overstay their visas. For example, in 2007-08, there were 48,500 visa overstayers, and only 1,476 unauthorized arrivals, of whom only 25 arrived by boat. The difference is that most of the visa overstayers were not 'brown' or 'black'. This raises the question as to whether the declaration by the Australian government is racist. If it is, then it must be challenged, since it violates Australia's Racial Discrimination Act.

As for 'mandatory detention', taking the Courts out of the equation is illegal – a violation of the Refugee Convention. "Mandatory" means that a judge has no power to decide on the validity or otherwise, of a claim for refuge or asylum. To detention he/she must go. It is a travesty of justice, unworthy of a civilized/democratic country.

There is not a scrap of evidence that mandatory detention achieves anything other than traumatizing already traumatised people. It is inhuman, cruel and degrading. As such, it is a violation of the *Universal Declaration of Human Rights*, signed and ratified by Australia which states:- *Article 5:- "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"*

All that mandatory detention had done is to damage the standing of Australia. There is certainly no evidence that mandatory detention prevented asylum seekers from coming here, any more than capital punishment prevented people from committing crimes that could result in execution. It is naïve to believe that it does.

- *The Government is also strengthening a range of law enforcement measures targeting people smugglers.*

People smugglers exist because there is a need for them – for people to flee barbaric regimes. People smugglers are not the problem; barbaric regimes are. It is governments that subject their people to gross violations of their basic human rights, and *create* people smugglers, that have to be targeted.

- *The Australian Government will crack down on people smuggling by introducing measures to stop the flow of funds and support to people smuggling ventures.*

It is more appropriate for Australia to “crack down” on regimes that force people to get into unseaworthy boats, pay huge sums of money they can ill afford, and embark on notoriously dangerous trips. Getting into bed with such regimes, or acting as their mouthpiece, is simply unacceptable.

If the Australian government is that concerned about people smugglers, then it must look into the factors that make people flee these dreadful regimes i.e. the “push-factors”. It is clear that Australia is disinclined to do this, for geopolitical, economic, trade agreements etc. These seem to be what are ‘important – to hell with human rights.

### A new parliament

Yes, there is a new parliament in Sri Lanka, made up of people whom one of the widely read newspapers described more accurately than I can. *The Sunday Leader* in an editorial before one of the elections set out what was on offer to the Sri Lankan voters:

*“None of the individual contenders, political parties or opportunistic coalitions are worthy of our respect or our vote. Together they comprise the most mind-boggling array of crooks, thugs, conmen, hypocrites, unprincipled racists, rapists, drug dealers, money launderers, and general all-round scum that is without parallel elsewhere in the world. Other nations have their share of such undesirables, no doubt, but among them are a handful of honest, sincere, principled folk who have distanced themselves from the corrupt majority. Not so in miserable Sri Lanka.”*

These are the parliamentarians who have been elected and the government they have formed. These are the people that the Australian government, and others, trust to ‘settle the problems’ in Sri Lanka!

- *Progress is being made in tackling the challenging task of resettling hundreds of thousands of displaced citizens and rehabilitating their communities.*

Progress is not being made. The UNHCR<sup>8</sup> estimates that when the military operations ended in May 2009, about 280,000 people were added to the existing population of 300,000 IDPs (Internally Displaced People i.e. refugees). So, there were more than half a million IDPs in northern Sri Lanka, *not* 280,000 as quoted by Amnesty International, and even by me in the numerous DVDs I have recorded and released internationally.

The **UK Foreign and Commonwealth Office (FCO)** stated<sup>9</sup> that, “...*the Sri Lankan government had transferred approximately 280,000 civilians from the former conflict areas to camps in the north of Sri Lanka.*”

The same report stated that, “*significant protection concerns*” remain “*for both displaced and returning civilians, as well as for at least 11,500 suspected ex-combatants to whom the ICRC has no access and who themselves have no access to due legal process regarding their detention.*”

---

<sup>8</sup> UNHCR Global Appeal 2010-11, p. 40, <http://www.unhcr.org/4b0426839.pdf>

<sup>9</sup> UK Foreign and Commonwealth Office, Annual Report on Human Rights 2009, March 2010, p. 149, <http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/human-rights-report-2009>,

