

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	419
Land:	Sri Lanka
Kilde:	British Home Office
Titel:	Operational Guidance Note, Sri Lanka
Udgivet:	1. december 2011
Optaget på baggrundsmaterialet:	10. april 2012



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 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 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).²

- 2.3.4** 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.³

¹ US State Department Human Rights Report 2010; Sri Lanka <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm>

² US State Department Human Rights Report 2010; Sri Lanka <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm>

³ US State Department Human Rights Report 2010; Sri Lanka <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm>

2.3.5 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.⁴

2.3.6 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.⁵

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-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. The additional police and military checkpoints on travellers from the north and the east and on movement to and in Colombo remained in effect. 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.⁶

2.4.4 Security forces at army checkpoints in Colombo frequently harassed Tamils. Both the government and the TMVP continued to operate checkpoints in the east that impeded the

⁴ Freedom House Sri Lanka country report 2011

<http://www.freedomhouse.org/template.cfm?page=22&year=2011&country=8137>

⁵ US State Department Human Rights Report 2010; Sri Lanka <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm>

⁶ US State Department Human Rights Report 2010; Sri Lanka <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm>

free movement of residents, especially Tamils. The government no longer restricted travel by Sri Lankan citizens on the A-9 highway leading north from Vavuniya to Jaffna.⁷

- 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.⁸
- 2.4.6** Careful consideration must therefore be given to any place of proposed internal relocation and how it will be accessed, taking account of the latest information about the security 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

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;

⁷ US State Department Human Rights Report 2010; Sri Lanka <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm>

⁸ US State Department Human Rights Report 2010; Sri Lanka <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm>

- 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.⁹ 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.¹⁰

Tamil ethnicity

3.6.3 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.¹¹

3.6.4 Both local and Indian-origin Tamils maintained that they suffered long-standing, systematic discrimination in university education, government employment, and other matters

⁹ US State Department Human Rights Report 2010; Sri Lanka <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm>

¹⁰ COIS Sri Lanka country report July 2011 (para 7.02) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹¹ COIS Sri Lanka country report July 2011 (para 18.10) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

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 groups¹²

Emergency regulations/Prevention of Terrorism Act

- 3.6.5** 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. And 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.”¹³

Passing of the 18th amendment- increase in presidential power

- 3.6.6** Sri Lanka's parliament voted on 8th September 2010 to allow the president, Mahinda Rajapaksa, to seek an unlimited number of terms in office and to tighten his hold on power by giving him total control over the judiciary, police and the civil service. The main opposition group, the United National party, boycotted the vote and burned an effigy of Rajapaksa in the capital. But the constitutional amendment passed with 161 votes in the 225-member parliament.
- 3.6.7** The constitution used to limit the president to two six-year terms, so Rajapaksa's new term, which was due to start in November 2010, would have been his last. The amendment also scrapped a provision requiring the president to receive the approval of independent commissions in appointing officials to the judiciary, police, public service and the elections office.

Treatment of ex-combatants

- 3.6.8** 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.¹⁴
- 3.6.9** 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

¹² COIS Sri Lanka country report July 2011 (para 18.12) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹³ 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>

¹⁴ COIS Sri Lanka country report July 2011 (para 3.28) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

individuals remained in these facilities when the state of emergency lapsed in August 2011; on 30 September about 1,000 were thought to remain in detention.¹⁵

- 3.6.10** Former Tamil Tiger rebels in Sri Lanka say they cannot find jobs or reintegrate into society, a year after they were freed from government "rehabilitation" and detention camps. In a series of exclusive interviews with the BBC, some also said they were being harassed by the security forces, though others were being left alone.¹⁶

