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OPERATIONAL GUIDANCE NOTE

SRI LANKA

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1 Introduction

- 1.1** This document summarises the general, political and human rights situation in Sri Lanka and provides information on the nature and handling of claims frequently received from nationals/residents of that province. It must be read in conjunction with the RDS-COI Service Sri Lanka Country of Origin Information Report of September 2005 at:
- www.homeoffice.gov.uk/rds/country_reports.htm
- 1.2** This guidance is intended to provide clear guidance on whether the main types of claim are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers should refer to the following Asylum Policy Instructions for further details of the policy on these areas:
- API on Assessing the Claim
 - API on Humanitarian Protection
 - API on Discretionary Leave
 - API on the European Convention on Human Rights
- 1.3** Claims should be considered on an individual basis, but taking full account of the information set out below, in particular Part 3: main categories of claims.
- 1.4** With effect from 23 July 2003, Sri Lanka is a country listed in section 94 of the Nationality Immigration and Asylum Act 2002. Asylum and human rights claims must be considered on their individual merits. However if, following consideration, the claim made on or after 23 July 2003 is refused, caseworkers should certify the claim as clearly unfounded unless satisfied that it is not. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail. The information set out below contains relevant country information, the most common types of claim and guidance from the courts, including guidance on whether cases are likely to be clearly unfounded.
- 1.5** The source documents used in this guidance are identified as appropriate in the body of the text and also listed at the end of this note.

2 **Country assessment**

- 2.1** Following independence from Britain in February 1948, the political scene has been dominated by two parties: the United National Party (UNP) and the Sri Lanka Freedom Party (SLFP), which is now part of the People's Alliance (PA). The SLFP was founded by S W R D Banadaranaike, who was Prime Minister until he was assassinated in 1959 by a Buddhist extremist. His widow, Sirimavo Banadaranaike, became leader of the SLFP and served as both Prime Minister and leader of the opposition.¹
- 2.2** A republican constitution was adopted in 1972 and the ruling coalition, led by Sirimavo Banadaranaike, gave itself an extra two years in power. The UNP returned to power in 1978 and adopted a new constitution based on an executive presidency. It introduced for the first time elections based on proportional representation. The presidential election in 1988 was won by the UNP's Ranasinghe Premadasa, who ruled until his assassination in 1993.²
- 2.3** The SLFP became part of the People's Alliance (PA) coalition which, headed by Mrs Chandrika Kumaratunga (the daughter of S W R D and Sirimavo Bandaranaike), won general elections in August 1994. Mrs Kumaratunga then went on to win a landslide victory in the Presidential election in November 1994. The PA also won the next Parliamentary elections in October 2000. Although there were reports of violence, intimidation and voting irregularities, the EU Election Observation Mission acknowledged that the result overall reasonably reflected the opinion of the people. In 2001, less than a year after being re-elected, the PA lost their majority and new elections were held in December 2001. The United National Front coalition, lead by UNP Ranil Wickremasinghe, won with 109 seats and the President's PA came second with 77 seats, which led to an arrangement of political cohabitation between two rival parties, with the PA's leader as President and the UNP's leader as Prime Minister.³
- 2.4** In November 2003, President Kumaratunga suspended parliament, sacked three key ministers taking over their portfolios (including defence) and declared a state of emergency (which was lifted a few days later). This was done on the grounds of national security, and the actions were within her Constitutional powers. No agreement on working arrangements was reached between the President and Prime Minister, and in January 2004, the SLFP signed an alliance with the JVP forming the United People's Freedom Alliance (UPFA). In February, the President dissolved Parliament and called general elections in April.⁴
- 2.5** The elections in April 2004 produced a new political order with the victory of the UPFA. Support for the traditional parties dropped, and smaller parties - JVP, TNA and JHU - gained significant numbers of seats. The UPFA formed a minority government. In September 2004, the Ceylon Workers' Congress (CWC – representing Indian-origin Tamils) with 8 seats joined the government giving it a small majority.⁵
- 2.6** The ethnic conflict in Sri Lanka has been going on for over 20 years as the Liberation Tigers of Tamil Eelam (LTTE) fight for an independent homeland. Some 70,000 people are estimated to have been killed and some one million displaced. In March 1999 the Sri Lankan Army launched two major offensives in the Vanni (jungle areas in the North) and captured over 800 sq kms of territory from the LTTE. Fighting in the North intensified in late 1999 and the Vanni fell to the LTTE after some of the fiercest fighting since the conflict began. In April 2000 the LTTE carried out a major assault which led to the withdrawal of Sri Lankan troops from Elephant Pass (which links the Jaffna peninsula to the rest of Sri Lanka). With control of Elephant Pass, the LTTE continued further attacks into the Jaffna Peninsula. Fighting continued until December 2001 when the announcement of a new ceasefire by the LTTE was reciprocated by the newly-elected UNF government. A Ceasefire Agreement was signed in February 2002 by the government and LTTE. In 21 April 2003 the LTTE suspended participation in the peace talks in protest at the handling of "critical issues",

