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This report serves the specific purpose of collating legally relevant information on conditions in countries of origin pertinent to the assessment of claims for asylum. It is not intended to be a general report on human rights conditions. The report is prepared within a specified time frame on the basis of publicly available documents as well as information provided by experts. All sources are cited and fully referenced.

This report is not, and does not purport to be, either exhaustive with regard to conditions in the country surveyed, or conclusive as to the merits of any particular claim to refugee status or asylum. Every effort has been made to compile information from reliable sources; users should refer to the full text of documents cited and assess the credibility, relevance and timeliness of source material with reference to the specific research concerns arising from individual applications.

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TABLE OF CONTENTS

List of Abbreviations

ACMC - All Ceylon Makkal Congress
BBS - Bodu Bala Sena
CHTU - Counter Human Trafficking Unit of Sri Lanka Bureau of Foreign Employment
CID - Criminal Investigation Department
CSD - Civil Security Department
CTF - Consultation Task Force
DIE - Department of Immigration and Emigration
EPDP - Eelam People's Democratic Party
FHH - Female Headed Households
GMRO - (General) Marriage Registration Ordinance
GoSL – Government of Sri Lanka
HSZ - High Security Zone
IDP - Internally displaced persons
IGP - Inspector-General of Police
JHU - Jathika Hela Urumaya
JVP - Janatha Vimukthi Peramuna
LTTE - Liberation Tigers of Tamil Eelam
MMDA - Muslim Marriages and Divorce Act
NCPA - National Child Protection Authority
NDF - New Democratic Front
OISL - OHCHR Investigation on Sri Lanka
OMP - Office on Missing Persons
PDVA - Prevention of Domestic Violence Act
PTA – Prevention of Terrorism Act
SIS - State Intelligence Service
SLA - Sri Lanka Army
SLAF - Sri Lanka Air Force
SLFP - Sri Lanka Freedom Party
SLMC - Sri Lanka Muslim Congress
SLN – Sri Lanka Navy
SLP - Sri Lankan Police
STF - Special Task Force
TID - Terrorism Investigation Division
TMVP - Tamil Makkal Viduthalai Pulikal
TNA - Tamil National Alliance
UNFGG - United National Front for Good Governance
UNP - United National Party
UPFA - United People's Freedom Alliance

1 Main Developments

1.1 Overview of major political developments since January 2013

1.1.1 January and August 2015 elections

In its annual report covering the year 2015, the international non-governmental organization Human Rights Watch (HRW) writes that "[e]lections in Sri Lanka brought about momentous changes after nearly a decade of increasingly autocratic rule" (HRW, 27 January 2016). The Colombo-based Centre for Monitoring Election Violence (CMEV), an independent and non-partisan organisation for monitoring election-related violence, describes the presidential elections in January 2015 as follows:

> "The January 2015 Presidential Election was significant in a number of respects. Following the passage of the 18th Amendment to the Constitution in October 2010 removing term limits on the presidency, it constituted the first election in which the incumbent sought a third term and was defeated in this bid." (CMEV, January 2015, p. 4)

The European Union Election Observation Mission (EU EOM) published a report in October 2015, giving the following overview of the elections during the year 2015:

> "The 17 August 2015 parliamentary elections followed the crucial presidential election held on 8 January 2015 which resulted in the victory of Maithripala Sirisena, the common opposition candidate of the New Democratic Front (NDF), against the then incumbent President Mahinda Rajapaksa of the Sri Lanka Freedom Party (SLFP). The victory of Mr Sirisena, former General Secretary of the SLFP, ended the 10-year rule of President Rajapaksa, and marked a significant transition in Sri Lankan politics while also giving rise to an extremely complex political scene." (EU EOM, 17 October 2015, p. 6)

The US-based non-governmental organization Freedom House provides the following information on the presidential election in its Freedom in the World 2016 report, covering the year 2015:

> "In the January 2015 presidential election, Rajapaksa suffered a surprise defeat, with his opponent, Sirisena, winning 51 percent of the vote; turnout was a record 82 percent. […]
>
> The longtime ruling-coalition practice of coopting opposition members of parliament and abusing state resources during election periods was challenged in late 2014, when a number of parties and prominent politicians defected from the UPFA [United People's Freedom Alliance] ahead of the 2015 presidential election. In late 2014, disparate opposition groups—including the UNP [United National Party], JVP [Janatha Vimukthi Peramuna], JHU [Jathika Hela Urumaya] and the Sri Lankan Muslim Congress—formed an alliance and selected a 'common opposition candidate,' Sirisena, a cabinet minister and former member of Rajapaksa's party. The JHU and the Muslim Congress had previously been members of Rajapaksa's ruling alliance." (Freedom House, 27 January 2016)

The Colombo-based Centre for Monitoring Election Violence (CMEV) describes the election campaign and related violence in the run up to the presidential election as follows:

> "The election campaign was fought against the backdrop of the populist authoritarianism and repression of the Rajapaksa regime – repression being most acute in the north where administration had come to be considerably militarized. Throughout the country, the space for media freedom and civil society activity, leave aside dissent, was shrunk to the point of extinction with the media often practicing self-censorship out of fear of retribution and civil society actors remaining silent for the same reason. […] As the election approached though, space opened up and civil society coalitions emerged to campaign for the abolition of the executive presidency and the restoration of democratic governance. The possibility of reform though hinged on the choice of a suitable challenger to the incumbent, in particular one from his majority Sinhala Buddhist constituency and party. The emergence of Mr. Sirisena in this role was a major fillip to these efforts and a considerable surprise to the Rajapaksa regime." (CMEV, January 2015, pp. 4-5)

> "By the end of election campaign period, CMEV reported a total of 543 incidents of election related violence and malpractices of which, 304 were categorized as Major Incidents involving 1 murder, 3 attempted murders, 3 grievous hurt, 1 hurt, 64 assaults, 32 threat and intimidation, 17 damage to property, 1 robbery, 11 arsons, 1 abduction, 11 bribery and 159 instances of the misuse of state resources. Minor incidents were recorded at 239. Most of the Major Incidents were reported from Jaffna (25), Kandy (24) and Kurunegala (23) districts. In 169 instances, the ruling UPFA was the perpetrator, while 51 complaints were received without identification of the party affiliation of the perpetrator." (CMEV, January 2015, p. 7)

The CMEV further reports that on the day of the election, it was able to observe 6,974 (56.63 per cent) polling centres. 222 incidents were recorded in relation to the polling centres whereas out of these 222 cases a "total 100 incidents were categorized as Major and 122 as Minor Incidents. The majority of Major Incidents were reported from Puttalam (11), Gampaha (10) and Kandy (9) Districts" (CMEV, January 2015, pp. 7-8). In its human rights report covering the year 2015, the US Department of State (USDOS) describes the presidential election of January 2015 as follows:

> "A presidential election was held January 8, and President Sirisena was sworn in on January 9. The election was observed by a wide range of domestic and international monitoring organizations. Voter turnout reached 81 percent, and the Commonwealth Observer Group reported voters were able to exercise their franchise freely and vote counting was transparent with results swiftly revealed to the public. Observers noted there was widespread abuse of state resources used for campaigning, consistent bias in state media toward the former government, and denial of access to venues for the opposition candidate." (USDOS, 13 April 2016, section 3)

The Bertelsmann Stiftung, a private operating non-profit foundation in Germany, gives insights into regional disparities concerning the turnout at the presidential elections in its Transformation Index (BTI) for 2016:

> "Among the Tamil minority, largely resident in the north, reservations about the Sri Lankan state remain, reflected in the 2015 presidential election; the 66% voter turnout in the northern Tamil-majority district of Jaffna was well short of the national rate of 81.5%. Anti-

> government protests in the north which were scheduled to take place after the presidential election were cancelled following Maithripala Sirisena's unexpected victory." (Bertelsmann Stiftung, 2016, p. 5)

A report from the European Parliament's Election Observation Delegation to the parliamentary Elections in Sri Lanka in 2015, consisting of a delegation of six members associated with the European Union Election Observation Mission (EU EOM), describes the events following Sirisena's victory in the presidential election in January 2015. According to the report, the newly elected president "formed an interim coalition government and appointed Ranil Wickremesinghe from the United National Party (UNP) as his Prime Minister." The report notes that "[t]he UNP had backed Sirisena in exchange for the post of prime minister for Ranil Wickremesinghe in case of victory." (European Parliament, 2015, p. 3). The final report of the European Union Election Observation Mission (EU EOM) described the developments after the presidential election as follows:

> "Following his election, President Sirisena became chairman of the SLFP and leader of the United People's Freedom Alliance (UPFA), which is led by the SLFP. However, he asked the leader of the United National Party (UNP), Ranil Wickremesinghe, to form a government. A minority government was formed comprising UNP members and allies as well as some representatives of the UPFA." (EU EOM, 17 October 2015, p. 6)

On 7 July 2015, the Interpreter, a blog operated by the Sydney-based think tank the Lowy Institute for International Policy, published a commentary by the International Crisis Group's (ICG) Sri Lanka senior analyst Alan Keenan stating that "[s]ince coming into power, he [Maithripala Sirisena] has moved away from Rajapaksa's narrative of Sinhala nationalism […] and returned power to the office of the prime minister and parliament". The same article notes however, that "[s]ix months after his stunning victory in Sri Lanka's presidential election, Maithripala Sirisena faces a renewed challenge from the man he ousted." (The Interpreter, 7 July 2015). The EU EOM describes the reforms of the new government and the challenges it faced in parliament, which finally led to the dissolution of parliament and early parliamentary elections:

> "In April the parliament approved the 19th Amendment to the Constitution, introducing changes to the political system which narrowed the powers of the president. A few months later the minority government was challenged by the strong UPFA parliamentary faction still backing Mr Rajapaksa. Fearing a no-confidence motion against the government, President Sirisena dissolved parliament on 26 June and called early elections. The UPFA entered the campaign divided between those members supporting Mr Rajapaksa and those who backed Mr Sirisena." (EU EOM, 17 October 2015, p. 6)

For further information on the 19th Amendment to the Constitution please see section 1.1.2 of this compilation (constitutional reforms).

In its annual report, Minority Rights Group International (MRG), a human rights organisation advocating for the rights on minority groups, also reported on the dissolution of Parliament and the parliamentary elections that followed:

> "In July, Sirisena dissolved parliament and called for a parliamentary election. Rajapakshe attempted to make a return to power by suggesting he would have to be appointed prime minister if his political party gained the largest number of seats in parliament. Despite a tense and closely fought, yet remarkably peaceful, election campaign, the opposition UNP secured 106 seats of the 225 available and its leader Ranil Wickremasinge, together with Sirisena, formed a 'national unity' government. In a significant and reconciliatory move, the new parliament appointed Rajavarothiam Sampanthan, leader of the Tamil Nationalist Alliance (TNA) – considered the political proxy of the Tamil Tigers during Sri Lanka's armed conflict – as opposition leader." (MRG, 12 July 2016, pp. 140 -141)

In its world report covering the year 2015, Freedom House notes a decline of harassment during the parliamentary election in August 2015:

> "Despite harassment of opposition politicians in the lead-up to the January 2015 election, the opposition candidate managed to triumph. Harassment of the opposition declined markedly for the August parliamentary polls. In the north and east, members of various Tamil political parties, who have faced frequent threats in the past, also faced less intimidation in 2015. In addition, Tamil civilians faced fewer hindrances in voting during both polls, in contrast to the 2010 elections. In what was described as an amicable gesture to the Tamil community by Sirisena, in early 2015 the newly elected president appointed a civilian governor in Northern Province, where Tamils comprise a majority; the new governor replaced a retired army commander." (Freedom House, 27 January 2016)

Reporting on the parliamentary elections on 17 August 2015, the above cited report from Freedom House gives the following overview of the election results:

> "In the August 2015 parliamentary elections, the UNP [United National Party] led a coalition, the National Front for Good Governance, to a modest victory, winning 106 seats, a 46-seat increase from the 2010 polls. The UPFA [United People's Freedom Alliance took 95 seats, a decline of 49, while the Tamil National Alliance (TNA), the largest party representing the ethnic minority, won 16 seats, an increase of 2. In August, the UNP and the SLFP [Sri Lanka Freedom Party] agreed to form a coalition government." (Freedom House, 27 January 2016)

In its human rights report covering the year 2015 the USDOS notes that "[t]he head of the Tamil National Alliance party, R. Sampanthan, was named leader of the opposition in the new parliament, the first Tamil politician in that position in 32 years." The report further states that "[t]he [parliamentary] elections were observed by a wide range of domestic, regional, and international monitoring groups, who concurred it was conducted in a fair and free manner with few reports of violence" (USDOS, 13 April 2016, section 3). According to the European Union Election Observation Mission's (EU EOM) final report on the parliamentary elections, which was published in October 2015, "[t]he 17 August parliamentary elections in Sri Lanka were well administered and offered voters a genuine choice from among a broad range of political alternatives." The report continues that "[w]hile the campaign rules were overly restrictive, these were, according to most interlocutors, the most peaceful and most efficiently conducted elections in the country's recent history" (EU EOM, 17 October 2015, p. 1). The

report further provides the following information on candidate registration, the campaigning environment and the abuse of state resources:

> "Candidate registration was inclusive. In total, 3,653 party candidates and 2,498 independent candidates contested the elections. A total of 35 political parties and alliances and over 200 independent groups submitted lists. Only four political parties/coalitions – the United People's Freedom Alliance (UPFA), the United National Party (UNP), the People's Liberation Front (JVP) and the Frontline Socialist Party – submitted lists in all 22 electoral districts. […]
>
> The campaign environment was positively assessed by most stakeholders as well as by EU EOM observers. A vibrant campaign was conducted, with activities organised mainly by candidates of the UNP, UPFA and to a lesser extent by the JVP. […] The electoral law provisions on campaigning are overly restrictive and thus not fully in line with international standards as they unduly limit freedom of campaigning. […] While abuse of state resources for campaign purposes remained significant, there were fewer instances compared to previous elections, according to interlocutors. Domestic observers reported that some 1,200 government officials ranging from executive-level officers to clerical staff were involved in campaigning. In addition there were reports of state vehicles and buildings being used to hold campaign activities, and numerous allegations of promotions and transfers of public officials." (EU EOM, 17 October 2015, pp. 2-3)

Summarising events and procedures on the Election Day itself, the report of EU EOM provides the following overview:

> "Election Day was peaceful despite some minor incidents and 35 arrests reported by the police. Voting took place in an orderly, efficient and transparent manner and the overall assessment of EU observers was 'very good' to 'good'. […]
>
> Voter turnout was 77.66 per cent. The United National Party received 46 per cent of votes while the United People's Freedom Alliance received 42 per cent. In nine out of 22 electoral districts the percentage of invalid votes was more than five per cent. In Vanni and Jaffna electoral districts (Northern Province) it was 9 and nearly 8 per cent respectively. According to EU EOM observers and interlocutors, the main reason was the lack of understanding of ballot-marking procedures and the confusing layout of the ballot papers. Most interlocutors realised rather too late in the process that there had been a serious lack of voter education prior to the elections." (EU EOM, 17 October 2015, p. 4)

1.1.2 Constitutional reforms

A report of the Office of the United Nations High Commissioner for Human Rights on Promoting Reconciliation, Accountability and Human Rights in Sri Lanka, published by the Human Rights Council (HRC) in September 2015, notes the following on constitutional reforms after the presidential elections in January 2015:

> "11. The presidential election of 8 January 2015 marked a watershed in the political environment in Sri Lanka. […]

> 12. The manifesto of the new Government included a 100-day programme of constitutional reform and other measures, which culminated in the passage of the nineteenth amendment to the Constitution limiting the powers of the executive presidency, re-introduced limits to presidential terms and restored the Constitutional Council, which makes recommendations on appointments to the judiciary and independent commissions." (HRC, 28 September 2015, p. 4)

In its human rights report, the US Department of State (USDOS) summarises constitutional reforms during the year 2015 as follows:

> "On April 28, parliament passed the 19th amendment to the constitution, a key component of the president's reform agenda. The amendment effectively rescinded the 18th amendment [from September 2010, remark ACCORD] - which, among other things, significantly increased executive influence over the judiciary - and reversed the centralization of decision-making authority under the executive presidency." (USDOS, 13 April 2016, section 1e)

> "In August the government attempted, but failed, to pass a 20th amendment to the constitution dealing with electoral reform prior to calling parliamentary elections. In the debate surrounding this amendment, ethnic-based minority parties complained its passage would disadvantage them due to the reduction or elimination of 'preferential voting,' which assigns seats in a given electoral district according to individual candidates who poll the greatest number of votes. They complained the mainstream parties' greater access to resources would unfairly disadvantage them." (USDOS, 13 April 2016, section 3)

The government of Sri Lanka refers to the 19th amendment of the constitution in a state report submitted to the United Nations Committee on the Elimination of Racial Discrimination (CERD), which was published in December 2015, in the following terms:

> "This important amendment, while repealing the 18th Amendment and building upon the essence of the 17th Amendment, serves to curtail Presidential powers, establish independent commissions overseeing a number of areas including the judiciary, police and human rights, and enshrines the right to access to information as a fundamental right." (Government of Sri Lanka, 7 December 2015, p. 7)

Asanga Welikala, a public law teaching fellow at the Edinburgh Law School and associate director of the Edinburgh Centre for Constitutional Law, wrote an analysis on the 19th amendment of the constitution on ConstitutionNet, a project which aims to support legislators, constitutional lawyers and other constitutional practitioners, created by the Sweden-based international NGO the International Institute for Democracy and Electoral Assistance (IDEA). Welikala notes that "[t]he Sri Lankan Parliament passed the Nineteenth Amendment to the Constitution Act on 28th April 2015, but due to the large number of committee stage amendments, it was certified into law by the Speaker only on 15th May" (ConstitutionNet, 26 May 2015). The article states that "[t]he Nineteenth Amendment has introduced a number of long-overdue reforms" such as to "restrict presidential discretions and strengthen the separation of powers by establishing more or less fixed presidential and parliamentary terms" and adding freedom of information to the Fundamental Rights Chapter (ConstitutionNet, 26

May 2015). According to Welikala, an important aspect of the 19th amendment is the establishment of the Constitutional Council and independent commissions, which is described in the following terms:

> "Perhaps the strongest feature of the Nineteenth Amendment is the de-politicisation framework that is established with the Constitutional Council and the independent commissions. This restores and adds to the Seventeenth Amendment framework that was repealed or weakened by the Eighteenth Amendment. The Constitutional Council has two functions: it recommends presidential appointments to the independent commissions and it approves presidential appointments to high posts such as superior court judges. […] As Presidents have refused to follow the Council's recommendations under the Seventeenth Amendment, it is now provided that if the President has not acted pursuant to recommendations, then such appointments are deemed made by operation of law after fourteen days. Independent commissions to oversee the public service, judiciary, the police, elections, and human rights are all restored. The bribery and corruption commission has been given constitutional standing and its powers have been enhanced. New commissions on audit and procurement have been introduced. These are all indubitably progressive institutional reforms; however, it remains to be seen whether they are robust enough to overcome inevitable resistance from vested interests to engender professionalism, independence, and capacity in the public sector, and to reshape a decrepit political culture with a high tolerance for authoritarianism and corruption." (ConstitutionNet, 26 May 2015)

In June 2016, the UN Human Rights Council (HRC) provides the following assessment of the 19th amendment of the Constitution in its annual report of the UN High Commissioner for Human Rights and the reports of the Office of the High Commissioner and the Secretary-General:

> "An early gain from the Government's first tranche of constitutional reform, the 19th amendment adopted in April 2015, has been the restoration of the Constitutional Council to recommend appointments to the senior judiciary and key independent institutions. This in turn has seen the appointment of reputed members to the Human Rights Commission of Sri Lanka. Although the Human Rights Commission still requires strengthening in terms of resources and staff, its newfound independence is already showing results with public statements and interventions on draft laws and issues such as the death penalty, police abuse, detention, and witness protection. The High Commissioner hopes that other Government bodies will give this important institution greater cooperation and respect, and involve it fully in all aspects of the transitional justice and constitutional reform process." (HRC, 28 June 2016, p. 4)

According to the annual report of Human Rights Watch (HRW) published in January 2016, "[i]n September [2015], the government announced that it had established a Constitutional Council which, in turn, will oversee appointments to the independent commissions" (HRW, 27 January 2016). The annual Freedom in the World 2016 report from Freedom House notes the following on the formation of independent commissions after the constitutional reforms of 2015:

> "The passage of the 19th Amendment in April and the appointment of independent commissions in the fall, including the National Human Rights Commission, represented important steps toward improving accountability mechanisms and reversing Rajapaksa's consolidation of executive power. However, some critics alleged that the amendment process was opaque and that its restrictions on executive power did not go far enough." (Freedom House, 27 January 2016)

A critical assessment of the 19th amendment was also provided in a report from August 2015 by the International Crisis Group (ICG), which writes that while "[t]he 28 April passage of the nineteenth amendment was a major political victory for Sirisena and a significant step toward rebuilding democracy and the rule of law in Sri Lanka", it did also involve "months of uncertainty and complicated negotiations, and emerged in a weaker form than most of its proponents had wanted" (ICG, 12 August 2015, p. 8).