To get back to the **UNHCR** report I have just referred to, it states that the majority of the IDPs who fled the offensive:- *“live in closed camps in Vavuniya district, as well as in camps in Mannar, Jaffna and Trincomalee.....The IDPs originate mainly from the Mannar, Vavuniya, Kilinochchi, Mullaitivu and Jaffna districts in northern Sri Lanka, as well as from some areas in the east of the country.*

*Though the end of hostilities has paved the way for the voluntary return of displaced people, some key obstacles to return remain. For instance, many of the areas of return are riddled with mines and unexploded ordnance..... Other key obstacles to return include the need to re-establish administrative structures in areas formerly held by the Liberation Tigers of Tamil Eelam; the destruction or damaged condition of public infrastructure and private homes; and the breakdown of the economy - including agriculture and fisheries.”*

UNHCR expressed its hope that, due to recent progress, *“a substantial number of IDPs will be able to return to their places of origin in the latter half of 2009, but a large portion of new IDPs are also likely to remain in the camps and with host families until well into 2010.”*

The UNHCR expressing “hope” is not good enough, certainly not in Sri Lanka.

The UNHCR should also answer the question as to when living ‘with host families’ constituted rehabilitation.

**The International Crisis Group (ICG)**<sup>10</sup> put this bluntly:- *“the resettlement process has failed to meet international standards for safe and dignified returns. There has been little or no consultation with the displaced and no independent monitoring; many returns have been to areas not cleared of mines and unexploded ordnance; inadequate financial resources have been provided for those returning home; and the military continues to control people’s movements.*

*Sri Lanka has made little progress in reconstructing its battered democratic institutions or establishing conditions for a stable peace.”*

More concerns were expressed by the **United States**<sup>11</sup> about land seizures by the government:- *“...in the north and east. Significant amounts of land were seized during the war by the military to create security buffer zones around military bases and other high-value targets which the government called HSZ (High Security Zones)<sup>12</sup>. The declaration of HSZs resulted in a number of displaced persons, particularly in the Jaffna Peninsula, and rendered inactive approximately 40 square kilometers of agricultural lands. While the government discussed reducing the size of these HSZs towards the end of the year, there was no action taken by year’s end.*

*Paramilitary actors were often cited as being responsible for other land seizures. While a legal process exists for private landowners to contest such seizures, in practice it proved very slow, and many victims did not take advantage of it for fear of violent reprisals by those who had seized the property in question.”*

In February 2010, the **European Union** declared its intent to:- *“suspend Sri Lanka’s preferential trade benefits”* due to *“significant shortcomings in Sri Lanka’s implementation of international human rights conventions.”* This has now been done which confirms Sri Lanka’s failure to implement international human rights conventions.

In June 2010, a group of **journalists in Colombo**, many of them Sinhalese, took the trouble and the not inconsiderable risk of visiting the Tamil North to see whether what the GoSL claimed about rehabilitation was true. They found that it was completely untrue.

---

<sup>10</sup> International Crisis Group, Update Briefing: Sri Lanka: A Bitter Peace, 11 January 2010, p. 1, [http://www.crisisgroup.org/library/documents/asia/south\\_asia/sri\\_lanka/b99\\_sri\\_lanka\\_a\\_bitter\\_peace.pdf](http://www.crisisgroup.org/library/documents/asia/south_asia/sri_lanka/b99_sri_lanka_a_bitter_peace.pdf)

<sup>11</sup> US Department of State, 2009 Human Rights Report: Sri Lanka, 11 March 2010, <http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136093.htm>

<sup>12</sup> High Security Zones (so-called)

In June 2016, a long overdue book: *“Proliferating Buddhist Structures in Tamil Homeland – sowing the Seeds of Disharmony”* was published by the British Tamils Forum (BTF). I know of no book ever published that has so much visual evidence of what is going on in Sri Lanka’s Tamil North and East.

The land grab. Of 69,992 acres of land in the North illegally occupied by the Armed Forces during the Rajapaksa regime, only 2,565 acres (3.6%) have been returned so far, leaving 67,427 acres in the hands of the military. Tamil people in the North and East cannot engage in their usual occupations – agriculture and fishing, and in any commercial activity. They can only exist.

