OPERATIONAL GUIDANCE NOTE

SRI LANKA

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1. Introduction

1.1 This document provides UK Border Agency caseowners with guidance on the nature and handling of the most common types of claims received from nationals/residents of Sri Lanka, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseowners must refer to the relevant Asylum Instructions for further details of the policy on these areas.

1.2 Caseowners *must not* base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and caseowners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

1.3 Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

2. Country assessment

2.1 Caseowners should refer the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the population, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/

2.2 An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/accessible-hrd-report-2010

2.3 Actors of protection

2.3.1 Case owners must refer to the Asylum Policy Instruction on 'considering the protection (asylum) claim' and 'assessing credibility'. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

2.3.2 The inspector general of police (IGP) is responsible for the 86,000-member Sri Lanka Police Service (SLPS). The SLPS conducts civilian police functions, such as enforcing criminal and traffic laws, enhancing public safety, and maintaining order. The IGP reports to the secretary of the Ministry of Defence (in a separate chain of command from that of the armed forces and other military units). The 5,850-member paramilitary Special Task Force (STF) is within the structure of the SLPS, although joint operations with military units in the recent defeat of the LTTE led to questions among observers about who actually was directing the STF. Bureaucratic adjustments during the year [2010] placed the police more firmly under the control of the Ministry of Defence.[1]

2.3.3 The Police department was short of 8600 personnel required to maintain law and order in the country...There were only 83,423 police officers in the service as of July 01, 2011, though the actual number required was 92,023. Of these officers, 81,328 were Sinhala police officers, 1,093 Tamil, 952 Muslim, nine Burghers and 25 Malay. There were only 430 police stations in the country[2]. Few police officers serving in Tamil majority areas were Tamil, and most did not speak Tamil or English, although the government began hiring and training ethnic Tamils in an effort to improve this situation. Estimates of ethnic Tamils and Muslims in the police numbered several thousand.[3]

2.3.4 The Sri Lankan Police Service functions under the aegis of the Ministry of Home Affairs but is currently in effect directly controlled by the president. Policemen are poorly paid and susceptible to corruption at lower levels while at higher levels senior police officials are often subject to political pressures. Human rights organisations have been highly critical of the Sri

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[1] US State Department (USSD) Human Rights (HR) Report 2010; Sri Lanka section 1d Role of the Police and Security Apparatus http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm

[2] USSD (HR) Report 2010; Sri Lanka section 1d Role of the Police and Security Apparatus http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm

[3] UKBA COIS Sri Lanka country report March 2012 (para 8.03) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

Lankan police, the rapid expansion and poor training of which have contributed to lack of professionalism. The senior officer of the Sri Lanka police is the inspector general (IG), and organised into five geographical commands (known as Ranges) covering the northern, eastern, western, southern regions and a separate range for Colombo, each under the command of a Senior Deputy Inspector of Police (SDIG).[4]

2.3.5 Impunity, particularly for cases of alleged police torture and corruption, was a serious problem. A 2007 AHRC assessment cited the government's tolerance of pervasive corruption as a major reason for the police force's incapacity to investigate and prosecute cases effectively. There was no independent authority to investigate complaints. Senior officials in the police force handled complaints against the police.[5]

2.3.6 Successive governments have respected judicial independence, and judges can generally make decisions without overt political intimidation. However, concerns about politicisation of the judiciary have grown in recent years. A 2009 International Crisis Group report on the judiciary highlighted a number of problems, including the executive's power to make high-level judicial appointments; the chief justice's control over the Judicial Service Commission, which makes lower-level appointments; and the lack of a mechanism to sanction biased or corrupt judges. In 2010, the Supreme Court made rulings favourable to the government in a number of politically charged cases, including a decision that allowed Rajapaksa's new term to begin 10 months after the presidential election. Corruption remains fairly common in the lower courts, and those willing to pay bribes have better access to the legal system.[6]

2.3.7 Citizens were allowed to file fundamental rights cases to seek redress of human rights violations. The judiciary exhibited some independence and impartiality in adjudicating these types of cases, and plaintiffs were awarded damages in a number of instances. Observers cited bureaucratic inefficiencies in this system, leading to delays in the resolution of many cases; cases filed by persons suspected of having ties to the LTTE appeared to be subject to delays much more frequently. Where damages were awarded, there were relatively few problems in enforcing the court orders.[7]

2.4 Internal relocation.

2.4.1 Caseowners must refer to the Asylum Policy Instructions on both internal relocation and Gender Issues in the asylum claim and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

2.4.2 Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-

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[4] US State Department Human Rights Report 2010; Sri Lanka section 1d Role of the Police and Security Apparatus http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm

[5] US State Department Human Rights Report 2010; Sri Lanka section 1d Role of the Police and Security Apparatus http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm

[6] Freedom House, Freedom in the World 2011, Sri Lanka , August 2011 http://www.freedomhouse.org/template.cfm?page=22&year=2011&country=8137

[7] US State Department Human Rights Report 2010; Sri Lanka section 1e Civil Judicial Procedures and Remedies http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm

treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

2.4.3 The law grants every citizen 'freedom of movement and of choosing his residence' and 'freedom to return to the country.' In practice, however, the government restricted this right on multiple occasions. Police and military checkpoints were still a frequent sight in Colombo and elsewhere, and numerous High Security Zones (HSZs) and other areas remained off limits to citizens. The HSZs extended in an approximately 2.5 mile radius from the fences of most military camps. Some observers claimed that the HSZs were excessive and unfairly affected Tamil agricultural lands, particularly in Jaffna. [8] In 2012 the International Crisis Group reported on the high level of militarisation in Sri Lanka's Northern Province, including "the many military camps and check-points" as well as the military run shops and vegetable farms. It was also noted that "This infrastructure is further reinforced by a large increase in the number of military intelligence units and numerous check-points dotted across the Northern Province. While almost all the check-points have been removed from the A-9 highway, the main arterial that links the north and the south, it is a different story in the interior of the Vanni. There nearly three years after the war, checkpoints get denser as you go further in".[9] The International Crisis Group also stressed that checkpoints have been a "long standing risk factor for women", particularly in the north and east of Sri Lanka.[10] The number of formal, stationary checkpoints declined from the previous year, in particular in Colombo. Many observers noted an increase in temporary, roving checkpoints, however, especially at night in Colombo.[11]

2.4.4 UNHCR informed in 2010 that there are still check points in Colombo, but less than before. The scrutiny at checkpoints is less but it has not disappeared. Most sources (Norwegian Embassy, a diplomatic mission, British High Commission, a local human rights organisation, the Co-ordinator of Law and Society Trust, the Director of an anonymous local NGO and a leading human rights defender) agreed that the security situation for Tamils in Colombo has improved, that the number of checkpoints has been reduced, and that cordon and search operations have been stopped.[12]

2.4.5 The government did not expel citizens from one part of the country to another, nor did it forcibly exile any citizens abroad, but it allowed citizens to leave the country under self-exile unless they were accused of breaking the law. More than a dozen journalists, having received physical threats, were in self-exile due to safety fears.[13]

2.4.6 An estimated 300,000 civilians were displaced as a result of the fighting and placed in camps in northern Sri Lanka. International attention focused on improving conditions for them and for other longer-term displaced civilians, and supporting the Government to return Internally Displaced People (IDPs) to their areas of origin. By November 2011, the number remaining in government camps had fallen to approximately 7,000, but many more had been unable to return to their former areas of residence[14] due to uncleared land mines, restrictions that have designated their home areas as HSZs [High Security Zones], and other war-related destruction. In January 2012 the official website of the Government of Sri Lanka announced that: an area exceeding 1,934 out of 2,061 square kilometres of lands in

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[8] USSD HRReport 2010; Sri Lanka section 2d Freedom of Movement, Internally Displaced Persons, Protection of Refugees and Stateless Persons.http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm

[9] International Crisis Group, Sri Lanka's North II; Rebuilding under the Military 16/03/2012, Section ii Limited Progress, Dangerous Trends and section iii, B, Infrastructure of Control: Military camps and the seizure of land.

[10] International Crisis Group, Women's Insecurity in the North and East, 20/12/2012 section IV A2 Militarisation and centralised control.

[11] COIS Sri Lanka country report March 2012 (para 25.08) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

[12] COIS Sri Lanka country report March 2012 (para 25.10) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

[13] USSD HR Report 2010; Sri Lanka http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm section 2d, Freedom of Movement, Internally Displaced Persons, Protection of Refugees and Stateless Persons.

[14] COIS Sri Lanka country report March 2012 (para 24.01) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

the North which were dotted with land mines and booby traps have been cleared by the end of 2011.[15]

2.4.7 The International Crisis Group reported in March 2012 that "conditions for most of the hundreds of thousands of Tamils and Muslims resettled in the Northern Province remain poor, with limited rebuilding and few economic opportunities. Military installations – including large newly built permanent camps – continue to displace thousands. Nearly 19,000 IDPs remain in camps or transit centres and more than 110,000 live with host families. Their difficulties are worsened by the heavy military presence; the estimated 150,000 military personnel deployed in the north monitor all activities and military leaders have a veto power on all political and development issues. The military has established its own commercial enterprises and completes with northern farmers and businesses struggling to re-establish themselves."[16] Amnesty International stated in 2011 that "Many families who left the camps still lived in unsettled conditions and continued to depend on food aid".[17]

2.4.8 Chatham House reported that the military in northern Sri Lanka required civilians to "seek permission even to hold religious or other personal gatherings" and imposed restrictions on humanitarian, developmental and psychiatric social work, accentuating existing resentments and impeding quick recovery". It also highlighted the military's involvement in various committees set up by the Government in September 2011 regarding land in the northeast.[18]

2.4.9 When assessing the reasonableness of internal relocation, careful consideration must be given to the personal circumstances of the individual applicant, the conditions in the area of proposed relocation and how it will be accessed, taking account of the latest information about the security and the humanitarian situation. A Country of Origin Information request should be submitted to the Country of Origin Information Service if more information is needed.

2.5 Country guidance caselaw

E.G. v. THE UNITED KINGDOM - 41178/08 [2011] ECHR 846 (31 May 2011)

Para 66. In order to determine whether there is a real risk of ill-treatment in this case, the Court must examine the foreseeable consequences of sending the applicant to Sri Lanka, bearing in mind the general situation there and his personal circumstances…. it is the present conditions which are decisive and it is therefore necessary to take into account information that has come to light since the final decision taken by the domestic authorities.

Para 69. The Court also finds that, in the light of the various sources of background country evidence on Sri Lanka, the current situation in the country has been accurately set out in the Country Guidance case of TK, cited above. The Court recognises the comprehensive review of background and expert evidence carried out by the Asylum and Immigration Tribunal which heard TK. …. Drawing on all these sources, the Court finds that the risk factors identified in LP and endorsed by this Court in NA. are still applicable but, given the end of hostilities, the likelihood of a Tamil returning to Colombo being the subject of adverse interest on the part of the Sri Lankan authorities has, if anything, declined (see TK, cited above).

Para 76. Furthermore, the Court takes the view that nothing that has transpired since the applicant's arrival in the United Kingdom would serve to heighten the level of interest or suspicion that he holds for the authorities in Sri Lanka. …. There is therefore no reason specific to the applicant for the

[15] COIS Sri Lanka country report March 2012 (para 24.16) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

[16] International Crisis Group Government Promises Ground Realities 1/03/2012 http://www.responsibilitytoprotect.org/index.php/crises/177-crisis-in-sri-lanka/4016-international-crisis-group-sri-lanka-government-promises-ground-realities

[17] Amnesty International, Annual Report 2011, Sri Lanka May 2011, Internally Displaced people :http//www.amnesty.org/en/region/sri-lanka/report-2011

[18] Chatham House, Charu Lata Hogg Sri Lanka: Prospects for Reform and Reconciliation October 2011, Centralisation, Militarisation and Development.

authorities' interest in him to have intensified during his absence from Sri Lanka.