Torture/ ill-treatment

- 3.6.11** The United Nations Committee Against Torture (UNCAT) held an open session on Sri Lanka at the beginning of November. 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 (<http://www2.ohchr.org/english/bodies/cat/cats47.htm>) The following paragraphs contain extracts from some of those reports.
- 3.6.12** The Freedom from Torture submission to the Committee against Torture for its examination of Sri Lanka, November 2011 observed that the those at particular risk of torture include Tamils who have an actual or perceived association with the Liberation Tigers of Tamil Eelam (LTTE).¹⁷
- 3.6.13** 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."¹⁸
- 3.6.14** 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 to us during this period, 35 document evidence of torture perpetrated from May 2009 onwards.¹⁹
- 3.6.15** According to the Freedom from Torture the evidence, drawn from MLRs they have prepared, demonstrates that torture is still ongoing in Sri Lanka. 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);

¹⁵ 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/>

¹⁶ BBC News, Sri Lanka: Former Tamil Tigers complain of harassment, 30 July 2011 <http://www.bbc.co.uk/news/world-south-asia-14331595>

¹⁷ 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/>

¹⁸ 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/>

¹⁹ 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/>

- 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.²⁰

3.6.16 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 judges order.²¹

3.6.17 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.²²

3.6.18 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 General's 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 General's 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.²³

3.6.19 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.²⁴

3.6.20 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

²⁰ 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/>

²¹ 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/>

²² 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/>

²³ 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/>

²⁴ 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/>

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 2011.²⁵

Commission on Lessons Learnt & Reconciliation

- 3.6.21** The LLRC was established by President Mahinda Rajapaksa in May 2010 after UN Secretary-General Ban Ki-moon announced that he would appoint a Panel of Experts to advise him on accountability issues in Sri Lanka – a move opposed by the Sri Lankan government. The Secretary-General appointed the Panel in response to widespread and credible allegations that crimes under international law including possible war crimes and crimes against humanity may have been committed by both the LTTE and Sri Lankan forces in the final stages of the armed conflict that ended in May 2009.
- 3.6.22** The Sri Lankan government has promoted the LLRC as an effective national accountability mechanism with which to respond to these allegations and has used the LLRC as its primary tool in lobbying against an independent international criminal investigation as recommended by the Panel of Experts in April. The LLRC's warrant emphasizes the need to reflect on Sri Lanka's history of internecine conflict and prevent its recurrence. This warrant does not explicitly mandate the LLRC to investigate violations of human rights and humanitarian law or to make recommendations aimed at bringing perpetrators to justice. Nor has the LLRC pursued these questions with vigor in interpreting and implementing its warrant. This is hardly surprising considering the composition of the commission, which includes as Chair Sri Lanka's former Attorney General, accused of obstructing investigation and prosecution of critically important human rights cases from the period of his tenure, including notably the execution style killing of five Tamil students by Sri Lankan security forces in January 2006 (commonly referred to as the 'Trinco Five' case).
- 3.6.23** The LLRC began hearings in Colombo in August 2010. Colombo sessions featured government officials, military officers, politicians, clergy and other prominent citizens who were asked to comment on what went wrong with the 2002 ceasefire and how best to proceed with reconciliation. In all, over 140 people made representations to the commission in Colombo. Many or most were known supporters of the current government and its policies; a handful could be considered critics. The vast majority of people testifying in Colombo were from the Sinhalese majority community; about 30 were Tamil and only five were Muslim. The LLRC also conducted hearings in the north and the east of Sri Lanka where individuals who were directly affected by the conflict testified.
- 3.6.24** The LLRC's timeframe has been extended twice. In mid-May 2011, when the commission was due to submit its final report to the President, Sri Lankan media reports indicated that the LLRC would seek a six month extension and that President Rajapaksa was prepared to grant it. The Commissioners are now scheduled to deliver a final report to the President by November 2011, buying Sri Lanka more time to negotiate away calls for an international investigation into alleged war crimes committed by both sides during the last phase of Sri Lanka's armed conflict in 2009.