We might well ask the Australian government from where it is getting its information that there are *‘evolving circumstances’*, implying an improvement in human rights concerns in Sri Lanka, when serious concerns have been expressed by the UNHCR, UK Foreign and Commonwealth Office, European Union, International Crisis Group, the US Department of State, and even Sinhalese investigators in Colombo. Has the Australian government got some secret information that has not been disclosed i.e. that all of the organisations I have cited are wrong (or are lying) and that *“Progress is being made (by Sri Lanka) in tackling the challenging task of resettling hundreds of thousands of displaced citizens and rehabilitating their communities”*?

- *Of the nearly 300,000 civilians displaced by the conflict, nearly 200,000 have either returned to their own homes or are living with host families.*

No they have not. *“Nearly 200,000”* have not returned to their homes, because they have been destroyed by the GoSL, and even their lands taken over and given to Sinhalese ‘settlers’ from the South.

The Australian government must answer the same question as the UNHCR has to answer :- *“Does living with host families constitute ‘resettlement?’* If it does, Australia and the UNHCR have an interesting concept of ‘resettlement’.

- *The Sri Lankan Government and humanitarian agencies are providing support for returnees through the provision of basic needs such as shelter, as well as assistance to help rebuild livelihoods.*

No they are not. Australian politicians (and others) are simply being the mouthpiece of a regime that has perfected the art of lying. Let alone ‘providing support’, a number of International humanitarian agencies have been either denied access to the area, or have very restricted access.

- *Living conditions for around 80,000 internally displaced people remaining in camps continue to be difficult but reduced numbers have relieved the problem of overcrowding.*

It is not the ‘living conditions’ for 80,000 people that are relevant. What is relevant is that 80,000 people, including thousands of children, are being held **illegally**, in violation of International Conventions and UN Principles.

- *We have responded generously to the humanitarian challenges facing Sri Lanka and continue to encourage the Sri Lankan Government to move down the path of peace and reconciliation.*

That is a downright lie. From a global perspective, Australia is one of the most ‘non-generous’. The number of refugees taken by Australia from Sri Lanka, and elsewhere, is abysmally poor. Only one refugee is taken for every 1,600 people in Australia (per capita GDP \$35,677, the 13<sup>th</sup> highest in the world), while one is taken in for every 40 in a miserably poor country such as Tanzania (per capita GDP \$1,263, 144 from the top). If Australia does not want to take in refugees, the least it can do is not to lie about it.

When did *“encouraging”* a fascist dictatorship *“to move down the path of peace and reconciliation”* ever work? The Australian government is joking, and the Sri Lankan government has worked this out. They are not stupid - just barbaric.

- *Given the evolving situation in Sri Lanka, a suspension in the processing of asylum claims from Sri Lankan nationals is appropriate.*

It is not a question of whether it is “*appropriate*” or not. The question is whether it is **legal** – which it is not.

### **Charging the Australian government**

The possibility of taking Australia to the International Court of Justice (ICJ) must be explored. This is provided for in Article 38 of the Refugee Convention:-

Article 38 Settlement of disputes:- “*Any dispute between parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute*”.

As is usual with these UN documents, they cannot be enforced. For example, Article 38 states “*any dispute between parties*”. Who are these ‘parties’? Australia is clearly one, but who is the other? The Refugees? But refugees are not a ‘party’.

It is a well known fact that individuals cannot take a country to the ICJ. It *has* to be another country that has signed the Convention. Moreover, it cannot be *any* country – it has to be one that is in dispute on the application of the Convention. Such a country does not exist. So, in effect, Article 38 is nonsense.

That said, the possibility of taking Australia to the ICJ must still be explored. Whether the case is lost or won is of little importance. The shame of being dragged before the ICJ is enough.

The Australian government can, however, be charged in Australian Courts for violating the Racial Discrimination Act. I am not a lawyer, but I will be surprised if that is not possible. If it was not, then there is no point having a Racial Discrimination Act.