According to Asanga Welikala's analysis of the reforms on ConstitutionNet, "[t]he drafting process of the Nineteenth Amendment was chaotic, sometimes fractious, and did not meet either its own deadlines or contemporary benchmarks of transparency and public consultation". The article also underlines that "[w]hile the recent reform process has balanced competing group interests within Parliament and government to a greater extent than in the 1940s, it nevertheless was an exercise in representative rather than participatory democracy", arguing that "[n]o effort was made even to share evolving documents with the public, let alone put in place a framework of public consultation, maintaining the elitist nature of Sri Lankan constitution-making" (ConstitutionNet, 26 May 2015). The decision-making process, and the criticism thereof, is further described in the following terms:

> "The struggle between the 'abolitionists' and the 'reformists' ended with the latter prevailing, because their view was more in line with what the opposition parliamentary majority was willing to support. […] The 1978 Constitution after the Nineteenth Amendment remains strongly presidential as the Prime Minister's role has been enhanced only marginally, and even this will depend on the President's willingness to co-operate with the PM. The new limits placed on presidential power, however, effect a constitutional regime change, and if well implemented, would ensure that the landmark presidential election of January 2015 was not a mere change of government for the continuation of business as usual. […] While retaining the presidential character of the constitution and the state, the Nineteenth Amendment has established a more even structural balance between the three organs of government and a thoroughgoing institutional framework for good governance." (ConstitutionNet, 26 May 2015)

The Constitution of Sri Lanka as amended on the 15 May 2015 (19th amendment) can be accessed via the following link:

- Constitution of the Democratic Socialist Republic of Sri Lanka, Revised Edition 2015, amended as of 15 May 2015 (published by the Parliament Secretariat) https://www.parliament.lk/files/pdf/constitution.pdf

The Act constituting the 19th amendment of the Constitution can be accessed via the following link:

- Nineteenth Amendment to the Constitution [An Act to Amend the Constitution of the Democratic Socialist Republic of Sri Lanka], certified on 15 May 2015 (published by Gazette of the Democratic Socialist Republic of Sri Lanka, 15 May 2015) https://www.parliament.lk/files/pdf/constitution/19th-amendment-act.pdf

A report published by the Human Rights Council (HRC) in June 2016 describes the continuing constitutional reform process, beyond the 19th amendment of the constitution, as follows:

> "7. The National Unity Government formed in September 2015 among a broad spectrum of political parties, including the Sri Lankan Freedom Party (SLFP) and the United People's Party (UNP), has consolidated its position, creating a political environment conducive to reforms. But the full promise of governance reform, transitional justice and economic revival has yet to be delivered and risks stalling or dissipating. Negotiating party politics and power sharing within the coalition has proved complex as the Government seeks to build and retain the two-thirds majority in parliament necessary to reform the Constitution. This is manifest in an extensive Cabinet with overlapping ministerial mandates, and mixed messages on crucial issues such as accountability.
>
> 8. Significant momentum has been achieved in the process of constitutional reform. On 10 March 2016, Parliament adopted a resolution establishing a constitutional assembly to draft and approve a new constitution or amendments by the end of 2016, which would then be put to a referendum in 2017. The drafting process has benefitted from an inclusive public consultation process overseen by a Public Representations Committee that received submissions and held district level consultations in the first quarter of 2016." (HRC, 28 June 2016, p. 3)

The above described resolution for the establishment of the Constitutional Assembly which is responsible for the drafting and approving of constitutional reforms notes the following:

> "1. This Parliament Resolves that - There shall be a Committee which shall have the powers of a Committee of the whole Parliament consisting of all Members of Parliament, for the purpose of deliberating, and seeking the views and advice of the People, on a Constitution for Sri Lanka, and preparing a draft of a Constitution Bill for the consideration of Parliament in the exercise of its powers under Article 75 of the Constitution." (Resolution for the appointment of the Constitutional Assembly, 9 March 2016, p. 1)

The resolution also indicates that "[t]he proceedings of the Constitutional Assembly shall be open to the public" (Resolution for the appointment of the Constitutional Assembly, 9 March 2016, p. 2) and that media staff of the Constitutional Assembly "shall set up and maintain a website and use other appropriate media, towards giving due publicity to the process for the adoption of the Constitution for Sri Lanka" (Resolution for the appointment of the Constitutional Assembly, 9 March 2016, p. 1). It further provides information on the structure, proceedings and decision-making processes of the Constitutional Assembly and can be accessed via the following link:

- Resolution for the appointment of the Constitutional Assembly, 9 March 2016 http://www.parliament.lk/files/documents_news/ca-motion/motion-en.pdf

As noted by the HRC report from June 2016 cited above, the public consultation process was managed by a Public Representations Committee (HRC, 28 June 2016, p. 3). This Public Representations Committee published a report of the consultation process in May 2016. The report describes the mandate of the Public Representations Committee and its public consultation process in the following terms:

> "The mandate was for the Committee to call for and receive written representations from the public and also receive conduct public sittings in various parts of the country to receive oral representations and submit our final report to the Constitutional Assembly within three months together with our recommendations." (Public Representations Committee on Constitutional Reform, May 2016, p. v)

> "According to our records, over 2.500 persons/organizations have appeared before us and made oral and written representations. Further, over 800 representations were received via e-mail, 150 by way of fax messages, 60 by telephone messages and 700 representations by post or handed over at the office." (Public Representations Committee on Constitutional Reform, May 2016, p. vii)

According to its report, the Public Representations Committee on Constitutional Reform made two major observations during the consultation process: "one was the desire expressed by people for strengthening and deepening democracy and the other was the desire for peace and reconciliation" (Public Representations Committee on Constitutional Reform, May 2016, p. 2). The full report, which summarises people's submissions for constitutional reform, covering aspects such as religion, devolution or fundamental and language rights, can be accessed via the following link:

- Public Representations Committee on Constitutional Reform: Report on Public Representations on Constitutional Reform, May 2016
  http://www.yourconstitution.lk/PRCRpt/PRC_english_report-A4.pdf

In a report about the reform process from May 2016, the International Crisis Group (ICG) also refers to the establishment of the constitutional assembly stating that "[r]ecognising the narrow window for deep reform and its own potentially short life, the UNP-SLFP coalition has transformed parliament into a 'constitutional assembly'" (ICG, 18 May 2016, p. 18). Referring to interviews conducted with a researcher as well as lawyers in Colombo, the ICG provides the following assessment on the reform process:

> "The government hopes to complete this constitution before the politically divisive, UNHRC-mandated truth and accountability processes begin in earnest ahead of the March 2017 UNHRC session. This fast track approach, however, particularly with respect to devolution, 'runs up against the fact of deeply entrenched [Sinhala] nationalism built up over years, which is unlikely to shift quickly'. The attempt to inaugurate the constitutional assembly on 9 January, Sirisena's first anniversary as president, was delayed by objections from the pro-Rajapaksa joint opposition. A compromise resolution passed two months later omitted the aims of the new constitution, including 'resolution of the national issue' (i.e. Tamil demands for autonomy), and removed reference to a 'new' constitution. The changes could complicate the plan to develop a reform package to be approved as a whole

by parliament and in a referendum. Sinhala nationalist politicians believe piecemeal amendments increase their prospect to defeat greater devolution to provinces and other reconciliation-related changes. The government-proposed drafting process remained largely unchanged, however, and backers argue parliamentary consensus was worth the delay." (ICG, 18 May 2016, p. 19)

The same report outlines the perceived goals of constitutional reforms and the challenges faced in achieving them:

> "Officials cite three main goals for the constitution: to abolish the executive presidency, adopt a new electoral system and settle the ethnic question by strengthening provincial devolution [Footnote 90: Other major changes are possible, including a bill of rights and strengthening of constitutional council independence. Crisis Group interviews, government lawyers, Colombo, January 2016]. On the first two, there is some degree of consensus, though detailed agreement may be difficult. On devolution, there is little agreement – and over a half-century of failed attempts and broken promises. The government has not presented a draft or campaigned for a particular set of proposals, unlike the last attempt to write a new constitution, in the late 1990s. The aim appears to be to work out an elite consensus between president, prime minister and TNA [Tamil National Alliance] leaders and with ex-President Kumaratunga's involvement. The key challenge will be to bring along the parties, particularly Sirisena's fractured SLFP [Sri Lanka Freedom party], but also many in the UNP [United National Party], in an increasingly polarised political context. It will be hard to persuade the SLFP and UNP on reforms that substantially satisfy longstanding Tamil demands for meaningful self-rule in the areas of the north and east where they have for centuries been the majority." (ICG, 18 May 2016, p. 20)

1.2 Overview of the present government structures

1.2.1 Government structures and political system

The Constitution outlines that "[t]he Republic of Sri Lanka is a unitary state" (Constitution, amended as of 15 May 2015, Article 2); its national languages are Sinhala and Tamil (Constitution, amended as of 15 May 2015, Article 19). Sri Lanka consists of 9 provinces, namely the Central, Eastern, North Central, Northern, North Western, Sabaragamuwa, Southern, Uva and Western Province (Constitution, amended as of 15 May 2015, Eighth Schedule). These provinces are represented by elected provincial councils (Constitution, amended as of 15 May 2015, Article 154A (1) (2)). The London-based Economist Intelligence Unit (EIU), which provides forecasting and advisory services through research and analysis, describes the powers of local governments in the provinces in an article from September 2016 as follows:

> "Under the 13th amendment to the constitution, passed in 1987, extensive powers are required to be devolved to nine directly elected provincial councils with a view to meeting Tamil demands for greater autonomy; however, the amendment has not yet been fully implemented. The United People's Freedom Alliance (UPFA) has majorities in all the provincial councils except the Northern Provincial Council." (EIU, 5 December 2016a)

According to the Constitution, "the executive power of the People, including the defence of Sri Lanka, shall be exercised by the President of the Republic elected by the People" (Constitution, amended as of 15 May 2015, Article 4 (b)). The President of Sri Lanka therefore holds the office of Head of the State, Head of the Executive and of the Government, and the Commander-in-Chief of the Armed Forces (Constitution, amended as of 15 May 2015, Article 30(1)). In December 2016, the EIU points out that after the 19th amendment to the constitution was passed in April 2015, "the president is elected for a term of five years by universal suffrage, and may dissolve parliament only after four and a half years have passed since the start of the first session of the current parliament" and that he "may serve a maximum of two terms" (EIU, 5 December 2016a). The president also appoints the Cabinet in consultation with the Prime Minister (CIA, last updated 10 November 2016). Covering the year 2015, the annual Freedom of the World report from Freedom House outlines that "[t]he prime minister heads the leading party in Parliament, but has limited authority." In its forecast published in September 2016, the EIU predicts that "[t]he government will implement legislative changes, which will, over time, reduce the powers of the president. The post of the prime minister will consequently be strengthened" (EIU, 5 December 2016b).

Legislative power in Sri Lanka is vested in the Parliament (Constitution, amended as of 15 May 2015, Article 4 (a)). The country has a unicameral Parliament consisting of 225-members who are elected for five-year terms (EIU, 12 July 2016). The Inter-Parliamentary Union (IPU), an international organization of parliaments promoting parliamentary dialogue and cooperation worldwide, describes the voting system as a proportional representation system with preferential voting:

> "Proportional representation system with preferential voting for 196 seats. Each elector selects specific party or independent group and three of its candidates. Parties polling less than one eighth of vote in each constituency are not entitled for seat allocation. The remaining 29 'national' seats are distributed to political parties in proportion to their overall share of the votes received in the election." (IPU, undated (a))

An IPU report about women in Parliament during the year 2015 states the following about Sri Lanka's proportion of women before and after the parliamentary elections in August 2015:

> "Political parties in Sri Lanka were encouraged to ensure that at least 30 per cent of their electoral lists were made up of women; that advice went largely unheeded. Even though they promised to empower women, the two leading political parties included fewer than 20 women in their nomination lists. The number of elected women decreased from 12 to 11 (4.9%)." (IPU, 2016, p. 9)

For information on presidential elections of January 2015 and the parliamentary elections held in August 2015 see section 1.1.1 of this compilation.

The constitution notes that "the judicial power of the People shall be exercised by Parliament through courts, tribunals and institutions created and established, or recognized, by the Constitution, or created and established by law" (Constitution, amended as of 15 May 2015, Article 4 (c)). The World Factbook notes that Sri Lanka's legal system represents a mix of

Roman-Dutch civil law, English common law, and Jaffna Tamil customary law. The Supreme Court of the Republic is the highest court in Sri Lanka and has the exclusive jurisdiction over reviewing legislation. It consists of a chief of justice, who is appointed by the president, and ten justices also assigned by the president in consultation with the chief of justice. Subordinate courts are the "Court of Appeals, High Courts, Magistrate's Courts, municipal and primary courts" (CIA, last updated 10 November 2016).

Sri Lanka's governmental news portal News.lk notes that according to the 19th amendment of the constitution, the Sri Lankan government introduced the Constitutional Council, whose first meeting took place on the 3rd of July 2015. The Constitutional Council "consists of Speaker, Prime Minister, Opposition Leader, four parliamentarians and three non-parliamentary members" and it "is the body that will appoint members to the independent commissions" (News.lk, 4 July 2015). These Commissions are listed in the Constitution under the Schedule of Article 41B ("Council to recommend appointments") as follows:

> "(a) The Election Commission. (b) The Public Service Commission. (c) The National Police Commission. (d) The Audit Service Commission. (e) The Human Rights Commission of Sri Lanka. (f) The Commission to Investigate Allegations of Bribery or Corruption. (g) The Finance Commission. (h) The Delimitation Commission. (i) The National Procurement Commission." (Constitution, amended as of 15 May 2015, Article 41B, Schedule)

For further information on the 19th amendment of the Constitution see section 1.1.2 of this compilation.

1.2.2 Overview of main political parties

Freedom House writes in its Freedom of the World 2016 report, covering the year 2015, that "[a] range of political parties, some of which explicitly represent the interests of ethnic and religious minority groups, are able to operate freely and contest elections" (Freedom House, 27 January 2016). The European Union Election Observation Mission (EU EOM) notes the following about political parties in Sri Lanka in its final report on the parliamentary elections in August 2015:

> "Sri Lankan politics have in recent decades been dominated by the competition between the SLFP [Sri Lanka Freedom Party] and the UNP [United National Party]. There are more than 60 political parties registered in Sri Lanka, the majority of them small. Political alliances are common. The two main parties formed pre-election coalitions with a number of small parties to reach a parliamentary majority." (EU EOM, 17 October 2015, p. 6)

After the parliamentary elections in August 2015, the news agency Reuters reports that "Sirisena's Sri Lanka Freedom Party (SLFP) and Wickremesinghe's United National Party (UNP), which together account for 85 percent of the 225-member parliament, have agreed to form a national unity government for two years" (Reuters, 3 September 2015). In July 2016, the Economist Intelligence Unit (EIU), the business information arm of the London-based media company Economist Group, also states that "[s]ince the August 2015 parliamentary election, the political system has been characterised by the coalition between the United National Party (UNP) and the Sri Lanka Freedom Party (SLFP), which have historically been rivals" (EIU, 12 July

2016). The same analysis by the EIU provides the following information regarding opposition parties:

> "The Tamil National Alliance (TNA) is the largest opposition party but will, in practice, side with the government on many policy issues. The TNA will be keen to maintain its political capital and focus on the demands of the Tamil community. This means that a left-wing party, the Janatha Vimukthi Peramuna, may take over the role of the main opposition party." (EIU, 12 July 2016)

The German non-profit think tank Bertelsmann Stiftung notes the following about the main political parties and party organisation in Sri Lanka during the time period from 1 February 2013 to 31 January 2015:

> "The significant change of recent years has been the gradual erasure of differences in policy and support bases between the two major parties, the United National Party (UNP) and the Sri Lanka Freedom Party (SLFP). The numerous points of intersection between the two major parties has exposed them as patronage-based groups relying on allegiance to their leaders. There is little contrast in terms of social policy and both parties are socially rooted in a Sinhalese Buddhist base. However, there is polarization between the two major parties, on the one hand and, on the other, the ethnic minority parties with whom they form alliances of convenience. One positive move came in January 2015 with the formation of the National Executive Committee which is tasked with advising the president and which includes representatives from every major political party. Overall, party organization is undemocratic and centers on personalities and patronage. Party branches generally become active at election time, when they mobilize voters." (Bertelsmann Stiftung, 2016, pp. 9-10)

The main political parties and their respective alliances are described below. No list of the distribution of seats in the eighth Parliament, as elected in the parliamentary elections in August 2015, could be found on the official website of the Parliament of Sri Lanka. Information on the allocation of seats was therefore obtained through publications from the European Union Election Observation Mission (EU EOM), the Inter-Parliamentary Union (IPU), Freedom House and media reports.

United National Party (UNP) and the United National Front for Good Governance (UNFGG)

The International Crisis Group (ICG) writes in a report from May 2016 that the United National Party (UNP) is "the traditional centre-right party, headed by Prime Minister Ranil Wickremesinghe" (ICG, 18 May 2016, p. 35). According to the Sri Lanka country information page of the website of the Inter-Parliamentary Union (IPU), the UNP holds 106 seats in Parliament since the last parliamentary elections in August 2015. The European Union Election Observation Mission (EU EOM) notes that the UNP obtained 5,098,916 votes, which amounts to 45.66 per cent in its report on the last parliamentary elections published in October 2015 (EU EOM, 17 October 2015, p. 45). Reporting on the parliamentary elections in August 2015, the BBC states that "[t]he UNP doubled its number of seats in parliament to 106, while Mr

Rajapaksa's United People Freedom Alliance took 95. The result gives the UNP enough seats to form a coalition with its allies" (BBC News, 18 August 2015).

Information on the coalition of the UNP with other parties is provided by the final report of the European Union Election Observation Mission:

> "The UNP formed the United National Front for Good Governance (UNFGG), a broad coalition consisting of five parties. Its main partners were the Tamil Progressive Alliance (TPA), the coalition of parties that represents mainly the Indian Tamil community, the main Muslim parties SLMC [Sri Lanka Muslim Congress] and ACMC [All Ceylon Makkal Congress], and the JHU [Jathika Hela Urumaya]. The UNFGG was joined also by several prominent SLFP [Sri Lanka Freedom Party] members of parliament who decided to contest the elections under the UNP ticket. The UNP, led by Prime Minister Ranil Wickremesinghe, is seen as more liberal and pro-market-oriented than the SLFP." (EU EOM, 17 October 2015, p. 7)

The World Encyclopedia of Political Systems and Parties, which describes governments and parties of nations worldwide and was published in its 4th edition in 2006, describes the foundation, policy and membership of the UNP as follows:

> "The United National Party (UNP) was a coalition founded before the election of 1947. Its base was the National Congress (Jathika Sangamaya-1919) and other minor organizations such as the Sinhala Maha Sabha (SMS; Great Council of Sinhalese) and the Ceylon Muslim League. It is a conservative party. The UNP is an umbrella party that was in power for nearly 31 years between 1947 and 1994. The elephant is its symbol. […]
>
> In terms of economic policy, the UNP is in favor of laissez-faire rather than welfare measures. Before 1977 it was committed to a mixed economy with emphasis on agriculture, private-sector development, and foreign investors. Ideologically, the UNP is the neoliberal party in Sri Lanka. It is similar to the Republican Party in the United States and the Conservative Party in the United Kingdom. […]
>
> The membership of the UNP is drawn from a multiethnic and multireligious background. Up to 1977 the membership of the UNP was composed of the urban middle class and the rural landed aristocracy. Since the mid-1970s the UNP has widened its electoral base by appealing to the lower-caste voters and the poorer sections of society." (World Encyclopedia of Political Systems and Parties, 2006, p. 1258)

In a query response about the United National Party (UNP) from November 2014, the Immigration and Refugee Board of Canada (IRB) describes the UNP in the following terms:

> "Sources report that the UNP was founded in 1946 (PHW 2014, 1354; FES Nov. 2008, 26). […] PHW [Political Handbook of the World] 2014 indicates that since Sri Lanka's first parliamentary election in 1947 following independence, 'political power has oscillated between the moderate and generally pro-Western United National Party (UNP) and the ... SLFP,' which has emphasized Buddhism and 'democratic socialism' (ibid.). The 2008 FES [Friedrich-Ebert-Stiftung] report similarly indicates that the UNP and SLFP have 'successively held power in Sri Lanka since independence in 1948' (FES Nov. 2008, 6).

> Sources describe the UNP as a 'moderate' and 'democratic socialist' party (PHW 2014, 1354), or as a 'conservative' party that has adopted a 'moderate' stance on communal issues, and that is largely supported by the Sinhalese (Sagar 2009, 551). […]
>
> Sources report that the UNP draws its support mainly from urban populations (De Votta 2010, 123; Shastri 2004, 241), in the south and west of the island (ibid.)." (IRB, 18 November 2014)

In July 2015, the Sri Lankan news network News First reports about the presentation of the UNP's party manifesto prior to the parliamentary elections in August 2015 which "has been titled the Five points programme to create a new country in 60 months" with these five points being based around "growing the economy, fighting corruption, ensuring freedom for all, investing in infrastructure and improving the education system" (News First, 23 July 2015).

Sri Lanka Freedom Party (SLFP) and the United People's Freedom Alliance (UPFA)

The International Crisis Group (ICG) describes the SLFP in a report from May 2016 as "the main left-of-centre party and constituent of the UPFA, headed by Mahinda Rajapaksa until January 2015 and now by President Maithripala Sirisena" (ICG, 18 May 2016, p. 35). The book Political Parties of the World, published in 2009 in its 7th edition, provides the following overview of the SLFP:

> "Founded in 1951, the SLFP campaigned for the attainment of republican status for Sri Lanka prior to the adoption of the 1972 constitution. With a democratic socialist orientation, the party advocated a non-aligned foreign policy, industrial development in both the state and private sectors, and safeguards for national minorities." (Political Parties of the World, 2009, p. 550)

The above cited book states that "[u]ntil June 2006 one family led the party throughout its history", referring to its first leader S.W.R.D. Bandaranaike who was "the party's founder and first Prime Minister from 1956 until his assassination in September 1959". He was followed by his widow Sirimavo Bandaranaike in 1960 who "became the world's first woman Prime Minister (when the Prime Minister was head of government)" and his daughter Chandrika Bandaranaike Kumaratunga in 1994. In late 2005, Kumaratunga was president of Sri Lanka, but the Supreme Court had ruled that her second term in that position would end a year earlier than anticipated, in December 2005. At this stage she "had effectively lost control of the SLFP to her Prime Minister Mahinda Rajapaske, who was elected president in November. In June 2006 Rajapakse was elected leader of the SLFP unopposed" (Political Parties of the World, 2009, p. 550).

GlobalSecurity.org, a US-based website covering military and security issues, writes that "[i]n January 2004, the SLFP and the JVP formed a political grouping known as the United People's Freedom Alliance (UPFA)" (GlobalSecurity.org, page last modified 12 January 2016). The book Political Parties of the World also notes that "[i]n January 2004 the SLFP formed an electoral pact with the Marxist and Sinhala nationalist Janata Vimukthi Peramuna (JVP) dubbed the United People's Freedom Alliance (UPFA)" (Political Parties of the World, 2009, p. 550).