¹ FCO Country Profile on Sri Lanka: 25 Nov 2005

² FCO Country Profile on Sri Lanka: 25 Nov 2005

³ FCO Country Profile on Sri Lanka: 25 Nov 2005

⁴ FCO Country Profile on Sri Lanka: 25 Nov 2005

⁵ FCO Country Profile on Sri Lanka: 25 Nov 2005

but said that they had no intention of breaking the cease-fire.⁶ Since then there has been no large-scale fighting on land, although there have been at least two clashes between the Navy and the LTTE's Sea Tigers.⁷

- 2.7** During the April 2004 election campaign, the LTTE stated their willingness to negotiate with any party which had a mandate for talks. The government, for their part, have said that restarting the peace talks is a priority for them and renewed the mandate of Norway as peace facilitators. Despite energetic shuttle diplomacy there has been no agreement on a resumption of talks and little progress made in the second half of 2004. Ongoing low-level violence in the East and political assassinations have complicated the prospects. Although it was initially hoped that the tsunami would present an opportunity for the two sides to return to the negotiating table, both the Government and the LTTE have put the peace process to one side while they deal with post-tsunami reconstruction.⁸
- 2.8** An estimated 200 people have died since the beginning of a ceasefire between the government and the Tamil Tigers in February 2002. As of November 2004, there had been 900 reports of abductions, of which almost 400 have been certified by the Norwegian-led Sri Lanka Monitoring Mission (SLMM) as violations of the ceasefire agreement.⁹
- 2.9** The Sri Lankan government have taken steps to improve its very poor human rights record of the 1980's and 1990's. Significant improvements have been made, but problems do remain. There are continued reports of rape and torture in custody, although these have fallen since the ceasefire. The LTTE are responsible for continuing serious human rights abuses including assassinations of political opponents, recruitment of child soldiers, abductions and extortion. There have been incidents of attacks on religious minorities. Sri Lanka is a signatory to all six core human rights instruments.¹⁰
- 2.10** Sri Lanka was severely affected by the tsunami on 26 December 2004 which killed some 40,000 people and displaced 400 – 500 thousand people along two thirds of the north-east, south and south-west coastline. Half the fishing fleet was destroyed, and a quarter of hotels in the affected areas sustained serious damage.¹¹
- 2.11** Presidential elections took place on 17 November 2005. The campaign was generally peaceful but there was violence in the north and east and the LTTE enforced a boycott of the polls in Tamil areas under their control or which they strongly influence in the north and east. This resulted in extremely low voter participation in these areas. Mahinda Rajapakse (SLFP) was elected President with 50.3% of the vote. UNP candidate and Leader of the Opposition, Ranil Wickremesinghe took 48.4%. The President appointed a new ministerial team on 23 November. The JVP and JHU which supported Rajapakse's candidature decided not to join the Government. The SLFP will therefore be a minority administration.¹²

3 Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Sri Lanka . It also contains any common claims that may raise issues covered by the API on Discretionary Leave. 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, Discretionary Leave, sufficiency of protection and internal flight are set out in the relevant API's, but how these affect particular categories of claim are set out in the instructions below.

⁶ COIS Sri Lanka COI Report Sept 2005 para 4.82-8.83

⁷ FCO Country Profile on Sri Lanka: 25 Nov 2005

⁸ FCO Country Profile on Sri Lanka: 25 Nov 2005

⁹ COIS Sri Lanka COI Report Sept 2005 para 6.144

¹⁰ FCO Country Profile on Sri Lanka: 25 Nov 2005

¹¹ FCO Country Profile on Sri Lanka: 25 Nov 2005

¹² FCO Country Profile on Sri Lanka: 25 Nov 2005

- 3.2 Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant 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 API on Assessing the Claim).
- 3.3 If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant 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 This guidance is **not** designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim)
- 3.5 Also, this guidance does not generally provide information on whether or not a person should be excluded from the Refugee Convention or from Humanitarian Protection or Discretionary Leave. (See API on Humanitarian Protection and API on Exclusion under Article 1F or 33(2) and API on DL)

All APIs can be accessed via the IND website at:

http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis.html

3. 6. Former members or supporters of the LTTE fearing reprisals from LTTE.