Para 79. The Court takes the view that the crucial question is whether the applicant is likely to come to the attention of the authorities as he passes through the airport (see NA., cited above, § 134). His scars, as described by the Adjudicator who, unlike this Court, had the opportunity of seeing the applicant in person, do not appear to be such as would attract special attention. The Court does not, therefore, consider that the applicant's scarring alone, even taken in conjunction with the background risk factors discussed above and even whilst the applicant is passing through the airport and thus subject to a greater degree of scrutiny and control by the Sri Lankan authorities, would attract sufficient attention to render him at risk of detention, interrogation and ill-treatment.

Para 80. The applicant would be returned to Sri Lanka as a failed asylum seeker from the United Kingdom, who has in the past been known to the authorities as a former LTTE member but who was released from custody as being of no further interest. He was arrested on only one occasion, unlike the applicant in NA. v. the United Kingdom, cited above, who had been arrested six times. …. In any event, the applicant's scarring was in large part sustained from a shelling incident and cannot therefore be described as characteristic of having undergone LTTE training or having been tortured in custody, which are the types of scarring most likely to rouse suspicion.

Para 81. The Court is of the view that the combination of risk factors which apply to him, of which the predominant factors are his previous record as an LTTE member and his scarring, are not sufficient to put him at real risk of detention and ill-treatment should he be returned to Sri Lanka.

TK (Tamils – LP updated) Sri Lanka CG [2009] UKAI 00049

a) The risk categories identified in LP (LTTE area – Tamils - Colombo – risk?) Sri Lanka CG [2007] UKAIT 00076 and approved by the European Court of Human Rights (ECtHR) in NA v UK, App.no. 25904/07, remain valid.

b) Events since the military defeat of the LTTE in May 2009 have not aggravated the likely approach of the Sri Lankan authorities to returned failed asylum seekers who are Tamils; if anything the level of interest in them has decreased. The principal focus of the authorities continues to be, not Tamils from the north (or east) as such, but persons considered to be either LTTE members, fighters or operatives or persons who have played an active role in the international procurement network responsible for financing the LTTE and ensuring it was supplied with arms.

c) The records the Sri Lanka authorities keep on persons with some history of arrest and detention have become increasingly sophisticated; their greater accuracy is likely to reduce substantially the risk that a person of no real interest to the authorities would be arrested or detained.

d) The practice of immigration judges and others of referring to “objective country evidence”, when all they mean is background country evidence, should cease, since it obscures the need for the decision-maker to subject such evidence to scrutiny to see if it conforms to legal standards for assessing the quality of Country of Origin Information (COI) as identified by the ECtHR in NA and as set out in the Refugee Qualification Directive (2004/83/EC), Article 4(1), 4(3)(a), 4(5),4(5)(a) and 4(5)(c) and the Procedures Directive (2005)85/EC), Article 8(2)(a)and (b) and 8(3).

NA v United Kingdom ECHR (2008) – risk on return to Sri Lanka for Tamils.

The Court endorsed existing country guidance (LP and PS) on risk to Tamils in Sri Lanka. Having examined closely developments in Sri Lanka since the AIT determination in LP, the Court considered that there was no general risk of mistreatment to Tamils in Sri Lanka and that nothing in the objective information submitted to the Court would require a different conclusion than that reached in the case of LP. The Court did not consider it necessary to identify any additional risk factors than those identified in LP though it agreed with the AIT that the list was not exhaustive. The Court emphasised that any individual asylum decision should be based on a fair assessment of the cumulative weight of the risk factors identified in LP, the general situation in Sri Lanka and the individual circumstances of the case. In particular the Court found that:

- there was a greater risk of detention and interrogation at Colombo airport than in Colombo city since the authorities at the airport would have greater control over the passage of persons there than the population at large;
- the majority of risk factors in LP would be more likely to bring a returnee to the attention of the Sri Lankan authorities at the airport than Colombo city

- the assessment of whether somebody is at real risk on return may depend on the likelihood of their being detained and interrogated at Colombo airport;
- the Sri Lankan authorities have the technological means and procedures in place to identify failed asylum seekers at the airport and those who are wanted by the authorities, however, the rigour of checks will vary from time to time depending on the security concerns of the authorities; and,
- in respect of risk of ill treatment of Tamils from the LTTE in a government controlled area such as Colombo, consistent with the determination in AIT determination of PS, only Tamils with a high profile as opposition activists or those seen by the LTTE as renegades or traitors may be able to demonstrate a real of mistreatment.

AN & SS (Tamils-Colombo-risk?) Sri Lanka CG [2008] UKAIT 00063

The AIT found that since the breakdown of the ceasefire, heightened security in Colombo has restricted the operations of the LTTE who are focusing on high profile targets. Background evidence does not show that Tamils in Colombo who have stopped supporting the Tigers, or who support parties opposed to them, are at real risk of reprisals, absent some features bringing them to prominence and the conclusion to this effect in PS Sri Lanka CG [2004] is updated and superseded by this determination. And:

- Since the breakdown of the ceasefire the operating capacity of the LTTE has been restricted and they are concentrating their attacks on individuals with a high political or military profile as well as members of the security forces generally and upon military installations.

- There is scarcely any evidence that low level supporters/ opponents of the LTTE who have left their ranks have been targeted in Colombo since 2004

- There is no solid evidence that the LTTE maintain a computerised database of opponents and defectors against which a check may be run when a person comes to their notice.

- For a person at risk in their home area in the North or the East but who is not risk in Colombo, relocation to Colombo will not in general be unduly harsh. Young Tamil men are likely to be stopped at checkpoints or rounded up in cordon and search operations or in raids upon lodges but most detainees are released in a fairly short time and those arriving without a national ID card should be able to get a replacement without too much difficulty. Abductions and kidnappings have tended to focus on businessmen and those about to leave the country although there is recent evidence that LTTE supporters are being abducted by paramilitaries.

LP (LTTE area – Tamils – Colombo – risk? Sri Lanka CG) [2007] UKIAT 00076.

The Tribunal found that;

(1) Tamils are not per se at risk of serious harm from the Sri Lankan authorities in Colombo. A number of factors might increase the risk, including but not limited to:

- Tamil ethnicity
- Previous record as a suspected or actual LTTE member or supporter
- Previous criminal record and/or outstanding arrest warrant
- Bail jumping and/or escaping from custody
- Having signed a confession or similar document
- Having been asked by the security forces to become an informer
- The presence of scarring
- Returned from London or other centre of LTTE activity or fund raising
- Illegal departure from Sri Lanka
- Lack of ID card or other documentation
- Having made an asylum claim abroad
- Having relatives in the LTTE

The Tribunal found that in every case, those factors and the weight to be ascribed to them, individually and cumulatively, must be considered in the light of the facts of each case but they are not intended to be a checklist.

(2) If a person is actively wanted by the police and/or named on a Watched or Wanted list held at Colombo airport they may be at risk of detention at the airport.

(3) Otherwise, the majority of returning failed asylum seekers are processed relatively quickly and with no difficulty beyond some possible harassment.

(4) Tamils in Colombo are at increased risk of being stopped at checkpoints, in a cordon and search operation, or of being the subject of a raid on a lodge where they are staying. In general, the risk again is no more than harassment and should not cause any lasting difficulty, but Tamils who have recently returned to Sri Lanka and have not yet renewed their Sri Lankan identity documents will be subject to more investigation and the factors listed above may then come into play.

(5) Returning Tamils should be able to establish the fact of their recent return during the short period necessary for new identity documents to be procured.

6) A person who cannot establish that he is at real risk of persecution in his home area is not a refugee; but his appeal may succeed under Article 3 of the ECHR, or he may be entitled to humanitarian protection if he can establish he would be at risk in the part of the country to which he will be returned.

(7) The weight to be given to expert evidence (individual or country) and country background evidence is dependent upon the quality of the raw data from which it is drawn and the quality of the filtering process to which that data has been subjected. Sources should be given whenever possible.

(8) The determinations about Sri Lanka listed in paragraph 226 are replaced as country guidance by this determination. They continue to be reported cases.

PS (LTTE, Internal Flight, Sufficiency of protection) Sri Lanka CG [2004] UKIAT 00297 (28 October 2004)

The Tribunal:

- restated that Tamils from the north and east of Sri Lanka, under the direct control of the LTTE, and from those areas where the degree of control has fluctuated, can in general terms safely relocate to Colombo to avoid localised fear of the LTTE. Travel restrictions have been greatly and progressively eased since the ceasefire, with a reduction in the numbers of checkpoints.

- accepted that it is physically possible for LTTE members to travel to Colombo although, in times when they have provoked public concern by their actions there, they would face heightened security measures, albeit not on the scale of the former cordon and search operations regularly carried out prior to the ceasefire. Nevertheless, it is clear that they do not choose to do so on an indiscriminate basis in order to find all those against whom they may harbour some suspicion.

- concluded that 'As we have already observed, those who the LTTE has on the objective evidence targeted in Colombo since the ceasefire have all been high profile opposition activists, or those whom they would see are renegades or traitors to the LTTE' (p71) and for those who are not high profile 'there is no arguable basis for saying that the Sri Lankan state does not provide a sufficiency of protection to the generality of Tamils having a localised fear of the LTTE in their home area.' (p72).

3. Main categories of claims

3.1 This Section sets out the main types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by those entitled to reside in Sri Lanka. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on

persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.

3.2 Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in Karanakaran should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction on 'considering the protection (Asylum) claim' and 'assessing credibility').

3.3 If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

3.4 All Asylum Instructions can be accessed via the on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/

3.5 Credibility

3.5.1 This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see Establishing the facts of the claim (material and non-material facts) in the Asylum Instruction Considering the protection (asylum) claim' and assessing credibility. Case owners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to anon-biometric visa. Asylum applications matches to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

3.6 Fear of persecution by the Sri Lankan authorities

3.6.1 Applicants may claim asylum based on fear of persecution by the Sri Lankan authorities/police/security services/army/paramilitaries due to their perceived support for or past LTTE involvement or Tamil ethnicity generally.