Paramilitary groups/rival political factions

- 3.6.25** 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 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

²⁵ 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

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.²⁶

Treatment of failed Asylum seekers

- 3.6.26** In a letter dated 18 March 2011 the British High Commission in Colombo reported that they routinely monitor the arrival of returnees at Bandaranaike International Airport in Colombo. All Sri Lankan returnees, regardless of which country they are returning from, go through a process whereby they are spoken to by representatives from the Department of Immigration & Emigration (DIE), the State Intelligence Service (SIS) and the Criminal Investigations Department (CID). Returnees are able to pass through the airport after routine checks are carried out on their identity and documentation.²⁷
- 3.6.27** BHC provides its contact details to returnees and they are encouraged to contact the Migration team if they encounter difficulties including any instances of harassments or assaults. This is not just limited to the entry procedures at the Airport, but also for post-arrival assistance. There have been no allegations that airport staff having mistreated returnees.²⁸
- 3.6.28** A BHC letter dated 3 October 2011 stated that on 28 September 2011 50 enforced returnees from the UK, many of whom were failed asylum seekers arrived back in Colombo. The ethnic split of the returnees was 27 Tamil, 12 Muslim and 11 Sinhala, and there were 42 males and 8 females. All of the returnees were in possession of their own valid national passport or an Emergency Travel Document issued by the Sri Lankan High Commission in London. 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.²⁹
- 3.6.29** The UNHCR's 2011 country operations profile for Sri Lanka states that in 2010, the improving situation in northern Sri Lanka prompted an increase in facilitated repatriation and spontaneous returns of refugees from India and elsewhere. This trend is expected to accelerate in 2011, when it is estimated that up to 15,000 UNHCR-facilitated and 6,000 spontaneous individual returns will take place.³⁰ On 13 October 2011 UNHCR reported that the UN refugee agency had begun repatriating Sri Lankan refugees from southern India by ferry, adding a new dimension to its voluntary return programme for civilians who fled the island nation before a long conflict ended in 2009.³¹

See also: [Actors of protection](#) (section 2.3 above)
[Internal relocation](#) (section 2.4 above)
[Caselaw](#) (section 2.5 above)

- 3.6.30 Conclusion.** The latest IAC country guidance case, *TK*, confirms the risk categories identified in *LP* which were also endorsed by the ECtHR in *NA* and finds that the military

²⁶ COIS Sri Lanka country report July 2011 (para 8.49) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

²⁷ COIS Sri Lanka country report July 2011 (para 25.40) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

²⁸ COIS Sri Lanka country report July 2011 (para 25.41) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

²⁹ British High Commission letter 3 October 2011

³⁰ UNHCR 2011 country operations profile; Sri Lanka <http://www.unhcr.org/pages/49e4878e6.html>

³¹ UNHCR helps first group of Sri Lankan refugees return by ferry from India 13 October 2011

<http://www.unhcr.org.uk/news-and-views/news-list/news-detail/article/unhcr-helps-first-group-of-sri-lankan-refugees-return-by-ferry-from-india.html>

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.

- 3.6.31** UNHCR 2010 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.
- 3.6.32** 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.
- 3.6.33** As noted above (3.6.9), 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 several thousand 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.
- 3.6.34** If credibility is accepted, case owners should assess the applicant’s individual circumstances taking into account the *LP* risk factors together with the added guidance given in *TK*, particularly with regard to the international procurement network and arms supply. The evidence suggests that many Tamils were forcibly recruited by the LTTE and many others had only minor involvement. Such persons are less likely to be either known or of current interest to the authorities than those with a significantly higher profile. However, each case should be considered carefully on its own facts.
- 3.6.35** 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.
- 3.6.36** 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.
- 3.6.37** 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.

- 3.6.38** 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.

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.³²

- 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.³³

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.³⁴ 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.³⁵
- 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.³⁶ 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.³⁷
- 3.7.6** A letter from the British High Commission dated 9th November 2011 stated that following the end of the civil conflict in Sri Lanka on 18th May 2009 the government of Sri Lanka

³² 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>

³³ COIS Sri Lanka country report July 2011 (para 3.26) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

³⁴ 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>

³⁵ 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>

³⁶ 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>

³⁷ 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>

approached International Organisation 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.
- Those with low level LTTE involvement and were believed to number between 3,000- 4,000. These would be released and receive community reintegration.³⁸

3.7.7 The BHC letter went on to state that in press releases by the Rehabilitation & Prison Reforms Minister D E W Gunasekera 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. The CGR went on to state that in January 2011 in total 5,686 persons had been released. There remained 4,658 ex-combatants detained in the 9 rehabilitation centres gazetted into law as being Protective Accommodation and Rehabilitation Centres (PARC). The Sri Lankan military operates these camps with involvement from various ministries. Those who remained in detention were released in batches over the following months³⁹ and 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.⁴⁰

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

³⁸ British High Commission letter 9 November 2011

³⁹ British High Commission letter 9 November 2011

⁴⁰ 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

involved in such actions, case owners should consider whether any of the exclusion clauses are applicable.