According to the Inter-Parliamentary Union, the United People's Freedom Alliance (UPFA) won 95 seats in the last parliamentary elections in August 2015 (IPU, undated (b)). The EU Election Observation Mission noted that 4,732,664 people voted for the UPFA in these elections, which represents 42.38 per cent of the votes (EU EOM, 17 October 2015, p. 45). The same report provides the following description of the UPFA in 2015, the year of the presidential and the parliamentary elections:

> "The UPFA coalition comprises several parties led by the SLFP. President Sirisena, as SLFP chairman, became leader of the UPFA shortly after the presidential election. The UPFA was significantly weakened because its main coalition partners, the Jathika Hela Urumaya (JHU), the Buddhist Sinhala nationalist party, the Sri Lanka Muslim Congress (SLMC) and the All Ceylon Muslim Congress (ACMC) joined the UNP coalition prior to the parliamentary elections. The most important partners of the SLFP in the current UPFA coalition are the Ceylon Workers' Congress, traditionally supported by Sri Lankan Tamils of Indian origin, and the National Freedom Front, the splinter party from the leftist JVP. The leading SLFP party draws its support mainly from the majority Sinhala community." (EU EOM, 17 October 2015, p. 7)

In an article from August 2015, the BBC writes that "[a]lthough Mr Rajapaksa and Mr Sirisena both belong to the UPFA, the two men are rivals and lead opposing factions in the UPFA" (BBC News, 18 August 2015). The International Crisis Group (ICG) outlines the UPFA leadership in August 2015 as follows:

> "Despite having formal leadership of the SLFP and UPFA, Sirisena's struggle to gain effective control deepened after passage of the nineteenth amendment. […] Sirisena's chief obstacle was stronger-than-expected support for Mahinda Rajapaksa within the party. Within weeks of the [parliamentary] election, supporters began campaigning for Mahindato to be the UPFA candidate for prime minister in the parliamentary elections." (ICG, 12 August 2015, p. 10)

Sri Lanka Senior Analyst of the ICG, Alan Keenan, describes the rivalry between Sirisena and Rajapaksain in an analysis for ConstitutionNet, which belongs to the Lowy Institute for International Policy, an independent, nonpartisan think tank based in Sydney, as follows:

> "Within days of his victory in January, Sirisena took over leadership of the SLFP from Rajapaksa, and the former also gained leadership of the SLFP-led coalition, the United People's Freedom Alliance (UPFA). But despite substantial concessions, he never gained complete control over either group, most of whom see Rajapaksa as their only chance to prevent a landslide UNP victory in August. Sirisena has struggled to hold the party and alliance together, while blocking Rajapaksa from returning to parliament with either the SLFP or UPFA. The announcement on 3 July that the UPFA had decided to nominate Rajapaksa as a candidate shocked and disappointed Sirisena's supporters, and appeared to signal Sirisena's capitulation in his battle with Rajapaksa." (The Interpreter, 7 July 2015)

Freedom House provides the following summary of the outcome of the Parliamentary elections in August 2015 and subsequently the outcome of the UPFA's internal conflicts in its Freedom of the World 2016 report:

> "Though Rajapaksa was able to win a seat in parliamentary elections held in August, the opposition United National Party (UNP) captured the most seats and formed a government with the backing of smaller parties on a platform of undertaking a wide range of electoral and governance-related reforms. Ranil Wickremesinghe, long-time leader of the UNP, again became prime minister, and a new cabinet was drawn from a range of coalition partners, including the SLFP, one of the parties that comprised the UPFA" (Freedom House, 27 January 2016)

Illankai Tamil Arasu Kadchi (ITAK) and the Tamil National Alliance (TNA)

The European Union Election Observation Mission provides the following information on the Tamil National Alliance (TNA) and the Illankai Tamil Arasu Kadchi (ITAK) in its final report about the parliamentary election in August 2015:

> "The TNA – an alliance of four Tamil parties that fielded candidates under the name of Illankai Tamil Arasu Kachchi (ITAK) – represents the Tamil ethnic minority in Sri Lanka and is the dominant political force in the Northern province. It also has significant support in the Eastern province, mainly in Batticaloa district. The TNA won 80 per cent of the votes in the Northern provincial council in 2013. The alliance supported Mr Sirisena during the presidential election." (EU EOM, 17 October 2015, p. 7)

In the sources available, the TNA and the Illankai Tamil Arasu Kachchi (ITAK) are both described as the main opposition party in Sri Lanka. According to an article by the German edition of the newspaper Le Monde Diplomatique from July 2014, the Illankai Tamil Arasu Kachchi, is one of the leading groups within the TNA (Le Monde Diplomatique, 10 July 2014). The Website of the Parliament of Sri Lanka does not list the TNA, but the Illankai Tamil Arasu Kadchi (ITAK) as one of six parties represented in the eighth parliament of the Democratic Social Republic of Sri Lanka, but does not provide information on the number of seats held by ITAK (Parliament of Sri Lanka, undated (a)). The Inter-Parliamentary Union (IPU) writes that the Lanka Tamil State Party (Ilankai Tamil Arasu Kadchi, ITAK) has won 16 seats in the parliamentary elections in August 2015 (IPU, undated (b)). In its Freedom in the World 2016 report covering the year 2015, Freedom House states that "the Tamil National Alliance (TNA), the largest party representing the ethnic minority, won 16 seats" (Freedom House, 27 January 2016). The International Crisis Group (ICG) describes the Tamil National Alliance in a report from May 2016 in the following terms:

> "TNA Tamil National Alliance: led by veteran politician R. Sampanthan, a coalition of four parties: Illankai Tamil Arasu Kachchi (ITAK), Eelam People's Liberation Front (EPRLF), PLOTE (People's Liberation Organisation of Tamil Eelam) and TELO (Tamil Eelam Liberation Organisation). Originally formed in 2001 under pressure from the LTTE to support its claims to leadership of the Tamil people, it currently supports a political solution under a federal system in a united Sri Lanka." (ICG, 18 May 2016, p. 35)

The website of the Parliament of Sri Lanka lists the above mentioned politician R. Sampanthan as a member of the Illankai Tamil Arasu Kadchi (ITAK) and as leader of the opposition in parliament (Parliament of Sri Lanka, undated (b)). The US Department of State (USDOS) also

writes in its annual human rights report covering the year 2015, that "[t]he head of the Tamil National Alliance party, R. Sampanthan, was named leader of the opposition in the new parliament, the first Tamil politician in that position in 32 years." (USDOS, 13 April 2016, section 3). In September 2015, the news agency Reuters provides the following information on R. Sampanthan and his party:

> "Rajavarothiam Sampanthan, 83, the head of Tamil National Alliance, is the first ethnic minority opposition leader since 1983, when Tamil legislators resigned en masse to protest against a law that compelled them to denounce separatism. Parliament's speaker accepted Sampanthan as the main opposition leader after loyalists to former president Mahinda Rajapaksa were divided on whether they should support the government or go into opposition. […] Sampanthan is a lawyer who was first elected to the parliament in 1977. His party, the former political proxy of the Tamil Tiger insurgents, backed Maithripala Sirisena in the January presidential elections, defeating Rajapaksa, who ordered the offensive that ended the Tamil insurgency in 2009." (Reuters, 3 September 2015)

People's Liberation Front (JVP)

According to the 2009 edition of the book Political Parties of the World, the JVP is a "Singhalese-based Marxist party" (Political Parties of the World, 2009, p. 549). In a report from May 2016, the International Crisis Group (ICG) describes the JVP as a "leftist Sinhala nationalist party that led violent insurgencies in 1971 and 1987-1990 but since the late 1990s has pursued an electoral path" (ICG, 18 May 2016, p. 35). The 2006 edition of the World Encyclopedia of Political Systems and Parties describes the JVP in the following terms:

> "The JVP was initially a breakaway group from the pro- China Communist Party in the mid-1960s. The JVP presented itself as a revolutionary movement based among the Sinhalese-Buddhist rural youth of the country. During this period the main objective of the JVP was to capture political power by means of revolutionary violence and establish an egalitarian Socialist government. Therefore, the JVP in April 1971 and between 1987 and 1989 unsuccessfully staged armed insurrections. Frustration among educated rural youth due to socioeconomic grievances was a major cause behind the development of the JVP as a youth political force. It is a political movement that moved from tactics of violence to elections in Sri Lanka" (World Encyclopedia of Political Systems and Parties, 2006, p. 1259)

In October 2015, the European Union Election Observation Mission (EU EOM) provides the following information in its final report on the parliamentary elections held in August 2015:

> "The JVP is a leftist nationalist party that established itself as an alternative to those disillusioned with mainstream politics. In the 2010 presidential election, the JVP formed a coalition with the UNP to support General Sarath Fonseka. Prior to the 2010 parliamentary elections it formed the Democratic National Alliance with the Democratic Party (DP) of General Fonseka. The JVP had six MPs in the outgoing parliament and, like its former ally the DP, contested the 2015 elections separately." (EU EOM, 17 October 2015, p.7)

According to the Inter-Parliamentary Union (IPU) the JVP hold 6 seats in the 8th Sri Lankan Parliament formed after the elections in August 2015 (IPU, undated (b)). The EU EOM notes in

its final report on the parliamentary elections from October 2015 that the People's Liberation Front gained 544,154 votes which represents 4.87 per cent (EU EOM, 17 October 2015, p. 45).

Eelam People's Democratic Party (EPDP)

In the 2009 edition of Political Parties of the World, the EPDP is described as a "Tamil regionalist party" which was "[f]ormed in 1995" and was "formerly the Eelavar Democratic Front (EDF, 1988-94)". It is further noted that "[b]y 1998 the EPDP had earned the enmity of the separatist Liberation Tigers of Tamil Eelam (LTTE) by defying the latter's call to boycott elections" (Political Parties of the World, 2009, p. 549). In May 2016, the International Crisis Group (ICG) describes the Eelam People's Democratic Party (EPDP) as a "former Tamil militant group" which supported the UPFA in the parliamentary elections of August 2015 (ICG, 18 May 2016, p. 35). According to the IPU, the EPDP holds one seat in parliament since the elections in August 2015 (IPU, undated (b)). The EU EOM notes that that EPDP gained 33,481 votes, representing 0.30 per cent (EU EOM, 17 October 2015, p. 45).

A report of the Office of the United Nations High Commissioner for Human Rights Investigation on Sri Lanka (OISL) published in September 2015, which was mandated to investigate the period between February 2002 to October 2011, describes the Eelam People's Democratic Party's (EPDP) political as well as its paramilitary activities:

> "148. The EPDP emerged in 1990 from a plethora of Tamil groups and is still active to this day, headed by Douglas Devananda. With the Government's support, EPDP became more politically orientated and won a number of parliamentary seats in the 1994 elections, becoming well established in the Jaffna district. Devananda himself held Ministerial positions on a number of occasions under Presidents Kumaratanga and Rajapaksa.
>
> 149. The paramilitary wing of EPDP was reportedly involved in tit-for-tat killings and other acts of violence. Towards the end of the conflict in 2009, EPDP was frequently cited as operating inside the closed military-run IDP camps. The freedom of movement that EPDP enjoyed in the camps clearly indicated official approval of their presence and activity." (OHCHR, 16 September 2015, p. 33)

The Immigration and Refugee Board of Canada (IRB) provides the following information on the EPDP's paramilitary activities in an older query response from February 2012:

> "In a 5 January 2012 interview with the Research Directorate, a professor at the S. Rajaratnam School of International Studies (RSIS) at Nanyang Technological University in Singapore, who is also the head of the school's Centre for Political Violence and Terrorism Research, indicated that the EPDP dissolved its paramilitary group after the defeat of the Liberation Tigers of Tamil Eelam (LTTE) in May 2009. However, 2011 sources said that the EPDP still had a 'paramilitary presence in the north' (Daily Mirror 14 Sept. 2011) or an [translation] 'armed wing' (OSAR 22 Sept. 2011, 17). […] In addition, during a 17 January 2012 telephone interview with the Research Directorate, an adjunct professor of Asian Studies at Temple University said that the EPDP is still a paramilitary group." (IRB, 8 February 2012)

In a query response from April 2015, which looks at relocation options during the period 2014 until March 2015, the IRB writes that "[s]ources report that paramilitary groups such as the Eelam People's Democratic Party (EPDP) maintain close ties with government forces (ibid. 5; Professor of political science 10 Mar. 2015)" (IRB, 8 April 2015). The US Department of State (USDOS) refers to the EPDP and paramilitary activities in its Human Rights report 2015 which covers the year 2014 in the following terms:

> "There were persistent reports of close ties between progovernment paramilitary groups such as the Eelam People's Democratic Party (EPDP) and government security forces. Whereas during the war these groups served more of a military function, often working in coordination with security forces, in the postwar environment they increasingly took on the characteristics of criminal gangs as they sought to solidify their territory and revenue sources. […]
>
> There were persistent reports that the EPDP, led by Minister of Traditional Industries and Small Enterprise Development Douglas Devananda, engaged in intimidation, extortion, corruption, and violence against civilians in the Tamil-dominated northern district of Jaffna. Reports throughout the year especially focused on the role of EPDP members in issuing threats to opposition Tamil politicians or community members engaged in human rights cases that could bring disrepute on the government." (USDOS, 25 June 2015, section 1a)
>
> "Pro-government paramilitary groups and gangs affiliated with political parties inhibited freedom of expression, particularly in the north. Members of the EPDP were reportedly involved in harassment and intimidation of journalists in Jaffna. The EPDP increasingly used public protests outside of opposition news outlets as an intimidation tactic to promote self-censorship. Throughout the year EPDP protests in Jaffna focused on the Jaffna Thinakkural newspaper for its strong anti-EPDP stance." (USDOS, 25 June 2015, section 2a)

The USDOS human rights report published in April 2016 covering the year 2015, does not contain any information of the EPDP or paramilitary activities.

Sri Lanka Muslim Congress (SLMC)

In the 2009 edition of Political Parties of the World it is noted that "[t]he SLMC was formed under the leadership of M.H.M. Ashraff in 1981 to represent the Tamil –speaking Muslim population of the Eastern province and was organised as an all-island party in 1986" (Political Parties of the World, 2009). Minority Rights Group International (MRG), a human rights organisation, advocating for the rights of minorities, describes the SLMC as follows:

> "The formation of the Sri Lanka Muslim Congress (SLMC) in the 1980s enabled Muslims to adopt a distinct political profile. The main demand of the SLMC – in the face of Tamil separatist demands for merger of the north and east – has been the creation of a separate regional council for Muslims in the east. The devolution proposals put forward by the PA government after it came to power in late 1994 were welcomed by the SLMC, but there was little progress with these proposals. After the cease-fire between the government and LTTE in 2002, the Muslims expressed concerns that their own rights will be undermined by the Tamils of the Eastern regions.

> Though the SLMC held powerful political positions and thanks to Sri Lanka's proportional representative system of election was able to play kingmaker with new goverments, in recent years the Muslim party has lost its stature. The mysterious death of SLMC leader M H M Ashroff in a helicopter crash in 2000 left the party divided." (MRG, undated)

In December 2014, prior to the presidential elections in January 2015, the Australian public broadcaster ABC reported that the SLMC "has quit the government and pledged support to the opposition, in a move seen as the biggest setback yet to president Mahinda Rajapakse's re-election bid". According to the ABC, "[t]he Sri Lanka Muslim Congress (SLMC) leader Rauf Hakeem also announced his own resignation as justice minister and said he would now work for the victory of the opposition candidate, Maithripala Sirisena, in the January 8 election" (ABC, 28 December 2014).

Concerning the parliamentary elections in August 2015, the International Crisis Group (ICG) reports that the SLMC was part of the UNP coalition called the United National Front for Good Governance (UNFGG) (ICG, 18 May 2016, p. 35). According to the IPU, the SLMC won one seat in Parliament (IPU, undated (b)). In an article from September 2015, the Colombo Telegraph, which describes itself as a public interest website run by a group of exiled journalists who report about Sri Lankan matters, provides the following account of the SLMC and its performance during the parliamentary election in August 2015:

> "The recently concluded election must have taught a very good lesson to Sri Lanka Muslim Congress (SLMC) since it faced a devastating defeat as the first time in its history of nearly three decades. The party could secure only one seat in the districts where it contested in its own symbol, tree. The one seat was won in Batticaloa district where SLMC was born. The organisation was formed as a non-political civil movement by late MHM Ashraff, late Ahmed Lebbei, former Batticaloa local council chairman, and a few other well-wishers in 1981 in Kattankudy. Later in 1986, it was declared as a political party and recognised by the Election Commissioner in 1988. It contested its first parliament election in 1989." (Colombo Telegraph, 14 September 2015)

1.3 Status of the post-conflict reconciliation

1.3.1 Accountability

In March 2011, the UN Secretary-General Ban Ki-moon appointed a panel of experts "[i]n order to understand the accountability obligations arising from the last stages of the war" (UN Secretary General, 31 March 2011, p. i). The Country Report on Human Rights Practices 2014 of the US Department of State (USDOS) summarises the report as follows:

> "In 2011 a panel of experts appointed by UN Secretary-General Ban Ki-moon published a report stating there were credible allegations of serious violations of international humanitarian law and international human rights law by the government, including large-scale shelling of no-fire zones; systematic shelling of hospitals and other civilian targets; and summary execution, rape, and torture of those in the conflict zone in 2009 as the conflict came to an end. The report also highlighted a number of credible allegations against the LTTE, including using civilians as a strategic buffer, using forced labor (including

> children), and committing summary executions of civilians attempting to flee the conflict zone. The report estimated there could have been as many as 40,000 civilian deaths, including victims on both sides of the conflict. Government officials issued statements strongly criticizing the report's findings and opposing the report's recommendations but refused to respond formally to the United Nations. In October the government reiterated its rejection of the panel's findings. At year's end there was still no progress on the panel's recommendations." (USDOS, 25 June 2015, section 5; see also UN Secretary General, 31 March 2011)

The above cited USDOS human rights report covering the year 2014 further noted that the government of Sri Lanka established the Lessons Learnt and Reconciliation Commission (LLRC) in 2010 which is described as follows:

> "In 2010 the government established the Lessons Learnt and Reconciliation Commission (LLRC), a presidential body mandated to inquire into the breakdown of the cease-fire with the LTTE. The commission provided its report to the president in 2011, and it was subsequently tabled in Parliament. […]
>
> Many international and national observers criticized the LLRC report for inadequately addressing accountability for alleged war crimes reportedly committed by the government and the LTTE during the final months of the conflict and for exonerating the government of any wrongdoing." (USDOS, 25 June 2015, section 5)

According to the UK Foreign and Commonwealth Office's (FCO) Human Rights and Democracy Report, "[i]nternational focus Sri Lanka intensified during 2014". Covering the year 2014, the report notes that "[o]n 24 February, the Office of the United Nations High Commissioner for Human Rights (OHCHR) published a report on reconciliation and accountability in Sri Lanka" (FCO, 12 March 2015). Looking at the implementation of recommendations from the Lessons Learnt and Reconciliation Commission (LLRC) and progress in accountability issues, this report of the OHCHR to the Human Rights Council (HRC) from February 2014, states that "[t]he Government has not responded to the offers of technical assistance made by the High Commissioner and the special procedures". It further argues that "new evidence continues to emerge on the events that took place in the final stages of the armed conflict" and recommends "the establishment of an independent, international inquiry mechanism, which would contribute to establishing the truth where domestic inquiry mechanisms have failed" (HRC, 24 February 2014, p. 1).

In its human rights report covering the year 2014, the USDOS also notes that "[t]he UNHRC passed resolution 25/1 in March, to promote 'reconciliation, accountability and human rights in Sri Lanka,' and asked the OHCHR to begin a comprehensive investigation" (USDOS, 25 June 2015, section 5). The report further describes an oral update on the situation by the UN High Commissioner for Human Rights in September 2014:

> "In September, UN high commissioner for human rights Zeid Ra'ad Al Hussein's oral update to the UNHRC reiterated the OHCHR's request for government cooperation with the investigation; asked the government to 'initiate a comprehensive truth seeking process'; and urged it to 'end the climate of intimidation, threat and harassment against civil society

> actors advocating for justice and human rights.' […] At year's end there were nine outstanding requests for visits to the country from UN special procedures mandate holders" (USDOS, 25 June 2015, section 5).

The HRC resolution 25/1 provided the mandate for the establishment of the OHCHR Investigation on Sri Lanka (OISL) (OHCHR, 16 September 2015, p. 7). OISL represents "a special investigation team established within OHCHR in Geneva by the then High Commissioner for Human Rights, Navi Pillay", which "began its work from 1 July 2014, and its core seven-member staff became fully operational by mid-August". The timeframe of the investigation covers February 2002 to October 2011, but "[t]he report also takes into account contextual and other relevant information that falls outside this timeframe but allows a better understanding of events." (OHCHR, 16 September 2015, pp. 7-8). OISL published the results of its investigations in the annual report of the OHCHR to the Human Rights Council (HRC) in September 2015. This report notes that "[t]he greatest obstacle to OISL work was the absence of cooperation and undermining of the investigation by the former Government". According to the report "the Government at all times sought to undermine the investigation by calling into question its objectivity, professionalism and integrity" (OHCHR, 16 September 2015, pp. 10-11).
The report also refers to the presidential elections in 2015 and describes the cooperation of the new government in the following terms:

> "9. The Government which took office after Presidential elections in January 2015 did not change its stance on cooperation with the investigation, nor admit the investigation team to the country, but it engaged more constructively with the High Commissioner and OHCHR. It also took some important steps which have had a positive impact on the human rights situation.
>
> 10. The new Government has also made commitments related to accountability for the violations allegedly committed during the last few months of the conflict and to certain high profile cases. However, the patterns of violations documented in this report, and the impunity which the perpetrators have continued to enjoy, highlight the need for far-reaching reforms, particularly with regard to the security forces and judicial apparatus, as well as the need for concerted political will to bring about profound changes with regard to the protection of human rights." (OHCHR, 16 September 2015, p. 6)

In its conclusions, the OHCHR Investigation on Sri Lanka (OISL) provides the following information:

> "1269. While egregious violations occurred on a large scale during the last phase of the armed conflict, this report has also described the persistence of serious human rights violations, abuses and related crimes that have impacted tens of thousands of individuals as well as whole communities – Sinhalese, Tamil and Muslim - not only during the period covered by the OISL's mandate, but also over past decades. These include extensive and endemic patterns of extrajudicial killings, enforced disappearances, abductions, unlawful arrests and arbitrary detention, torture and sexual violence committed with impunity by the Government forces over many years, as well as by paramilitary organisations linked to them. They also include the multiple unlawful killings, indiscriminate suicide bombings and

claymore mine attacks by the LTTE which killed and maimed many civilians, and the recruitment of children and their use in hostilities by the LTTE and paramilitary groups.

1270. Most importantly, many of the structures responsible for the violations and crimes remain in place, ready to be reactivated when necessary as well as to prevent any progress in terms of addressing accountability. Indeed, OISL believes that there must be profound institutional changes to end the decades of repressive and persecutory attitudes, practices and structures to prevent their recurrence." (OHCHR, 16 September 2015, pp. 245-246)

Among its 39 recommendations including issues concerning institutional reforms, justice and reparations as well as Sri Lanka's Prevention of Terrorism Act (PTA) (see section 1.3.2 of this compilation) the report proposes the establishment of a special court, combining international and domestic elements:

"20. Adopt specific legislation establishing an ad hoc hybrid special court, integrating international judges, prosecutors, lawyers and investigators, mandated to try war crimes and crimes against humanity, including sexual crimes and crimes committed against children, with its own independent investigative and prosecuting organ, defence office, and witness and victims protection programme. Resource the court so that it can effectively try those responsible." (OHCHR, 16 September 2015, p. 250)

Describing developments in relation to accountability during the year 2015, Human Rights Watch (HRW) refers to the impact of the OHCHR Investigation on Sri Lanka (OISL) in its annual report:

"Based on the OHCHR report, the Human Rights Council, with Sri Lanka's acquiescence, adopted a consensus resolution that recommended establishing a special court 'integrating international judges, prosecutors, lawyers and investigators' with an independent Sri Lankan investigative and prosecuting body. The resolution was left with the Sri Lankan government to work out the details for this body, including the role and number of the tribunal's foreign judges and prosecutors. The government has since turned to civil society groups from across the country for their input on this and a resolution-endorsed truth and reconciliation commission.

