

<b>Institution:</b> SOAS University of London		
<b>Unit of Assessment:</b> 19 – Politics and International Studies		
<b>Title of case study:</b> Enabling UK asylum protection for Tamil diaspora activists after Sri Lanka's civil war		
<b>Period when the underpinning research was undertaken:</b> 2008-2020		
<b>Details of staff conducting the underpinning research from the submitting unit:</b>		
<b>Name(s):</b>	<b>Role(s) (e.g. job title):</b>	<b>Period(s) employed by submitting HEI:</b>
Dr Suthaharan Nadarajah	Senior Lecturer in International Relations Lecturer Teaching Fellow	2020-present  2010–2020 2008–2010
<b>Period when the claimed impact occurred:</b> 1 August 2013 - 31 July 2020		
<b>Is this case study continued from a case study submitted in 2014?</b> N		
<p><b>1. Summary of the impact</b> (indicative maximum 100 words)</p> <p>Research conducted at SOAS on post-civil war relations between the Tamil diaspora and the Sri Lankan state directly contributed to a 'radical change' – according to legal experts – in UK asylum law and policy in 2013: namely, recognition of participants in lawful Tamil diaspora-based political activity as a key and novel category of persons 'at risk' of harm if returned, despite the war's end. Recognition of this 'at risk' category has provided thousands of Tamils who engage in lawful protests and advocacy against the Sri Lankan authorities with new or additional grounds for seeking protection, thus also enabling their continued participation in democratic political life in the UK. The research also directly contributed to positive outcomes in dozens of individual Tamils' asylum claims, and the UK's recognition of the 'at risk' category influenced asylum claims by Tamils in other countries, in particular Australia and France.</p>		
<p><b>2. Underpinning research</b> (indicative maximum 500 words)</p> <p>Sri Lanka's civil war ended in 2009 with the total military destruction of the Liberation of Tigers of Tamil Eelam (LTTE). In the final year of the war, mass atrocities by the Sri Lankan security forces prompted unprecedented mobilisation by both first- and second-generation diaspora Tamils in mass protests and civil society advocacy campaigns. Following the war's end, the UK sharply reduced eligible 'at risk' categories for Tamils seeking asylum and stepped up returns of rejected claimants. The UK's reasoning, shared by other western governments, was that human rights abuses by the Sri Lankan authorities related to their efforts to defeat the LTTE insurgency. On this view, now the LTTE was no more, Tamils who had participated whilst abroad in lawful campaigns and protests against the Sri Lankan authorities, were not at risk of harm if returned, as any adverse attention from the authorities would relate to suspected support for renewed insurgency.</p> <p>Long-term ethnographic research conducted at SOAS since 2008 by Dr Suthaharan Nadarajah [3.1, 3.2, 3.3, 3.4] on the Tamil diaspora's evolving transnational political activities and its relations with host-country governments and the Sri Lankan authorities, has served as basis for consequential country-related expertise provided in UK asylum procedures from 2013 to date. The Tamil diaspora is a classic 'conflict generated' diaspora, expanding through waves of refugee flight from the start of Sri Lanka's civil war in 1983. For example, by 2011 over 130,000 Tamils from Sri Lanka had claimed asylum in the UK alone. Nadarajah's research examines the social and political circumstances and state policies in both Sri Lanka and western countries which both influence and are influenced by Tamil diaspora political activism. Outputs include analyses of Sri Lankan security practices [3.2], contingent workings of western terrorism proscription regimes [3.1], international anti-terrorism practices' influence on diaspora agency [3.4], and co-analysis with</p>		

Mark Laffey (SOAS), building on Nadarajah's research on the Tamil diaspora, of the production of hybrid subjectivities at 'home' and 'abroad' by the institutions and practices of liberal peace [3.3].

