

Immigration and Refugee Board of Canada

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Responses to Information Requests

Responses to Information Requests (RIR) respond to focused Requests for Information that are submitted to the Research Directorate in the course of the refugee protection determination process. The database contains a seven-year archive of English and French RIRs. Earlier RIRs may be found on the UNHCR's [Refworld](#) website. Please note that some RIRs have attachments which are not electronically accessible. To obtain a PDF copy of an RIR attachment, please email the [Knowledge and Information Management Unit](#).

20 July 2017

LKA105842.E

Sri Lanka: Information on the ability of notaries public, lawyers or commissioners of oaths to notarize a document in which the deponent is stating that they aided an individual, who was wanted by the authorities, in fleeing the country; whether the notary, lawyer or commissioner of oaths has any legal obligations when issuing such an affidavit, including notifying the authorities (2016-July 2017)
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

Information on the ability of notaries public, lawyers or commissioners of oaths to notarize documents in which the deponent is admitting to having committed an offense, was scarce among the sources consulted by the Research Directorate within the time constraints of this Response. In correspondence with the Research Directorate, an associate with a Colombo-based law firm that practices litigation and dispute resolution, among others, stated that an individual is able to "obtain a duly executed affidavit where the deponent expresses guilt or admits to having committed an offence, but it will not amount to a confession under Sri Lankan law" (Associate 13 July 2017). Further and corroborating information, including requirements and procedures to obtain such an affidavit, could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

According to the Associate,

[a]dmitting the commission of an offence would be tantamount to a confession. As per the criminal procedure code of Sri Lanka, at any time before an inquiry or trial the magistrate may record a confession. This is not in the format of an affidavit but a statement recorded after having reason to believe that it is made voluntarily. Once the statement is recorded the magistrate will make a memorandum at the foot of such record to the effect that it was made voluntarily in his presence and was read over to the person making the statement. (Associate 13 July 2017)

Article 127 of the Sri Lankan *Code of Criminal Procedure*, on the "[p]ower to record statements and confessions," provides the following:

127.

1. Any Magistrate may record any statement made to him at any time before the commencement of any inquiry or trial.
2. Such statement shall be recorded and signed in the manner provided in section 277 and dated, and shall then be forwarded to the Magistrate's Court by which the case is to be inquired into or tried.
3. A Magistrate shall not record any such statement being a confession unless upon questioning the person making it he has reason to believe that it was made voluntarily, and when he records any such statement he shall make a memorandum at the foot of such record to the following effect:

I believe that this statement was voluntarily made. It was taken in my presence and hearing and was read over by me to the person making it and admitted by him to be correct, and it contains accurately the whole of the statement made by him.

(Signed) A. B.

Magistrate of the Magistrate's Court. (Sri Lanka 1979)

Section 17 of the *Evidence Ordinance* provides the following definitions of an admission and a confession: 17.

1. An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons and under the circumstances hereinafter mentioned.
2. A confession is an admission made at any time by a person accused of an offence stating or suggesting the inference that he committed that offence. (Sri Lanka 1896)

Information on legal obligations, including notifying the authorities when issuing an affidavit where the deponent is admitting to having committed an offense, was scarce among the sources consulted by the Research Directorate within the time constraints of this Response. Without providing further detail, the Associate stated that

[g]enerally, lawyers are also commissioners for oaths having authority to administer oaths and affirmations. As per the professional ethics of lawyers in Sri Lanka, a lawyer has a duty to keep in strict confidence all information obtained from a client. However, there are certain exceptions to this rule and a lawyer may disclose confidential information, such as where the circumstances give rise to a public duty of disclosure. (Associate 13 July 2017)

A chapter authored by Avindra Rodrigo, a lawyer at the Colombo-based law firm F.J. & G. de Saram, in a 2014 document produced by Lex Mundi, a network of independent law firms in 100 countries, entitled *In-House Counsel and the Attorney-Client Privilege Global Practice Guide*, states the following:

Under the Sri Lankan jurisdiction, communications between [a]ttorneys-at-[l]aw and their clients ("professional communications") are privileged, subject to certain limitations set out in the law. In terms of the Supreme Court (Conduct and Etiquette for Attorneys-at-Law) Rules of Sri Lanka, an [a]ttorney-at-[l]aw has a duty to keep in strict confidence all information whether oral or documentary, acquired by him from or on behalf of his client, in any matter in respect of the business and affairs of his client, ("[c]onfidential [i]nformation"). (Rodrigo 2014, 62)

The same source further states the following:

In respect of limitations to the aforesaid privilege on [c]onfidential [i]nformation, the Supreme Court Rules specify that subject to any written law, an [a]ttorney-at-[l]aw may disclose [c]onfidential [i]nformation:

- a. if it is expressly or impliedly authorized by his client in writing or in the event of the death of his client, by the legal representative of the client (provided however, he should be careful to disclose ... only [c]onfidential [i]nformation as is necessary in the circumstances and no more);
- b. in order to defend himself, his associates or employees, against any allegation of misconduct or malpractice made by his client;
- c. to prevent the commission of a crime, fraud or illegal act;
- d. in the case of joint retainer or where the client has a joint retainer or others having a joint interest with the client, as the case may be.

Further, the Evidence Ordinance stipulates that the privilege relating to Confidential Information shall not be applicable for:

- a. any communication made in furtherance of any illegal purpose;
- b. any fact observed by such [a]ttorney-at-[l]aw in the course of his employment showing that any crime or fraud has been committed since the commencement of his employment.

In practice, it is recognized that there are exceptional circumstances in which professional communications may be disclosed by an [a]ttorney-at-[l]aw, such as:

- a. when disclosure is required by law or by order of a court of a competent jurisdiction, provided that only such information as is required is divulged;
- b. the [a]ttorney's professional interests require it;

- c. the circumstances give rise to a public duty of disclosure; and / or
- d. where the information becomes public knowledge. (Rodrigo 2014, 62-63)

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

References

Associate, Colombo-based law firm. 13 July 2017. Correspondence with the Research Directorate.

Rodrigo, Avindra. 2014. Lex Mundi. "Sri Lanka." *[In-House Counsel and the Attorney-Client Privilege Global Practice Guide](#)*. [Accessed 14 July 2017]

Sri Lanka. 1979. *[Code of Criminal Procedure](#)*. [Accessed 17 July 2017]

Sri Lanka. 1896. *[Evidence Ordinance](#)*. [Accessed 12 July 2017]

Additional Sources Consulted

Oral sources: Two Colombo-based law firms.

Internet sites, including: Blackhall Publishing – Laws of Sri Lanka; ecoi.net; Factiva; United Nations – Refworld.

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