- 3.6.1 Many claimants will claim asylum based on ill treatment amounting to persecution at the hands of the LTTE due to their past involvement with, and/or opposition to the mainstream LTTE. Some - particularly those who have aligned themselves with the Sri Lankan army military intelligence units – state that they are targeted by the LTTE because they are perceived as “defectors”, whilst others fear being targeted because of their association with the breakaway “*Karuna*” faction of the LTTE. Others express a fear of being attacked by the LTTE in Colombo because they have engaged in - or are perceived by the LTTE to have engaged in - activity which is seen as ‘disloyal’ to the LTTE.
- 3.6.2 **Treatment.** An announcement was made on 22 February 2002 that the Sri Lankan Government and the Liberation Tigers of Tamil Eelam (LTTE) had signed an agreement on the cessation of hostilities. The agreement committed the parties to put an end to hostilities and to restore normalcy for all Sri Lankans. The February 2002 agreement between the Sri Lankan government and the LTTE required both parties to abstain from hostile acts against the civilian population, including such acts as torture, intimidation, abduction, extortion and harassment. The parties also agreed that search operations and arrests under the Prevention of Terrorism Act (PTA) should not be made. The LTTE opened political offices in government-held areas (under the terms of the cease-fire agreement LTTE members are able to engage in political activity in areas outside their control provided they are unarmed and out of military-style uniforms). In 21 April 2003 the LTTE suspended participation in the peace talks in protest at the handling of “critical issues”, but said that they had no intention of breaking the cease-fire.¹³
- 3.6.3 In March 2004 the LTTE’s eastern commander, Vinayagamoorthi Muralitharan - known as Colonel Karuna – broke away from the mainstream LTTE taking with him some 6,000 troops. In April 2004 thousands of LTTE troops moved into the east to engage Colonel Karuna and his supporters in battle. After fierce fighting and substantial casualties, the main faction of the LTTE defeated the breakaway group and regained full control of eastern areas.¹⁴

¹³ COIS Sri Lanka COI Report Sept 2005 para 4.82-8.83

¹⁴ COIS Sri Lanka COI Report Sept 2005 para 4.45 - 4.58

- 3.6.4** Karuna's group are alleged to have subsequently killed 26 LTTE members, including S. Senathirajah, the LTTE political leader for Batticaloa. Karuna's group are also alleged to have killed 7 civilians, including LTTE supporter, journalist Aiyathurai Nadesan, who was killed in Batticaloa on 31 May 2004. There were reports that the Government provided protection and military aid to Karuna and his group to assist them in their fight against the mainstream LTTE.¹⁵
- 3.6.5** During the April 2004 election campaign, the LTTE stated their willingness to negotiate with any party which had a mandate for talks. The government, for their part, have said that restarting the peace talks is a priority for them and renewed the mandate of Norway as peace facilitators. Since then and despite energetic shuttle diplomacy there has been no agreement on a resumption of talks. Although it was initially hoped that the tsunami would present an opportunity for the two sides to return to the negotiating table, both the Government and the LTTE put the peace process to one side while they deal with post-tsunami reconstruction. A 'no peace, no war' scenario continues to prevail. The ceasefire agreement remains in place but is under pressure due to ongoing violence in the East, including political assassinations and paramilitary activity (including by the Karuna LTTE breakaway group) continues.¹⁶
- 3.6.6** Members of the LTTE have committed serious human rights abuses, involving both Tamils and Sinhalese and have been responsible for politically motivated killings, arbitrary arrests, torture, harassment, abduction, disappearances, extortion, and detention.¹⁷ The number of killings in Sri Lanka in the two years preceding the ceasefire of 22 February 2002 was 3,791 in 2,000 and 1,822 in 2001. Fifteen people were reported killed in 2002; 59 in 2003; 108 in 2004 and 195 in 2005.¹⁸ Most incidents having taken place in the in the north and east of Sri Lanka.¹⁹ As of November 2004, there had been 900 reports of abductions, of which almost 400 have been certified by the Norwegian-led Sri Lanka Monitoring Mission (SLMM) as violations of the ceasefire agreement.²⁰
- 3.6.7** During 2004, there was credible evidence that, in addition to the 120 cadres and civilians killed in fighting between LTTE factions in March, the LTTE killed more than 81 members of anti-LTTE Tamil political groups, LTTE cadres loyal to Karuna, alleged Tamil informants for the security forces in the north, the east, and Colombo, and civilians. Both current and former members of anti-LTTE Tamil political parties were targeted by the LTTE. During the year, 10 current and past anti-LTTE Eelam People's Democratic Party (EPDP) members were killed. Credible sources indicated that after the fighting in March, the LTTE killed an additional 43 members of breakaway military leader Karuna's group. The LTTE also targeted alleged Tamil informants to the military, killing 10 during the year.²¹
- 3.6.8** **Sufficiency of protection.** The Ministry of Internal Security controls the 66,000-member police force, which is responsible for internal security in most areas of the country. The Ministry of Defence controls the 112,000-member Army, the 27,000-member Navy, and the 20,000-member Air Force. Home Guards, an armed militia of more than 20,000 members drawn from local communities and who are responsible to the police, provide security for Muslim and Sinhalese communities located near LTTE-controlled areas. The police force includes the 6,000-member paramilitary Special Task Force which is the para military arm of the Sri Lanka Police, and deployed essentially for counter Terrorist and Counter Insurgency operations within the country. They are also deployed in the close protection Units providing security for VIP's and at Key Installations.²²
- 3.6.9** In June 2003 there were reports of some large-scale arrests in Colombo City and Western Province during joint police/military operations against the LTTE in response to a spate of