3.6.2 ***Treatment***. Repercussions of the nearly 30-year war against the Liberation Tigers of Tamil Eelam (LTTE) continued to have an effect on human rights, despite the defeat of the LTTE in May 2009. In an effort to prevent any violent separatist resurgence, the government continued to search for and detain persons it suspected of being LTTE sympathisers or operatives.[19] Despite the end of the fighting, there continued to be human rights violations in 2010, including disappearances and extra-judicial killings, arbitrary arrests and a restriction on political space for free expression.[20]

3.6.3 A UN report by a panel of international experts published in April [2011] stated that there were credible allegations that the government was responsible for widespread human rights violations in late 2008 and 2009. The panel declared that government shelling was responsible for the majority of civilian deaths in the war's closing stages, amounting to tens

[19] US State Department Human Rights Report 2010; Sri Lanka http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm
[20] UK Foreign & Commonwealth Office (FCO), The 2010 Foreign & Commonwealth Office Report: Sri Lanka, March 2011, http://fcohrdreport.readandcomment.com/human-rights-in-countries-of-concern/sri-lanka/

of thousands of lives. It said that heavy shelling by the army had targeted the no-fire zones where the administration had encouraged people fleeing the conflict to congregate. In addition to the charge of shelling civilians, the report also found credible allegations that the government had fired on hospitals and other humanitarian operations, such as food distribution lines; that it had denied humanitarian assistance; and that it had violated the rights of refugees and suspected LTTE cadres.[21]

Tamil ethnicity

3.6.4 Throughout the conflict, minorities suffered disproportionately – including at the hands of the now defeated Liberation Tigers of Tamil Eelam. The political rights of minorities, a key driver of the conflict, continued to be restricted in 2010. Tamil representatives continued to report discrimination from the government and security forces. Tamil civilians in Colombo were asked to register their presence with their local police station in July [2010], and throughout 2010 arrests under the Emergency Regulations and Prevention of Terrorism Act primarily affected Tamils.[22]

3.6.5 Both local and Indian-origin Tamils maintained that they suffered long-standing, systematic discrimination in university education, government employment, and other matters controlled by the government. According to the SLHRC [Sri Lanka Human Rights Commission], Tamils also experienced discrimination in housing. Landlords were required to register any Tamil tenants and to report their presence to the police, although in practice many landlords did not comply. Tamils throughout the country, but especially in the conflict-affected north and east, reported frequent harassment of young and middle-age Tamil men by security forces and paramilitary groups.[23]

3.6.6 In February 2012, Amnesty International reported ongoing unlawful detention practices in Sri Lanka whereby the Sri Lankan authorities "continue to arrest and detain suspects without minimal safeguards" often contributing to torture and custodial killings in a culture of impunity.[24] The report documents numerous instances where such violations have taken place against Tamils, especially those perceived to support the LTTE.[25] Similarly, Human Rights Watch noted in 2012 that Tamils who have been released after being sent to so-called rehabilitation centres report harassment by security forces after they returned home.[26]

3.6.7 News articles published by Tamil Net regularly document harassment and beatings committed by security forces and attempts to forcibly relocate Tamil communities. For example, articles in 2012 reported that the Sinhala army and police "brutally attacked a number of Tamil youths below the age of 25, who were passing by the road" in Vanni[27] and that "A gang of more than one hundred fifty Sinhalese who were brought to Channaar village in Mannaar district [...] by a government minister had threatened resettled Tamil families to leave the village immediately to give room for the majority community"[28]. Chatham House reported in October 2011 that "Tamil men and women continue to be arbitrarily arrested, while an unspecified number remain in custody in detention centres to which the. International Red Cross and domestic human rights organizations have no access". [29]

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[21] COIS Sri Lanka country report March 2012 (para 3.51) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[22] UK Foreign & Commonwealth Office (FCO), The 2010 Foreign & Commonwealth Office Report: Sri Lanka, March 2011, http://fcohrdreport.readandcomment.com/human-rights-in-countries-of-concern/sri-lanka/, Minorities and other discriminated groups
[23] US State Department Human Rights Report 2010; Sri Lanka http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm, section 6, National/Racial/Ethnic Minorities
[24] Amnesty International, Locked Away: Sri Lanka's security detainees, February 2012, 1. Summary and 2. Introduction.
[25] Amnesty International, Locked Away: Sri Lanka's security detainees, February 2012.
[26] Human Rights Watch, World Report 2012, 22/01/2012, Torture, Enforced Disappearances, and Arbitrary Detention.
[27] Tamil Net, Occupying SL Army, Police jointly attack Tamil youth in Vanni, 14/02/2012.
[28] Tamil Net, Colombo-backed gang threatens resettled Tamil families in Mannaar, 24/01/2012.
[29] Chatham House, Charu Lata Hogg Sri Lanka: Prospects for Reform and Reconciliation, October 2011, Centralisation, Militarisation and Development.

Emergency regulations/Prevention of Terrorism Act

3.6.8 The Sri Lankan parliament, at the request of President Mahinda Rajapaksa, allowed emergency regulations in place nearly continuously since 1971 to expire on August 31, 2011. However, the 1979 Prevention of Terrorism Act (PTA) and other laws and regulations permitting detention without charge for up to 18 months leave an abusive detention regime in place, Human Rights Watch said. Proposed legislation will allow the authorities to continue to detain more than 6,000 people now held under emergency regulations. Many of the powers in the emergency regulations can also be found in the existing Prevention of Terrorism Act, Human Rights Watch said. Just like the emergency regulations, the PTA allows for arrests for unspecified "unlawful activities" without warrant and permits detention for up to 18 months without producing the suspect before a court. The government need not charge the person with an offense. The act also provides immunity from prosecution for government officials who may commit wrongful acts, such as torture, under the legislation. Legal proceedings are prohibited if an official acted "in good faith," or in "pursuance of any order made or direction given under this Act."[30]

Treatment of ex-combatants

3.6.9 Any alleged association with the LTTE appears to have been grounds for arrest. Those arrested include individuals who were recruited by the LTTE in the days and weeks before their defeat, as well as individuals who carried out official functions in LTTE administered areas and received a salary from the LTTE, but had not taken any active part in hostilities. Bona fide civilians who did not wish to be separated from relatives who had been identified as LTTE suspects were also detained at reception points such as Omanthai. The basis for arrests has included allegations by fellow IDPs and paramilitary groups in the internment camps, raising issues of credibility.[31]

3.6.10 According to official statistics of the 11,600 people the Sri Lankan government alleged had links to the LTTE and who either surrendered to the army or who were arrested by the authorities out of displaced persons camps following the armed conflict in 2009 were subjected to mass detention in facilities the Sri Lankan government called rehabilitation centres. Many detainees allege that they were forcibly recruited by the LTTE. Around 2,700 individuals remained in these facilities when the state of emergency lapsed in August 2011; on 30 September {2011}about 1,000 were thought to remain in detention.[32] On 9 February 2012 the Government announced that another group of 40 rehabilitated ex-LTTE cadres had been handed over to their families, leaving just over 970 ex-cadres to be reintegrated.[33]

3.6.11 Amnesty International's February 2012 report noted the ongoing harassment, re-arrest and physical attacks against former detainees, as well as the "killings and enforced disappearances of newly released detainees". It further stated that "Police often use threats against detainees, former detainees and families to extract confessions or intelligence, to extort money from them or force detainees to implicate or denounce others".[34]

Torture/ ill-treatment

3.6.12 The United Nations Committee Against Torture (UNCAT) held an open session on Sri Lanka at the beginning of November [2011]. Several NGOs submitted reports regarding torture in Sri Lanka, the full reports can be viewed on the Office of the United Nations High Commissioner for Human Rights (OHCHR) website

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[30] Human Rights Watch Sri Lanka: 'Bait and Switch' on Emergency Law 7 September 2011 http://www.hrw.org/news/2011/09/07/sri-lanka-bait-and-switch-emergency-law
[31] COIS Sri Lanka country report March 2012 (para 3.32) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[32] COIS Sri Lanka Bulletin: Recent reports of torture and ill treatment 30 November 2011 (para 1.05) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[33] COIS Sri Lanka country report March 2012 (Page 11) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[34] Amnesty International, Locked Away: Sri Lanka's security detainees, February 2012, 2. Introduction and 4. Patterns of Arbitrary Detention in Sri Lanka, Threatened.

(http://www2.ohchr.org/english/bodies/cat/cats47.htm)

3.6.13 The Freedom from Torture submission to the Committee against Torture for its examination of Sri Lanka, November 2011 observed that those at particular risk of torture include Tamils who have an actual or perceived association with the Liberation Tigers of Tamil Eelam (LTTE).[35]

3.6.14 The REDRESS, Asian Legal Resource Centre & ACAT-France, alternative report of September 2011, also observed that: "Torture, in particular by the police, remains endemic in Sri Lanka. In spite of the large number of credible allegations of torture and other forms of ill-treatment, there have been few prosecutions and even fewer convictions of the torturers. This lamentable situation reflects serious shortcomings in investigation methods and accountability mechanisms that result in an overall climate of impunity."[36]

3.6.15 The Freedom from Torture submission to the Committee against Torture for its examination of Sri Lanka, November 2011 observed that the rate of referrals for medico-legal reports (MLR) for Sri Lankans in 2011 had been similar to that of 2010 when they received 199 referrals. Freedom from Torture received approximately 170 referrals for MLRs for Sri Lankans during 2010 and the period January-September of 2011. From these referrals, 65 MLRs have been produced to date and a number are still in production. Of the 65 MLRs produced to date for Sri Lankan clients referred during this period, 35 document evidence of torture perpetrated from May 2009 onwards.[37]

3.6.16 According to the Freedom from Torture the evidence, drawn from MLRs they have prepared, demonstrates that torture is still ongoing in Sri Lanka. Freedom from Torture's report "Out of the Silence: New Evidence of Ongoing Torture in Sri Lanka" was, released on 7 November 2011. The FFT report contained, inter alia, detailed information on the following: Profile of the torture survivors in the study; Detention and Forensic evidence of torture;[38] specifically, they state their evidence demonstrates that:

- Torture perpetrated by state actors within both the military and police has continued in Sri Lanka after the conflict ended in May 2009 and is still occurring in 2011;
- Those at particular risk of torture include Tamils who have an actual or perceived association with the Liberation Tigers of Tamil Eelam (LTTE);
- A variety of different types of torture have been perpetrated in a significant number of locations around Sri Lanka during the post-conflict period; and
- Many Sri Lankan torture victims are left with visible, heavy scarring attributable to both blunt force trauma and burns which suggests impunity for perpetrators of torture in Sri Lanka.[39]

3.6.17 Human Rights Watch in February 2012 said research had found that some returned Tamil asylum seekers from the UK had been subjected to arbitrary arrest and torture on return to Sri Lanka. 8 (anon) cases were documented in which people deported had faced serious abuses and HRW stated they had obtained medical evidence to support each of the claims of torture. HRW called upon the UK to cease returns and on the Sri Lankan government to

[35] COIS Sri Lanka Bulletin: Recent reports of torture and ill treatment 30 November 2011 (para 1.14) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[36] COIS Sri Lanka Bulletin: Recent reports of torture and ill treatment 30 November 2011 (para 1.24) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[37] COIS Sri Lanka Bulletin: Recent reports of torture and ill treatment 30 November 2011 (para 1.13) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[38] COIS Sri Lanka country report March 2012 (para 8.38) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[39] COIS Sri Lanka Bulletin: Recent reports of torture and ill treatment 30 November 2011 (para 1.14) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

stop targeting Tamil returnees, to end the use of torture and other ill treatment in custody.[40]

3.6.18 In August 2011, Sri Lankan military forces used violence against over 100 civilian villagers in Navanthurai after they exercised their right to assembly and peaceful protest. Several media reports describe a situation on 23 August 2011 in which over 100 men in Navanthurai were dragged from their homes in the early morning and severely beaten by the Sri Lankan army before being detained and handed over to the police. Women and children were also beaten, and private property was both damaged and stolen. The men were held without medical treatment for over eight hours and it took 20 hours before the most severely injured men were taken to hospital on a judge's order.[41]

3.6.19 According to media reports there have been nine deaths in custody in the year 2011 and 96 cases of torture. No legal and administrative action regarding the same has been undertaken.[42]

3.6.20 The Torture Act has rarely been used to prosecute acts of torture, despite reports of widespread torture in Sri Lanka. To date, there have only been three convictions under the Torture Act in Sri Lanka. According to the Asian Human Rights Commission, the government has stopped investigating cases of torture as a matter of policy, and since 2009 no cases have been investigated or prosecuted. Part of the problem is the lack of an effective investigation mechanism, in violation of Article 12 of the Convention Against Torture. Complaints under the Torture Act must be submitted to the Attorney Generals Department. The former practice was for the Department to refer cases to the Special Investigations Unit of the Criminal Investigation Division, which reported back to the Attorney Generals Department for consideration of filing indictments. In 2009 these referrals were discontinued as a matter of policy and no new mechanism has been established. Further problems include insufficient evidence, due to intimidation of victims and witnesses, a lack of thorough investigation by the police as well as delays in prosecution.[43]