Some key undertakings in the resolution include the establishment of a dedicated office on enforced disappearances; a truth, justice, and reconciliation commission; and an office on reparations. The government also released two sets of presidential commission reports on human rights violations, which included reports that had been completed, but not made public in May 2009. In November, the government began planning public consultations throughout the country as an initial step towards the establishment of these offices.

In November, the UN Working Group on Enforced and Involuntary Disappearances visited Sri Lanka at the invitation of the government. The group noted the almost complete lack of accountability for disappearances and the lack of sustained efforts to uncover the truth about what happened to the victims. The group also expressed concern that some of the people they had met with on their trip were subsequently visited by members of the security forces and were questioned about their meeting with the group.

> In May, the government appointed as its new army chief, a senior officer whose division was implicated in serious human rights abuses. Maj. Gen. Jagath Dias led the Army's 57th Division during the last two years of the civil war, and his promotion created concerns that the new government, like its predecessor, would shield senior military personnel from accountability." (HRW, 27 January 2016)

For further information on enforced disappearances see section 2.2.4 of this compilation.

The above-described consensus resolution from October 2015 states that it "[w]elcomes the recognition by the Government of Sri Lanka that accountability is essential to uphold the rule of law" and that it "affirms that a credible justice process should include independent judicial and prosecutorial institutions" (HRC, 14 October 2015, p. 4). The resolution can be accessed via the following link:

- HRC - UN Human Rights Council: Resolution adopted by the Human Rights Council on 1 October 2015. Promoting reconciliation, accountability and human rights in Sri Lanka [A/HRC/RES/30/1], 14 October 2015
  http://www.un.org/ga/search/view_doc.asp?symbol=a/hrc/res/30/1

Verité Research, a think tank providing strategic analysis and advice to decision-makers and opinion-formers in Asia, describes Resolution 30/1 in the following terms:

> "In September 2015, Sri Lanka co-sponsored Resolution 30/1 at the 30th Session of the United Nations Human Rights Council (UNHRC). In doing so, the Sri Lankan government committed to a range of measures dealing with human rights, accountability and transitional justice. The endorsement of the Resolution represents a marked shift in Sri Lanka's engagement with the Council - from confrontation under the former government, to consensus and cooperation. Resolution 30/1 has since come to denote the main features of Sri Lanka's transitional justice agenda, particularly with regard to accountability mechanisms for abuses suffered by victims of the conflict. It contains 36 distinct commitments that fall into five broad thematic categories: 1. Transitional justice and reconciliation 2. Rights and rule of law 3. Security and demilitarisation 4. Power sharing 5. International engagement" (Verité Research, June 2016, p. 3)

In its human rights report covering the year 2015, the US Department of State (USDOS) summarises Resolution 30/1 from October in the following terms:

> "The government and 26 other governments cosponsored the resolution. The resolution highlighted the need for: devolution of political authority; a comprehensive approach to dealing with the past, incorporating the full range of judicial and nonjudicial measures; broad consultations in the creation of transitional justice mechanisms; a review of the witness and victim protection law; repealing the PTA [Prevention of Terrorism Act]; signing and ratifying the International Convention for the Protection of All Persons from Enforced Disappearances; criminalizing enforced disappearances; issuing certificates of absence to families of missing persons as a temporary relief measure; and continued land returns. The resolution also affirmed the importance of participation in a judicial mechanism, including the special counsel's office, of commonwealth and other foreign judges, defense lawyers,

> and authorized prosecutors and investigators. It also asked the UN high commissioner for human rights to provide technical assistance to the government. The resolution mandates an oral report from the OHCHR in June 2016 and a written report in March 2017." (USDOS, 13 April 2016, section 5)

In an oral update published by the Human Rights Council in June 2016, the Office of the High Commissioner of Human Rights (OHCHR) provides the following information on the implementation of Resolution 30/1:

> "35. Overall, the Human Rights Council should be encouraged thus far by the steps that the Government of Sri Lanka has taken to implement some of the key commitments made in Resolution 30/1, and the consultations and preparations now underway to further elaborate and design the transitional justice mechanisms. The restoration of the Constitutional Council, an independent Human Rights Commission and the ratification of the Disappearances Convention (CED) are important achievements that will leave a legacy for the future. Once established, the new Office of Missing Persons will hopefully provide at least a form of immediate redress for the families of the disappeared. Nonetheless, the establishment of full transitional justice mechanisms will be needed to provide a comprehensive response to past human rights violations and ensure that they do not reccur.
>
> 36. More rapid and sustained progress could have been made on other issues, such as the release of land and detainees and the revision of the PTA [Prevention of Terrorism Act] and witness protection laws, which would build confidence with the minority community. The early momentum established in investigating emblematic cases must be sustained, as early successful prosecutions would mark a turning point from the impunity of the past. Continuing allegations of arbitrary arrest, torture and sexual violence, as well as more general military surveillance and harassment, must be swiftly addressed, and the structures and institutional culture that promoted those practices be dismantled, to show there will be no tolerance for practices of the past." (HRC, 28 June 2016, pp. 8-9)

The same report notes that "overall progress in setting up structures that would allow for the design and establishment of the different transitional justice components has been hesitant and slow" (HRC, 28 June 2016, p. 6). It further provides the following summary:

> "23. Progress has been hampered by a lack of clarity of responsibilities between various overlapping ministries and institutions. Further, the lack of an overall, comprehensive transitional justice strategy raises questions about how the different transitional justice mechanisms will link together. In November 2015, a Prime Minister's Action Group was established to provide overall political coordination among the different ministries involved. This is to be supported by a dedicated Secretariat for the Coordination of the Reconciliation Mechanisms (SCRM), the recent appointment to which of a Secretary-General is very much welcomed. Nevertheless, it still needs to further strengthen institutional capacity and dedicated expertise." (HRC, 28 June 2016, p. 6)

A press release from the Secretariat for the Coordination of the Reconciliation Mechanisms (SCRM) published in August 2016, which confirms the appointment of the Secretary General of

the SCRM, notes that "[t]he SCRM is the apex body created by cabinet in December 2015 to coordinate all reconciliation related activities in Sri Lanka" and that it "is established under the Prime Minister's Office and the Secretary General reports directly to the Honourable Prime Minister and through him H.E. the President" (SCRM, 25 August 2016). In February 2016, the SCRM released an address by Foreign Minister Mangala Samaraweera on the launch of a Consultations on Reconciliation Mechanisms describing the consultation process as follows:

> "We have appointed eleven independent eminent citizens to the Consultation Task Force to lead the consultations process that will happen both through written consultations and in face-to-face meetings in all 25 districts. The Consultation Task Force will review and analyse the people's input from across the island and will present the Government with a report that will also be made public, which will be used to make the final decision on the shape and form of the reconciliation mechanisms." (SCRM, 15 February 2016, p. 4)

The OHCHR report to the HRC from June 2016 takes a note of the above mentioned Task Force, providing the following information on consultation processes:

> "25. In January 2016, the Government appointed an 11-member Task Force formed by prominent members of civil society mandated to conduct the national consultation process. Consultations were launched online in February, with the Task Force setting up a mechanism to receive written submissions. Focus group discussions and direct consultations with stakeholders were launched in June, and will extend to provincial and district levels. It would be important that the process of consulting the various constituencies enters a new phase of direct interactions, and that those participating in the consultations are not subject to harassment or intimidation. The High Commissioner emphasizes the need to include the voices of victims abroad and encourages further outreach in the diaspora.
>
> 26. A parallel fast-track consultation process was conducted in May 2016 with respect to the proposed Office of the Missing Persons that has been prioritized by the Government." (HRC, 28 June 2016, p. 7)

In December 2016, the UN Committee Against Torture (CAT) refers to the accountability process in its concluding observations as follows:

> "13. Bearing in mind the findings of the OISL that the Sri Lankan security forces committed widespread or systematic torture, enforced disappearances, and other serious human rights violations during and in the aftermath of the internal conflict, the Committee is seriously concerned at the failure of the State party to carry out an institutional reform of the security sector. In this regard, the Committee was alarmed by the presence of the Chief of National Intelligence, Sisira Mendis, as part of the Sri Lankan delegation, since he was the Deputy Inspector General of the Criminal Investigations Department (CID) from March 2008 to June 2009. […]
>
> 15. While welcoming the State party's commitment to address the widespread violations that occurred during and immediately after the internal conflict by co-sponsoring the Human Rights Council Resolution 30/1 on promoting reconciliation, accountability and

> human rights in Sri Lanka, the Committee notes that the State party has only just completed a process of national consultations and has not yet established institutions called for in that resolution, particularly a Judicial Mechanism with a Special Counsel, as well as a Commission for Truth, Justice, Reconciliation and Non-recurrence and an Office for Reparations." (CAT, 7 December 2016, pp. 4-5)

For further information on developments in regard to the Office on Missing Persons see section 2.2.4 of this compilation.

The June 2016 OHCHR report to the HRC underlines another issue in regard to accountability by noting that "[a] key question remains the participation of international judges, prosecutors, investigators and lawyers in a judicial mechanism" (HRC, 28 June 2016, p.8). The report further provides the following statement on international participation:

> "The High Commissioner remains convinced that international participation in the accountability mechanisms would be a necessary guarantee for the independence and impartiality of the process in the eyes of victims, as Sri Lanka's judicial institutions currently lack the credibility needed to gain their trust. It is also important to keep in mind the magnitude and complexity of the international crimes alleged, which the OHCHR investigation found could amount to war crimes and crimes against humanity." (HRC, 28 June 2016, p. 8)

In July 2016, the newspaper Colombo Telegraph reports that the President Sirisena "who has been adamant against any international participation in an accountability probe on war crimes […] reiterated his stand at an event held in Panadura". The president is quoted as stating that "As long as I am the President of this country, I will not allow for any international courts, international judges and international organisations to interfere with the internal affairs of Sri Lanka and the judiciary". The Colombo Telegraph notes that Sirisena has made this declaration "just days after United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein underscored the importance of bringing in international judges, prosecutors, investigators and lawyers into the judicial mechanism to probe war crimes." (Colombo Telegraph, 9 July 2016)

The June 2016 OHCHR report further refers to challenges in regard to the protection of witnesses and provides the following account of the situation:

> "20. A major constraint remains the lack of a viable system for the protection of victims and witnesses. The new Government adopted a long pending law in February 2015, but this legislation has shortcomings that the High Commissioner has highlighted in previous reports. The Government committed in Resolution 30/1 to further review the law, although this has yet to occur. Meanwhile, a Victim and Witness Protection Authority has been appointed under the law since January 2016, although it has suffered from the departure of its first chairperson and the deployment of his replacement on another assignment overseas. Clearly the strengthening of an effective witness protection system, that is fit for the purpose of international crimes and that has the confidence of the people, will be essential before witnesses can have confidence to come forward and transitional justice mechanisms be considered credible.

> 21. The High Commissioner strongly urges the Government to review and amend the Assistance to and Protection of Victims of Crime and Witnesses Act of 2015 in order to incorporate better safeguards for the independence and effectiveness of the victim and witness protection program in line with international standards." (HRC, 28 June 2016, p. 6)

The Assistance to and Protection of Victims of Crime and Witnesses Act, which was passed in Parliament on 19 February 2015 and was subsequently enacted into law in March 2015 is available via the following link:

- Assistance to and Protection of Victims of Crime and Witnesses Act [An act to provide for the setting out of rights and entitlements of victims of crime and witnesses and the protection and promotion of such rights and entitlements [...]],certified on 7 March 2015 (published by Gazette of the Democratic Socialist Republic of Sri Lanka, 13 March 2015) http://www.parliament.lk/uploads/acts/gbills/english/5971.pdf

In June 2016, Amnesty International (AI) published a report, which includes further information on the establishment of accountability mechanisms. The report can be accessed via the following link:

- AI - Amnesty International: Sri Lanka: Making the rights choices; Establishing effective mechanisms to deliver justice, truth and reparation to victims [ASA 37/4902/2016], 8 November 2016 (available at ecoi.net) http://www.ecoi.net/file_upload/1226_1479112062_asa3749022016english.pdf

1.3.2 Prevention of Terrorism Act (PTA) and emergency legislation

Amnesty International (AI) provides the following information on emergency legislation and the Prevention of Terrorism Act (PTA) in a briefing from October 2014, submitted to the United Nations Human Rights Committee ahead of its examination of Sri Lanka's fifth periodic report on its implementation of the International Covenant on Civil and Political Rights (ICCPR):

> "On 30 August 2011, the government lifted the state of emergency, which had been in place almost continuously since 1971 and which enabled the authorities to invoke a wide array of draconian emergency regulations under the Public Security Ordinance including regulations that restricted freedom of expression and association, allowed for warrantless searches and arrests and permitted prolonged detention without charge or trial. However, the repressive Prevention of Terrorism Act, which contains many similar provisions to the now lapsed Emergency Regulations, has been retained, and it too allows for extended administrative detention. The authorities also introduced new regulations under the PTA to continue detention of LTTE [Liberation Tigers of Tamil Eelam] suspects without charge or trial. The PTA reverses the burden of proof where torture and other ill-treatment is alleged, and restricts freedom of expression and association." (AI, 7 October 2014, p. 13)

The report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) Investigation on Sri Lanka (OISL), published in September 2015 and mainly covering a timeframe from February 2002 until October2011, describes emergency regulations issued under the Public Security Ordinance Act and the PTA in the following terms:

> "329. The Sri Lankan Constitution and the Code of Criminal Procedure (CCP) provide for freedom from arbitrary arrest and detention. It imposes a legal time limit for police custody, requires notification to the Magistrate's Court of arrests without warrant by any police officer, and demands that persons are provided with the reason for their arrest.
>
> 330. However, these safeguards were undermined by Emergency Regulations issued under the Public Security Ordinance Act, and the Prevention of Terrorism Act (PTA), which remained in force throughout the period covered by OISL's mandate. Emergency Regulations were ended in 2011. They gave extensive powers to the Secretary of Defence to order arrests and detention, and to the Sri Lankan security forces to carry out such arrests. Some of their provisions contravened provisions of ICCPR [International Covenant of Civil and Political Rights]". (OHCHR, 16 September 2015, p. 71)

"Freedom from arbitrary arrest, detention and punishment and prohibition of retrospective penal legislation" is regulated by Article 13 of the Constitution (Constitution, amended as of 15 May 2015, Article 13). For more information on arbitrary arrest and detention see section 2.2.6 of this compilation.

In a report on accountability in Sri Lanka from 2012, the non-governmental organization International Commission of Jurists (ICJ) notes that the above mentioned Public Security Ordinance "was one of the final pieces of legislation to be passed by the British prior to independence" which "enabled the then Governor General to declare a state of emergency and to make ERs [emergency regulations] under Section 5" (ICJ, 2012, p. 43). Article 155 (1) of The Sri Lankan Constitution refers to the Public Security Ordinance Act and states that "The Public Security Ordinance as amended and in force immediately prior to the commencement of the Constitution shall be deemed to be a law enacted by Parliament." (Constitution, amended as of 15 May 2015, Article 155 (1)). The Parliament of Sri Lanka does not list the Public Security Ordinance under Acts endorsed by Parliament, but it lists a number of amendments to the Ordinance. The latest amendment listed on the Parliament's website was endorsed in July 1988 and can be found under the name "28/1988: Public Security (Amendment)" (Parliament of Sri Lanka, undated (c)). In a press release from August 2016, Amnesty International (AI) reports that "[i]n August, the HRCSL [Human Rights Commission of Sri Lanka] called on the Sri Lankan authorities to review the Public Security Ordinance, which enables the imposition of emergency regulations, to bring it into line with international standards." (AI, 29 August 2016, p. 3)

The whole text of the Public Security Ordinance, including the amendment from 1988, is published by the South Asia Terrorism Portal (SATP) and can be accessed via the following link:

- Public Security Ordinance: No. 25 of 1947 [An Ordinance To Provide For The Enactment Of Emergency Regulations Or The Adoption Of Other Measures In The Interests Of The Public Security And The Preservation Of Public Order And For The Maintenance Of Supplies And Services Essential To The Life Of The Community], 16 June 1947(published by South Asia Terrorism Portal, SATP)
  http://www.satp.org/satporgtp/countries/shrilanka/document/actsandordinance/public_security_ordinance.htm

The International Commission of Jurists (ICJ) notes the following about the termination of the emergency regulations in 2011 and the regulations that followed thereafter:

> "Almost immediately after the state of emergency ended, the President, acting in his capacity as Minister of Defence, promulgated five new regulations under Section 27 of the PTA [Protection of Pakistan Act]:
>
> 1. The Prevention of Terrorism (Proscription of the Liberation Tigers of Tamil Eelam) Regulations No. 1 of 2011;
> 2. The Prevention of Terrorism (Proscription of the Tamil Rehabilitation Organization) No. 2 of 2011;
> 3. The Prevention of Terrorism (Extension of Application) Regulations No. 3 of 2011;
> 4. The Prevention of Terrorism (Detainees and Remandees) Regulations No. 4 of 2011; and
> 5. The Prevention of Terrorism (Surrendees Care and Rehabilitation) Regulations No. 5 of 2011" (ICJ, 2012, pp. 56-57)

In a query response from September 2011 the Immigration and Refugee Board of Canada (IRB) notes that refers to Lakbima News, which reported that PTA regulations were printed on 6 and 7 September 2011 and backdated to 29 August 2011, "presumably to cater to the weeklong period of illegality during which these laws were missing" (IRB, 29 September 2011). The report of the OHCHR from September 2015 also describes that despite the Emergency Regulations being lifted in 2011, "some of the provisions remain in force as provisions under the PTA and are similar to those of the regulations which were lifted" (OHCHR, 16 September 2015, p. 72). It further provides the following information on the PTA:

> "331. The PTA was introduced in 1979 and remains in force today. It permits Sri Lankan security forces to arrest without warrant individuals suspected of 'acting in any manner prejudicial to the national security or to the maintenance of public order' or having conducted 'any transaction' with a person or group engaged in terrorist activities, and to detain people for up to 18 months without bringing them before a court." (OHCHR, 16 September 2015, p. 71)

In its annual report covering the year 2015, Human Rights Watch (HRW) provides the following information on the PTA:

> "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; many PTA detainees have been held for years without charge. And the act provides immunity from prosecution for government officials who may commit wrongful acts, such as torture, under the legislation.
>
> The PTA facilitated thousands of abuses over the years, including torture to obtain 'confessions,' enforced disappearances, and extrajudicial executions. The law has been used since the end of the war, including under the present government, to detain and torture people suspected of links to the LTTE, including forcibly returned asylum seekers. Many instances of torture, sexual violence, and other ill-treatment occured in the Criminal

> Investigation Division and Terrorist Investigation Division offices in Colombo and elsewhere, while others occured in unofficial places of detention." (HRW, 27 January 2016)

Freedom House notes in in its Freedom in the World 2016 report, covering the year 2015, that "[t]he new government promised to undertake a review of those detained under PTA regulations, as well as to consider repealing the law" (Freedom House, 27 January 2016). Amnesty International (AI) also writes in its report for the year 2015 that "the government pledged to repeal the PTA and replace it with anti-terrorism legislation that complied with international standards" and that it also "pledged to review detention records and claimed to have released at least 45 detainees after 'rehabilitation'" (AI, 24 February 2016). The annual HRW report for the year 2015 also noted that "Sri Lanka's new government agreed to review and repeal the Prevention of Terrorism Act, though said it would replace the law with new counter-terrorism legislation". According to the HRW report, "[t]he PTA has long been used to hold suspected LTTE members and others without charge or trial for years" and that "[i]n November, the government announced a plan to deal with the Tamil detainees held under the PTA […] although the exact contours of the rehabilitation program remained unclear" (HRW, 27 January 2016). In June 2016, HRW provides the following information on developments regarding the PTA:

> "Exact numbers of those still held under the PTA are unknown, with estimates ranging from 120 to 162 detainees. Since April 2016, the government has arrested at least 11 people under the PTA for alleged terrorist activities instead of using appropriate provisions under the criminal code. […] Although the government has been more transparent about recent PTA arrests, the tremendous powers given to the security forces under the PTA facilitate abuses. […]
>
> Recent arrests under the PTA in Chavakachcheri in the Northern Province prompted Sri Lanka's National Human Rights Commission to issue Directives on Arrest and Detention under the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 on May 18, 2016. This comprehensive list of directives is intended to protect detainees against the security forces' broad powers under the PTA, particularly at the time of arrest and ensuing detention. These include guarantees of medical and legal assistance, registration of arrest, right to language of the detainee's choice, security from torture and other ill-treatment, and special protection for women and children. The directives also reassert the commission's mandate to be promptly informed of all PTA arrests, to access any person arrested or detained under the PTA, and to access any place of detention at any time.
>
> The government has made substantial progress on many cases of prior PTA detainees. The authorities have released some PTA detainees on bail, 'rehabilitated' others, and promised to charge and prosecute the remainder. However, the government has still not put forward a plan to provide redress for those unjustly detained under the PTA, or addressed the issue of detainees charged and prosecuted solely on the basis of coerced confessions obtained during detention.
>
> 'So long as the PTA is in place and being used, the Sri Lankan government will have a hard time convincing the Human Rights Council that it is keeping its commitments,' Adams

> [HRW Asia director] said. 'Revoking the PTA is absolutely crucial for ensuring respect for the basic rights of criminal suspects and the rule of law in Sri Lanka.'" (HRW, 13 June 2016)

In its annual report to the Human Rights Council (HRC) in June 2016, the United Nations High Commissioner for Human Rights also mentions the above described directives on arrest under the PTA and provides the following information on directions issued by the president in this regard:

> "The Human Rights Commission has recently re-issued directives intended as safeguards upon arrest under the PTA. On 17 June, the President issued similar directions to the Commanders of the Armed Forces and the Police to enable the Human Rights Commission to exercise and perform its powers, functions and duties and for the purpose of ensuring that fundamental rights of persons arrested or detained are respected and such persons are treated humanely." (HRC, 28 June 2016, p. 5)

In a press release from August 2016, Amnesty International (AI) also writes that in June, "President Sirisena instructed the Sri Lankan police and armed forces to comply with directives issued by the Human Rights Commission of Sri Lanka (HRCSL) on 18 May 2016, designed to protect those arrested under the PTA and other emergency measures". According to AI, these directives "seek to end practices that can lead to abuse, such as the failure of arresting officials to identify themselves, the transport of suspects in unmarked vehicles, and the use of unofficial places of detention" (AI, 29 August 2016, p. 3). The directives from the Human Rights Commission of Sri Lanka on arrest and detention under the PTA from May 2016 can be accessed via the following link:

- HRCSL - Human Rights Commission of Sri Lanka: Directives issued by The Human Rights Commission of Sri Lanka on Arrest and Detention under the Prevention Of Terrorism (Temporary Provisions) Act No 48 Of 1979, 18 May 2016 http://hrcsl.lk/english/wp-content/uploads/2016/05/Directives-on-Arrest-Detention-by-HRCSL-E-.pdf

The report published by the UN Human Rights Council (HRC) in June 2016 notes that the government has taken "symbolic steps" towards reconciliations as it "de-listed a number of Tamil diaspora organisations and individuals who had been proscribed under the Prevention of Terrorism Act (PTA)" (HRC, 28 June 2016, p. 4). However, the report further provides the following information on developments regarding the PTA:

> "14. The fate of remaining security detainees held under the PTA remains a major concern for the Tamil community. In December 2015, the Government released on bail 39 individuals detained without charge, but around 250 detainees are believed to remain in detention. The Government has made indictments in 117 of these cases, and in January created a special High Court bench to expedite proceedings. The Government had promised the Attorney-General's Office would make decisions by the end of March but there have been no further charges or releases this year. This situation is not only traumatic for the individuals concerned -some of whom resorted to hunger strikes- and for their families, but a source of growing frustration among Tamil political parties and community at large. […]

> 15. This situation is compounded by the Government's continued reliance on the PTA to make new arrests, despite its commitment to repeal the law. According to reports, the Government has made more than 40 new PTA arrests in 2015-16, including more than 25 in March-April 2016 during a security operation after the discovery of an explosives cache in Jaffna. The manner in which some of these arrests reportedly took place, in an arbitrary manner and without following proper legal procedure, have led some to compare them to the infamous 'white van' abductions/disappearances of the past. While there are clear differences (all those arrested reappeared in detention in matter of hours), such cases strike fear in the community and undermine confidence in the Government's efforts to restore the rule of law and criminal procedures in accordance with the law and international standards. […]
>
> 17. Meanwhile, the Government has initiated the drafting of new security laws to replace the PTA." (HRC, 28 June 2016, p. 5)

In October 2016, the Sri Lankan newspaper the Colombo Telegraph published the following information regarding the drafting process of new legislation in order to replace the PTA:

> "Prime Minister Ranil Wickremesinghe has announced that the first draft of the new counter terrorism law, which will replace the Prevention of Terrorism Act (PTA) will be out this week. He made this statement while on an official tour to New Zealand, over the weekend. Wickremesinghe had said that the new draft will be available for discussion.
>
> The announcement comes amidst increasing pressure, both locally and internationally, calling on the government to repeal the PTA" (Colombo Telegraph, 2 October 2016)

The UN Committee Against Torture (CAT) refers to new legislation for the replacement of the PTA in its concluding observations from December 2016:

> "While noting that a draft policy and legal framework has been proposed by the Government to replace the PTA, the Committee regrets that lack of specific information provided by the delegation on the scope of the terrorism-related offences, the safeguards against arbitrary arrest and the judicial oversight of detention." (CAT, 7 December 2016, p. 7)

The PTA, which was last amended in July 1988, can be accessed via the following link:

- Prevention of Terrorism Act (Temporary Provisions), 1979 [An Act to Make Temporary Provision for the Prevention of Acts of Terrorism in Sri Lanka [...]] (amended as of 15 July 1988) (available at Refworld)
  http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=printdoc&docid=4561dac84

2 Security Situation/Developments (since January 2013)

2.1 General information on security forces: armed forces, intelligence services, police, paramilitary forces

According to the Constitution, the president is the Commander-in-Chief of the Armed Forces (Constitution, amended as of 15 May 2015, Article 30 (1)). The report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) Investigation on Sri Lanka (OISL) from September 2015 describes the main branches of the Sri Lankan Security Forces as follows:

> "106. The Ministry of Defence is responsible for the formulation and execution of strategies with regard to defence and safeguarding the territorial integrity and sovereignty of Sri Lanka. […]
>
> 110. At the time of the conflict, the Security Forces of Sri Lanka consisted of three armed forces: the Sri Lanka Army (SLA), the Sri Lanka Navy (SLN) and the Sri Lanka Air Force (SLAF); and three civilian bodies - the Sri Lanka Police (SLP), the National Intelligence Bureau (NIB) now replaced by the State Intelligence Service, and the Civil Defence Forces (CDF). During most of the period covered by OISL mandate, all six fell under the Ministry of Defence until 2013, when the SLP was brought under a new Ministry of Law and Order. A Civil Security Department was created in 2006 under which the pre-existing National Home Guard was reorganized." (OHCHR, 16 September 2015, p. 25)

In a report from October 2015, Human Rights Watch (HRW) provides the following insights on the security forces and the defence budget:

> "Sri Lanka has invested a great deal into its security forces, including the police, particularly since the outbreak of ethnic violence in the 1980s. Due in part to the LTTE insurgency, Sri Lankan security services grew substantially over the last few decades. Although the war ended in 2009, the number of security force personnel has not decreased and the annual defense budget has continued to grow each year since." (HRW, October 2015, p. 14)

In December 2015, the American online news aggregator Huffington Post published an article by the freelance writer Taylor Dibbert, who has worked for human rights organisations in Sri Lanka, when the Sri Lankan government "released its proposed budget for the coming year". According to the article "defense spending stands out yet again" and "2016 defense expenditures are expected to exceed 2014 defense expenditures by over 20 billion Sri Lankan rupees" (Huffington Post, 1 December 2015). In October 2015, the news website Sri Lanka Mirror states that "[t]he budget for 2016 too, has allocated the highest amount for the defence ministry, reports say" (Sri Lanka Mirror, 25 October 2015).

The Appropriation Act for the financial year 2016, which includes the budget allocations for the defense ministry, was certified on 19th December 2015 and can be accessed via the following link:

- Appropriation Act, No. 16 of 2015 [An act to provide for the service of the financial year 2016 ; [...]], certified on 19 December 2015 (published by Gazette of the Democratic Socialist Republic of Sri Lanka, 23 December 2015)
  http://www.parliament.lk/uploads/acts/gbills/english/5993.pdf

2.1.1 Armed forces

Sri Lanka Army (SLA)

GlobalSecurity.org, a US-based website covering military and security issues, describes the Sri Lanka Army (SLA) as follows:

> "The Sri Lankan Army is the oldest and largest of the nation's three armed services. It was established as the Royal Ceylon Army in 1949, and was renamed when Sri Lanka became a republic in 1972. The commander of the army exercises direct operational control over the force." (GlobalSecurity.org, page last modified 5 May 2012a)

The report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) Investigation on Sri Lanka (OISL) from September 2015 states that "[t]he Army Commander is the most senior officer within the Army. The President, as Commander-in-Chief, appoints the Army Commander" (OHCHR, 16 September 2015, p. 25). The website of the SLA states that "Lieutenant General A W J C De Silva RWP VSV USP ndu psc, was appointed as the 21st Commander of the Sri Lanka Army effective from 22 February 2015." (SLA, undated (a)).

When describing the structure of the SLA, the OISL report from September 2015 points out that there are Security Force Headquarters (SFHQ), which are "a Corps level formation, commanded by a Major General having a defined geographical area of responsibility, and a number of different combat Divisions and supporting units under command" (OHCHR, 16 September 2015, p. 25). The SLA-website lists the following SFHQs: SFHQ Jaffna, SFHQ Wanni, SFHQ East, SFHQ Kilinochchi, SFHQ Mullaittivu, SFHQ West, SFHQ Central (SLA, undated (b)). The OISL report from September 2015 further describes the following structure of the SLA:

> "116. Division: a combined arms manoeuvre formation capable of independent battlefield operations, numbering some 10 to 20,000 soldiers. Commanded by a two-star general, it has a number of different combat Brigades and supporting units under command […]
>
> 117. Brigade: a major tactical infantry formation, commanded by a one-star general (Brigadier), numbering some 3,500 to 6000 soldiers. It has a number of different combat battalions and other supporting units under command. In addition to the Brigades attached to the divisions was the Artillery Brigade. […]
>
> 118. Battalion: a tactical infantry formation, commanded by a Lieutenant Colonel and numbering some 650 men. It consists of a number of combat companies and support companies, all of which are an integral part of that battalion.
>
> 119. Task Force: This was an ad-hoc grouping put together for a specific task requiring a separate formation command. It was hierarchically equivalent to a division, but had the size of a strong brigade. It comprised a mixture of existing units 'borrowed' from other formations and new units that were raised by new recruitment during the rapid expansion of the army. According to maps compiled by the Defence Ministry, Task Forces 2, 3, 4 and 8 were particularly involved in the final weeks of the conflict." (OHCHR, 16 September 2015, p. 26)

According to GlobalSecurity.org "[t]he actual headcount of the Sri Lankan Army is a bit of a puzzle" (GlobalSecurity.com, page last modified 5 May 2012b). The 'Military Balance' of the International Institute for Strategic Studies which was published by The World Bank, notes that the Sri Lankan armed forces personnel amounted to a strength of 223,100 in the year 2014 (The World Bank, undated).

Sri Lanka Navy (SLN)

The website of the Sri Lanka Navy (SLN) describes the history of the navy as follows:

> "In 1937 the Ceylon Naval Volunteer Force (CNVF) was established. After World War II CNVF was absorbed into the Royal Navy as Ceylon Royal Naval Volunteer Reserve (CRNVR). After independence from British rule, a nucleus of 100 Officers and Men prepared to form the Regular Navy gradually. On 9th December 1950 the Navy Act was enacted and Royal Ceylon Navy was formed. In 1972, with the introduction of new constitution Royal Ceylon Navy was renamed as the Sri Lanka Navy." (SLN, undated (a))

The report of OISL published by the OHCHR in September 2015 describes the SLN's role during the war:

> "122. The SLN was heavily involved in the conflict, particularly with regard to fighting LTTE Sea Tigers, and intercepting LTTE supply routes, as well as boats leaving the Vanni, including civilians fleeing from LTTE-controlled areas. SLN provided support to the Army through naval gunfire support to land operations. It was also involved in the checking, loading and unloading of humanitarian supplies on ships going to the Vanni. It had its own intelligence service." (OHCHR, 16 September 2015, p. 27)

Listing the navy operations at present, the SLN website refers to "a wide area of maritime activities", including the following operations:

> "Deep Sea Surveillance: Offshore Patrol Vessels are deployed in the high seas to carry out surveillance on illegal transfer of war like materials using merchant vessels & activities of EEZ [Exclusive Economic Zone].
>
> FAC Operations: Fast Attack Craft are small surface combatants of about 25 mtrs length and around 50 tons displacement armed with rapid fire weapons. […] These units so far proved to be the most effective weapon against the terrorist sea tiger activities.
>
> Security of Harbours: Owing to the terrorist activities where they have carried out attacks using suicide cadres against Naval units berthed at Trincomalee, Kankesanturai and Karainagar and many attempts against merchant ships off Kankesanturai and in Colombo Harbour, it has become essential to protect these harbours round the clock. Sri Lanka Navy is the Designated Authority for implementing International Ships and Port Facility Security (ISPS) Code in Sri Lanka.
>
> IPC Operations: Inshore Patrol Craft are small 14 mtrs vessels which are capable of operating inshore as well as for beaching. […]

SBS Operations: Special Boat Squadron consists of elite Naval troops trained for clandestine and special operations.

Land Operations: Since early 90's SLN has been involved in land operations assisting the Army on amphibious operations liberating land areas from terrorist control.

SLN also assist the Army in ground combat duties. For this purpose North Central Command was established and Naval Patrolman battalions were raised to take up this task." (SLN, undated (b))

Since July 2011, Vice Admiral Ravindra C. Wijegunaratne is the Commander of the Sri Lankan Navy (SLN, undated (c)).

Sri Lanka Air Force (SLAF)

The OISL report published by OHCHR in September 2015 notes that "[t]he Air Force is the smallest of the three armed forces" (OHCHR, 16 September 2015, p. 28). The report describes the structure and tasks of the Sri Lanka Air Force (SLAF) as follows:

"The SLAF had 13 air squadrons and one ground regiment, which was responsible for airfield protection. The island is divided into an air defence command and four zonal commands, North, South, East-West, each under the control of an Air Vice Marshall (one star rank). The zonal commands control all flying squadrons and airbases, and are responsible for air operations that have been decided upon by the Directorate of Operations at Air Force HQ. The Air Force was tasked with a range of functions often in support of army or navy operations, including:

- Pre-planned bombing of significant targets (infrastructure or high-value individuals), often carried out from higher altitudes;

- Close air support (also called fighter ground attack) by which low flying aircraft engage tactical ground targets that are of direct significance to the progress of infantry or armour operations;

- Reconnaissance flights by aircraft (including Unmanned Aerial Vehicles – UAV) which were equipped with still or video cameras in order to provide intelligence to inform operational and targeting decisions." (OHCHR, 16 September 2015, p. 28)

The Sri Lankan internet newspaper ColomboPage reports in September 2016 that Air Marshal Kapila Jayampathy officially took over the command of the SLAF on 14 September 2016 (ColomboPage, 14 September 2016).

2.1.2 Intelligence services

In an article from July 2013, the weekly newspaper the Sunday Observer describes the intelligence service in Sri Lanka as follows:

"Sri Lanka has two primary intelligence arms: the State Intelligence Service and the Defence Intelligence, which comprise the Directorate of Military Intelligence, Directorate of Naval

> Intelligence, and Air Intelligence. In addition, the Police maintains the Special Branch, while the Special Task Force [an elite paramilitary unit within the police] also has its own Intelligence Division. Furthermore, the Terrorist Investigation Department and Criminal Investigation Department of the Police also work closely with the other intelligence agencies on matters relating to National Security." (Sunday Observer, 14 July 2013)

The report of the OHCHR Investigation on Sri Lanka (OISL) from September 2015 takes a note of the Military Intelligence Corps of SLA, writing that "[i]n addition to its role in intelligence gathering in the context of the conflict, it played a pivotal role in the identification and interrogation of LTTE suspect including at military checkpoints, screening posts and in IDP camps" (OHCHR, 16 September 2015, p. 27). The same OISL report describes the State Intelligence Service (ISI) in the following terms:

> "127. The State Intelligence Service reports to the Ministry of Defence. The SIS was one of a number of intelligence bodies operational during the final phases of the armed conflict. In interviews with Business Today in April 2009, both the Inspector General of the Sri Lankan Police at the time and the Deputy Inspector General of the Criminal Investigation Division described the close coordination, including weekly meetings under the Secretary of Defence, of the different intelligence services, including the SIS, police intelligence units and the Directorate of Military Intelligence to exchange information on the LTTE." (OHCHR, 16 September 2015, p. 28)

The Sri Lanka Guardian, a non-profit web portal founded by a group of people describing themselves as "concerned Sri Lankan citizens including journalists, activists, academics and retired civil servants", reports about the SIS in January 2015, providing information about changes after the presidential elections in January 2015:

> "The State Intelligence Service (SIS) called a halt to monitoring land telephones soon after the election results were announced. Insiders say that the technical hand hired for the purpose has also been relieved of his duties. He was a serving officer who was later recruited to work in a temporary capacity. The move came as SIS Director Chandra Wakista, DIG, quit his post yesterday. He made a brief two-minute speech to his officers before departing." (Sri Lanka Guardian, 18 January 2015)

In March 2015 the news website Sri Lanka Mirror reports about the appointment of the new director of SIS:

> "SSP Nilantha Jayawardena has been appointed as the new Director of the State Intelligence Service (SIS), police spokesman SP Ajith Rohana says. The appointment has been made by IGP N.K. Illangakoon. SSP Jayawardena, who has held several posts in the SIS for over 12 years, has even once functioned as its Additional Director. Previously, he was functioning as the Kankasanthurei Division SSP. Jayawardena is an old boy of Nalanda College." (Sri Lanka Mirror, 2 March 2015)

2.1.3 Police

The September 2015report of the OHCHR Investigation on Sri Lanka (OISL) provides the following summary of the Sri Lankan Police (SLP):

> "128. The SLP is primarily responsible for law enforcement: maintaining law and order, preventing crime and investigating crime. Up until August 2013, SLP was under the Ministry of Defence and Urban Development. It then came under the newly formed Ministry of Law and Order. SLP is headed by the Inspector General of Police (IGP) who is selected by the President. The IGP is a member of the National Security Council." (OHCHR, 16 September 2015, pp. 28-29)

The Constitution of Sri Lanka notes that the Constitutional Council needs to approve of the appointment of the Inspector-General of Police (IGP) (Constitution, amended as of 15 May 2015, Art. 41C (1)). In April 2016 the official government news portal News.lk reports about the appointment of the IGP in the following terms:

> "Senior DIG Pujitha Jayasundara has been appointed as the 34th Inspector General of Police (IGP) by President Maithripala Sirisena. He was nominated as the next IGP by the Constitutional Council out of three names proposed by the President Sirisena, when it was met on last Monday (18th April). The former IGP N.K. Illangakoon was retired on 11th April." (News.lk, 20 April 2016)

In a October 2015 report about accountability for police abuse, Human Rights Watch (HRW) notes that "[t]he National Police Commission was created in 2002 to act as an independent vehicle for police appointments, transfers, and promotions", with the commission also being responsible for conducting "inter-disciplinary proceedings against officers" (HRW, October 2015, p. 15). The report further provides the following summary of discussions surrounding the National Police Commission:

> "In 2010, the constitutional provision guaranteeing the independence of the commission was repealed and replaced with an amendment that effectively allowed the president control over appointments, leading observers to conclude it had been rendered all but powerless. The Sirisena government addressed this problem by supporting passage of the 19th Amendment to the constitution, designed partly to restore the independence of the National Police Commission and other public service commissions. However, many observers assert that the amendment does not go nearly far enough to address the concerns." (HRW, October 2015, p. 15)

For a discussion of constitutional reforms see section 1.1.2 of this compilation.

The website of the SLP provides an undated summary of developments within the SLP, with the latest date mentioned within the text being the year 2007. This summary notes that "[p]resently there are 43 Territorial Divisions 67 Functional Divisions 432 Police Stations with strength of more than 84,000" (Sri Lanka Police, undated). According to an undated summary of the SLP by the International Criminal Police Organisation (INTERPOL), an organisation with 190 member countries supporting police work worldwide, the SLP has "a strength of more than 89,000 men and women". INTERPOL lists the following activities under the SLP's mandate: "Crime prevention, detection and investigation; National security (including counter-terrorism, public order, intelligence services, VIP security, prison transport services); Traffic control; Emergency services; Community policing" (INTERPOL, undated).

Appendix I of the Constitution deals with "Law and Order" and provides a Schedule containing a list of offences which have to be investigated by the SLP. The Constitution can be accessed via the following link

- Constitution of the Democratic Socialist Republic of Sri Lanka, Revised Edition 2015, amended as of 15 May 2015 (published by the Parliament Secretariat) https://www.parliament.lk/files/pdf/constitution.pdf

The September 2015 OISL report gives insights into the structural setup of the SLP:

> "131. The Sri Lanka Police has five Territorial Ranges; Northern, Southern, Eastern, Western and Colombo Ranges. Each Range contains a number of 'Divisions', each of which is commanded by a Senior Superintendent of Police (SSP). These in turn contain a number of 'Districts', each commanded by a Superintendent (SP). Each District has two or three Police Stations, each of which is commanded by a Police Chief Inspector (CI). Some Police Stations have smaller Police Posts which are placed in the suburbs or outlying districts to facilitate public access to the police in their local area. Beside the Territorial Ranges, there are a number of Functional Ranges, which have a nationwide mandate in a specific functional area. For the purposes of this report, the significant Functional Ranges are the Special Task Forces, the Terrorism Investigation Division (TID) and the Criminal Investigation Department. At the beginning of the mandate period there was also a Disappearances Investigation Unit (DIU)." (OHCHR, 16 September 2015, pp. 29-30)

In an October 2015 report, Human Rights Watch (HRW) provides the following information of the functional divisions such as the Criminal Investigation Department (CID) and the Terrorist Investigation Division (TID). This HRW report summarises information from an older report published by the Rehabilitation and Research Centre for Torture Victims (RCT) in 2009:

> "The primary functional divisions of the police consist of the Criminal Investigation Department (CID), the Narcotics Bureau, the Women and Children's Bureau, and the Terrorist Investigation Division (TID). The CID is charged with investigating major crimes and security-related violations. The TID is charged with investigating cases under the Prevention of Terrorism Act (PTA), although these lines are often blurred. There are also the Special Task Force (STF), an armed paramilitary force; intelligence units; and personal protection units. The police responsible for most of the abuses examined in this report fall under the authority of the CID, which operates under the command of the director inspector general of police." (HRW, October 2015, p. 14)

The OISL report from September 2015 also refers to the CID and TID in more detail:

> "134. The CID is primarily responsible for investigating serious and organised crime, but also engaged with counter-terrorism activities. CID are plainclothes police and have surveillance, intelligence and analysis sections. Its '4th Floor' facility at Police HQ in Colombo is particularly notorious as a place where many detainees are taken for interrogation […]

> 135. The TID was created in the mid-1980s and has a specific focus on preventing and investigating acts of terrorism as defined in the Prevention of Terrorism Act. The exact division of responsibility between CID and TID remains unclear. TID Colombo detention/interrogation facilities are often referred to as the '6th floor'." (OHCHR, 16 September 2015, p. 30)

Another body of the SLP belonging to what OISL refers to as "significant Functional Ranges" is the Special Task Force (STF) (OHCHR, 16 September 2015, p. 30). The human rights report of the US Department of State (USDOS), covering the year 2015, also mentions the STF, stating that "[t]he nearly 6,000-member paramilitary Special Task Force falls under the Sri Lankan Police Service, although joint operations with military units in the past led to questions about the task force's chain of command" (USDOS, 13 April 2016, section 1d). According to the website of the Ministry of Law & Order "[a]t the beginning of early 1980s, with the emergence of terrorist threat in the North and East, the Police in the course of their duties had to face armed attacks carried out by the terrorists", which is the reason why "the necessity arose for the formation of a special Military Arm within the Police Service to counter the above threat" (Ministry of Law & Order and Southern Development, last updated 26 September 2016). The September 2015 report from OISL provides the following information on the STF:

> "132. The Special Task Force is an elite paramilitary unit within the police. It was formed by Presidential decree in 1983 to provide additional support to the police in the face of the rising threat of LTTE, especially in the East. STF officers resemble military rather than police officers, wearing green berets and camouflage uniforms. As well as the AK-47 assault rifles used by all branches of SLAF [Sri Lankan Armed Forces], the STF are depicted carrying more specialist weapons including sniper rifles, RPGs [Rocket-propelled grenade], grenade launchers, pistols and AR-15 assault rifles. The STF reports to the IGP [Inspector General of Police]." (OHCHR, 16 September 2015, p. 30)

2.1.4 Paramilitary

In an e-mail response dated 26 December 2016, Alan Keenan, Sri Lanka senior analyst at the International Crisis Group, denies the question whether there are any paramilitary groups or paramilitary wings of parties in Sri Lanka that are still active and/or influential. Keenan continues to state:

> "There are no longer any active paramilitaries in Sri Lanka. There are ex-LTTE and ex-Tamil militants from other parties who are reportedly working with the Sri Lanka military as informants and/or intelligence operatives. Some of these, according to some reports, may be involved in criminal activities, including drug-running, extortion and violence. However, there is little hard evidence and such activities do not appear to the work of clearly identifiable groups. Recent allegations of existence of a criminal network (in the northern Jaffna peninsula) known as the 'Aava group' and with links to the Sri Lankan military are murky and unconfirmed. There are certainly ex-Tamil militants, some of whom are working with and for the military (or possibly other government intelligence services), but exactly what they are doing and on whose orders remains unclear." (Keenan, 26 December 2016)

According to the OHCHR Investigation on Sri Lanka (OISL) from September 2015, which covers a timeframe from February 2002 until October 2011, "[o]ver time the involvement of paramilitary groups with Government security forces became increasingly clear" (OHCHR, 16 September 2015, p. 31). The US Department of State (USDOS) refers to paramilitary groups in its report on human rights covering the year 2014:

> "There were persistent reports of close ties between progovernment paramilitary groups such as the Eelam People's Democratic Party (EPDP) and government security forces. Whereas during the war these groups served more of a military function, often working in coordination with security forces, in the postwar environment they increasingly took on the characteristics of criminal gangs as they sought to solidify their territory and revenue sources." (USDOS, 25 June 2015, section 1a)

In a query response from April 2015, the Immigration and Refugee Board of Canada (IRB) notes that "[t]wo sources indicate that paramilitary groups are less active in Colombo since the end of the war (Socio-cultural anthropologist 22 Mar. 2015; Visiting Professor 9 Mar. 2015)" (IRB, 8 April 2015). In a query response from June 2015, the Swiss Refugee Council (Schweizerische Flüchtlingshilfe, SFH) refers to a contact person from a human rights organisation in Sri Lanka, which told the SFH in May 2015 that the cooperation between the security forces and different groups continues (SFH, 16 June 2015, pp. 9-10). Responding to an email inquiry in December 2016, Colonel Hariharan, a former military intelligence officer of the Indian army, notes however, that "[w]ith the exit of Mahinda Rajapaksa from power, paramilitary wings have lost much of their influence and relevance to pressurize people", and that "Military Intelligence, which had enjoyed a lot of patronage during the previous regime to use paramilitary as coercive instrument of power outside the pale of law, is at present under a lot of pressure from the government" (Hariharan, 3 December 2016).