¹⁵ COIS Sri Lanka COI Report Sept 2005 para 6.132

¹⁶ FCO Country Profile on Sri Lanka: 25 Nov 2005

¹⁷ COIS Sri Lanka COI Report Sept 2005 para 6.03

¹⁸ Institute for Conflict Management: "Casualties of terrorist violence in Sri Lanka since March 2000"

¹⁹ Institute for Conflict Management: "Prominent Tamil political leaders assassinated since the Ceasefire Agreement" & "Incidents of violence between the LTTE and Tamil National Front"

²⁰ COIS Sri Lanka COI Report Sept 2005 para 6.144

²¹ COIS Sri Lanka COI Report Sept 2005 para 6.131

²² COIS Sri Lanka COI Report Sept 2005 para 5.26-5.27

killings and other crimes, including the slaying of intelligence operatives. This was part of an initiative by the Ministry of Defence and the Interior Ministry to launch a comprehensive security operation with the deployment of military and intelligence services to render the city safe from criminals and hit squads. Most of those detained were released after a maximum of several days, but some detentions extended to several months and 65 persons were charged under the Prevention of Terrorism Act.²³

3.6.10 Internal relocation. The Sri Lankan Constitution grants every citizen “freedom of movement and of choosing his residence” and the Government generally respected these rights in practice. The war with the LTTE prompted the Government to impose more stringent checks on travellers from the north and the east and on movement in Colombo, particularly after dark. However since 2003, Tamils were no longer required to obtain police-passes to move around the country. Limited access continued to certain areas near military bases and High Security Zones, defined as areas near military emplacements, camps, barracks, or checkpoints where civilians could not enter. Some observers claimed the High Security Zones were excessive and unfairly affected Tamil agricultural lands, particularly in Jaffna. The LTTE limited travel on the road connecting Jaffna to the rest of the country.²⁴

3.6.11 Claimants who fear persecution at the hands of the LTTE in LTTE dominated areas are able to relocate to Colombo, or other Government controlled areas and it would not normally be found to be unduly harsh for claimants to relocate in this way.

3.6.12 Caselaw.

Naillaiah [2002] UKIAT The IAT held that whilst the claimant had a real risk of persecution at the hands of the LTTE in his home area against which the Sri Lankan authorities could not protect him, it was not unduly harsh for him to relocate to Colombo.

Oppilamani [2004] EWCH 348 (Admin). The claimant feared reprisals from the LTTE because she joined and worked for the EPDP for a year and a half and because of her husband’s defection from the LTTE. The claimant assisted in promoting the EPDP by organising meetings, recruiting members and making pro-EPDP speeches. She was not considered to be a high-profile political opponent. Also it was concluded that, on the facts of the case, there was a sufficiency of protection.

Mylvaganam [2005] EWHC 98 (Admin). The claimant was found not to be a true high profile opposition activist to the LTTE. The claimant was a member of the SLFP and chief organiser in the Batticaloa district, a member of a human rights task force in 1998 and appointed as a member of Batticaloa General Hospital Committee in 1999. He contested elections in Batticaloa in 2000 on behalf of the SLFP. This case is fact specific but it demonstrates what the courts take into account when considering whether an individual has a high political profile.

PS [2004] CG 00297 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).