Against the above assumptions prevailing in UK asylum law and policy, Nadarajah's research identified and explained key post-war shifts in Sri Lankan national security policy and practices that were producing new patterns of human rights abuses, especially in relation to Tamil diaspora activism [3.1, 3.2]. Three insights from the research were important for UK asylum law and policy:

1) the Sri Lankan authorities' post-war adverse attention now also focussed on lawful Tamil diaspora political activities quite distinct from support for renewed armed violence. In other words, 'support for terrorism', on the authorities' view, encompassed diaspora political campaigns such as those advocating for international accountability for war crimes; demilitarisation of (troop withdrawals from) Tamil-majority areas; Tamil self-determination by non-violent means (e.g. referenda); among other aspects.

2) the Sri Lankan security forces and intelligence agencies were now violently targeting returning Tamils who had, or were suspected to have, participated in lawful activities such as gathering testimony from survivors of and eyewitnesses to war crimes and human rights abuses; assisting the work of international human rights groups, UN investigators.; demonstrating against the Sri Lankan government's policies; commemorating Tamil victims of 'genocide'.

3) it was the increasing integration of prominent Tamil diaspora groups into western states' policy making on Sri Lanka that made them serious threats to national security on the view of the Sri Lankan authorities. Increasingly forceful pressure by the international community led by Tamil diaspora-hosting western states (hitherto close allies in the 'war on terror') was placed on the Sri Lankan government to reach a political settlement on Tamil demands for self-rule, demilitarise Tamil-majority areas, and, especially, prosecute state perpetrators of wartime mass atrocities. The Sri Lankan government attributed these international demands – all deemed assaults on the country's sovereignty and independence – primarily to the malign influence of Tamil diaspora activism on western governments' policy decisions.

Taken together, the research showed how and why, on the view of the Sri Lankan authorities, the primary post-war threat to the country's national security, sovereignty and territorial integrity is diaspora Tamils' seemingly growing ability to mobilise international pressure on and action against them, rather than actual or potential support for revived insurgency in Sri Lanka [3.1].

In 2013, Nadarajah elaborated these insights in an expert report and oral testimony for the UK's immigration and asylum Upper Tribunal (high court) hearing of a designated 'country guidance' case on Sri Lanka, resulting in the addition of Tamils involved in diaspora-based 'Tamil separatism' as a key and novel category 'at risk' of harm if returned to Sri Lanka [3.2].

### 3. References to the research (indicative maximum of six references)

3.1. Nadarajah, S. (2018). 'The Tamil Proscriptions: Identities, Legitimacies and Situated Practices'. *Terrorism and Political Violence*, (30)2, pp. 278–297.

<https://doi.org/10.1080/09546553.2018.1432214> **Peer-reviewed article in highly-ranked IR journal (top-ranked in Terrorism Studies)**

3.2. Nadarajah, S. (2013). Sri Lanka After The War. Expert report prepared for the UK Upper Tribunal's Country Guidance case of GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC). January 2013. 14,000 words. Available on request

**Peer-reviewed by experts at commissioning NGO Tamils Against Genocide – see 5.4, p1**

3.3. Laffey, M. and Nadarajah, S. (2012). 'The Hybridity of Liberal Peace: States, Diasporas and Insecurity'. *Security Dialogue*, (43)5, pp. 402–419. <https://doi.org/10.1177/0967010612457974>

**Peer-reviewed article in top-ranked IR journal**

3.4. Nadarajah, S. (2009). 'Disciplining the Diaspora: Tamil Self-Determination and the Politics of Proscription'. In: A. Ingram and K. Dodds, eds, *Spaces of Security and Insecurity: Geographies of the War on Terror*. Farnham: Ashgate, pp. 109–130. ISBN: 9780754673491

<https://eprints.soas.ac.uk/18416/>

Peer-reviewed chapter. Described as ‘strongest chapter in the book’ by review essay in *Political Geography* (Matthew G. Hannah, 2010).

#### 4. Details of the impact (indicative maximum 750 words)

Nadarajah’s work had wide and significant impact on, first, asylum protection in the UK for Tamils from Sri Lanka, by influencing directly a key change in UK asylum law and Home Office policy guidance in 2013–2014, which influenced the submission, assessment, and Tribunal determinations on claims by thousands of Tamil asylum seekers thereafter. Second, the protection extended by this change in asylum law and policy enabled the continued participation of Tamil asylum seekers and other non-resident Tamils in lawful political advocacy and democratic life in the UK. The change in UK law and Home Office policy, which remains in place in July 2020, has influenced Sri Lankan Tamils’ asylum claims in other countries, in particular Australia and France.