Civil Security Department (CSD) (also referred to as Civil Defence Forces)

The September 2015 report of the OHCHR Investigation on Sri Lanka (OISL) notes that "[t]he Sri Lankan National Home Guard Service was established as a volunteer service in the mid 1980's to protect the border and rural villages that were threatened by LTTE. It was originally placed under the Police Department" (OHCHR, 16 September 2015, p. 31). The website of the CSD explains that in September 2006 the then president Rajapakse "re-structured the whole Home Guard Service and established the Civil Security Department" (CSD, 24 September 2015). Subsequently the CSD developed as follows:

> "Numbers employed [in the CSD] increased to 41,500 and one month military training was introduced. Further, two types of uniforms similar to military uniforms were issued. A reasonable salary was paid for the employees. A military officer (Rear Admiral Rank) was appointed as the Director General of the Civil Security Department. […] The Director General at present is Mr. Chandrarathne Pallegama. Approximately, 69 officers from the Armed Services and Police were attached for better administration." (CSD, 24 September 2015)

The September 2015 OISL report notes that "'paramilitary groups' is also sometimes used to refer to the above-mentioned Home Guard system", but that "the Home Guard's links to the security forces are official" (OHCHR, 16 September 2015, p. 31).

Karuna, Pillayan and the Tamil Makkal Viduthalai Pulikal (TMVP)

The September 2015 OISL report provides the following information on a paramilitary group called the Karuna Group and the political party Tamil Makkal Viduthalai Pulikal (TMVP):

> "141. Vinayagamoorthy Muralitharan, known by his nom de guerre Colonel Karuna Amman, was originally the commander of LTTE in the Eastern Province, based in Batticaloa District. In 2004, Karuna broke away from LTTE, taking a number of his cadres with him, and formed a paramilitary group often referred to as the Karuna Group. The Group was allegedly linked with the Government security forces, particularly as hostilities intensified in 2006.
>
> 142. Under the terms of the CFA [Cease Fire Agreement], the Karuna Group should have been disarmed by the Government. In his statement to the public hearings of the LLRC, on 17 August 2010, Gotabaya Rajapaksa claimed the Karuna Group (as well as other paramilitary groups such as EPDP [Eelam People's Democratic Party] and the Pillayan Group (which later broke away from the Karuna Group) had been disarmed, but nevertheless acknowledged that the Karuna Group had 'supported the Government for a long period' and that at the time, they 'had to carry weapons' 'for their own security'.
>
> 143. OISL gathered information indicating to the contrary that the Karuna Group played a vital role in providing intelligence on LTTE after the split, and allegedly became engaged in covert activities against LTTE and those suspected of having links with LTTE, reportedly acting alongside, or on behalf of SLA [Sri Lankan Army], SLN [Sri Lankan Navy] and STF [Special Task Force] in particular. […]
>
> 144. The Karuna Group formed an associated political party called Tamil Makkal Viduthalai Pulikal (TMVP) which was officially registered in 2007. TMVP contested the Eastern Provincial Council elections in 2008, winning a majority. Karuna himself became Minister of National Integration under the Rajapaksa Government in March 2009." (OHCHR, 16 September 2015, p. 32)

In an older query response from February 2012, the Immigration and Refugee Board of Canada (IRB) summarises the development of the Tamil Makkal Viduthalai Pulikal (TMVP) and Karuna as well as the TMVP deputy leader called Pillayan:

> "According to the IRIN article, the TMVP formed a political party in 2006 (UN 9 Mar. 2009). […] A year later, in 2008, the party campaigned in provincial elections as part of the United People's Freedom Alliance (UPFA) (ibid.). […] International Crisis Group (Crisis Group) noted that the TMVP's deputy leader, Sivanesathurai Chandrakanthan, alias Pillayan [also spelled Pillaiyan, Pallayan] became chief minister of the [Eastern Provincial] Council (International Crisis Group 18 July 2011, 4 n. 13). […]

> As the Wall Street Journal indicates, Pillayan's election as chief minister caused a rift between him and Karuna (2 Feb. 2009). […]
>
> On 9 March 2009 (ColomboPage 9 Mar. 2009), Karuna and his followers left the TMVP to join the Sri Lanka Freedom Party (SLFP) (ibid.; International Crisis Group 18 July 2011, 4 n. 13; OSAR 1 Dec. 2010, 7), President Rajapaksa's party (TamilNet 31 Mar. 2009; International Crisis Group 18 July 2011, 4 n. 13). […] Upon joining the SLFP, Karuna was appointed Minister of National Reconciliation and Integration [also written as National Integration and Reconciliation or National Integration] (ColomboPage 9 Mar. 2009; The Hindu 10 Mar. 2009). […] Pillayan, meanwhile, continued to lead the TMVP (OSAR 1 Dec. 2010, 7) and maintain his position as chief minister of the Eastern Provincial Council (ibid.; UN 9 Mar. 2009)." (IRB, 17 February 2012)

The OISL report from September 2015 refers to the "Pillayan Group" and mentions that "Pillayan was initially the deputy of Karuna", but after a further split in 2007 he set up his own group and "became Chief Minister of the Eastern Province in May 2008" (OHCHR, 16 September 2015, p. 32). In October 2015, the Sri Lankan news portal The Asian Mirror reports about more recent developments in Karuna's political career and recent investigations against both, Karuna and Pillayan:

> "Former Deputy Minister Vinayagamoorthi Mutalitharan alias Karuna Amman has decided to join the TULF [Tamil United Liberation Front], led by former Parliamentarian V. Anandasangaree. Karuna Amman, a former Vice Chairman of the SLFP, was the founding leader of the TMVP following his defection from the LTTE. Karuna has also decided to resign from all the positions he held as a member of the SLFP. The 'official reason' behind Karuna Amman's resignation from the SLFP is the party's slow approach on the 'Tamil question'. Karuna and his erstwhile associate Pilleyan are now under investigation over a number of crimes, committed under the watch of some top echelons of the previous regime. Pilleyan was recently arrested for killing former TNA [Tamil National Alliance] MP Joseph Pararajasingham during the Christmas day mass at a church in Batticaloa in 2005. At the time Pararajasingham was killed, Karuna and Pilleyan were working together as the leader and the deputy leader of the TMVP. They had close links with the Sri Lankan military." (The Asian Mirror, 26 October 2015)

Pillayan is mentioned in a report of the International Crisis Group (ICG) from May 2016 which outlines that "[t]he TMVP was founded by ex-LTTE commander V. Muralitheran (aka Karuna) and later led by S. Chandrakanthan (aka Pillayan), who served one term as Eastern province chief minister and is currently jailed on suspicion of involvement in Pararajasingham's murder" (ICG, 18 May 2016, p. 10). A month prior, in April 2016, the Sri Lankan Internet newspaper ColomboPage reported that the court "extended the remand of the former Eastern Province Chief Minister Sivanesathurai Chandrakanthan alias Pillayan, who was arrested by the Criminal Investigation Department (CID) of police over the killing of a Tamil parliamentarian" (ColomboPage, 1 April 2016).

Iniya Bharathi

The OISL report published in September 2015 provides the following information on Iniya Bharathi:

> "K Pushpakumar, known as Iniya Bharathi was, according to press reports, appointed in 2011 as Sri Lanka Freedom Party (SLFP) organizer for Ampara District by President Mahinda Rajapaksa. Iniya Bharathi's group was listed under the Security Council 1612 procedure for the recruitment of children." (OHCHR, 16 September 2015, pp. 32-33)

The English language Sri Lankan newspaper reported the following on Iniya Bharathi in January 2012:

> "Iniya Bharathi is a lead operative of the paramilitary group led by Vinayagamoorthy Muralidharan alias Karuna who currently holds a Deputy Minister's post in the Rajapaksa government. Iniya Bharathi is at present the Ampara District Coordinator for President Rajapaksa. According to past news reports about ninety percent of affected families that gave evidence before the Lessons Learnt and Reconciliation Commission (LLRC) at its sittings in Ampara on March 26, 2011 alleged that Iniya Bharathi was responsible for the abductions and disappearances of their husbands, wives and children. Iniya Bharathi is also accused of intimidating voters, issuing death threats and of election fraud during the last presidential election, parliamentary election and during the recently held local government elections. The Kalmunai court had sentenced Iniya Bharathi to a ten year suspended jail term, when he was found guilty in some criminal cases." (The Sunday Leader, 29 January 2012)

In April 2016, the Sri Lankan news website the Colombo Gazette reports about Iniya Bharathi in the following terms:

> "The Janatha Vimukthi Peramuna (JVP) today accused former paramilitary member Iniya Bharathi of taking land by force in Thirukkovil in Ampara. JVP Parliamentarian Vijitha Herath told Parliament that Iniya Bharathi had assisted the former Government during the war against the LTTE and had control over Thirukkovil. He says during the war Iniya Bharathi used weapons to control the people of Thirukkovil and today he continues to have a hold on the residents in the area. The JVP MP [Member of Parliament] urged the Government to intervene in Thirukkovil and bring the situation under control." (Colombo Gazette, 6 April 2016)

Eelam People's Democratic Party (EPDP)

In September 2013, the Colombo Telegraph, which refers to itself as a public interest website operated by a group of exiled journalists, published an article about the EPDP centred on a cable from the WikiLeaks database which was written by the then U.S. Ambassador in the year 2007:

> "The EPDP, originally called the Eelam People's Revolutionary Liberation Front (EPRLF), began as a rival to the LTTE. One wing of the EPRLF founded the EPDP as a formal political party when its leader, Douglas Devananda, was elected to Parliament in 1994 and aligned

> with the government. […] 'Although registered as a formal political party, the EPDP remains a feared paramilitary group, wielding non-official power over parts of the Jaffna peninsula and especially the offshore islands with the tacit approval of the Sri Lanka Army.' the US Embassy Colombo informed Washington." (Colombo Telegraph, 17 September 2013)

Following the elections in August 2015, the EPDP holds one seat in Parliament (IPU, undated (b)). Section 1.2.2 (overview of main political parties) also contains information on the EPDP and its political activities.

In a query response about the EPDP from February 2012, the Immigration and Refugee Board of Canada (IRB) provides the following information from an interview with an Adjunct Professor of Asian Studies, from the Temple University in Philadelphia, conducted in January 2012:

> "The Adjunct Professor noted that the EPDP 'basically act like the military;' this includes working at checkpoints and as security informants (17 Jan. 2012). The OFPRA report indicates that paramilitaries, such as the EPDP, dressed in civilian clothing, are present at checkpoints and collaborate with the military (France Sept. 2011, 81). One observer speculated that they are there to [translation] 'identify suspects' (ibid.). According to OSAR, groups such as the EPDP work for the authorities, identifying [translation] 'suspects or presumed members of the LTTE and their sympathisers' (22 Sept. 2011, 18)." (IRB, 8 February 2012)

In an IRB query response from April 2015, it is noted that the "paramilitary groups such as the Eelam People's Democratic Party (EPDP) maintain close ties with government forces [...] and information held by these groups 'would be potentially available to the police'" (IRB, 8 April 2015). In a query response from June 2015, the Swiss Refugee Council (Schweizerische Flüchtlingshilfe, SFH) states that, according to different people in contact with the SFH in October 2014, the Tamil party EPDP is working closely together with security forces in the North, providing them with information. The SFH refers to information of a contact person from June 2015, which works for an international NGO that had been on location in May and June, being in contact with different activists. The source notes that there are rumours that the EPDP continues to cooperate with the security forces (SFH, 16 June 2015, p. 9).

The EDPD is mentioned in a January 2016 report from the International Truth and Justice Project Sri Lanka (ITJP). The report, which documents war and post-war crimes in Sri Lanka, suggests that "[g]iven the EDPD is a pro-government Tamil party and was involved in brokering half the ransoms paid by the 2015 victims [of abduction] in this report, questioning their cadres would be a starting point for evidence gathering regarding ongoing cases" (ITJP, January 2016, p. 41).

2.2 Overview of issues surrounding security forces, military

2.2.1 Forced recruitment by government forces

No information could be found on current practices of forced recruitment by government forces.

In a book from 2014 about the former president Rajapaksa's government, the Australian broadcaster, writer and an advocate for Tamil refugees in Australia, Trevor Grant, describes forced recruitment of government forces during the war, referring to a source from 2006:

> "A consistent omission has been the forced recruitment, often through abduction, of child soldiers by the Sri Lankan military and pro-government forces, including the Karuna-led faction which broke from the LTTE and joined with government forces in 2004. […] A UN report in 2006 noted there was 'strong and credible evidence that certain elements of the government security forces are supporting and sometimes participating in the abduction and forced recruitment of children'. The same report described a 'lack of political will on the part of the government to end impunity for child recruitment and use'" (Grant, 2014, p. 197)

The report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) Investigation on Sri Lanka (OISL) which was published in September 2015, covering a timeframe from February 2002 until October 2011, also refers to the above cited statement from 2006, which was published after the then Special Adviser on Children and Armed Conflict, Allan Rock, went on a mission to Sri Lanka in 2006. OISL further reports the following about its findings:

> "He had met with the parents of many of the children who had been abducted in Batticaloa District. Similar allegations were made by several other credible human rights organizations. The SLMM [Sri Lanka Monitoring Mission] reported violations of the CFA [Cease Fire Agrement] in which security forces were reportedly found to be acting in collusion with Karuna Group and TMVP, including in cases involving abduction of children for the purposes of recruitment." (OHCHR, 16 September 2015, pp. 142-143)

The same OISL report from September 2015 further notes that "a number of armed groups were responsible for child recruitment" (OHCHR, 16 September 2015, p. 133). In regard to political parties and paramilitary groups, the report focuses on recruitment by the TMVP/Karuna Group "because of the extent of their child recruitment". It outlines that other groups who recruited children included "Iniya Bharathi, registered political parties PLOTE and EPDP, and former TMVP member and Eastern Province Chief Minister Sivanesathurai Chandrakanthan (also known as Pillayan)" (OHCHR, 16 September 2015, p. 133). The OISL report further provides the following information on governmental involvement concerning forced recruitment, covering the mandated timeframe from 2002 to 2011:

> "715. After abducting boys and young men, the Karuna Group often held them temporarily in its nearest political office. It has been reported that TMVP political offices were frequently guarded by the Sri Lankan army and police.
>
> 716. The OISL has not been able to establish the numbers of children recruited by Karuna Group. UNICEF registered 596 children, including two girls, recruited by the Karuna Group/TMVP between 2006 and 2009
>
> 717. Based on the information obtained by OISL, there are reasonable grounds to believe that Government forces may have known that the Karuna Group (and subsequently the TMVP) recruited children. From 2006 onwards, the Eastern Province was under the control

> of the Government, and recruitment took place close to police and SLA camps, with newly recruited children reportedly cleared to pass through SLA checkpoints. By 2007, Karuna Group openly passed security forces check points fully armed in the East." (OHCHR, 16 September 2015, p. 142)

In February 2014, the London-based human rights organisation Child Soldiers International published a briefing on accountability for child recruitment and use in Sri Lanka, which states that "[t]he government has also taken no action against and continued to ignore allegations of underage recruitment by the TMVP including forces under the control of Inya Bharathi" (Child Soldiers International, February 2014, p. 2). The annual report on promoting reconciliation, accountability and human rights in Sri Lanka published by the Human Rights Council (HRC) in June 2016 notes that "paramilitary leaders, allegedly responsible for killings, abductions and widespread recruitment of child soldiers, continue to hold public positions and have faced no criminal investigation" (HRC, 28 June 2016, p. 6).

For further information on the situation of children, see section 4.5 of this compilation.

2.2.2 Treatment of military deserters

Article 32 of the Sri Lankan Code of Criminal Procedure from 1979 notes that "peace officers may arrest without warrant" if somebody is "reasonably suspected of being a deserter from the Sri Lanka Army, Navy or Air Force" (Code Of Criminal Procedure Act, 1979, Article 32 (g)). The Sri Lankan Army Act notes the following under the sub-heading "desertion, fraudulent enlistment and absence without leave":

> "103. (I) Every person subject to Desertion. military law who- (a) deserts or attempts to desert the army. Or (c) [sic] persuades, endeavours to persuade, procures or attempts to procure, any person subject to military law to desert the army.
>
> Shall be guilty of a military offence and, on conviction by a court martial, shall
>
> (i) where such offence is committed by him while on active service or under orders for active service, be liable to suffer rigorous imprisonment for a term not less than three years or any less severe punishment in the scale set out in section 133, and
>
> (ii) where such offence is committed by him under any other circumstances, be liable for the first offence to suffer simple or rigorous imprisonment for a term not exceeding three years or any less severe punishment in the scale set out in section 133, and for the second or any subsequent offence to suffer rigorous imprisonment for a term not less than three years or any less severe punishment in the scale set out in section 133." (Army Act, 1949, Article 103)

A similar regulation for deserting the Air Force can be found in the Sri Lankan Air Force Act in its consolidated version of 1979 (not including amendments from 1988 and 1993) (Air Force Act, 1949, Article 103).