3.6.21 The Lawyers Rights Watch Canada stated that the Government of Sri Lanka is clearly not ready, willing nor capable of fully implementing the Convention against Torture into its domestic law. In the past few months, Sri Lanka has come under increasing pressure to investigate credible allegations of torture, war crimes and crimes against humanity. However, the Government of Sri Lanka has refused and ignored the repeated calls made by the international community for an investigation into these allegations. To date, Sri Lanka has failed to address these concerns and shows no plans of doing so in the near future. At the core of the persistence of the problem of torture in Sri Lanka is the prevailing culture of impunity. [44]

3.6.22 The UN Committee against Torture (UNCAT) stated that they remain seriously concerned about the continued and consistent allegations of widespread use of torture and other cruel, inhuman or degrading treatment of suspects in police custody, especially to extract confessions or information to be used in criminal proceedings. The Committee is further concerned at reports that suggest that torture and ill-treatment perpetrated by state actors, both the military and the police, have continued in many parts of the country after the conflict ended in May 2009 and is still occurring in 2011.[45]

Commission on Lessons Learnt & Reconciliation

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[40] http://www.hrw.org/news/2012/02/24/uk-halt-deportations-tamils-sri-lanka
[41] COIS Sri Lanka Bulletin: Recent reports of torture and ill treatment 30 November 2011 (para 1.32) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[42] COIS Sri Lanka Bulletin: Recent reports of torture and ill treatment 30 November 2011 (para 1.27) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[43] COIS Sri Lanka Bulletin: Recent reports of torture and ill treatment 30 November 2011 (para 1.36) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[44] COIS Sri Lanka Bulletin: Recent reports of torture and ill treatment 30 November 2011 (para 1.21) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[45] UN Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention, 31 October 2011- 25 November 2011 http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.LKA.CO.3-4_en.doc

3.6.23 In November [2011] the government-appointed Lessons Learnt and Reconciliation Commission (LLRC), mandated to examine the events of the island's civil war, including developments following the end of the ceasefire with the Liberation Tigers of Tamil Eelam (LTTE, Tamil Tigers) in 2002, handed its report to the president, Mahinda Rajapakse. The final report contains the findings of 57 public sessions and 12 field visits, conducted in over 40 places in the north and east. Over 1,000 people appeared before the commission and more than 5,000 written submissions were taken into account.[46]

3.6.24 Amnesty International (AI) stated on 16 December 2011: "The final report of Sri Lanka's Lesson Learnt and Reconciliation Commission (LLRC), released publicly today, acknowledges serious human rights problems in Sri Lanka but falls short of fully addressing the war crimes and crimes against humanity committed during the final phases of the conflict between the government and the Liberation Tigers of Tamil Eelam. The report's major shortcoming is in addressing alleged violations of the laws of war, where the LLRC appears to have taken the government's responses uncritically. The LLRC admits what the Government of Sri Lanka has assiduously denied – that civilians, including those in hospitals, suffered directly as a result of LTTE and government shelling, but the LLRC's blanket rejection of government targeting of civilians and its deliberate downplaying of the numbers of civilians caught in the final phase of the conflict is not warranted by the evidence, including that presented to the LLRC.[47]

3.6.25 The International Crisis Group welcomed the public release of the report of Sri Lanka's 'Lessons Learnt and Reconciliation Commission' (LLRC)." The report acknowledges important events and grievances that have contributed to decades of political violence and civil war in Sri Lanka and makes sensible recommendations on governance, land issues and the need for a political solution. But it fails in a crucial task – providing the thorough and independent investigation of alleged violations of international humanitarian and human rights law that the UN and other partners of Sri Lanka have been asking for. Despite the Sri Lankan government's two and half years of propaganda that their brutal campaign against the LLTE was conducted with little or no damage to civilians, the evidence of shelling of civilians and mass deaths was too much for the commission to ignore".[48]

3.6.26 The UN Panel of Experts on Accountability in Sri Lanka, mandated to investigate human rights violations primarily in the last stages of the war in 2008/2009, reported in March 2011 and found credible allegations that comprise five core categories of potential serious violations committed by the Government of Sri Lanka (i) killing of civilians through widespread shelling, (ii) shelling of hospitals and humanitarian objects, (iii) denial of humanitarian assistance, (iv) human rights violations suffered by victims and survivors of the conflict, including both IDPs and suspected LTTE cadre, and (v) human rights violations outside the conflict zone, including against the media and other critics of the Government.[49]

Paramilitary groups/rival political factions

3.6.27 Reports of Abductions for extortion and ransom increased during the year [2010], particularly in the North and East. Local residents blamed such abductions in the Jaffna Peninsula on armed members of the EPDP, led by Government ally and MP Douglas Devananda. In other areas of the North and East however it was difficult to identify the perpetrators. [50] The overall number of extrajudicial killings dropped significantly from the previous year. Nevertheless during the year [2010] unknown actors suspected of association with pro-government paramilitary groups committed killings and assaults of

[46] COIS Sri Lanka country report March 2012 (para 3.60) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[47] COIS Sri Lanka country report March 2012 (para 3.64) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[48] COIS Sri Lanka country report March 2012 (para 3.68) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[49] United Nations, Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka, 31/03/2011, Executive Summary.
[50] USSD HR Report 2010; Sri Lanka http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm, section 1 b. Disappearance

civilians. These included the Tamil Makkal Viduthalai Pulikal (TMVP), led by breakaway LTTE eastern commanders Vinayagamurthi Muralitharan, alias Karuna,' and Sivanesathurai Chandrakanthan, alias Pillaiyan,' in the east, as well as the Eelam People's Democratic Party (EPDP), led by the former Minister of Social Services and Social Welfare Douglas Devananda in Jaffna. These and other pro-government paramilitaries also were active in Mannar and Vavuniya. All of these groups endeavoured to operate political organizations, some with more success than others, and there were persistent reports of close, ground-level ties between paramilitaries and government security forces. Whereas these groups served more of a military function during the war, often working in coordination with security forces, the paramilitaries now took on increasingly criminal characteristics as they sought to solidify their territory and revenue sources in the post-war environment.[51]

3.6.28 Journalists for Democracy in Sri Lanka reported that between October 2011 and February 2012 "there has been a disturbing rise in the number of abductions, especially in and around the capital, Colombo" of "social activists, businessmen and those identified by the Police as criminals and 'underworld' characters. The report further states that "Amongst others who have been abducted are those who have in any way challenged the authorities on issues of impunity and on-going human rights violations".[52] Amnesty International documented the abduction of a Tamil businessman from his home in Colombo by armed men, who previously had "brought a case against Sri Lankan police for torture, unlawful arrest and detention".[53] Amnesty International further stated that as of late June 2011 "there were still reports of abductions and killings by unidentified armed groups in Jaffna district; individuals suspected of involvement were said to be members of paramilitary groups with ties to the Sri Lankan armed forces".[54]

Treatment of failed Asylum seekers (see also section 5: Returns)

3.6.29 The FCO report "Information gathering visit to Colombo, Sri Lanka 23-29 August 2009" commented on the procedures followed by the Department of Immigration and Emigration (DIE) officials, who operate border control at the airport [Bandaranaike International Airport (BIA), located in Katunayake in the Gampaha district] and the circumstances in which the State Intelligence Service (SIS), Criminal Investigations Department (CID) and Terrorist Investigation Department (TID) would become involved.[55]

3.6.30 The report informed that anyone who was wanted for an offence would be arrested. Those with a criminal record or LTTE connections would face additional questioning and may be detained.[56]

3.6.31 The Canadian High Commission noted [August 2011} that "there have been only four cases of persons having been detained upon arrival of which the Canada High Commission is aware. Each of these cases involved outstanding criminal charges in-country and were not related to their overseas asylum claims or their ethnicity. Persons of all ethnic backgrounds are returned either under escort or voluntarily to Sri Lanka daily, and the screening and admission process for all these persons remains the same.[57]

3.6.32 A letter from the BHC, Colombo, dated 5 January 2012 reported on the entry procedures for UK returnees at Colombo Bandaranaike Airport, including the roles of DIE, SIS and

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[51] USSD HR 2010; Sri Lanka http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm, section 1 a. Arbitrary or Unlawful Deprivation of Life
[52] Journalists for Democracy in Sri Lanka, New wave of abductions and dead bodies in Sri Lanka, 26/02/2012.
[53] Amnesty International, Man Abducted Days Before Court Hearing, 15/02/2012.
[54] Amnesty International, When will they get justice? Failures of Sri Lanka's Lessons Learnt and Reconciliation Commission, 07/09/2011, LAW AND ORDER.
[55] COIS Sri Lanka country report March 2012 (para 25.29) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[56] COIS Sri Lanka country report March 2012 (para 25.30) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[57] COIS Sri Lanka country report March 2012 (para 25.50) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

CID.[58] In the same letter the BHC stated: In general, the situation regarding all returnees regardless of race or creed appears to be more relaxed now. There is still inconsistency in the way individuals are dealt with and the British High Commission are aware that some returnees are not even identified by the authorities, or they are but they are allowed to proceed without undergoing the SIS/CID interviewing process. The border authorities have amended their procedures for the UKBA charter flights of returnees in order to speed up the process".[59]

3.6.33 Freedom from Torture (FFT) released a report "Out of the Silence: New Evidence of Ongoing Torture in Sri Lanka " on 7 November detailing evidence of torture which took place between May 2009 and early 2011in the case sample of 35 completed medico-legal reports [of Sri Lankan asylum seekers in the UK]."[60]

3.6.34 The FFT report commented that 14 of the 35 cases report periods of residence or travel abroad preceding detention and torture: five travelled for educational purposes, three for family reasons and four for the purpose of seeking refuge outside of Sri Lanka. In the remaining two cases, the purpose of travel was not stated. Of the four who sought refuge abroad, three were forcibly returned to Sri Lanka. In one case the individual had unsuccessfully claimed asylum in the UK a number of years earlier but was returned to Sri Lanka from another European state. Another was returned from a European state after two years of residence, having been refused asylum there. Of the 10 cases involving individuals who travelled abroad for non-asylum purposes, nine returned voluntarily to Sri Lanka (all from the UK). All of the 14 individuals who had returned to Sri Lanka after a period abroad, whether they left Sri Lanka through a legal route or otherwise, were subsequently detained and tortured. In five of these cases, the episode of detention and torture documented in the MLR occurred over a year and up to seven years after return. However, in nine cases the individual was detained within days, weeks or a month of their return. Of these nine cases, six were detained in Colombo, either from their home, at checkpoints or from a lodging house. Others were detained at checkpoints elsewhere in the country or directly from the airport upon arrival."[61]

3.6.35 Human Rights Watch on 16 June 2011 publicly expressed concern about Britain returning rejected asylum seekers to Sri Lanka because it believes that 'Sri Lankan nationals who have been affiliated with or are considered to be supporters of the LTTE, would be at significant risk of persecution if deported back to Sri Lanka'. The organization noted that its research 'shows that Sri Lankan authorities have frequently violated the basic rights of people suspected of being affiliated with or supporters of the LTTE'.[62] In February 2012, Human Rights Watch stated that its research found that "some returned Tamil asylum seekers from the United Kingdom have been subjected to arbitrary arrest and torture upon their return to Sri Lanka" and documented specifically "eight recent cases in which people deported to Sri Lanka have faced serious abuses" obtaining "medical evidence supporting each of the [eight] claims of torture".[63]

3.6.36 Amnesty International (AI) reported in June 2011 that the United Kingdom rejected 26 asylum seekers from Sri Lanka, most of whom were Tamil, and that when the returnees arrived in Colombo, they were taken for questioning. AI's Sri Lanka researcher is quoted as saying that '[t]he government of Sri Lanka has a history of arresting and detaining rejected Sri Lankan asylum seekers upon their return and we are aware of cases of people being tortured'.. In a news item about the pending deportations issued on 16 June [2011], the day before the deportations, the same researcher is also quoted as saying that 'the end of the armed conflict in Sri Lanka in May 2009 has not diminished the risks faced by rejected Sri

[58] COIS Sri Lanka country report March 2012 (para 25.33) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[59] COIS Sri Lanka country report March 2012 (para 25.34) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[60] COIS Sri Lanka country report March 2012 (para 25.40) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[61] COIS Sri Lanka country report March 2012 (para 25.41) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[62] COIS Sri Lanka country report March 2012 (para 25.50 http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[63] Human Rights Watch, UK: Halt Deportations of Tamils to Sri Lanka: Credible Allegations of Arrest and Torture upon Return, 25/02/2012.