²³ COIS Sri Lanka COI Report Sept 2005 para 6.96 – 6.97

²⁴ COIS Sri Lanka COI Report Sept 2005 para 6.68

Sinnarasa [2005] EWHC 1126 (Admin). Although the High Court found that it was not necessarily just high profile individuals who may be targeted in Colombo, the detailed findings of the judgment nonetheless establish a challenging threshold for Karuna type cases. The high profile of the claimant's associates and the court's finding that she came "very close indeed to the borderline" of what could be rightly regarded as a clearly unfounded claim means that few claimants will establish that their association to the Karuna faction gives rise to a fear that is not clearly unfounded. The features of the claimant's account that took her just over the borderline were as follows:

- (i) she was an intelligence operative;
- (ii) she had associated herself with Colonel Karuna for a significant period of time, and that association could lead the majority LTTE to identify her as a close associate of Colonel Karuna and not simply someone caught up in the schism;
- (iii) she fled with a Brigade Commander or similarly high ranking official, who was undoubtedly high profile within the LTTE;
- (iv) there was evidence that she was being sought by the LTTE;
- (v) there was evidence that there was an increasingly insistent demand that she report to the LTTE for an interview
- (vi) there was an expert report

3.6.13 Conclusion. In addition to carefully establishing the claimants previous involvement with, and/or level of opposition to the mainstream LTTE, caseworkers also must take care to distinguish between claimants expressing fear of LTTE persecution on the grounds that (a) the claimant is regarded by the LTTE as a 'defector', 'traitor' or 'renegade'; (b) those who are political opponents of the LTTE; and (c) those closely associated with the internal LTTE schism as supporters of Colonel Karuna.

3.6.14 Low level supporters or members of a Tamil, or non-Tamil, political party opposed to the LTTE who have never had a previous association with the LTTE are unlikely to be the target of reprisals by the LTTE. Those whom the LTTE has on the objective evidence targeted in Colombo since the ceasefire have all been high profile opposition activists. In the event that the claimant did consider themselves at risk, the Sri Lankan Government are both willing and able to provide a sufficiency of protection. Applications under this category therefore are likely to be clearly unfounded and as such fall to be certified.

3.6.15 Prominent past supporters or members of Tamil political parties who have aligned themselves with the government against the LTTE and who have consciously and publicly opposed the LTTE are likely to attract the adverse interest from the LTTE in Colombo. In such circumstances the Sri Lankan Government are both willing and generally able to provide sufficient protection. Whilst claims in this category are likely to be refused, it is unlikely that the claims will fall to be certified as clearly unfounded. However, where an individual claimant is able to demonstrate that they are of such high political profile that they would be unable to obtain sufficient protection or move to another location within Sri Lanka, they should be granted asylum.

3.6.16 Former low level members or supporters of the LTTE who have now align themselves with the government against the LTTE, (or who are perceived by the LTTE to be opponents, whether or not they actually are) are unlikely to be the target of reprisals by the LTTE. There is no evidence that the LTTE pursue people who refuse to carry out low level ancillary activities (such as cooks, book keepers etc) for the mainstream LTTE. Those whom the LTTE has on the objective evidence targeted in Colombo since the ceasefire have all been high profile opposition activists. In the event that the claimant did consider themselves at risk, the Sri Lankan Government are both willing and able to provide a sufficiency of protection. Applications under this category therefore are likely to be clearly unfounded and as such fall to be certified.

3.6.17 In cases involving LTTE 'defectors', 'traitors' or 'renegades', caseworkers need to carefully establish which of these terms applies to the claimant. 'Defectors' who have assisted the Sri Lankan authorities at a strategic level (for example those who have aligned themselves with the Sri Lankan army military intelligence units) are at risk of being targeted by the LTTE in Colombo. In such circumstances the Sri Lankan Government are both willing and are generally able to provide sufficient protection. Whilst claims in this category are likely to be unfounded, it is unlikely that the claims will fall to be certified as clearly unfounded.

However, where an individual claimant is able to demonstrate that they are of such high political profile that they would be unable to obtain sufficient protection or move to another location within Sri Lanka, they should be granted asylum. If the claimant has never been an LTTE member and their actions do not involve leaving the LTTE and subsequently joining another organisation, or the claimant cannot demonstrate significant previous commitment to the LTTE or subsequent formal membership or ongoing and regular assistance to LTTE opposition groups or the Sri Lankan security forces, then the claimant's activities are unlikely to result in them being targeted by the LTTE in Colombo and such applications under this category therefore are likely to be clearly unfounded and as such fall to be certified. The terms 'traitor' or 'renegade' are used in relation to those persons who fear being attacked by the LTTE in Colombo because they have engaged in – or the LTTE think they have been engaged in – activity which is seen as disloyal to the LTTE. Those whom the LTTE have targeted in Colombo since the ceasefire have all been high profile activists. It is not the case that all those who have committed or are thought to have committed any "treacherous" act or acts damaging to the LTTE are at risk of being targeted. Claims made by former members of the LTTE who have merely provided information under duress or those refusing to carry out low level ancillary activities for the mainstream LTTE are therefore likely to be clearly unfounded and as such fall to be certified as such. However, where an individual claimant is able to demonstrate that they are an activist of such high profile that they would be unable to obtain sufficient protection or move to another location within Sri Lanka, they should be granted asylum.