The Navy Act regulates desertion from the naval forces stating the following:

> "Every person subject to naval law Desertion who absents himself from his ship, or from the place where his duty requires him to be […] shall be deemed to have deserted and shall be guilty of a naval offence and shall be punished - […]
>
> (a) if he has deserted to the enemy, with death or any less severe punishment in the scale of punishments, and (b) if he has deserted in any other circumstances, with rigorous imprisonment for a term not less than three years or any less severe punishment in the scale of punishments" (Navy Act, 1979, Article 71)

The Qatar-based news network Al Jazeera reports in June 2016 that "[d]esertion has risen significantly since the end of the war, with military officials disclosing that nearly 30,000 soldiers - of the overall forces of 350,000 - are currently classed as deserters, and blaming this on financial hardship in their home villages" (Al Jazeera, 6 June 2016). In a press release from March 2015, the Sri Lankan Ministry of Defence declared a general amnesty period for army deserters between 2 and 16 April 2015 stating that "since 1995 Army has conducted 20 amnesty periods and over 67,213 have been cleared thus far" (Ministry of Defence, 25 March 2015). In June 2016, the Ministry of Defence announced another one-month amnesty period for deserters of the tri forces (army, air force and the navy) from 13 June to 13 July 2016 during a media briefing (Ministry of Defence, 7 June 2016). The press statement following this media briefing provides insights into the treatment of military deserters:

> "Secretary [to the Ministry of Defence] Hettiarachchi noted that, since deserters are issued with warrants they are unable to leave the country or to return back from foreign countries. He also highlighted that since the original certificates of the deserters are with the tri forces they also face difficulties while applying for jobs and it is also illegal to employ them. Further speaking Secretary said that one of the main reasons for the amnesty period is to clear the documents of the tri forces.
>
> Speaking at the briefing Additional Secretary (Defence) Mr. S. Hettiarachchi said that during the clearance process if the deserters are required to make any payments steps will be taken to provide a maximum sum of up to Rs. 10,000 rupees which can be deducted by the respective forces. […]
>
> The deserters who come during the amnesty period will not be placed under arrest or detained. They can complete their proper clearance procedures and if they are entitled to receive any salary payments it will be provided upon deducting any outstanding dues. Furthermore if any deserters wish to continue his service in the tri forces it may be considered according to the requirements of respective forces. Deserters are requested to use this opportunity to obtain official clear during this amnesty period." (Ministry of Defence, 7 June 2016)

After the amnesty period for deserters ended in July 2016, the Sri Lankan daily business paper Daily FT provides the following information on possible consequences for military deserters who failed to report back during the one-month amnesty periods:

> "The armed forces are to take legal action against 18,847 deserters who did not reported for duty during the one-month general amnesty period given to them to report to their posts in the Army, Navy and Air Force. […]
>
> However, [Military Spokesman] Brig. Jayaweera said the Police and Military Police in the tri-forces had already started searching for those who had not reported back. 'They will be arrested and go through the normal legal process of the military. Even if they report back to the military now, they have to go through the same legal process to get clearance as they didn't respond during the general amnesty period,' he explained.
>
> The Military Spokesman said the Defence Ministry would not declare another amnesty period for them to report as they were given a month to report back to clear themselves." (Daily FT, 23 July 2016)

2.2.3 Treatment of people associated with or perceived to be supporters of the LTTE

In its human rights report covering the year 2015, the US Department of State (USDOS) writes that "[t]he major human rights problems reported during the year included harassment of civil society activists, journalists, and persons viewed as sympathizers of the banned terrorist group [...] LTTE" (USDOS, 13 April 2016, executive summary). According to this report, "[i]n the east and north, military intelligence and other security personnel, sometimes allegedly working with paramilitary groups, were responsible for the documented and undocumented detention of civilians accused of LTTE connections" (USDOS, 13 April 2016, section 1c). The annual Amnesty International (AI) report covering the year 2015 reports the following on the detention of people who are perceived to be associated with the LTTE:

> "Tamils suspected of links to the Liberation Tigers of Tamil Eelam (LTTE) were arrested and detained under the Prevention of Terrorism Act (PTA) which permits extended administrative detention, and shifts the burden of proof onto a detainee alleging torture or other ill-treatment." (AI, 24 February 2016)

Human Rights Watch (HRW) also refers to the Prevention of Terrorism Act (PTA) in relation to the treatment of suspected LTTE members:

> "The PTA has long been used to hold suspected LTTE members and others without charge or trial for years. […] The PTA facilitated thousands of abuses over the years, including torture to obtain 'confessions', enforced disappearances, and extrajudicial executions. The law has been used since the end of the war, including under the present government, to detain and torture people suspected of links to the LTTE, including forcibly returned asylum seekers." (HRW, 27 January 2016)

The non-governmental organisation Association des Étudiants Tamouls de France, an organisation formed by Tamil students to support the integration of Tamils in France, submitted a written statement to the UN Human Rights Council which was published in June 2016. The statement refers to "key findings after examination of an official list of 181 persons remanded under the PTA" as well as interviews with people affected, such as for example former detainees and their families (Association des étudiants tamouls de France, 9 June 2016, p. 2). The research was conducted in Sri Lanka in 2015 and mentions that "[e]ven a child who had

joined the LTTE when he was 13 years old was detained under the PTA twice and tortured" (Association des étudiants tamouls de France, 9 June 2016, p. 2). It further provides the following information on the detainees:

> "The column 'allegation' in the list of those detained under the PTA indicates that some persons have been detained since 2006, 2008 and 2009 and afterwards without having charges filed against them, on grounds such as 'Encouraging LTTE', 'Supporting LTTE' or even just 'LTTE Terrorism'." (Association des étudiants tamouls de France, 9 June 2016, p. 3)

Freedom of Torture, an organisation providing clinical services to survivors of torture in the UK, as well as advocating for their rights, published a report in August 2015 based on the study of 148 Sri Lankan torture cases. In the cases studied, torture was perpetrated between 2009 and 2013, although it is noted that "cases of more recent torture, including from 2014 and even 2015, have since been referred to Freedom from Torture" (Freedom from Torture, 13 August 2015, p. 9). A key finding of the research indicates that "[t]hose at particular ongoing risk of torture include Tamils with a real or perceived association with the Liberation Tigers of Tamil Eelam (LTTE) at any level and whether current or historic" (Freedom from Torture, 13 August 2015, p. 9). The report further provides the following information on the investigated torture cases:

> "The profile factor - other than ethnicity - that was reported by the vast majority of people to have led to detention and torture by state authorities was an actual or perceived association with the LTTE. Of the 148 people, 142 described an association with the LTTE at some level and/or said that they had been associated with the LTTE by the Sri Lankan authorities in some way (96% of all cases). The LTTE association related directly to themselves or to members of their family, or to both [...]. For some people the association was real and for others it was wrongly imputed to them by the authorities. Either way, this was the key factor that reportedly led to their eventual detention on one occasion or more.
>
> […] These cases demonstrate that ordinary people of Tamil ethnicity with links to the LTTE - even where these links were minimal or at a relatively low level - as well as those for whom such links were merely suspected or were completely false, were detained and tortured and that the detention of people with these profiles has continued well into the post-conflict period." (Freedom from Torture, 13 August 2015, p. 19)

In a HRW report about police accountability from October 2015, it is also noted that "[p]olice use of torture against criminal suspects cannot be dismissed as a wartime phenomenon" and that "police have been implicated in enforced disappearances, extrajudicial executions, and abductions of those suspected, however loosely, of ties to the LTTE." (HRW, October 2015, p. 17).

The International Crisis Group (ICG) published a report in August 2015, which provides information about the treatment of people associated with the LTTE returning to Sri Lanka from abroad. Based on interviews conducted by the ICG as well as newspaper articles from 2015, the ICG describes the situation as follows:

> "Tamils returning from abroad continue to be arrested under the PTA on suspicion of old LTTE involvement. According to some reports, after police detention, many are sent to the military-run rehabilitation program. Tamil politicians and activists allege that secret detention centres established by the old government continue, though officials deny this." (ICG, 12 August 2015, p. 17)

For more information on detention, see section 2.2.6 (arbitrary arrest and detention) of this compilation. For further information on the treatment of persons returning from abroad, refer to section 4.7.3 of this compilation

Rehabilitation of former LTTE cadres

In June 2014, a press release by the Government of Sri Lanka writes about government-sponsored rehabilitation programmes for ex-combatants, which reportedly include "professional training courses" and "comprises psychological assistance, education, sports, and spiritual, religious and cultural empowerment". Upon the completion of the programme, "ex-combatants become eligible to receive loans up to Rs. 250,000 at a minimal interest rate to start livelihood programs" (Government of Sri Lanka, 5 June 2014). The Government further provides the following information on the programme:

> "The Commissioner General of Rehabilitation Maj. Gen. Jagath Wijetilleke said that nearly 12,000 former LTTE cadres either surrendered or were taken into custody following the end of the war in 2009. The remaining 132 ex-LTTE combatants are currently undergoing the one-year rehabilitation program that is jointly conducted by the Sri Lanka Army and BCGR at the Poonthottam Rehabilitation Center in Vavuniya. […]
>
> According to Maj. Gen. Wijetilleke, the progress and welfare of those who have already been reintegrated are constantly being monitored by the Socio Economic Welfare Coordinating Office for Rehabilitated Beneficiaries, established at the District Secretariat offices in all districts in the Northern and Eastern provinces." (Government of Sri Lanka, 5 June 2014)

In May 2016, the Office of the High Commissioner of Human Rights (OHCHR) published the preliminary observations of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Mr. Juan E. Mendez, which provide the following information on rehabilitation:

> "While there were around 24 rehabilitation facilities right after the end of the conflict, rehabilitation now consists of one year in detention (on occasion extended to 15 months) at Poonthotam Rehabilitation Centre in Vavuniya, at the end of which the individual is deemed 'rehabilitated' and released. Forty persons (39 male, 1 female) are currently held in Poonthotam Rehabilitation Centre in Vavuniya. I have been informed that they will be released in the course of the following months. My team and I interviewed some of these forty persons, who told us they have been deprived of liberty since 2009 or earlier. […]
>
> Living conditions and other benefits are considerably more humane in rehabilitation than in prison, including the fixed term of detention, periodic home leave of four days' duration

> and vocational training. However, not all security related prisoners are invited to rehabilitation and it is unclear what selection criteria are used." (OHCHR, 7 May 2016a)

In its human rights report covering the year 2015, the USDOS provides the following information on rehabilitation and reintegration:

> "Reintegration of former combatants and other detainees released from rehabilitation remained challenging due to intensive surveillance by the military, social stigma (some persons were afraid to associate themselves with former combatants, who regularly had to report to the army), employment difficulties, and psychological trauma. Several released former combatants reported torture or mistreatment, including sexual harassment and abuse by government officials while in rehabilitation centers and after their release." (USDOS, 13 April 2016, section 1d)

In February 2015 the International Bar Association, an organisation of legal practitioners, bar associations and law societies worldwide, notes the following on the rehabilitation process for ex-LTTE cadres in a written statement submitted to the UN Human Rights Council:

> "Although the civil war ended in 2009, conflict-related issues continue to affect human rights protection in Sri Lanka. A key concern in this regard is the rehabilitation process aimed at 'reforming' ex-LTTE cadres. In particular, the following core human rights issues have been identified: (1) arbitrary detention in rehabilitation camps is used by the Sri Lankan Government as a means to suppress the Tamil population; (2) surveillance, intimidation and harassment continue after the release of detainees; (3) the rehabilitation process further entrenches divisions within Sri Lankan society and provides a continuous source of conflict." (International Bar Association, 24 February 2015, p. 2)

In its Freedom in the World 2015 report covering the year 2014, Freedom House notes that "[f]ormer LTTE fighters and their social circles face special scrutiny and are repeatedly questioned by authorities, infiltrated by intelligence personnel, and encouraged to inform on their associates" (Freedom House, 28 January 2015). The following year, the Freedom in the World report 2016, covering the year 2015, does not refer to the surveillance of former LTTE combatants (Freedom House, 27 January 2016). In March 2016, TamilNet, which describes itself as a not-for-profit news provider with a Tamil perspective, reports that "the intelligence operatives of the SL [Sri Lankan] State and military surveillance officers are conducting fresh 'registrations' of people living across the 14 divisions of Batticaloa district" (TamilNet, 5 March 2016). The article further provides the following information:

> "Particularly, 1080 families are subjected to systematic and continuous surveillance by the SL [Sri Lankan] military intelligence in 10 of 14 divisions in Batticaloa district, the Tamil civil sources said. Regardless of their release after prolonged detention and so-called military rehabilitation, they are being again subjected to questions for their presence in Vanni, whether they had received training from the LTTE, did they participate in combat, where they are employed now and how they receive money." (TamilNet, 5 March 2016)

In August 2016, the Sri Lankan internet newspaper ColomboPage writes that "Tamil media reports have alleged that 105 former LTTE members have so far died mysteriously, allegedly

after being injected with a drug when they were undergoing post-war rehabilitation in Sri Lankan army run camps" (ColomboPage, 11 August 2016). In September 2016, Journalists for Democracy in Sri Lanka (JDS), a group of journalists, writers and human rights defenders who describe themselves as having fled the country "due to work related persecution", reports that "Tamil lawyers in Sri Lanka have called upon the United Nations to investigate the suspicious deaths and serious physical disabilities of Tamil Tiger rebels following their release from state custody" (JDS, 12 September 2016). The Tamil lawyers from the Tamil Lawyers Forum (TLF) claim that "[t]he numbers of dead among the category of ex cadres who have served time in Rehabilitation facilities stand at a high 107 within the last 4-5 years" and that "the Northern Provincial Council (NPC) unanimously adopted a resolution in early August demanding that the government launch an investigation". The TLF are also "criticising the failure to launch an internal investigation so far" (JDS, 12 September 2016).

2.2.4 Enforced disappearances

According to the OHCHR Investigation on Sri Lanka (OISL) published in September 2015, which covers the time period between 2002 and 2011, different United Nations entities as well as NGOs "have gathered an overwhelming amount of information confirming the direct involvement of the Government, and in particular security forces in enforced disappearances" (OHCHR, 16 September 2015, p. 86). In July 2016, the UN Human Rights Council published the report of the Working Group on Enforced or Involuntary Disappearances (WGEID) on its mission to Sri Lanka conducted in November 2015. According to the report, "the Working Group has transmitted communications concerning over 12,000 cases of enforced disappearance to the Government of Sri Lanka, of which 5,750 are still outstanding" (HRC, 8 July 2016, p. 4). The report further provides the following information:

> "6. Enforced disappearances have been used in a massive and systematic way in Sri Lanka for many decades to suppress political dissent, counter-terrorist activities or in the internal armed conflict. […] During and after the conflict, enforced disappearances were still carried out for purely economic purposes such as extortion by some State officials and affiliated paramilitaries. The extensive use of enforced disappearance and the almost complete lack of judicial accountability and of decisive and sustained efforts to secure the truth about the disappeared, in addition to the absence of a comprehensive reparation programme and social, psychological and economic support for the victims have left profound wounds on society and a deep sense of mistrust among relatives." (HRC, 8 July 2016, pp. 3-4)

The report of the WGEID from July 2016 also notes that it had "heard consistent and reliable accounts about people who had disappeared after surrendering to the army during the last days of the conflict with LTTE in May 2009" (HRC, 8 July 2016, p, 10).

In its human rights report covering the year 2015, the US Department of State (USDOS) notes that "[t]here were no official statistics regarding disappearances, and fear of reporting such incidents made reliable accounting difficult" (USDOS, 13 April 2016, section 1b). The USDOS report further provides the following information on enforced disappearances in Sri Lanka during the year 2015:

> "On December 10, the country signed the International Convention for the Protection of All Persons from Enforced Disappearance. In September the Cabinet approved the issuance of a 'certificate of absentee' for persons reported missing in lieu of a death certificate to enable family members to access government benefits." (USDOS, 13 April 2016, section 1b)

Reporting on the year 2015, Human Rights Watch (HRW) also states that "the government decided to issue official certificates to the families of the disappeared affirming their status as 'missing' instead of 'deceased'", which "allows for the families to obtain certain benefits" (HRW, 27 January 2016).

In January 2016, the Prime Minister of Sri Lanka appointed the Consultation Task Force on Reconciliation Mechanisms (CTF), which was, among other things, tasked with public consultations on the establishment of an Office on Missing Persons (OMP) (Consultation Task Force on Reconciliation Mechanisms, August 2016, p. viii). The CTF published an interim report which "is based on the findings of 291 written submissions received as of 17th July 2016" as well as "consultations with 11 CSOs [Chief Security Officers] and groups representing families of the missing and disappeared, and 11 focus group discussions (FGDs) held by the ZTFs [Zonal Task Forces, established to conduct consultations] in the Northern, Eastern, Southern and Uva provinces" (Consultation Task Force on Reconciliation Mechanisms, August 2016, p. viii). Summarising the submissions, the report states the following on enforced disappearances:

> "Grave concerns were expressed in the submissions about on-going human rights violations in the North and East, including allegations of abductions and incidents of intimidation of victims and human rights defenders. The continuation of these incidents is a matter of serious concern, having a detrimental impact on the credibility of the TJ [Truth and Justice] process. […] It is strongly and repeatedly stated in the submissions that the Government must repeal the Prevention of Terrorism Act (PTA) and must introduce legislation, to give effect to the UN Convention on Enforced and Involuntary Disappearances, including criminalization of enforced disappearances, in addition to ensuring arrest and detention take place in accordance with the Presidential Directives issued in June 2016." (Consultation Task Force on Reconciliation Mechanisms, August 2016, p. viii- ix)

The report of the Working Group on Enforced or Involuntary Disappearances (WGEID) on its mission to Sri Lanka published by the HRC in July 2016 also notes that "[t]he Working Group received extensive information about the Prevention of Terrorism Act and on how a number of its provisions could facilitate the occurrence of enforced disappearance" (HRC, 8 July 2016, p. 5). For a description of the PTA see section 1.3.2 of this compilation.

The WGEID further states that "[t]he Working Group welcomes in particular its ratification on 25 May 2016 of the International Convention for the Protection of All Persons from Enforced Disappearance. This ratification should be followed immediately by implementing legislation" (HRC, 8 July 2016, pp. 4-5). In September 2016, Amnesty International (AI) issued a statement at UN Human Rights Council on lacking legislation on enforced disappearances providing the following information:

> "Sri Lankans are however still waiting for the legislation that would make enforced disappearances a crime under Sri Lankan law. Families hoped that the Office on Missing Persons would finally, after years of waiting, deliver the truth about the fate of their missing loved ones, but expressed frustration that they were not adequately consulted before its creation." (AI, 15 September 2016)

The interim report of the Consultation Task Force (CTF), which was tasked with public consultations on the establishment of an Office on Missing Persons (OMP), also raised issues regarding these consultations. In its interim report published in August 2016, the CTF refers to "hurried briefings organised by the Ministry of Foreign Affairs (MFA) prior to gazetting the Bill" which go "contrary to the spirit of the commitment given by the Government to consult victims and affected communities as a preliminary step to drafting the OMP Bill" (Consultation Task Force on Reconciliation Mechanisms, August 2016, p. ix). The interim report further provides the following information on the consultation process:

> "The CTF acknowledges that several provisions of the Bill reflect the views, ideas, demands and recommendations expressed in submissions made to the CTF […] Other submissions received by the CTF relating to the OMP (both before and after the Bill was released) raise concerns, and identify gaps and limitations regarding the content of the Bill and the process by which it was formulated as well as the disturbing recurrence of abductions in the recent past." (Consultation Task Force on Reconciliation Mechanisms, August 2016, p. 6)

> "For its part, the CTF has since its establishment in January 2016 insisted that if the consultation process is to be successful, the Government must ensure that the security forces, Police and the intelligence services refrain from harassment and intimidation of persons involved in the consultations. […] Despite these instructions, several grave incidents were reported." (Consultation Task Force on Reconciliation Mechanisms, August 2016, p. 9)

According to BBC News, "[p]arliament passes a law to establish an office to trace the thousands of people who disappeared during the war and separate Marxist insurrection" in August 2016 (BBC News, 21 September 2016). The act providing for the establishment of the OMP can be accessed via the following link:

- Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act [An Act to Provide for the Establishment Of The Office On Missing Persons; To Provide For The Searching And Tracing Of Missing Persons; […]] certified on 23 August 2016 (published by Gazette of the Democratic Socialist Republic of Sri Lanka, 26 August 2016) http://www.parliament.lk/uploads/acts/gbills/english/6016.pdf

In its July 2016 mission report, the WGEID describes similar issues of harassment and intimidation by government forces during investigations:

> "53. The Working Group is extremely concerned that relatives of disappeared persons and organizations have been harassed and intimidated in different ways owing to their involvement in the investigation of cases of enforced disappearance. The Working Group was informed that relatives of the disappeared have received several visits from intelligence officers, police officers or army personnel and have been questioned about

> their activities and the meetings they attend. Most of the allegations pointed directly to officers of the Criminal Investigation Department. […] The Working Group also heard allegations that some of the people with whom it had met had been questioned about its visit." (HRC, 8 July 2016, p. 13)

The report of the WGEID published in July 2016 further notes that "fear discouraged relatives from filing complaints in relation to enforced disappearances" and that it "observed severe problems relating to investigations into enforced disappearances, including omissions, delays and lack of due diligence". It adds that "[m]any authorities, both civil and military, allegedly refuse to work or cooperate with the investigating authorities" (HRC, 8 July 2016, p. 11). Additionally, the WGEID also points to reports of sexual harassment:

> "55. The Working Group is extremely concerned about detailed allegations that Criminal Investigation Department personnel have engaged in sexual harassment and violence against mothers or wives of disappeared persons, including in exchange for providing information on their relatives' cases." (HRC, 8 July 2016, p. 13)

The interim report of the Consultation Task Force on Reconciliation Mechanisms contains similar information, stating that submissions received during the consulting process "provide details of the failure on the part of various state agencies to respond to or even acknowledge and record complaints relating to the missing, the disappeared and surrendees" (Consultation Task Force on Reconciliation Mechanisms, August 2016, p. 14). It further describes reports of harassment and intimidation of family members of disappeared persons in the following terms:

> "It was reported that women have been asked for bribes (including sexual favours) for information about their disappeared relatives. Some of the submissions noted how physical threats of violence and death had been made following their complaint. In other instances, unknown individuals had called and demanded ransom money for the return of the individual. Some had lost large sums of money—some of it collected through loans, pawning of family jewellery, sale of land or borrowing—on false promises to release the disappeared person." (Consultation Task Force on Reconciliation Mechanisms, August 2016, p. 14)

The WGEID report from July 2016 concludes that "[i]mpunity for enforced disappearances remains a major challenge in Sri Lanka" and that "[f]or the vast majority of cases, there is absolute impunity" (HRC, 8 July 2016, p. 11).