Lankan asylum seekers, who continue to be subjected to arrest and detention upon their arrival in Sri Lanka.[64]In October 2011, Amnesty International stated that "Sri Lankan nationals returning to the country after living abroad are at risk of being arbitrarily detained on arrival or shortly thereafter. Sri Lankan nationals who are failed asylum seekers are especially at risk and are likely to be interrogated on return".[65]

Scarring

3.6.37 As regards "scarring" the BHC, Colombo observed in the letter of 5 January 2012:"There is strong anecdotal evidence that scarring has been used in the past to identify suspects. Previous conversations with the police and in the media, the authorities have openly referred to physical examinations being used to identify whether suspects have undergone military style training. Contacts in government ministries suggest that this practice has either ceased or is used less frequently. At the very least it appears that the security forces only conduct these when there is another reason to suspect an individual, and are not looking for particular scars as such, but anything that may indicate the suspect has been involved in fighting and/or military training. There is no recent evidence to suggest that these examinations are routinely carried out on immigration returnees." [66]

3.6. 38 The Freedom from Torture report Out of the Silence: New Evidence of Ongoing Torture in Sri Lanka, released on 7 November 2011,however, noted that high levels of scarring [based on a data set of '35 medico-legal reports (MLRs) prepared by Freedom from Torture clinicians in relation to clients, most of whom are asylum seekers or refugees' in the UK] could reflect a policy of permanently 'branding' victims not only to inflict long-term psychological and physical damage, but also to ensure that the individual may be easily identified in future as having been suspected of links to the LTTE.[67]

See also: **Actors of protection (section 2.3 above)**

Internal relocation (section 2.4 above)

Caselaw (section 2.5 above)

3.6.39 ***Conclusion.*** The ECtHR in E.G. found that the risk categories identified in *LP* and endorsed by the ECtHR in NA continued to apply, but noted that because the conflict has ended that the interest in returning Tamils on the part of the Sri Lankan authorities has, if anything, declined. The Court in EG found that it is present conditions which are decisive and an assessment must be made of the circumstances at the time of the proceedings. TK found that the military defeat of the LTTE in 2009 has not aggravated the likely approach of the Sri Lankan authorities to returned failed asylum seekers who are Tamils; if anything, the level of interest in them has decreased. The principal focus of the authorities continues to be, not Tamils from the north (or east) as such, but persons considered to be either LTTE members, fighters or operatives or persons who have played an active role in the international procurement network responsible for financing the LTTE and ensuring it was supplied with arms.

3.6.40 The UNHCR 2010 Eligibility Guidelines said that at the time, owing to reports of torture of persons suspected of LTTE links in detention; deaths of LTTE suspects whilst in custody; as well as poor prison conditions (see section 3.9 below), persons suspected of having links with the LTTE may be at risk of persecution in Sri Lanka. UNHCR also notes that, according to some reports, young Tamil men, particularly those originating from the north and east of the country may be disproportionately affected by the implementation of security and anti-terrorism measures on account of their suspected affiliation with the LTTE.

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[64]COIS Sri Lanka country report March 2012 (para 25.50) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[65] Amnesty International, Sri Lanka: Briefing to Committee Against Torture, October 2011, 3. Torture and Ill-Treatment, Risk of Torture for Failed Asylum Seekers.
[66] British High Commission Colombo, letter dated 5 January 2012 Annex E: cois Sri Lanka country report March 2012.
[67]COIS Sri Lanka country report March 2012 (para 25.54) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

3.6.41 The IAC found in *TK* that the records the Sri Lanka authorities keep on persons with some history of arrest and detention have become increasingly sophisticated; their greater accuracy is likely to reduce substantially the risk that a person of no real interest to the authorities would be arrested or detained.

3.6.42 As noted above (3.6.10), several thousand people were detained or "surrendered" when the conflict came to an end, including some with minimal involvement in the LTTE. Reports vary as to actual numbers, but the majority with low level involvement have since been released in tranches which suggests that in general they are not of continuing interest to the authorities. The key question, in light of improvements in the overall security situation, is whether any past involvement in the LTTE is currently likely to bring returnees to the adverse attention of the Sri Lankan authorities.

3.6.43 Case owners should follow EG and consider the present conditions in Sri Lanka. A key question in light of improvements in the overall security situation is whether any past involvement in the LTTE, actual or perceived, is currently likely to bring returnees to the adverse attention of the Sri Lankan authorities. Each case should be considered carefully on its own facts.

3.6.44 Where fear is of ill-treatment/persecution by the state authorities or agents acting on behalf of the state, claimants cannot usually apply to these authorities for protection. In the case of paramilitaries, case owners should assess availability of protection on a case by case basis taking into account: whether the groups are authorised or directed by the state to engage in actions which may amount to persecution; whether such actions are not directed by the state but are either tolerated or not controlled by the state; the area of operation of the particular group; whether evidence suggests the group are causing ongoing harm in the location(s) identified by the applicant; whether the applicant is individually likely to remain of serious adverse interest; evidence of State intervention against any criminal activity of the group.

3.6.45 As this category of applicants' fear is of ill-treatment/persecution by the state authorities, and the government administers tight control of the entire state, then in general internal relocation to escape that persecution will not be an option. However, where applicants fear members of paramilitary groups, internal relocation from the areas of activity of the relevant group may be viable. Each case should be considered carefully on its individual circumstances.

3.6.46 With regard to paramilitaries, case owners should consider in individual cases the location of perceived harm; whether the claimed threat is on-going; the status of the group concerned and the likelihood of such group acting with impunity.

3.6.47 Case owners should note that members of the LTTE and paramilitary groups have been responsible for serious human rights abuses. If it is accepted that an applicant was actively involved in such actions, case owners should consider whether any of the exclusion clauses are applicable and such cases should always be referred to a Senior Caseworker. The LTTE are a terrorist organisation proscribed under UK legislation.

3.7 Fear of persecution by the Liberation Tigers of Tamil Eelam (LTTE).

3.7.1 Some applicants may claim asylum based on fear of ill-treatment at the hands of the LTTE due to their past involvement with, and/or opposition to the mainstream LTTE; in particular, those perceived as defectors, disloyal to the LTTE or associated with groups aligned with the State: the Tamil Makkal Viduthalai Pullika (TMVP) - Karuna or Pillayan factions, Eelam People's Democratic Party (EPDP) or People's Liberation Organisation of Tamil Eelam (PLOTE). Such claims are likely to be linked to events prior to the end of the civil war in May 2009.

3.7.2 ***Treatment.*** On 19 May 2009 the Government of Sri Lanka announced the military victory over the Liberation Tigers of Tamil Eelam (LTTE) following a 26 year long internal conflict. Over this period at least 70,000 people are estimated to have been killed and some one million displaced. Towards the end of the fighting, high numbers of civilians are believed to have been killed and injured as a result of the heavy fighting. There was no independent access to the conflict zone and international concern has been raised about the conduct of hostilities by both sides in the final months of the conflict.[68]

3.7.3 A UN report by a panel of international experts stated that the LTTE killed many people and shot those who tried to flee the conflict. They also kept civilians hostage as 'human shields' and sited artillery and munitions dumps near to refugee and civilian sites such hospitals, while also conducting suicide attacks that targeted civilians. Among other human rights violations by the LTTE, the experts mentioned the use of forced labour and child soldiers.[69]

Current/future LTTE activity

3.7.4 Most of the LTTE leaders and its chief, Velupillai Prabhakaran, were killed during the last weeks of the war. The UNHCR reported in July 2010 that in the wake of the conflict, almost 11,000 persons suspected of LTTE links were arrested and detained in high-security camps.[70] The International Crisis Group (ICG) reported in December 2010 that of the estimated 12,000 people who surrendered or were detained, many have now been released.[71]

3.7.5 Following their crushing military defeat, there has been no sign of renewed LTTE militancy. The killing of virtually the entire political and military leadership, combined with the August 2009 arrest of the LTTE's international leader, and would-be successor to Prabhakaran, S. Pathmanathan, or K.P, has crippled the organisation.[72] A February 2010 ICG report on the Sri Lankan Tamil diaspora considered that there was little chance of the LTTE regrouping in the diaspora, with new organisations forming in more transparent and democratic ways.[73]

3.7.6 A letter from the British High Commission dated 9 November 2011 stated that following the end of the civil conflict in Sri Lanka on 18 May 2009 the government of Sri Lanka approached International Organization for Migration (IOM) to look at an operational programme for rehabilitation and reintegration of ex-combatants in the north of the country. The Sri Lankan Ministry of Defence was given direct responsibility for Disarmament, Demobilisation and Reintegration (DDR). The detained cadres were split into three specific groups:

•Active LTTE members who have been served with detention orders under the Emergency Regulations and are to be charged with offences. These are believed to currently number around 1,400, although that figure may include others held previously under the emergency powers.

•Former LTTE cadres who may be held in Protective Accommodation and Rehabilitation Centres (PARC) and who may remain there for an indeterminate period of between six months and one year. It was believed that initially, many of these were children.

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[68] FCO country profile; Sri Lanka http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/asia-oceania/sri-lanka?profile=history
[69] COIS Sri Lanka country report March 2012 (para 3.51) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[70] UNHCR 'Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka', 5 July 2010 http://www.unhcr.org/refworld/docid/4c31a5b82.html
[71] International Crisis Group, Human Rights in Sri Lanka in the Post-Conflict Period, 6 December 2010 http://www.crisisgroup.org/en/publication-type/speeches/2010/human-rights-in-sri-lanka-in-the-post-conflict-period.aspx
[72] International Crisis Group, Sri Lanka: A Bitter Peace, 11 January 2010 http://www.crisisgroup.org/~/media/Files/asia/south-asia/sri-lanka/b99%20sri%20lanka%20a%20bitter%20peace.pdf
[73] International Crisis Group, The Sri Lankan Diaspora after the LTTE 23 February 2010 http://www.crisisgroup.org/~/media/Files/asia/south-asia/sri-lanka/186%20The%20Sri%20Lankan%20Tamil%20Diaspora%20after%20the%20LTTE.pdf

•Those with low level LTTE involvement and were believed to number between 3,000- 4,000. These would be released and receive community reintegration.

The BHC letter went on to state that in press releases by the Rehabilitation & Prison Reforms Minister D E W Gunesekera in October 2010, and by the Commissioner General of Rehabilitation (CGR), Brigadier Susantha Ranasinghe in January 2011, they both stated that the total number of LTTE cadres that had been detained at the end of the war was 11,696. Those with low level LTTE involvement were released in batches. [74]

3.7.7 In September 2011 the government released the last batch of some 1,800 former LTTE guerrillas who underwent rehabilitation. The release ceremony for the former Tamil Tigers was held at President Mahinda Rajapaksa's official residence in the presence of the Colombo- based diplomatic community. The former Tamil Tiger guerrillas were among about 11,000 LTTE fighters who underwent vocational training in military-run rehabilitation centers after they surrendered following the end of the civil war in May 2009. They were allowed to reunite with the families having gone through the process where they were taught self employment skills and English language training. Officials said there are over a thousand more former Tamil Tigers who have been sent for rehabilitation as a result of the court procedure. They will be released only after the legal process.[75]

See also: **Actors of protection (section 2.3 above)**

Internal relocation (section 2.4 above)

Caselaw (section 2.5 above)

3.7.8 ***Conclusion.*** The LTTE has been comprehensively defeated militarily and its leadership destroyed. There is currently no reported LTTE activity in Sri Lanka. The high military presence in former LTTE strongholds reduces the potential risk of them regrouping and the government is committed to criminally prosecute 'hardcore' LTTE members. It is therefore unlikely that claimants in this category are at continuing risk from the LTTE as an organisation.