3.6.18 Those who fear persecution by the LTTE because of their association to the Karuna faction are unlikely to establish a need for international protection unless the claimant's association was close and could lead the mainstream LTTE to identify them as a close associate of Colonel Karuna and not someone simply caught up in the schism. If a claimant did not have regular contact with the Karuna faction leaders, particularly after the divisions occurred, and their role was one that did not go beyond basic logistical support, then it is likely that they are not at risk. Few claimants therefore are likely to establish that their association to the Karuna faction gives rise to a fear that is not clearly unfounded. However, where an individual claimant is able to demonstrate that they were closely associated with Karuna that they would be unable to obtain sufficient protection or move to another location within Sri Lanka, they should be granted asylum.

3. 7. Fear of persecution by the Sri Lankan authorities.

3.7.1 Many claimants will claim asylum based on ill treatment amounting to persecution at the hands of the Sri Lankan authorities due to their past involvement with the LTTE or other political organisations opposed to the Government.

3.7.2 *Treatment.* An announcement was made on 22 February 2002 that the Sri Lankan Government and the Liberation Tigers of Tamil Eelam (LTTE) had signed an agreement on the cessation of hostilities. The agreement committed the parties to put an end to hostilities and to restore normalcy for all Sri Lankans. The February 2002 agreement between the Sri Lankan government and the LTTE required both parties to abstain from hostile acts against the civilian population, including such acts as torture, intimidation, abduction, extortion and harassment. The parties also agreed that search operations and arrests under the Prevention of Terrorism Act (PTA) should not be made. The LTTE opened political offices in government-held areas (under the terms of the cease-fire agreement LTTE members are able to engage in political activity in areas outside their control provided they are unarmed and out of military-style uniforms).²⁵

3.7.3 It was reported that the Sri Lankan Government continued to hold 38 Tamils under the Prevention of Terrorism Act (PTA) during 2004; however, no new arrests under the PTA occurred. The PTA, like the repealed Emergency Regulations, permitted warrant-less arrest and non-accountable detention. There were no reports of political killings or politically motivated disappearances at the hands of the security forces during the year. There were however credible reports that some police tortured individuals in custody.²⁶

²⁵ COIS Sri Lanka COI Report Sept 2005 para 4.82-8.83

²⁶ COIS Sri Lanka COI Report Sept 2005 para 6.104, 6.131-6.148

- 3.7.4 Sufficiency of protection.** The Human Rights Commission of Sri Lanka (HRC) was established by Act No. 21 of 1996 and is vested with monitoring, investigative and advisory powers in relation to human rights. It has been set up as a permanent national institution to investigate any infringement of a fundamental right declared and recognized by the Constitution and to grant appropriate relief. In June 2004, the HRC established a Torture Prevention Monitoring Unit to implement its 'zero tolerance' torture policy. The HRC provided extra training for officers assigned to this unit and established a policy of quick investigation for torture complaints. The HRC also assigned special teams to investigate deaths in police custody.²⁷
- 3.7.5** Special sections of the Attorney General's Office and the Criminal Investigation Unit also focus on torture complaints. During 2004, the units forwarded 44 cases for indictments, of which 11 resulted in indictments, with the remaining cases pending at year's end. There were two convictions from indictments in earlier years.²⁸ The use of torture is an offence carrying a mandatory seven years imprisonment and of a fine Rs. 10,000 [approx £56].²⁹ The Inter-Parliamentary Permanent Standing Committee and its Inter-Ministerial Working Group on Human Rights Issues also continued to track criminal investigations of torture.³⁰
- 3.7.6** NGOs have criticised the Sri Lankan Attorney General for deciding, in individual cases, not to file charges against police officers who have been alleged to have used torture. In other cases the same NGOs have praised the Attorney General when he has decided to file charges commenting that it indicates that the impunity enjoyed by some state officers who flout the law is now being challenged. NGOs have also made strong representations to the Inspector General of Police, Attorney General and other relevant state agencies to implement a witness protection programme. NGOs have said that although regrets are expressed over deaths, no positive attempt has been taken to introduce a witness protection programme and to provide resources for it and that under these circumstances victims of torture who take cases to trial are faced with serious danger. On the one hand they wish to have the perpetrators of torture punished. On the other hand they are afraid of jeopardising the life and freedom of their family members and also themselves. Many torture victims have relocated to other areas in search of security.³¹
- 3.7.7** Under fundamental rights' provisions in the Constitution, torture victims may file civil suit for compensation in the high courts or Supreme Court. Courts have granted awards of up to 1,000,000 rupees (approx £5,600).³²
- 3.7.8 Internal relocation.** Claimants with a well founded fear of persecution by the authorities would not be able to internally relocate to another part of the country controlled by the Sri Lankan government to escape any such risk.
- 3.7.9** However the LTTE has effective control on the ground in large sections of the north and east of the country and operates a parallel administration that includes schools, hospitals, courts, and police and other law enforcement personnel.³³ Claimants who fear persecution at the hands of the Sri Lankan government in areas controlled by the government are able to relocate to LTTE controlled areas and it would not normally be found to be unduly harsh for claimants to relocate in this way