##### *Influencing changes in asylum law and policy guidance on Sri Lanka*

Nadarajah’s research, provided as expert evidence in a written report [3.2] and oral testimony to the UK’s immigration and asylum Upper Tribunal (UKUT), directly influenced its landmark determination in July 2013 on a designated Sri Lanka Country Guidance case [5.1]. To the co-lead advocate for the appellants at the hearing, it was ‘clear from a comparison of Dr Nadarajah’s evidence with the conclusions reached by the Upper Tribunal . . . that the Tribunal relied heavily on his evidence for many of the key features of its conclusions . . . All of these were key features of the guidance which the Tribunal gave [in its determination] and which continue to shape the way in which asylum claims by Sri Lankan Tamils are assessed’ [5.3 pp2–3].

By identifying and explaining important but hitherto unrecognized shifts in post-war Sri Lankan national security policy and practices, the analysis presented in Nadarajah’s expert evidence challenged key assumptions underpinning the UK’s asylum policy, and directly influenced the Tribunal’s hugely consequential finding that participation in lawful Tamil diaspora political activism in the UK could put individuals at risk of harm from the Sri Lankan authorities. The UKUT’s recognition of this distinct and novel ‘at risk’ category in its determination, which extensively cited Nadarajah’s expert report and oral testimony [3.1, paras 148–164 & Appendix K, paras 22–56], was described by legal experts as producing a ‘radical change’ in the UK Home Office’s and asylum Tribunals’ assessment of risk of return to Sri Lanka [5.6 p3].

This recognition was of very high significance because a Country Guidance (CG) determination by the UKUT becomes the authoritative finding on the ‘country guidance issues’ specified in the determination, unless superseded by a subsequent CG determination. A Tribunal determination that fails to follow the country guidance or to show why it does not apply to the case in question can be appealed on a point of law. The Home Office publishes the CG findings in policy guidance for its decision makers, who are expected to apply them when assessing asylum claims. [5.3].

The key, and novel, ‘country guidance issue’ identified in the 2013 CG determination was that “individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have a significant role in relation to post-conflict Tamil separatism *within the diaspora*” were “at real risk of persecution or serious harm on return to Sri Lanka”, as “the [Sri Lanka] government’s present objective is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state” [5.1 p2, **emphasis added**]. The co-lead advocate for the appellants considered “Dr Nadarajah’s contribution to [this finding] as absolutely crucial in assisting the Tribunal to understand the attitudes of the Sri Lankan government, the dynamics of the Tamil diaspora, and the risks to those perceived as [Tamil] separatists in the event of a return to Sri Lanka” [5.3 p3].

After the 2013 CG determination was upheld by the Court of Appeal, in August 2014, the CG was published by the Home Office in new policy guidance for asylum decision-makers, titled ‘Sri Lanka: Tamil Separatism’ [5.2]. Nadarajah’s analysis of the country context in his 2013 expert evidence to the Upper Tribunal proved prescient, as in April 2014 the Sri Lankan authorities proscribed almost all the leading Tamil diaspora advocacy groups as terrorists, invoking UN anti-terrorism

instruments. While these bans were summarily rejected by western states as lacking any evidentiary basis [3.1], the most direct protection for politically active non-resident Tamils in the UK is that provided by the 2013 'at risk' category changes in asylum law and policy [5.7 p6].

In December 2020, the 2013 CG determination remained the authoritative legal guidance on Sri Lanka for asylum Tribunals, and current Home Office policy guidance, though revised, remained largely consistent with that issued in 2014 [5.5, 5.6]. In April 2020, Nadarajah was commissioned to provide extensive written and oral evidence to assist the UKUT to update its authoritative guidance on Sri Lanka. The determination of the new Country Guidance case, heard in September, is awaited. Whereas in 2013 a Tribunal-recognised 'Interested Party', Tamils Against Genocide (TAG) [5.4], instructed Nadarajah's expert evidence, in 2020 he was jointly instructed by legal representatives of the main parties, the Home Office and the appellants [5.5 p3].