3.7.9 If an individual applicant expresses a fear of particular individuals as a result of past animosities, their claims should be carefully considered on their individual merits. In such cases, case owners should carefully consider the individual circumstances to determine whether there is a continued real risk of harm and if so, whether state protection would be available and/or internal relocation a viable option.

3.7.10 Case owners should note that members of the LTTE and paramilitary groups have been responsible for serious human rights abuses. If it is accepted that an applicant was actively involved in such actions, case owners should consider whether any of the exclusion clauses are applicable and such cases should always be referred to a Senior Caseworker. The LTTE are a terrorist organisation proscribed under UK legislation.

3.8 Journalists, human rights activists and opposition supporters

3.8.1 Some applicants may claim fear of ill-treatment amounting to persecution at the hands of the Sri Lankan authorities due to perceived criticism of the government in their roles as journalists, lawyers, human rights activists or supporters of the political opposition.

Journalists

[74] COIS Sri Lanka country report March 2012 (para 3.40) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[75] The Times of India, Lanka releases 1,800 ex LTTE guerrillas after rehabilitation 30 September 2011 http://articles.timesofindia.indiatimes.com/2011-09-30/south-asia/30229609_1_ltte-fighters-ltte-guerrillas-vocational-training

3.8.2 ***Treatment.*** The law provides for freedom of speech and of the press, but in practice this was not always supported. Government officials criticised, pressured, and harassed the media, and most journalists practiced self-censorship.[76] A 2011 UN report by a panel of international experts stated the Sri Lankan Government had violated the rights of members of the media and other critics of the government. It noted that the media had been intimidated through the use of threats and abductions.[77]

3.8.3 Media freedom suffered from severe government pressure throughout the island, and most journalists practiced self-censorship, particularly on problems critical of top government officials. National and international media freedom organisations and journalists' associations expressed concern over media freedom and were sharply critical of the government's role in harassing and intimidating journalists. The police, under the authority of the Ministry of Defence, reportedly maintained a special unit to monitor and control all references in the media to members of the Rajapaksa family.[78]

3.8.4 Senior government officials repeatedly accused critical journalists of treason and often pressured editors and publishers to print stories that portrayed the government in a positive light. This pressure reportedly was exerted sometimes directly through threats and intimidation and sometimes through orders to government and private firms to cease advertising in critical newspapers. Threats led some journalists to choose self-exile.[79]

3.8.5 In addition to the high-profile disappearance of Prageeth Eknaliyagoda in January 2010, media personnel often were subject to threats and harassment during the year 2010. Statements by government and military officials contributed to an environment in which journalists who published articles critical of the government felt under threat.[80] Gnanasundaram Kuhanathan, editor of a Jaffna-based newspaper, was beaten with iron bars by a group of unidentified youths in late July [2011]. He was severely injured and required hospitalization. There have been no further developments regarding the killing of Lasantha Wickrematunge or the disappearance of Prageeth Ekneligodan.[81]

3.8.6 Amnesty International reported, in their annual report that in 2010 Journalists were physically assaulted, abducted, intimidated and harassed by both government personnel and members of government-allied armed groups. Little effort was made to investigate attacks or bring perpetrators to justice.[82]

3.8.7 The treatment of journalists saw an overall improvement when compared to the final phase of the war and the immediate aftermath of the 2010 presidential election. There were no murders of journalists reported in 2011. There was also a decline in the number of recorded attacks on journalists, although several incidents were reported.[83] However, Human Rights Watch stressed in its annual report covering events in 2011 that “free expression remained under assault”[84] and, in October 2011, Amnesty International reported that “The state often fails to properly investigate attacks, including acts of torture perpetrated against journalists”.[85]

3.8.8 The reporting climate is in no way conducive to assertive journalism. Sunil Jayasekara, convenor of the Free Media Movement (FMM) admits the situation may appear to have improved, but cautions that fewer attacks and the absence of killings do not mean the environment is favourable for journalists to practice their craft without fear of reprisal. A number of International media and human rights groups have echoed Jayasekara‘s

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[76] US State Department Human Rights Report 2010; Sri Lanka http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm
[77] COIS Sri Lanka country report March 2012 (para 3.51) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[78] US State Department Human Rights Report 2010; Sri Lanka http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm
[79] US State Department Human Rights Report 2010; Sri Lanka http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm
[80] US State Department Human Rights Report 2010; Sri Lanka http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm
[81] COIS Sri Lanka country report March 2012 (para 14.06) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[82] Amnesty International Annual Report 2011; Sri Lanka http://www.amnesty.org/en/region/sri-lanka/report-2011
[83] COIS Sri Lanka country report March 2012 (para 14.08) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[84] Human Rights Watch, World Report 2012, 22/01/2012, Civil Society and Opposition Members.
[85] Amnesty International, Sri Lanka Briefing to Committee Against Torture, October 2011.

sentiment. There are still high levels of anxiety and journalists continue to look over their shoulders and continue to curtail their comments and reports. A major factor contributing to this sense of unease is the government‘s failure to conduct proper investigations into any of the attacks against media persons and institutions, which has helped foster a climate of impunity and indifference.[86]

3.8.9 A Reporters Without Borders report of 26 October 2011 deplored the action of two Sri Lankan Internet Service Providers in blocking access to the independent news website Lanka-e-News, the site has been inaccessible since 18 October. Reporters Without Borders urged the ISPs not to discriminate against news sites that are critical of the government and to restore access to Lanka-e-News. They also urged the government to stop pressuring ISPs and guarantee their independence. The hounding of Lanka-e-News has intensified this year. An arson attack on its headquarters in the Colombo suburb of Malabe in the early hours of 31 January 2011 gutted most of the building including the rooms housing its computers and library and forced it to suspend all activities. The Lanka-e-News political journalist and cartoonist Prageeth Eknaligoda is meanwhile still missing. He disappeared on 24 January 2010. Several other sites, including the Sri Lanka Guardian, are permanently blocked. Groundviews and its partner site Vikalpa were temporarily blocked on 20 June, like the Transparency International site.[87]

3.8.10 In November 2011 The Committee to Protect Journalists reported that they were concerned by the Sri Lankan government's announcement of an upcoming set of guidelines and code of conduct for journalists and media organisations, and they believed these regulations will only increase the government's control of the media. According to Bob Dietz CPJ's Asia program coordinator, website registration rules, the blocking of websites, and talk of media guidelines are indicators that the pressure on voices critical of President Mahinda Rajapaksa's government is only going to increase.[88]

3.8.11 In February 2012, Reporters Without Borders called on the UN Human Rights Council to "…demand an end to threats and violence against news media and human rights defenders in Sri Lanka". It also listed incidents against journalists and freedom of expression in 2012, including: disrupting web traffic of TamilNet.com; blocking of other news websites; the defence ministry posting an article accusing Journalists for Democracy in Sri Lanka of "treachery and conspiracy" against the government and security forces; and attacking and beating freelance journalists.[89] Similarly, TamilNet.com regularly reports on attacks and harassment against journalists most recently against the chief editor of a weekly magazine[90] and against journalists who visit the Sri Lankan military-led administration in the North of the country.[91]

See also sections on Human rights activists and opposition supporters below

Human Rights activists.

3.8.12 In 2010 and until April 2011 Human rights defenders seeking accountability for human rights violations, in particular for alleged violations of international human rights and humanitarian law committed by the Government and the LTTE during the civil conflict that ended in 2009, fighting against corruption or defending environmental rights, were subjected to various acts of intimidation including threats, slandering campaigns, judicial harassment and even forced disappearance and killing. Human rights defenders were also subjected to reprisals when promoting and using the UN human rights system, while failure to investigate prominent cases of assassination and disappearance of human rights

[86] COIS Sri Lanka country report March 2012 (para 14.08) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[87] Reporters without Borders, Censored website's editor talks about media control, 26 October 2011 http://en.rsf.org/sri-lanka-censored-website-s-editor-talks-26-10-2011,41277.html
[88] Committee to protect journalists, Sri Lankan government to impose guidelines on media, 10 November 2011 http://www.cpj.org/2011/11/sri-lankan-government-to-impose-guidelines-on-medi.php
[89] Reporters Without Borders, RSF calls on UNHRC to condemn violations of freedom of information, 28/02/2012.
[90] Tamil Net, Colombo-backed group attacks Muslim journalist in Batticaloa, 14/02/2012.
[91] TamilNet, SL military-led administration in North harasses Tamil journalists, 07/01/2012.

defenders further contributed to an environment of fear and silence.[92]

3.8.13 A number of domestic and international human rights groups continued to investigate and publish their findings on human rights cases, despite increasing government restrictions and physical threats to their work.[93] Prominent human rights defenders faced public criticism from members of the government and have been called 'traitors'. Activists have been intimidated when carrying out their work and some received anonymous death threats. There were also direct barriers to human rights organisations wishing to work in Sri Lanka. Some international human rights organisations were not granted visas to visit Sri Lanka in 2010. The government also cancelled visas for organisations working within Sri Lanka.[94]

3.8.14 In December 2011, the UN Committee against Torture expressed its concern at reports that human rights defenders, defence lawyers and other civil society actors, including political activists, trade unionists and independent media journalists have been singled out as targets of intimidation, harassment, including death threats and physical attacks and politically motivated charges. It regrets that, in many cases, those allegedly responsible for acts of intimidation and reprisal appear to enjoy impunity.[95]

3.8.15 In March 2012, the International Crisis Group expressed concern over "attacks on the media and on human rights defenders".[96] In the same month, BBC News reported on a rise in "sinister abductions by anonymous squads in white vans", which "for years have been the vehicle of shadowy gangs behind enforced disappearances". It further noted that between October 2011 and February 2012 there were "32 unexplained abductions [...] mostly in Colombo or northern Sri Lanka…", including two young activists who organised a number of demonstrations in 2011.[97]

See also the section on opposition supporters below.