3.7.10 Caselaw.

K [2003] UKIAT 00096, P [2003] UKIAT 000145 and V [2004] UKIAT 00012 clearly established in the cases that the peace process in Sri Lanka is well established and is being observed and as a result the situation and risk to Tamils is greatly changed. As stated in V, "it has for some time now been the case that there has been international acceptance of the appropriateness of return of failed asylum seekers, unless there are clear reasons for considering that they may be particularly at risk".

²⁷ COIS Sri Lanka COI Report Sept 2005 para 6.159, 6.162

²⁸ COIS Sri Lanka COI Report Sept 2005 para 6.174

²⁹ COIS Sri Lanka COI Report Sept 2005 para 6.193

³⁰ COIS Sri Lanka COI Report Sept 2005 para 6.174

³¹ COIS Sri Lanka COI Report Sept 2005 para 6.191- 6.195

³² COIS Sri Lanka COI Report Sept 2005 para 6.179, 6.186-6.187

³³ Freedom House "Freedom in the World 2005" Aug 2005

Thampibillai v The Netherlands [2004] ECHR 39. The European Court of Human Rights (ECtHR) said that in the current climate in Sri Lanka it is unlikely that a returning LTTE supporter will face a real risk of being subjected to ill-treatment by the State. "No round-ups and no large-scale and/or arbitrary arrests of Tamils have taken place and Tamils no longer require permission before travelling to certain areas ... persons who are arrested on suspicion of membership of, or involvement in, the LTTE are not subjected to ill-treatment and torture as has occurred in the past".

Venkadajalasarma v The Netherlands [2004] ECHR 40. The ECtHR confirmed its position with regard to the safety of returning LTTE supporters.

- 3.7.11 Conclusion.** Following the announcement of the cease-fire in February 2002, the Sri Lankan authorities have since de-proscribed the LTTE and suspended arrests made under the Prevention of Terrorism Act (PTA). The authorities in Sri Lanka will no longer be concerned with those individuals with past low-level support for the LTTE. Claims under this category are therefore likely to be clearly unfounded and as such fall to be certified as such.
- 3.7.12** Those individuals who may be of continuing interest to the authorities would be those wanted for serious offences. These cases will be exceptional, and will normally be high-profile members of the LTTE who are still active and influential, and wanted by the authorities. Although such individuals may face prosecution on return, there is no evidence to suggest that they would not be treated fairly and properly under Sri Lankan law. Claims made under this category are therefore likely to be clearly unfounded. Caseworkers should note that the LTTE have been responsible for numerous serious human rights abuses, some of which amount to war crimes. If it is accepted that a claimant was an active operational member or combatant for the LTTE and has been involved in such actions, then caseworkers should consider whether one of the Exclusion Clauses is applicable, although as previously indicated such claims are likely to be clearly unfounded and certification would be on the basis that the claim did not fall within the inclusion clauses of the 1951 UN Convention. Caseworkers should refer such cases to a Senior Caseworker in the first instance.
- 3.7.13** There is in general sufficient protection available to those claimants who express fear of rogue state officials after having made complaints to the Sri Lankan authorities with regard to, for example, the use of torture. Furthermore internal relocation is also an option where, in the particular circumstances of the claimant it is not considered unduly harsh for the victim to do so. The grant of asylum or Humanitarian Protection is unlikely therefore to be appropriate. Such claims should only be certified as clearly unfounded if internal relocation is clearly an option.
- 3. 8. Prison conditions**
- 3.8.1** Claimants 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.
- 3.8.2 Consideration.** It is reported that Prison conditions do not meet international standards; acute overcrowding and lack of sanitary facilities are the main causes. Women are held separately from men. In some cases, juveniles are not held separately from adults. Pre-trial detainees are not held separately from those convicted. The Government permit visits by independent human rights observers and the International Committee of the Red Cross (ICRC), which during 2004 conducted 60 visits to 22 permanent places of detention, including prisons and some police stations. During the same year, representatives from the national office of the HRC visited 142 police stations and 5 detention centres, while representatives from regional offices of the HRC visited 250 police stations and 19 detention centres.³⁴
- 3.8.3** Conditions also reportedly are poor in LTTE-run detention facilities. In 2004 the ICRC conducted 6 visits to 2 LTTE-controlled prison facilities, and 18 visits to 14 LTTE-operated police stations. Credible observers reported that conditions in these prisons were