#### *Improving access to asylum protection for Tamils in the UK*

CG determinations directly shape subsequent assessments of asylum claims by the Home Office and the Tribunals. The senior asylum lawyer and barrister who was co-lead advocate for the appellants at the 2013 CG Sri Lanka hearing stated the determination was "of crucial significance in identifying the categories of Tamil applicants now adjudged entitled to be granted asylum in the UK" [5.3 p.2]. A senior lawyer specialising in Sri Lankan cases stated "in the past seven years thousands of Tamils who have sought asylum in the UK and Europe and in several common law jurisdictions ... have had their claims assessed using [the 2013 CG] as the guidance case. Many are among those who have participated in Tamil diaspora political activities. Others have given evidence to international human rights groups and UN investigations," [5.6 p3] (see below).

Given the standing asylum law and policy guidance, Home Office rejections, claimants' appeals and tribunal decisions since 2013 often centre on whether the applicant meets the standard set (but not specified) by the 2013 CG determination of 'a significant role' in 'Tamil separatism' (as perceived by the Sri Lankan authorities) in relation to Tamil diaspora activism [5.5]. In this regard, Nadarajah was regularly commissioned by lawyers representing Tamil asylum seekers to provide the courts with expert reports explaining how risk to the individual in the country context at the time of the hearing related to that recognised in the 2013 CG determination. From 2014 to July 2020, he provided over 40 expert reports to asylum Tribunals based on his research. Many of his expert reports were relied on by the Tribunal for their decisions. A lawyer specialising in Sri Lankan cases stated "Dr Nadarajah's reports have not only been central to positive determinations of asylum appeals, but also played a key role in stopping deportations, obtaining rights to appeal negative decisions through judicial review, and immigration bail." [5.5 p2].

#### *Improving capabilities and practices of UK asylum lawyers*

Nadarajah's research also directly influenced the work of UK asylum law practitioners representing Tamil asylum seekers from Sri Lanka. One senior asylum lawyer described Nadarajah's 2018 article [3.1] as "excellent", explaining that "legal practitioners would definitely benefit from this being publicly available. We struggle to get legal aid granted for country expert reports at times and so this would be a great alternative for initial asylum applications relying on the political issues in Sri Lanka" [5.9]. Based on such feedback, the article was published open access with SOAS's funding in August 2018 and has been downloaded over 3,000 times as of July 2020. The article, along with Nadarajah's newly commissioned expert report was included in the evidence jointly submitted by the Home Office's and appellant's lawyers to the Upper Tribunal hearing of the 2020 Country Guidance (Sri Lanka) case.

Nadarajah's research also influenced asylum lawyers' case preparation and arguments made before Tribunals, both via expert reports he produced (including for the 2013 and 2020 CG cases, and dozens of individuals' cases from 2015 to July 2020 [5.4, 5.5, 5.6]), and via training courses he conducted for 50 UK immigration lawyers specialising in Tamil cases. A public statement of appreciation by Duncan Lewis, a leading UK law firm, described Nadarajah's training as 'much needed and very welcome' for their staff, and the research he presented as "of the utmost importance to any legal practitioner representing Sri Lankan asylum seekers" [5.8 p3].

*Widening participation by Tamil asylum seekers in UK political processes and international investigations*

Through his direct impact on UK asylum law and policy, Nadarajah's work significantly influenced the ability of non-resident Tamils in the UK to participate in democratic life here. Recognition of Tamil diaspora political activists as an 'at risk on return' category from 2013 to July 2020, has encouraged individuals who previously may have been dissuaded by fear of reprisals from the Sri Lankan authorities after being deported to participate in a range of lawful political activities.