Rules must be binding, violations must be punished, and words must have meaning. If they are not, then these Conventions and Acts will lose credibility, and the Rule of Law will descend to the Rule of the Jungle. The problem is that the wording of some of these Conventions is such that no one can be held accountable. Hence the Rule of the Jungle prevails.

### **The recent move to establish a Police State in Sri Lanka.**

The Prevention of Terrorism Act (PTA), repressive draconian Act under which so many returning asylum seekers (and others) have been subjected to ‘disappearance’ torture, sexual violence and more, and which has been thoroughly condemned by every human rights organization in the world, will be repealed and replaced by the ‘Counter Terrorism Act (CTA) which is even more repressive, making Sri Lanka a Police State, one of the worst in the world. This has already had cabinet approval and only needs to be passed by Parliament to become law.

The Act defines ‘terrorist offenses’ as

- Threatening, attacking, changing or adversely affecting unity, territorial integrity, security or sovereignty of Sri Lanka.
- Compelling Sri Lanka to reverse, vary or change a policy decision or to do or abstain from doing any act relating to defence, national security, territorial integrity, or sovereignty of Sri Lanka.
- Illegally causing a change of the Government.
- Committing any act of violent extremism towards achieving ideological domination.

I will deal with this very worrying Act (CTA) in a separate publication.

The penalties are severe. They include imprisonment for up to 20 years, heavy fines, confiscation of property and death. The death penalty extends well beyond murder – something unknown in any other country.

Sri Lanka is fast drifting into a fascist Police State. It is to this country that asylum seekers and refugees are being returned. The outlook, especially for the Tamils, is not good.

### The truth about asylum seekers.

#### Alarmist language, irresponsible suggestions and downright lies about asylum seekers

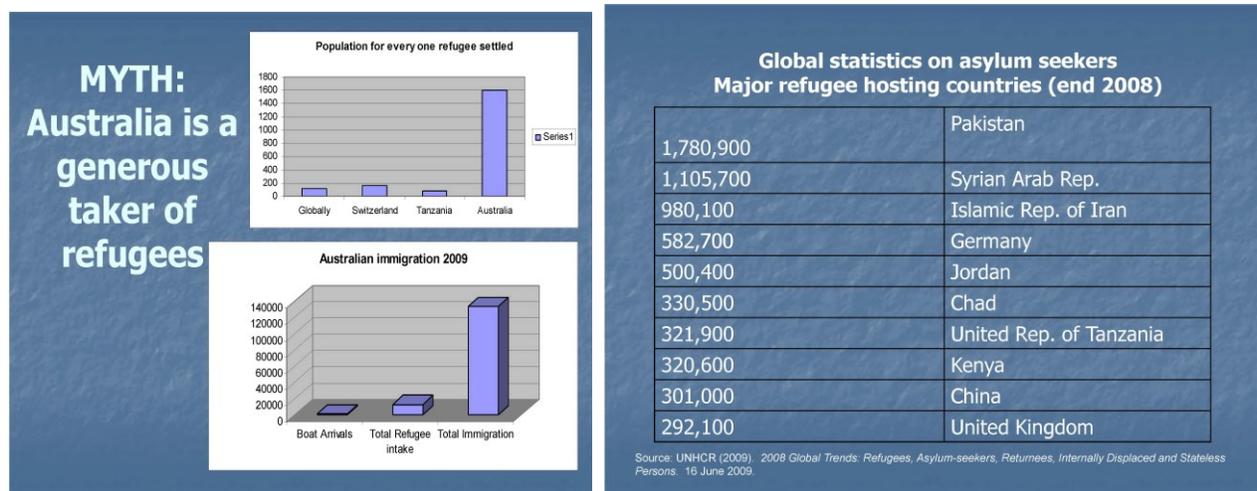
**Alarmist language to fan hysteria** ('terrorists' entering Australia, "this is only border protection", this country will be "swamped" by refugees etc). Politicians and the media revel in this. One cannot disguise racism and political opportunism, behind the mask of 'national security, border protection' etc. It is for us, to pull down these masks and expose the evil faces behind them. We have to expose them on the Australian stage, and even the world's stage, in all its brutish, iniquitous and ugliness.