3.8 Journalists, civil society, human rights activists, 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.
- 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.⁴¹
- 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.⁴²
- 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.⁴³
- 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.⁴⁴
- 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.⁴⁵
- 3.8.7** Overtly, 2011 has been a period of relative calm and overall the situation has improved from what it was during the final phase of the war and the immediate aftermath of the 2010 presidential election. No murders of journalists were reported last year. And although there has been a decline in the number of recorded attacks on journalists several incidents were reported.⁴⁶
- 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 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

⁴¹ US State Department Human Rights Report 2010; Sri Lanka <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm>

⁴² US State Department Human Rights Report 2010; Sri Lanka <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm>

⁴³ US State Department Human Rights Report 2010; Sri Lanka <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm>

⁴⁴ US State Department Human Rights Report 2010; Sri Lanka <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm>

⁴⁵ Amnesty International Annual Report 2011; Sri Lanka <http://www.amnesty.org/en/region/sri-lanka/report-2011>

⁴⁶ COIS Sri Lanka country report July 2011 (para 14.04) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

impunity and indifference.⁴⁷

- 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.⁴⁸
- 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.⁴⁹
- 3.8.11** 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. The government often criticised local NGOs critical of government actions, failed to respond to requests for assistance, and put pressure on those who sought such assistance.⁵⁰
- 3.8.12** The operating environment for human rights defenders in Sri Lanka remained difficult throughout 2010. 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.⁵¹
- 3.8.13** 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.⁵²
- 3.8.14** 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

⁴⁷ COIS Sri Lanka country report July 2011 (para 14.04) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁴⁸ 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

⁴⁹ 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-media.php>

⁵⁰ COIS Sri Lanka country report July 2011 (para 15.03) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁵¹ COIS Sri Lanka country report July 2011 (para 15.05) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁵² COIS Sri Lanka country report July 2011 (para 13.05) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

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.⁵³

3.8.15 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.⁵⁴

3.8.16 On 29 March 2011 LankaeNews reported that: "Captain Senaka Haripriya Silva, who was the private Secretary of Gen. Sarath Fonseka during the Presidential election period when the latter was also a Presidential candidate was released on bail yesterday (28) by the appeal Court after being in remand custody for over 13 months."⁵⁵

3.8.17 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.⁵⁶

3.8.18 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 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.⁵⁷

See also: [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

3.8.19 Conclusion. Applicants perceived to be active or influential in opposition to the Sri Lankan Government may be 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

⁵³ COIS Sri Lanka country report July 2011 (para 13.06) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁵⁴ FCO, Human Rights and Democracy report 2010, <http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/accessible-hrd-report-2010>

⁵⁵ COIS Sri Lanka country report July 2011 (para 13.11) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁵⁶ 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>

⁵⁷ 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>

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.⁵⁸
- 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.⁵⁹
- 3.9.5** According to the assessment by UNSR Nowak in 2007, "the combination of severe overcrowding and antiquated infrastructure of certain prison facilities places unbearable strains on services and resources, which for detainees in certain prisons, such as the Colombo Remand Prison, amounts to degrading treatment." Nowak also noted the absence of an independent institution responsible for monitoring conditions in detention facilities, holding private interviews, and conducting medical evaluations of detainees.⁶⁰
- 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.⁶¹
- 3.9.7** The government permitted independent human rights observers and the International Committee of the Red Cross (ICRC) to visit to 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.⁶²
- 3.9.8** **Conclusion** Overcrowding and unsanitary conditions which amount to degrading treatment for 'ordinary' detainees have been recorded in some prison facilities and case owners should therefore consider carefully whether the threshold is likely to be breached in individual cases, taking into account any objective material available on potential places of detention. 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.