A senior editor with Tamil Guardian (the leading English-language Tamil diaspora news website), stated that within a year of the 2013 CG determination "the significant protections from harm by the Sri Lankan authorities provided in [it] had far reaching effects on Tamil diaspora political activity by encouraging several hundred Tamils awaiting decisions on their asylum claims to join major Tamil diaspora advocacy groups, and hundreds of others to participate in demonstrations and other public activities," [5.7 p7]. This is despite such events routinely being videoed and photographed by Sri Lankan embassy officials, and in 2014 the Sri Lankan government banning these Tamil diaspora groups as terrorists. [5.7, 3.1].

Similarly, the Director of TAG (Together Against Genocide, a prominent Tamil human rights and transitional justice NGO) Janani Jananayagam stated "due to the increased sense of protection provided by [the 2013 CG determination]" Tamil asylum seekers who had witnessed war crimes by Sri Lankan security forces and "who previously had been reluctant, were persuaded to now come forward and give evidence" [5.4 p9]; Dozens of witnesses gave evidence to TAG and many more others to other international human rights groups and the landmark UN investigation (2014–2015) by the Office of the High Commissioner for Human Rights. [5.4, pp8-10].

*Influencing decisions on Tamils' asylum claims in Australia, France, and Luxembourg*

The 2013 change in UK asylum law and policy guidance on Sri Lanka has influenced Tamils' asylum claims in other countries. A senior UK lawyer stated "Dr Nadarajah's research, which the UKUT relied on for its country guidance in the [2013 CG] determination, has also contributed to increasing international protection for politically active individuals in the Tamil diaspora in many countries including Australia, France, and Luxembourg." [5.6 p4]. An analysis in 2016 of the influence of the UKUT's CG determinations on Australia's asylum courts showed that the 2013 determination on Sri Lanka had been "by far the most frequently-used country guidance decision in Australia . . . No other decision of the UKUT . . . has enjoyed similar currency" [5.10 p5, p8].

**5. Sources to corroborate the impact** (indicative maximum of 10 references)

- 5.1. UK Asylum Tribunal, GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC). Determination of Tribunal. 8 July 2013. <https://www.refworld.org/pdfid/51da951c4.pdf>
- 5.2. UK Home Office, Country Information and Guidance – Sri Lanka: Tamil Separatism, 28 August 2014. [https://www.ecoi.net/en/file/local/1313898/1930\\_1409221654\\_cig-sri-lanka-tamil-separatism-v1-0e.pdf](https://www.ecoi.net/en/file/local/1313898/1930_1409221654_cig-sri-lanka-tamil-separatism-v1-0e.pdf)
- 5.3. Letter from the co-lead advocate and barrister, Doughty Street Chambers, May 2019.
- 5.4. Letter from Janani Jananayagam, Director, Together Against Genocide, December 2020.
- 5.5. Letter from a solicitor, Joint Council for the Welfare of Immigrants, December 2020.
- 5.6. Letter from a solicitor and barrister, Birnberg Pierce & Partners, December 2020.
- 5.7. Letter from a Senior Editor, Tamil Guardian, December 2020.
- 5.8. Public statement by Duncan Lewis Solicitors, 23 November 2018. [https://www.duncanlewis.co.uk/news/%E2%80%98Sri Lanka Permanent counterinsurgency, a and the Tamil threat abroad%E2%80%99 what Duncan Lewis Immigration Department at Dalston learned from Dr Suthakaran Nadarajah \(23 November 2018\).html](https://www.duncanlewis.co.uk/news/%E2%80%98Sri Lanka Permanent counterinsurgency, a and the Tamil threat abroad%E2%80%99 what Duncan Lewis Immigration Department at Dalston learned from Dr Suthakaran Nadarajah (23 November 2018).html)
- 5.9. Email from a solicitor and supervisor, Duncan Lewis Solicitors, June 2018.
- 5.10. Douglas McDonald-Norman, 'Country Guidance Decisions in the UK and Australia', AUSPUBLAW, 7 July 2016. <https://auspublaw.org/2016/07/country-guidance-decisions/>