**Myth 1. "They are queue-jumpers"**. There is no queue when people are fleeing murderous regimes, nor should there be. Let me give you a medical analogy. There is a waiting-list for surgery eg removal of an appendix. However, if the appendix ruptures, the patient is operated on at once. Is he a queue-jumper?

**Myth 2. Asylum seekers are illegal immigrants.** Asylum seekers are not doing anything illegal. On the UN Refugee Convention and Australian Law, it is absolutely clear that it is perfectly *legal* to seek asylum. More than 85% of boat people fulfill refugee criteria, more on Appeal. Even with UNHCR refugee status, they can languish in camps indefinitely. What then is the *meaning*, in practical terms, of being a UNHCR-certified refugee?

**Myth 3. "We must "crack down on people smugglers"**. "People smugglers" exist because there is a need for them, for desperate people to flee. The only way to end 'people smuggling' is to get rid of the need for them – by providing safe passage for threatened and vulnerable people. The greater the barriers to refugees, the more they will turn to 'people smugglers'

**Myth 4. "Australia is a generous taker of refugees"**. This is a downright lie. Australia is one of the most 'non-generous'. The number of refugees taken by Australia in relation to its population is abysmally poor. Only one refugee is taken for every 1,600 people in Australia (per capita GDP \$35,677, the 13<sup>th</sup> highest in the world), while one is taken in for every 40 people in a miserably poor country such as Tanzania (per capita GDP \$1,263, 144 from the top).



**Myth 5. “Refugees cost us greatly”.** That is arrant nonsense. It is “border control” that is highly expensive. Millions of dollars are now being spent in Nauru, Manus and Christmas Island, to say nothing of the numerous detention centres in mainland Australia. to run torture camps, and “outsource” refugees. A humane policy to help and settle refugees will be far less costly- to say nothing of the talent, expertise and willingness to work hard, that refugees often bring.

## Myth: Refugees cost “us” greatly

- “Border control” highly expensive system
- Millions more now to Indonesia to run torture camps, “outsource” refugees
- Mandatory detention costs \$104 per day
- A humane policy that welcomed & helped settle refugees would be *far less costly*.

Method	Cost (\$)
Parole	~\$10.00
Mandatory Detention	\$104.00

**Myth 6. “To let refugees in will ‘open the floodgates, and we will be swamped with refugees?’** That is just nonsense. Prior to 1992 when there was no mandatory detention, refugee applicants lived in hostels. There was no ‘flood’. Refugees only come when forced to. East Timor is an excellent example. Here is a desperately poor country right on our doorstep. Yet, there has been no flood of refugees from there. People would rather stay in their country, even a poor one, rather than in a rich foreign land. That is not an opinion to be debated, but a fact to be faced and learnt from.

**Myth 7. “There may be ‘terrorists’ among the asylum seekers”**

What if there are (former) terrorists among the asylum seekers? If there are, and they have committed a crime, then they should be charged before a proper Court, like any other person who has committed a crime.

If they have been former armed fighters, they are entitled to special protection. “*Hors de combat*”, literally meaning “out of the fight,” is a French term used in International Law to refer to those who are incapable of performing their military function (whether this be fighting for the Sri Lankan Army or the Tamil Tiger Army). Such fighters *hors de combat* are granted special protections according to the laws of war, sometimes including prisoner of war status. To do otherwise, is a violation of international law.

Let us not be hypocrites. There are many members of the Sri Lankan Armed Forces who have committed, or been responsible, for major crimes, including violations of The Laws of War (*Jus in bello*), who have no problem coming into these countries. Some are now even diplomats. Should they not be kept out, or arrested and charged when they come to other countries, as has happened to Nazi war criminals?

Several of them who have directly committed major war crimes, have been recently appointed as Sri Lankan Ambassadors to important countries, and been accepted by these countries. Others are on their way.

Another two, who are responsible for some of the worst atrocities, documented beyond any doubt. Both of them are US citizens/ ‘Green card holders’ , and move freely in and out of the USA, and other countries. They should not only been denied entry, but be charged in international Criminal Courts, as was done to some of the Nazi army officers. Does the fact that they have supported the Government of Sri Lanka, make their criminal activity acceptable? This is adopting double standards, and is completely unacceptable.