4. Discretionary Leave

⁵⁸ US State Department Human Rights Report 2010; Sri Lanka <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm>

⁵⁹ US State Department Human Rights Report 2010; Sri Lanka <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm>

⁶⁰ US State Department Human Rights Report 2010; Sri Lanka <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm>

⁶¹ US State Department Human Rights Report 2010; Sri Lanka <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm>

⁶² US State Department Human Rights Report 2010; Sri Lanka <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154486.htm>

- 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 practitioners of Unani, Siddha and Homeopathy systems as well. Nearly 60% of the rural population relies on traditional and natural medicine for their primary health care.⁶³
- 4.4.3** 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 State Pharmaceutical Corporation (SPC) markets drugs under the generic name and is most of the time cheaper than the branded versions.⁶⁴
- 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.⁶⁵
- 4.4.5** There are several hospitals which are able to deal with mental health issues, the main public facility being the National Institute of Mental Health; a government run establishment in Angoda, Colombo, which can hold up to 1400 patients. There is a Long Stay Unit at

⁶³ COIS Sri Lanka country report July 2011 (para 23.04) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁶⁴ COIS Sri Lanka country report July 2011 (para 23.02) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁶⁵ COIS Sri Lanka country report July 2011 (para 23.13) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

Hendala where 200 male patients can remain indefinitely, and a similar establishment in Mulleriyawa that caters for up to 850 female patients. There are 9 other hospitals or units in the following locations that each have places for between 20-30 patients: Ragama Teaching Hospital, Colombo South Teaching Hospital, Batticaloa Teaching Hospital, Peradeniya, Kandy, Kurunegala, Galle, Badulla, and Kalutara. There is only one private hospital providing psychiatric treatment, the Park Hospital, Park Road, Colombo 5 (www.parkhospitals.com), although private consultations with psychiatrists working at public facilities are available, which is known as channel consultation.⁶⁶

- 4.4.6** 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

- 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.
- 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. BHC reported in August 2010 that in general, the situation regarding all returnees appeared to be more relaxed than was reported following the UKBA/FCO Fact Finding Mission in August 2009.⁶⁷ A BHC letter dated March 2011 stated that there were no allegations that airport staff having mistreated returnees.⁶⁸ A further BHC letter dated 3 October 2011 stated that on 28 September 2011 50 enforced returnees from the UK, many of whom were failed asylum seekers arrived back in Colombo. 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. Nevertheless, the safety of any individual return should be assessed by reviewing the risk factors outlined in 3.7.20.
- 5.4** The UNHCR's 2011 country operations profile for Sri Lanka states that in 2010, the improving situation in northern Sri Lanka prompted an increase in facilitated repatriation and spontaneous returns of refugees from India and elsewhere. This trend is expected to accelerate in 2011, when it is estimated that up to 15,000 UNHCR-facilitated and 6,000 spontaneous individual returns will take place.⁶⁹ On 13 October 2011 UNHCR reported that the UN refugee agency had begun repatriating Sri Lankan refugees from southern India by ferry, adding a new dimension to its voluntary return programme for civilians who fled the island nation before a long conflict ended in 2009.⁷⁰

⁶⁶ COIS Sri Lanka country report July 2011 (para 23.22) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁶⁷ COIS Sri Lanka country report July 2011 (para 25.36) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁶⁸ COIS Sri Lanka country report July 2011 (para 25.41) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁶⁹ UNHCR 2011 country operations profile; Sri Lanka <http://www.unhcr.org/pages/49e4878e6.html>

⁷⁰ UNHCR helps first group of Sri Lankan refugees return by ferry from India 13 October 2011 <http://www.unhcr.org.uk/news-and-views/news-list/news-detail/article/unhcr-helps-first-group-of-sri-lankan-refugees-return-by-ferry-from-india.html>

- 5.5** 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.
- 5.6** 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
December 2011