Opposition supporters

3.8.16 Sri Lanka is not an electoral democracy. The 1978 constitution vested strong executive powers in the president, who is directly elected for a six-year term and can dissolve Parliament. The prime minister heads the leading party in Parliament but otherwise has limited powers. The 225-member unicameral legislature is elected for a six-year term through a mixed proportional-representation system. Elections have historically been generally free and fair, though marred by some irregularities, violence, and intimidation.[98]

3.8.17 The law provides for freedom of assembly, and the government generally respected this right in practice; however, some restrictions existed. For example, the 2005 Emergency regulations gives the president the power to restrict meetings, assemblies, and processions. The law states that rallies and demonstrations of a political nature may not be held when a referendum is scheduled, but the government generally granted permits for demonstrations, including those by opposition parties and minority groups. A number of university students were detained in October [2010] following demonstrations at several universities in protest of plans to develop private universities in the country. The government alleged that these demonstrations were unauthorised and deliberately set up with the help of leftist political parties to disrupt classes and clash with police.[99]

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[92] COIS Sri Lanka country report March 2012 (para 15.01) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[93] COIS Sri Lanka country report March 2012 (para 15.07 http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[94] UK Foreign & Commonwealth Office (FCO), The 2010 Foreign & Commonwealth Office Report: Sri Lanka, March 2011, http://fcohrdreport.readandcomment.com/human-rights-in-countries-of-concern/sri-lanka/, Human rights defenders
[95] UN Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention, 31 October 2011- 25 November 2011, 08/12/2011, Human rights defenders, defence lawyers, journalists and other civil society actors at risk.
[96] International Crisis Group, Government Promises, Ground Realities, 01/03/2012, Continuing human rights abuses.
[97] BBC News, Sri Lanka's sinister white van abductions, 14/03/2012.
[98] COIS Sri Lanka country report March 2012 (para 13.03)http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[99] US State Department Human Rights Report 2010; Sri Lanka http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm,

3.8.18 During the year (2010) the government detained and imprisoned a small number of persons for political reasons. However, the government permitted access to such persons on a regular basis by international humanitarian organisations. There were reports of cases in which persons were detained for what appeared to be simply their opposition to the government and its top leaders. There were numerous cases of police arresting persons for putting up or simply possessing posters critical of the government.[100]

3.8.19 Following the arrest of defeated presidential candidate Sarath Fonseka, police used batons and tear gas to break up a number of peaceful protests over his detention and conviction, including protests in Colombo in February 2010 and Galle in August 2010. In the latter, two opposition MPs were arrested when they attempted to complain about police behaviour. They were later released without charge.[101]

3.8.20 General Sarath Fonseka, the former Sri Lankan army chief turned opposition leader, was sentenced to three years in prison, in November 2011, for claiming that top government officials were responsible for war crimes during the final phases of the country's 25-year civil war in 2009. The 60-year-old is already serving a 30-month sentence for alleged corruption and faces a host of further charges.[102]

3.8.21 In November 2011 Fonseka was found guilty of "spreading rumours and causing public disorder". Supporters say the allegations against him are politically motivated. The conviction was for remarks Fonseka was quoted as having made during an interview in which he accused the defence secretary, Gotabhaya Rajapaksa – considered a hardliner within the government – of ordering the execution of LTTE leaders as they surrendered. Fonseka led the military campaign against separatists from the Tamil minority fighting in the Liberation Tigers of Talim Eelam (LTTE) organisation. The decision to sentence Fonseka comes days before the release of an official Sri Lankan government report [see 3.6.23-3.6.26] into widespread claims of substantial human rights abuses by both sides in the closing weeks of the war as army units cornered LTTE fighters in the north-east of the country. Hundreds of thousands of civilians had retreated with the LTTE, and many – up to 30,000 according to some estimates – were killed in the ensuing combat. Human rights organisations have accused Sri Lankan army forces under Fonseka of indiscriminately shelling areas in which large numbers of civilians were sheltering, as well as executing surrendering fighters.[103]

3.8.22 The HRW World Report 2012, Sri Lanka noted that: “Members and supporters of the Tamil National Alliance (TNA), campaigning ahead of local elections in Jaffna in June [2011], were attacked by army personnel wielding rods, batons, and sticks. Among the injured were TNA members and police officers assigned to provide security to the parliamentarians. The results of an investigation into the incident ordered by the secretary of defence are not known. The TNA and the government have been in negotiations to deal with, among other matters, devolution of powers to the provinces, a key issue underpinning the civil war. The talks have been rife with tension, with the TNA accusing the government of deceitful and facetious behaviour, and the government accusing the TNA of issuing LTTE-type ultimatums as a result of its electoral victory in the north. The TNA left talks with the government in August [2011] but has since returned[104]

3.8.23 In October 2011, Amnesty International stated that “People abducted, arrested or detained

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section 2b. Freedom of Peaceful Assembly and Association

[100]COIS Sri Lanka country report March 2012 (para 13.10) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

[101] FCO, Human Rights and Democracy report 2010, http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/accessible-hrd-report-2010

[102] The Guardian, Former Sri Lankan army chief convicted for war crimes claim, 18 November 2011 http://www.guardian.co.uk/world/2011/nov/18/former-sri-lankan-army-chief-jailed

[103] The Guardian, Former Sri Lankan army chief convicted for war crimes claim, 18 November 2011 http://www.guardian.co.uk/world/2011/nov/18/former-sri-lankan-army-chief-jailed

[104]COISSri Lankacountry report March 2012 (para 13.12) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

for expressing dissent or criticizing the government or its policies and who are perceived by the authorities or their proxies as political opponents have also been subjected to torture. They include political activists, trade unionists, human rights defenders and independent journalists".[105]

3.8.24 In March 2012, the International Crisis Group reported on the continuing human rights abuses since the end of the war and specifically noted that "the rate of abductions and disappearances has surged again in the past few months" with "Political activists and perceived opponents of the government appear to be targets".[106]

See also: **Actors of protection (section 2.3 above)**

Internal relocation (section 2.4 above)

Caselaw (section 2.5 above)

3.8.25 ***Conclusion:*** Journalists and human rights applicants perceived to be active or influential in opposition to the Sri Lankan Government and those with sufficient profile to be perceived to be government critics are at risk of persecution by the state. Given the tight control the government has over its entire territory, internal relocation is unlikely to avoid such risk. Case owners must be satisfied that individuals claiming persecution on this basis are able to provide sufficient detail to demonstrate that they will be known to the authorities as having been, or perceived to have been, engaged in such activities.

3.9 Prison conditions

3.9.1 Applicants may claim that they cannot return to Sri Lanka due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Sri Lanka are so poor as to amount to torture or inhuman treatment or punishment.

3.9.2 The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason, or in cases where for a Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.

3.9.3 ***Consideration.*** Prison conditions did not meet international standards due to overcrowding and the lack of sanitary facilities. According to prison officials and civil society sources, prisons designed for approximately 10,000 inmates held an estimated 26,000 prisoners. Approximately 1,400 of these were women. Some 12,000 of these total prisoners were convicted, while the remaining 14,000 were in detention either awaiting or undergoing trial. In some cases juveniles were not held separately from adults. Pre-trial detainees often were not held separately from those convicted.[107]

3.9.4 In many cases prisoners were reported to be sleeping on concrete floors and often without natural light or sufficient ventilation. Female prisoners were held separately from male prisoners and in generally better conditions, but some human rights groups alleged that isolated incidents of degrading treatment occurred, including corporal punishment, overcrowding, maltreatment, or abuse.[108] In October 2011, the Tamil Information Centre described conditions in some military and police detention facilities as "appalling" and highlighted that "Food is often insufficient or not provided for days at a time, and water

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[105] Amnesty International, Sri Lanka Briefing to Committee Against Torture, October 2011.

[106] International Crisis Group, Government Promises, Ground Realities, 01/03/2012, Continuing human rights abuses.

[107] USSD HR Report 2010; Sri Lanka http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm, section 1c, Prison and Detention Center Conditions

[108] USSD HR Report 2010; Sri Lanka http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm, section 1c, Prison and Detention Center Conditions

given to detainees has been reported to be dirty, or withheld until they comply with interrogation. This treatment is often in parallel to the physical methods of torture described".[109]

3.9.5 Acute congestion is the root cause for many problems and vices in prisons. Over 148,740 prisoners were admitted to prisons in 2009. Of them 37,872 were those convicted of various crimes while the majority - 108,868 were remand prisoners. The situation relating to remand prisoners is deplorable. Some of them are in prison for only a day while others are languishing for years until their release on a court order. Convicted prisoners have a work schedule and better facilities.[110]

3.9.6 There appeared to be no formal procedure without going through prison officials by which prisoners and detainees could submit complaints of poor conditions or abusive treatment to judicial authorities.[111]

3.9.7 The government permitted independent human rights observers and the International Committee of the Red Cross (ICRC) to visit regular and remand prisons, but not those facilities holding LTTE ex-combatants yet to be formally charged. The government did not provide access to any detention facilities operated by military intelligence, stating that none existed. The ICRC was not allowed to visit suspected illegal detention facilities operated by paramilitaries. In December, the Government requested the ICRC to close their offices in the North.[112]

3.9.8 The United Nations Committee Against Torture (UNCAT) 's concluding observations of 25 November 2011 observed: "The Committee is concerned at reports from non-governmental organisations on deaths in custody, including police killings of criminal suspects in alleged staged 'encounters' or 'escape' attempts. The Committee notes with concern that the State party only reported two cases of death in custody, where the cause of death was determined to be suicide, for the entire period 2006-2011, while for a similar period between 2000-2005 the State party had reported in its core document approximately 65 annual deaths in custody from all causes…"[113] The UN Committee Against Torture also raised concerns regarding "reports documenting individual cases of torture and ill-treatment where the victims were allegedly randomly selected by police to be arrested and detained for what appears to be an unsubstantiated charge and subsequently subjected to torture or ill-treatment to obtain a confession for those charges".[114]

3.9.9 The Amnesty International Annual Report 2011, Sri Lanka noted that: "Some people died in custody after being tortured by police." AI also stated that "confessions are routinely extracted under torture by the police in order to "solve" cases" and that "Torture and other ill-treatment of criminal suspects by the police are also common".[115] In 2012, Human Rights Watch also reported that "Sri Lanka has a long history of torture by the police forces, at times resulting in death".[116]

3.9.10 Previously, in June 2011, the Asian Human Rights Commission published a report documenting 1,500 cases of police torture in Sri Lanka between 1998 and 2011 and found that "that almost all of the victims whose cases were summarized were randomly selected

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[109] Tamil Information Centre's submission to the Committee Against Torture on Sri Lanka, October 2011, 1.2 Conditions in detention.

[110] COIS Sri Lanka country report March 2012 (para 11.11) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

[111] USSD HR 2010; Sri Lanka http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm, section 1c, Prison and Detention Center Conditions

[112] USSD HR 2010; Sri Lanka http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm, section 1c, Prison and Detention Center Conditions

[113] COIS Sri Lanka country report March 2012 (para 11.20) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

[114] UN Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention, 31 October 2011- 25 November 2011, 08/12/2011, Coerced confessions.

[115] Amnesty International, Sri Lanka Briefing to Committee Against Torture, October 2011.

[116] Human Rights Watch, World Report 2012, 22/01/2012, Torture, Enforced Disappearances, and Arbitrary Detention.

by the police to be arrested and detained for a fabricated charge. Perhaps the most shocking aspect of the criminal justice system in Sri Lanka is the overwhelmingly large number of charges which are fabricated by the police on a daily basis. Torture is used to obtain a confession for these fabricated charges**".**[117]

3.9.11 ***Conclusion*** Conditions in prisons and police custody are very poor and taking into account the levels of overcrowding, unsanitary conditions, lack of food and the incidence of torture, are likely to reach the Article 3 threshold and a grant of Humanitarian Protection may be appropriate - see exclusion below.

3.9.12 Those perceived to be connected to the LTTE, both men and women, and held in rehabilitation camps, prisons or detention centres may be at heightened risk of ill-treatment and torture. Case owners will need to consider whether a grant of asylum based upon imputed political opinion is appropriate – see exclusion below.

3.9.13 Where case owners believe that an individual is likely to face imprisonment on return to Sri Lanka they should also consider whether the applicants actions merits exclusion by virtue of Article 1F of the Refugee Convention. Where case owners consider that this may be the case they should contact a senior caseworker for further guidance.

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4. Discretionary Leave

4.1 Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.

4.2 With particular reference to Sri Lanka the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and the Asylum Instructions on Article 8 ECHR.