**Myth 8. “Asylum seekers are the problem”.** Where illegal entry into Australia, or illegal residence in this country is concerned, asylum seekers who arrive by boat or plane are vastly outnumbered by people who overstay their visa. For example, 2007-8, there were 48,500 visa overstayers and only 1,476 unauthorised arrivals, of whom only 25 arrived by boat.

**If you want to get rid of refugees, stop creating them,** for example, by supporting the Sri Lankan government’s policy to wipe out the Tamils to make Sri Lanka into a Sinhala-Buddhist country.

**The damage done to Australia**

Damage is being done, not only to the asylum seekers, mentally and physically, but to the **good name of Australia**, that is violating the UN Refugee Convention, signed by Australia. It is outrageous that this country supported and cooperated with one of the most barbaric regimes in Asia, the murderous totalitarian regime of Mahinda Rajapaksa and his brother (an American), Gotabaya Rajapaksa, for geopolitical and commercial gains, to hell with human rights.

The reality that Tamils were slaughtered, their homes destroyed, locked up in concentration camps with very limited access to those outside, or forced to flee the country as refugees, seems to be of no concern,

The strategy is to maintain ‘friendly relations’, and trade links, with a neighboring country, however barbaric the regime. It is commerce, trade, and the control of the commercially vital Indian Ocean, for which a foothold in Sri Lanka, astride this ocean, that seems to be what determines Australia’s actions. This is simply unacceptable.

Australian politicians could not care less about the reputation of Australia as a caring, decent country, (the treatment of Aborigines excepted – the recent much-trumpeted ‘apology’ to them by the former Prime Minister Rudd, being mere words which mean nothing).

## What can I say?

**To the Australian Prime Minister** who claims to be Christian, I'd say that it is a most 'un-Christlike Christian' who disregards the "*When I was homeless you took me in*" provision, when the people in need of a home have a brown skin.

**To Australian politicians** who often say that boat-people heading for Australia are not Australia's problem. It *is* Australia's problem. Australia holding innocent Tamils, and others, without charge or trial, in Nauru, Manus Island, Christmas Island and numerous hell-holes in remote mainland Australia, out of the sight of 'troublesome' human rights activists, is a violation of every international convention on human rights that Australia has signed.

Political leaders in Australia and Sri Lanka are glaring examples of what Obama said in Cairo:

*"...there are some who advocate democracy only when they are out of power: once in power they are ruthless in suppressing the rights of others".*

**To the rest of the world**, I'd repeat what Obama reminded us, but has been known for years:

*"There is also one rule that lies at the heart of every religion*

***that we do unto others as we would have them do unto us.***

*This truth transcends nations and peoples - a belief that isn't new; that isn't black or white or brown; that isn't Christian, or Muslim or Jew. It's a belief that pulsed in the cradle of civilization, and that still beats in the heart of billions."*

It is this simple truth that has motivated and driven me all these years, since 1948 when I was just 16 years old, and decided to get involved in all this.

This is what it means to be a human being, and share this world with other human beings. If this simple concept is grasped and the sentiment expressed implemented, the world we share will be a better place for all of us to live in. This will be particularly so for the 42 million refugees and internally displaced people (officially) in the world, from wars, conflict, and poverty – the shocking fact is that one person in 115 on this planet is a refugee -, and millions of others who are not refugees but lead a dreadful life, for no fault of their own.

I will end with what Edmund Bourke<sup>13</sup>, the Irish politician and philosopher, said so many years ago,

*"All that is necessary for the triumph of evil is that good men do nothing".*

I urge you, good men and women, to stand with us and not allow the "Axis of Evil" – Sri Lanka, US, Australia and elsewhere to triumph.

Brian Senewiratne

email: [bsenewiratne@gmail.com](mailto:bsenewiratne@gmail.com)

8 November 2016

---

<sup>13</sup> 1729-1796, an Anglo-Irish statesman, author, philosopher, and politician, who was an MP in the British House of Commons (Parliament), for many years.