³⁴ COIS Sri Lanka COI Report Sept 2005 para 5.32

acceptable, in that they were on a par with local standards. The ICRC has not had access to other places of detention in LTTE-controlled areas in the Vanni and the east.³⁵

3.8.4 Conclusion Whilst prison conditions in Sri Lanka are poor with acute overcrowding and lack of sanitary facilities being particular problems, conditions are unlikely to reach the Article 3 threshold. Therefore even where claimants can demonstrate a real risk of imprisonment on return to Sri Lanka a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health.

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 API on Discretionary Leave)

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 not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave.

4.3 Minors claiming in their own right

4.3.1 The policy on minors claiming in their own right is set out in the API on Children. Unaccompanied minors who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place.

4.3.2 Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, and who do not qualify for leave on any more favourable grounds, should be granted Discretionary Leave for a period of twelve months or until their 18th birthday, whichever is the shorter period

4.4 Medical treatment

4.4.1 Claimants 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 to be engaged.

4.4.2 In Sri Lanka, the traditional Western medical structure of general practitioners, specialists and hospitals with operating theatres and emergency units, co-exists with the traditional practice of ayurvedic (herbal) medicine. The country has its own National Health Service, which is available to everyone. In the Colombo area and one or two of the larger centres such as Kandy, there are many well-reputed hospitals, staffed by physicians, most of whom are very experienced and internationally trained. There is an extensive range of specialist care found in Colombo, both in the private and government sectors. Specialist care would include treating such conditions as cardiac, gastro-intestinal, dermatological, urological, orthopaedic and general surgery.³⁶

4.4.3 Most medications are available in Colombo, under various generic and company labels. The prices for medications bought in Sri Lanka range widely, but as a comparison, most drugs would be cheaper than in the United Kingdom for prescription and dispensing charges. On

³⁵ COIS Sri Lanka COI Report Sept 2005 para 5.36

³⁶ COIS Sri Lanka COI Report Sept 2005 para 5.43 – 5.48

the whole, medical care is affordable for the average person, and government hospitals generally charge a lesser fee than private hospitals.³⁷

- 4.4.4** It is reported that in addition to the National Health Service, there were 160 private medical institutions and 800 private dispensaries including family physicians in the country. Over 60 per cent of the population are reported to obtain medical treatment from private medical institutions, and a majority of them sought medical treatment through channelled services and family physicians.³⁸
- 4.4.5** The Article 3 threshold will not be reached in the great majority of medical cases and a grant of Discretionary Leave will usually not be appropriate. Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 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** 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.
- 5.2** On 31 December 2004 the forced return of persons to areas that had been directly affected by the tsunami were temporarily suspended. In the case of Sri Lanka, removals were temporarily suspended to the coastal areas of the north, east, south and south-west.
- 5.3** Following improvement in conditions in the tsunami affected areas, the temporary suspension of forced returns was ended on 10 November 2005 and the normal practice was resumed of taking forward all forced removals on an individual basis taking full account of any reason a person puts forward for not being removed.
- 5.4** Assistance is provided for those that wish to return voluntarily and permanently through the Voluntary Assisted Return and Reintegration Programme (VARRP) run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance. The programme was established in 2001, 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 should be advised to contact the IOM by telephone: 020 7233 0001 or by email: www.iomlondon.org.

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³⁷ COIS Sri Lanka COI Report Sept 2005 para 5.43 – 5.48

³⁸ COIS Sri Lanka COI Report Sept 2005 para 5.43 – 5.48

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