4.3 Minors claiming in their own right

4.3.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to; or (b) there are adequate reception and care arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, support and care arrangements in place for minors with no family in Sri Lanka. Those who cannot be returned should, if they do not qualify for leave on any more favourable grounds, be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

4.4 Medical treatment

4.4.1 Applicants may claim they cannot return to Sri Lanka due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

4.4.2 The public sector provides health care for nearly 60% of the population and caters to 95% of inpatient care. The private sector provides mainly curative care, which is estimated to be nearly 50% of outpatient care. This is largely concentrated in urban and suburban areas. The public sector provides care under allopathy and ayurvedic systems. But there are private practioners of Unani, Siddha and Homeopathy systems as well. Nearly 60% of the

[117] Asian Human Rights Commission, Police Torture Cases Sri Lanka 1998-2011, June 2011, Introduction.

rural population relies on traditional and natural medicine for their primary health care.[118]

4.4.3 The State Pharmaceuticals Corporation of Sri Lanka (SPC) are able to procure all Western drugs. Prescription and dispensing charges are cheaper in Sri Lanka than in the United Kingdom. As of 1st January 2008, the Healthcare and Nutrition Ministry banned the prescription of drugs by their trade names, instead insisting on the use of their generic names. This applies to doctors in government service as well as in the private sector. The SPC markets drugs under the generic name and is most of the time cheaper than the branded versions.[119]

4.4.4 In a letter from the British High Commission in Colombo, dated 14 September 2010, a consultant at the National STD/AIDS Control Programme stated that all of the drugs recommended by the World Health Organisation (WHO) for the treatment of HIV/AIDS are available. The government provides first grade treatment for HIV patients meeting WHO standards. Drugs for countering opportunistic infections are widely available in pharmacies and generally prices in pharmacies are lower than in the UK. Persons seeking treatment in any of the Government medical institutions, receive treatment free of charge. The World Bank continues to fund a National STD/AIDS Control Programme.[120]

4.4.5 A letter from the British High Commission (BHC) in Colombo dated 29 January 2012 reported on a visit to the Maharagama Cancer Institute in Western Province and the meeting held with Dr Yasantha Ariyaratne, the senior Consultant Clinical Oncologist the Cancer Institute is the main public hospital for the treatment of cancer in Sri Lanka and the only establishment solely dedicated to this purpose. The institute provides chemotherapy, radiotherapy and surgical treatment for cancer patients and possesses 1 linear accelerator and brachytherapy equipment. Allof the senior consultants had been trained and worked in the UK, USA or Australia at some stage and that many were well versed in the British NHS system. There are cancer units within public sector hospitals in Kandy and Galle (both teaching hospitals), and in Jaffna, Anuradhapura, Badulla and Kurunegala.[121]

4.4.6 A letter from the British High Commission (BHC) Colombo dated 31 January 2012 reported: The main public facility is the National Institute of Mental Health (NIMH); a government run establishment which can hold up to 1500 residential patients at its two locations close to each other in Angoda and Mulleriyawa, Colombo. A Consultant Psychiatrist from National Institute of Mental Health (NIMH) told us that every district in Sri Lanka, apart from Monaragala, has a hospital offering treatment for mental illness. All of these hospitals have between 8 – 12 beds for patients. Colombo has two hospitals apart from NIMH offering this facility. He added that although the government's policy states that each district has at least 30 beds for patients with mental illnesses, this had not been implemented; adding that the only way many of the districts had managed to get extra beds was due to donations by the Sri Lanka College of Psychiatrists.[122] Médecins Sans Frontières MSF (Doctors Without Borders) has since November 2010 provided counselling to people suffering from mental trauma in partnership with the Kilinochchi District Mental Health Unit, in the far north of Sri Lanka.[123]

4.4.7 However, in 2012, the NGO Basic Needs, stated that "money that is spent on mental health only really goes to the large mental health institutions in capital cities, which are inaccessible and do not provide appropriate care for mentally ill people".[124] It also noted that there was one psychiatrist per 500,000 population in Sri Lanka and stressed that most non-medical mental health professionals in Sri Lanka, such as social workers, have little formal training in mental health so they are not properly qualified to offer the level of support that

[118]COIS SriLanka country report March 2012 (para 23.04) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[119]COIS SriLanka country report March 2012 (para 23.02) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[120]COIS SriLanka country report March 2012 (para 23.13) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[121]COIS SriLanka country report March 2012 (para 23.15) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[122]COIS SriLanka country report March 2012 (para 23.25) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[123]COIS SriLanka country report March 2012 (para 23.27) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[124] Basic Needs, Sri Lanka, current webpage undated [Last accessed: 07/03/2012].

mentally ill people need.[125] A December 2011 IRIN News article cites Ritsuko Kakuma of Melbourne's Centre for International Mental Health as stating that Sri Lanka has only 25 working psychiatrists for a population of 20 million people.[126]

4.4.8 The BHC letter of 31 January 2012 reported that: "The government through the State Pharmaceutical Corporation (SPC) provide free drugs to patients with mental health problems[127] However, Basic Needs notes that, while the government does provide free drugs to people that come under its care, "hospitals have to meet other mental health expenditure (including drugs that are not on the government's list) from its own budget, and this can mean charging for treatment".[128] It also reports that mentally ill people do not qualify for disability benefits from the government, even though the government classes mental illnesses as a disability.[129]

4.4.9 The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns (see also the sub-section on the Treatment of failed Asylum seekers, paragraphs 3.6.25-3.6.33)

5.1 There is no policy which precludes the enforced return to Sri Lanka of failed asylum seekers who have no legal basis of stay in the United Kingdom. Nevertheless, the safety of any individual return should be assessed by reviewing the risk factors outlined in this document.

5.2 Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

5.3 UK enforced returns were 'paused' from 18 May 2009 pending a review of the country situation following the end of the conflict, although Assisted Voluntary Returns continued throughout. Enforced returns have since resumed.

5.4 Freedom From Torture (FFT) in a statement 25 February 2012 called upon the UK government to stop all forcible removals of Tamils to Sri Lanka. This followed a Human Rights Watch (HRW) report that a number of individuals who were recently removed by the UK were detained and tortured on return. HRW had called upon the UK to suspend deportations of ethnic Tamil asylum seekers to Sri Lanka.[130] The UK Border Agency has considered the reports by Freedom from Torture and Human Rights Watch and following current caselaw maintains that at present it is safe in general to return failed asylum seekers, including Tamils, to Sri Lanka.

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[125] Basic Needs, Sri Lanka, current webpage undated [Last accessed: 07/03/2012].
[126] IRIN, GLOBAL: Governments "still failing" on mental health issues, 18/12/2011.
[127] COIS Sri Lanka country report March 2012 (para 23.30) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[128] Basic Needs, Sri Lanka, current webpage undated [Last accessed: 07/03/2012].
[129] Basic Needs, Sri Lanka, current webpage undated [Last accessed: 07/03/2012].
[130] Freedom from Torture ,www.freedomfromtorture.org/news-events/news/6133 / Human Rights Watch www.hrw.org/news/2012/02/24/uk-halt-deportations-tamils-sri-lanka

5.5 The BHC, Colombo, in a letter dated 5 January 2012, reported on the entry procedures for the UK returnees at the Colombo Bandaranaike Airport, including the roles of the Department of Immigration and Emigration (DIE) officials, who operate border control at the airport [Bandaranaike International Airport (BIA), located in Katunayake in the Gampaha district]; and the circumstances in which the State Intelligence Service (SIS), and Criminal Investigations Department (CID) would become involved.[131]

- UK returnees generally arrive in Colombo on Sri Lankan Airlines scheduled flights, which provide the only direct flights between the UK and Sri Lanka from London Heathrow Terminal 4. Returnees also arrive from the UK however on Qatar Airlines via Doha, Gulf Air via Bahrain and Jet Airways via Delhi or Mumbai.

- DIE procedures are the same for all deported and returned Sri Lankan nationals and they will interview them merely to confirm their Sri Lankan nationality. They record the details of all returnees in a register (logbook) which is held in the duty Chief Immigration Officer's office. Once satisfied that a returnee is a Sri Lankan national in many cases they refer them to the State Intelligence Service (SIS) and the Criminal Investigations Department (CID).

- Emergency passports are considered full official documents issued by the Sri Lankan authorities. They are a proof of identity and are valid to go through any checkpoints.

5.6 As regards returns on charter flights: A BHC Colombo letter of I March 2012 stated "A flight chartered by the UK Border Agency specifically for the return of Sri Lankan nationals who did not qualify for leave to enter or remain in the United Kingdom, left London on 28 February 2012 bound for Colombo and arrived on 29 February 2012 with 52 enforced returnees, many of whom were failed asylum seekers. The ethnic split of the returnees was 29 Tamil, 13 Sinhala and 10 Muslim, and there were 45 males and 7 females. Prior negotiations had taken place in both London and Colombo between the UK and Sri Lankan governments under the 2004 bilateral readmission agreement in order to facilitate the smooth arrival and processing of the returnees on arrival in Sri Lanka. From the British High Commission the Deputy High Commissioner, the Returns Liaison Assistant and I were waiting in the immigration arrivals hall along with officials from the Police Criminal Investigations Department (CID), SIS and airport security. DIE had brought in a team of Tamil speaking officers, and CID and SIS had also drafted in extra staff specifically to assist their airport based colleagues in processing the charter flight returnees. I addressed them in English. I explained who I was and what procedures they were about to go through, and offered them words of reassurance about the process and the amount of time it would take. I explained that we would assist them in contacting waiting relatives or friends. On completion of the SIS/CID interviews, the returnees returned to the main seating area. As soon as passports/travel documents were reunited with the returnees they were allowed to proceed. The first returnee was allowed to proceed at 1445hrs. Representatives from the International Organization for Migration (IOM) spoke individually to each returnee to hand over a travel grant in Sri Lankan Rupees equivalent to £50, to enable the returnee to have the means to travel to their onward address anywhere in Sri Lanka, and for overnight accommodation where required. Each returnee provided contact details to IOM. All of the returnees were given either my business card or that of my colleague at the British High Commission, and were advised to contact us if they had any questions or concerns. My colleague and I both watched each returnee go through the Customs control to ensure they were not stopped or harassed in any way. The last of the returnees passed through Customs and into the arrivals area at around 1830hrs.[132]

5.7 Negotiations are currently taking place regarding the implementation of the EU-Sri Lanka Readmission Agreement (EURA). A project funded by the European Union has contracted the International Organization for Migration (IOM) to take this forward. The Government of

[131] COIS SriLanka country report March 2012 (para 25.33) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[132] COIS Sri Lanka country report March 2012 (Annex E) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

Sri Lanka have indicated that they will develop their arrival procedures and redocumentation processes for the implementation of the EURA, adding that these will apply across the board for Sri Lankan returnees from all countries in the world. DIE have indicated that they wish to launch these new procedures from January 2012, but as yet we are not aware that this has taken place.[133]

5.8 UNHCR's 2011 country operations profile for Sri Lanka states that since the end of the Sri Lanka conflict, an increasing number of Sri Lankan refugees are returning home, both spontaneously and with the help of UNHCR. The agency has also received many requests [from] Sri Lankan refugees, mainly in India and Malaysia, for help to return. As of April 2011, some 3,312 Sri Lankan refugees had returned to the country with the help of UNHCR.[134] A majority of the returns are taking place to Sri Lanka's eastern district of Trincomalee. A substantial number of Sri Lankan refugees are also going back to the Mannar and Vavuniya districts in the country's north while small groups are returning to Jaffna, Kilinochchi, Batticaloa, Colombo, Ampara, Puttalam and Kandy.UNHCR carries out regular monitoring in these areas.[135]

5.9 Sri Lankan nationals may return voluntarily to any region of Sri Lanka at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.

5.10 The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Sri Lanka. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Sri Lankan nationals wishing to avail themselves of this opportunity for assisted return to Sri Lanka should be put in contact with Refugee Action Details can be found on Refugee Action's web site at:

www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx

Country Specific Litigation Team
Immigration Group
UK Border Agency
April 2012

[133] COIS Sri Lanka country report March 2012 (para 25.35) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[134] UNHCR: Refugees in Sri Lanka http://unhcr.lk/srilankanrefugeeselsewhere.php
[135] COIS:Sri Lanka country report March 2012 (para 25.26) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/