2.2.5 Extrajudicial killings

In September 2015, the UN Human Rights Council (HRC) published a report containing the findings of the Office of the United Nations High Commissioner for Human Rights (OHCHR), regarding the violation of human rights during the armed conflict, human rights developments since March 2014 and reforms taken since the election of the new government in 2015. The report contains the following summary on extrajudicial killings in Sri Lanka:

> "25. On the basis of the information obtained by the investigation team, there are reasonable grounds to believe the Sri Lankan security forces and paramilitary groups associated with them were implicated in unlawful killings carried out in a widespread

> manner against civilians and other protected persons. Tamil politicians, humanitarian workers and journalists were particularly targeted during certain periods, although ordinary civilians were also among the victims. There appears to have been discernible patterns of killings, for instance in the vicinity of security force checkpoints and military bases, and also of individuals while in the custody of security forces. If established before a court of law, these may, depending on the circumstances, amount to war crimes and/or crimes against humanity." (HRC, 28 September 2015, p. 6)

In August 2015, the British NGO Freedom from Torture, which provides therapeutic care for survivors of torture, published a report based on a study of 148 Sri Lankan torture cases between 2009 and 2013. Referring to the case studies, the report states that "[t]his group of Sri Lankan torture survivors wants the world to know that torture, disappearances and extrajudicial killings are ongoing in peacetime Sri Lanka right up to the present time" (Freedom from Torture, 13 August 2015, p. 65). Covering the year 2015, the US Department of State (USDOS) provides the following information on extrajudicial killings in its human rights report:

> "Unlike in the previous year, there were no substantiated reports of extrajudicial killings, although the use of force against civilians by government officials, while increasingly rare, remained a problem. The government arrested several members of the armed services and political class suspected in unsolved cases, some more than a decade old." (USDOS, 13 April 2016, section 1a)

The previous year, the USDOS reported that in 2014 "[t]here were reports that the government or its agents committed arbitrary or unlawful killings", but that "[r]eliable statistics on such killings were difficult to obtain because past complainants were killed, and many families feared reprisals if they complained" (USDOS, 25 June 2015, section 1a). The report further provides the following numbers about death in police custody:

> "While the overall number of reported extrajudicial killings did not appear to increase from the previous year, killings and assaults on civilians by government officials were a problem. Throughout the year numerous reports emerged regarding the killing of suspects under questionable circumstances while in police custody. According to a government official, there have been 68 such police custodial deaths in the country since the start of 2012. In October a media account listed 12 individuals killed while in police custody in 11 incidents since July 2013." (USDOS, 25 June 2015, section 1a)

The same report also refers to a December 2013 statement by the Standing Committee on Rule of Law of the Bar Association of Sri Lanka (BASL):

> "In December 2013 the Bar Association of Sri Lanka's (BASL's) Standing Committee on Rule of Law issued a public statement regarding custodial deaths, which noted that 'any person accused of committing criminal acts has a right to be tried according to law. Police cannot be allowed to try and punish persons accused of crimes however serious they may be.' Such actions amounted to usurpation of judicial power by police, the BASL stated, and should be dealt with under the law. The statement added that a 'large number' of such incidents indicated a troubling pattern of 'extrajudicial killing' for which the 'explanation by the police…has been identical.' The BASL called for the creation of a special commission

> to investigate the incidents, but authorities took no action to do so and had not released any investigation results to the public by year's end." (USDOS, 25 June 2015, section 1a)

In its annual report covering the year 2014, the UK Foreign and Commonwealth Office (FCO) notes in July 2015 that "[t]here were continued allegations of police involvement in torture and custodial deaths, as well as in extrajudicial killings throughout 2014" (FCO, 12 March 2015). An in-year update of this FCO report from July 2015 notes that"[c]oncerns remain over torture and extrajudicial killings" (FCO, 15 July 2015). The update refers to the suspension of policemen involved in two incidents of custodial deaths in Suriyavewa and Thalawakele as well as to the suspension of three other policemen "following two separate deaths of suspects in custody at the Jaela and Dummalasuriya police stations". According to the update, "NGOs raised concerns over the discovery of dismembered bodies showing signs of torture in several areas around the country in March." (FCO, 15 July 2015)

In October 2014, Amnesty International (AI) published a report on the protection of human rights in Sri Lanka which provides the following information on extrajudicial executions and deaths in custody:

> "Amnesty International continues to receive credible reports of the unlawful use of force and violations of the right to life by state agents and by paramilitary groups under the control of the armed forces, including extrajudicial killings and suspicious deaths in custody. […] Parties that have been accused of such abuse include police and army personnel, members of the Eelam People's Democratic Party (EPDP); the Karuna faction within the ruling United People's Freedom Alliance (UPFA); and the Tamil Makkal Viduthalai Pulikal (TMVP). The Sri Lankan authorities have taken insufficient measures to prevent violations by government forces and their affiliates by failing to adequately discipline personnel and by failing to ensure that paramilitary agents and political parties aligned with the government are disarmed. They have failed to effectively investigate alleged extrajudicial executions, and have not prosecuted those suspected of the crimes." (AI, 7 October 2014, p. 15)

In September 2015, AI notes that "[a]lleged war crimes committed during the long armed conflict, as well as enforced disappearances, extrajudicial executions and torture that continued after the fighting ended have never been effectively investigated" (AI, 9 September 2015, p. 1). In August 2016, AI submitted a written statement to the UN Human Rights Council (HRC) stating that "[d]espite repeated promises to progress investigations, impunity persists in most cases". The cases mentioned by AI include the "January 2006 extrajudicial executions of five students in Trincomalee by Sri Lankan security personnel" and the "August 2016 shootings of 17 aid workers with Action Contre La Faim" (AI, 29 August 2016, p. 3). In November 2016, a Human Rights Watch (HRW) press statement mentions that "[t]wo students from northern Sri Lanka's Jaffna University were shot by police near a checkpoint in the early hours of October 20, 2016. Both died from their wounds". According to HRW, "[i]nitially, police denied the shooting", but "the autopsy found bullets lodged in their bodies". The press statement notes that "extrajudicial killings by the police are all too familiar, and the government almost never holds officers responsible" (HRW, 6 November 2016).

In its fifth periodic report for the consideration of the Committee against Torture from December 2015, the Government of Sri Lanka argues that "[w]henever credible evidence is available, steps have been taken to prosecute law enforcement personnel and members of the military, who are responsible for torture and arbitrary killings" (Government of Sri Lanka, 11 December 2015, p. 6). The report further provides the following information on investigations of extrajudicial killings:

> "58. Professional measures are being taken by the College of Forensic Pathologists of Sri Lanka (CFPSL), the professional body of the specialists in Forensic Medicine in Sri Lanka, to continuously improve and update the system are as follows: […] Development of guidelines on investigations into deaths in custody and extrajudicial executions and arbitrary killings is under discussion by the CFPSL. Implementation of Minnesota Protocol in Sri Lanka has been recommended. CFPSL and the Chief JMO will be working on this." (Government of Sri Lanka, 11 December 2015, p. 14)

The report of the working group on enforced or involuntary disappearances on its mission to Sri Lanka, published by the UN HRC in July 2016 also refers to the government's forensic capacities to investigate mass graves:

> "42. The Government should be proactive in ensuring the proper investigation of known mass graves and in the identification of new ones. Unfortunately, the Government is not taking any active measures to uncover possible grave sites until it is compelled to investigate by a court order. At the same time, given that a comprehensive State policy to search for disappeared persons would likely give rise to the discovery of more graves, the Government should reinforce the forensic capacity and technical expertise of all those involved in the exhumation and identification of the remains and in the ensuing criminal investigation.
>
> 43. The Working Group welcomes the establishment of a new DNA laboratory in the Government Analyst's Department, but is concerned that it may not have the capacity to deal with the increasing workload." (HRC, 8 July 2016, p. 10)

2.2.6 Arbitrary arrest and detention

In its annual report covering the year 2015, Amnesty International (AI) reports that "[a] new government in January brought constitutional reforms and promises of improved human rights protection. Many human rights challenges remained, including persistent use of arbitrary arrest and detention" (AI, 24 February 2016). The US Department of State (USDOS) notes in its human rights report for the year 2015 that "[t]he law prohibits arbitrary arrest and detention, but such incidents occurred although at a decreased rate relative to 2014. Civil society groups and human rights activists reported incidents of persons arrested and detained on unsubstantiated charges" (USDOS, 13 April 2016, section 1d). In May 2016, the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Mr. Juan E. Mendez, notes that "[t]here does not seem to be a clear rule in the law that says that arrests have to be authorized by a judge. In practice, the decision to arrest a person is made by a police officer" (OHCHR, 7 May 2016a).

Looking at developments during the year 2015, Freedom House notes in its Freedom of the World report that "[p]olice and security forces occasionally engage in abusive practices, including arbitrary arrest" and that abusive practices "disproportionately affect Tamils" (Freedom House, 27 January 2016). AI explains detention practices during the year 2015 as follows:

> "Tamils suspected of links to the Liberation Tigers of Tamil Eelam (LTTE) were arrested and detained under the Prevention of Terrorism Act (PTA) which permits extended administrative detention, and shifts the burden of proof onto a detainee alleging torture or other ill-treatment." (AI, 24 February 2016)

In its human rights report covering the year 2015, the USDOS describes arrest under the PTA in the following terms:

> "The PTA does not clearly define what constitutes an arbitrary arrest. Under the PTA, security forces have sweeping powers to search, arrest, and detain. Detainees may be held for up to 18 months without charge. Many detainees were held arbitrarily for substantially longer periods than this without charge, including in irregular places of detention. [...]
>
> According to human rights groups, police stations held an unknown number of irregular detainees, as did the CID [Criminal Investigation Department], the Terrorist Investigation Division, army camps, and other informal detention facilities without charge or trial on allegations of involvement in terrorism-related activities." (USDOS, 13 April 2016, section 1d)

In a press statement from June 2016, Human Rights Watch (HRW) reports that "[e]xact numbers of those still held under the PTA are unknown, with estimates ranging from 120 to 162 detainees". HRW notes that between April and June 2016 "the government has arrested at least 11 people under the PTA for alleged terrorist activities instead of using appropriate provisions under the criminal code" (HRW, 13 June 2016). The HRW press statement from June 2016 further provides the following information on recent developments regarding arrests and detention under the PTA:

> "Recent arrests under the PTA in Chavakachcheri in the Northern Province prompted Sri Lanka's National Human Rights Commission to issue Directives on Arrest and Detention under the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 on May 18, 2016. This comprehensive list of directives is intended to protect detainees against the security forces' broad powers under the PTA, particularly at the time of arrest and ensuing detention. These include guarantees of medical and legal assistance, registration of arrest, right to language of the detainee's choice, security from torture and other ill-treatment, and special protection for women and children. The directives also reassert the commission's mandate to be promptly informed of all PTA arrests, to access any person arrested or detained under the PTA, and to access any place of detention at any time.
>
> The government has made substantial progress on many cases of prior PTA detainees. The authorities have released some PTA detainees on bail, 'rehabilitated' others, and promised to charge and prosecute the remainder. However, the government has still not put forward

> a plan to provide redress for those unjustly detained under the PTA, or addressed the issue of detainees charged and prosecuted solely on the basis of coerced confessions obtained during detention." (HRW, 13 June 2016)

In a report by the International Crisis Group (ICG) from August 2015 it is noted that "Tamils returning from abroad continue to be arrested under the PTA on suspicion of old LTTE involvement" (ICG, 12 August 2015, p. 17). For further information on the treatment of persons returning from abroad, see section 4.7.3 of this compilation.

For further information on the Prevention of Terrorism Act (PTA), see section 1.3.2 of this compilation. The above described directives on arrest and detention under the PTA can be accessed via the following link:

- HRCSL - Human Rights Commission of Sri Lanka: Directives issued by The Human Rights Commission of Sri Lanka on Arrest and Detention under the Prevention Of Terrorism (Temporary Provisions) Act No 48 Of 1979, 18 May 2016 http://hrcsl.lk/english/wp-content/uploads/2016/05/Directives-on-Arrest-Detention-by-HRCSL-E-.pdf

The annual report of the United Nations High Commissioner for Human Rights, published by the Human Rights Council (HRC) in June 2016, also refers to "[c]ontinuing allegations of arbitrary arrest" (HRC, 28 June 2016, p. 9). The report further provides the following information on people detained and the manner of arrest and detention:

> "14. The fate of remaining security detainees held under the PTA remains a major concern for the Tamil community. In December 2015, the Government released on bail 39 individuals detained without charge, but around 250 detainees are believed to remain in detention. The Government has made indictments in 117 of these cases, and in January created a special High Court bench to expedite proceedings. The Government had promised the Attorney-General's Office would make decisions by the end of March but there have been no further charges or releases this year. This situation is not only traumatic for the individuals concerned - some of whom resorted to hunger strikes - and for their families, but a source of growing frustration among Tamil political parties and community at large. […]
>
> 15. This situation is compounded by the Government's continued reliance on the PTA to make new arrests, despite its commitment to repeal the law. According to reports, the Government has made more than 40 new PTA arrests in 2015-16, including more than 25 in March-April 2016 during a security operation after the discovery of an explosives cache in Jaffna. The manner in which some of these arrests reportedly took place, in an arbitrary manner and without following proper legal procedure, have led some to compare them to the infamous 'white van' abductions/disappearances of the past. While there are clear differences (all those arrested reappeared in detention in matter of hours), such cases strike fear in the community and undermine confidence in the Government's efforts to restore the rule of law and criminal procedures in accordance with the law and international standards." (HRC, 28 June 2016, p. 5)

Groundviews, a citizens journalism website based in Sri Lanka which was established under the Voices of Reconciliation Project, conducted by the Centre for Policy Alternatives (CPA) and strives to enable discussions on democracy, rights, governance and peace in Sri Lanka, published an article in June 2016 on the above described arrests after the discovery of explosives in Jaffna on 30 March 2016. The article notes that as of 23 June 2016 "[a]t least 23 of the 28 persons who have been arrested have not been charged with any crime" and that "[n]o arrest receipts were issued at the time of arrest in at least 10 cases. According to the article, "[f]amily members have also been reported as being detained, subjected to intensive interrogation, harassment and/or intimidation." (Groundviews, 28 June 2016)

The non-governmental organisation Association des Étudiants Tamouls de France, an organisation formed by Tamil students to support the integration of Tamils in France, submitted a written statement which was published by the Human Rights Council in June 2016, providing "some key findings after examination of an official list of 181 persons remanded under the PTA (excluding those already sentenced and presently serving those sentences)" (Association des étudiants tamouls de France, 9 June 2016, p. 2). Such key findings include that "five persons have been remanded for the past 18-19 years (one since 1996 and four since 1997) without having their case(s) concluded, neither establishing their guilt nor innocence" and that "[o]ut of 22 reported as remanded in 2014, 20 had not been charged when the list was prepared". The statement also notes that "[t]here have been numerous allegations of secret detention centres, notorious for torture, run under the former Rajapaksa Government, where many families of the disappeared claim their loved ones were being held" and that "[b]oth, the Rajapaksa Government and the current government have vehemently denied the existence of such secret camps. (Association des étudiants tamouls de France, 9 June 2016, pp. 2-3)

Referring to interviews in Colombo and Jaffna as well as newspaper articles published in 2015, the International Crisis Group (ICG) also notes in a report from August 2015 that "Tamil politicians and activists allege that secret detention centres established by the old government continue, though officials deny this" (ICG, 12 August 2015, p. 17). The Sri Lankan Consultation Task Force on Reconciliation Mechanisms writes in its interim report, which summarises submissions from civil society regarding missing persons, that "[s]ubmissions and zonal consultations also raise the issue of secret detention camps" (Consultation Task Force on Reconciliation Mechanisms, August 2016, p. 7). The report further provides the following information on such detention camps:

> "One organisation reported that the Government ignored a complaint relating to the existence of a secret detention camp in Trincomalee in 2013 where 600 people were allegedly detained. They also expressed that the complainants were harassed. Submissions note that secret detention camps continue to exist, but that the present government is taking no action on this matter, and that complainants continue to be harassed. Participants at a FGD [focus group discussion] held in Kilinochchi referred to the existence of secret detention camps in Kadirgamam, Pulmottai, Trincomalee and Verugal and demanded the right to see the detainees.
>
> While submissions noted that violations are no longer occurring in an overt, widespread or systematic manner, the continuation of these incidents under the present government is

a matter of serious concern." (Consultation Task Force on Reconciliation Mechanisms, August 2016, pp. 7-8)

2.2.7 Torture

This section deals with politically motivated torture and torture in relation to real or perceived security threats. It can be read in conjunction with section 3.2 (torture and ill-treatment of criminal suspects) of this compilation.

The human rights report of the US Department of State (USDOS) covering the year 2015 provides the following information on torture by police and security forces:

> "The law makes torture a punishable offense and mandates a sentence of not less than seven years and not more than 10 years' imprisonment. There were credible reports during the year that police and military forces abducted, tortured, raped, and sexually abused citizens. The PTA allows courts to admit as evidence confessions extracted by torture.
>
> In the east and north, military intelligence and other security personnel, sometimes allegedly working with paramilitary groups, were responsible for the documented and undocumented detention of civilians accused of LTTE connections. Observers reported that interrogation sometimes included mistreatment or torture following detention. There were reports that authorities released detainees with a warning not to reveal information about their arrest or detention, under the threats of re-arrest or death." (USDOS, 13 April 2016, section 1c)

The Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment conducted a visit to Sri Lanka from 29 April to 7 May 2016. In his preliminary observations and recommendations from May 2016, he notes that "[t]he current legal framework and the lack of reform within the structures of the armed forces, police, Attorney-General's Office and judiciary perpetuate the real risk that the practice of torture will continue" (OHCHR, 7 May 2016a).

In its annual report for the year 2015, Human Rights Watch (HRW) describes the use of the Prevention of Terrorism Act (PTA) to facilitate torture in the following terms:

> "The PTA facilitated thousands of abuses over the years, including torture to obtain 'confessions', enforced disappearances, and extrajudicial executions. The law has been used since the end of the war, including under the present government, to detain and torture people suspected of links to the LTTE, including forcibly returned asylum seekers. Many instances of torture, sexual violence, and other ill-treatment occured in the Criminal Investigation Division and Terrorist Investigation Division offices in Colombo and elsewhere, while others occured in unofficial places of detention." (HRW, 27 January 2016)

In August 2015 the organisation Freedom of Torture, which provides clinical services to survivors of torture in the UK and advocates for the rights of torture victims, published a report based on a study of 148 Sri Lankan torture cases. The report covers a timeframe from May 2009 to September 2013, but notes that "cases of more recent torture, including from 2014 and even 2015, have since been referred to Freedom from Torture". According to the research,

"torture did not end when the fighting stopped. Rather, torture - including rape and other forms of sexual torture and extensive burning - remains integral to the machinery of repression in Sri Lanka and continues to be perpetrated with impunity" (Freedom from Torture, 13 August 2015, p. 9). Regarding the change of presidency in January 2015, Freedom of Torture "cautions against any assumption that torture in the country has stopped or even reduced as a consequence". The organisation states that "[w]e know from our clinical experience of working with Sri Lankan torture survivors over decades that torture is an entrenched part of the state apparatus in Sri Lanka, enduring under successive political leaders" (Freedom from Torture, 13 August 2015, p. 15). Key findings of the report include the following indications:

> "- The Sri Lankan military, police and intelligence services have continued to practise torture – including rape and other forms of sexual torture and extensive burning – in the years of 'peace' since the end of the armed conflict;
>
> - There is a network of torture facilities across Sri Lanka including unofficial detention centres;
>
> - Those at particular ongoing risk of torture include Tamils with a real or perceived association with the Liberation Tigers of Tamil Eelam (LTTE) at any level and whether current or historic;
>
> - The Sri Lankan authorities take a strong interest in the activities of the Tamil diaspora in the UK and many returning to Sri Lanka with a real or perceived past connection to the LTTE, at whatever level and whether directly and/or through a family member or acquaintance, have been tortured and interrogated about their activities and contacts in the UK." (Freedom from Torture, 13 August 2015, p. 14)

The USDOS human rights report covering the year 2015 provides the following information on torture cases throughout the year:

> "The International Truth and Justice Project reported 11 cases (three women and eight men) of abduction, torture, and sexual violence perpetrated by police and security forces in 2015. The study identified 48 sites at which torture occurred, with 30 of these either known military camps or police stations. All victims indicated state actors continued to interrogate and harass their families following their escape." (USDOS, 13 April 2016, section 1c)

The USDOS further notes that "[s]everal released former combatants reported torture or mistreatment, including sexual harassment and abuse by government officials while in rehabilitation centers and after their release" (USDOS, 13 April 2016, section 1d).

In its report covering the year 2015, HRW notes that "the government took no significant measures to end impunity for security force abuse, including police use of torture" (HRW, 27 January 2016). Similarly, Amnesty International (AI) writes that during the year 2015 "[t]orture and other ill-treatment of detainees – including sexual violence – continued to be reported and impunity persisted for earlier cases" (AI, 24 February 2016). In August 2016, AI provides a written statement to the UN Human Rights Council (HRC) regarding

justice, truth and reparation efforts in Sri Lanka. Among other things, the statement urges to repeal the PTA "which has been associated with arbitrary detention, torture and enforced disappearances". In this regard, the statement also concludes that there have been "positive steps aimed to protect detainees", noting that in August 2015 "Sri Lanka made a declaration under article 22 of the UN Convention against Torture, recognising the competence of the Committee to receive and consider individual communications [from or on behalf of victims of a violation by a State Party]." (AI, 29 August 2016, p. 3)

After his visit to Sri Lanka from 29 April to 7 May 2016, the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment provides the following conclusion in his preliminary observations published in May 2016:

> "After many interviews conducted by my team and myself at random throughout my visit with both detainees and those who have been released, I am persuaded that torture is a common practice carried out in relation to regular criminal investigations in a large majority of cases by the Criminal Investigation Department (CID) of the police. In cases where there is a real or perceived threat to national security there is a corresponding increase in acts of torture and ill-treatment during detention and interrogation in Terrorism Investigation Division (TID) facilities. […] Both old and new cases continue to be surrounded by total impunity." (OHCHR, 7 May 2016a)

2.2.8 Forced displacement

This section on forced displacement can be read in conjunction with section 4.7.4 (freedom of movement of IDPs) of this compilation.

In July 2015, the Internal Displacement Monitoring Centre (IDMC) describes the situation of displacement as follows:

> "More than six years after the end of the 26-year long conflict between the Liberation Tigers of Tamil Eelam (LTTE) and the Sri Lankan armed forces, up to 73,700 people remain internally displaced in the country's Northern and Eastern Provinces […]. The overwhelming majority belong to the Tamil and Muslim minorities. In addition, it is estimated that several tens of thousands among the more than 794,000 who are registered as having returned to their homes have still not achieved a durable solution to their displacement." (IDMC, 1 July 2015, p. 1)

The US Department of State (USDOS) human rights report covering the year 2015 provides the following information on Internally Displaced Persons (IDPs) in Sri Lanka:

> "According to the government's Ministry of Resettlement, Rehabilitation, Hindu Religious Affairs, and Prison Reforms, 44,934 citizens remained IDPs as of May [2015]. Conversely, the International Office of Migration placed the number of IDPs at 90,000. The large majority resided in Jaffna, Kilinochchi, Puttalam, and Trincomalee districts in the north and east. […] Living conditions for these persons were often difficult and, according to humanitarian organizations, did not conform to international standards. As a result humanitarian agency representatives provided limited but essential support to IDPs in parts of the Northern and Eastern provinces. Among the long-term, protracted displaced

> were nearly 30,000 individuals displaced by HSZs [High Security Zones] or exclusive economic zones, persons living in welfare centers in the Jaffna area, persons living with host families, and others in transit camps in Trincomalee." (USDOS, 13 April 2016, section 2d)

In its Freedom in the World 2016 report, Freedom House describes the situation during the year 2015 in the following terms:

> "Government appropriation of land in the north and east as part of economic development projects or 'high security zones' following the end of the civil war had prevented local people from returning to their property. The Sirisena administration, however, has released some military-held land for resettlement by displaced civilians. There have been few official attempts to help Muslims forcibly ejected from the north by the LTTE in the early 1990s to return to their homes." (Freedom House, 27 January 2016)

Based on a visit to Sri Lanka in April 2015, as well as a newspaper article from May 2015, the IDMC compares the security situation of IDPs under the previous and the new government in its report from July 2015 as follows:

> "Threats to their physical security as well as continuously high levels of surveillance were important concerns reported by IDPs and returnees under the previous government. There has been some improvement in recent months. […] Surveillance of civilians – including IDPs as well as those who have returned, settled elsewhere, or are locally integrating – has become less regular, but continues on occasions. […] IDPs and returnees still voice security concerns, given the close proximity of military camps to relocation and return areas in Mullaitivu, Kilinochchi, Jaffna and Trincomalee. In addition, returning IDPs reportedly have to register with the military as well as with civilian authorities. A critical mass of returnees in each location needed to make people feel safer has not been reached." (IDMC, 1 July 2015, p. 5)

According to the same IDMC report from July 2015 "[u]nderdevelopment and lack of action to restore livelihood opportunities in the north and east mean that IDPs struggle to make ends meet" (IDMC, 1 July 2015, p. 5). In October 2016, the United Nations Special Rapporteur on minority issues visited Sri Lanka. Following the visit, the Special Rapporteur stated the following on the situation of internally displaced people in Sri Lanka:

> "Seven years after the end of the war, I am concerned to hear about the large number of communities still living in precarious situations of displacement. Notably, this includes the significant numbers of Muslims who were displaced from the Tamil areas of the North during the conflict, as well as the Tamils displaced during the conflict in the Northern and Eastern provinces and the Up-Country Tamils who were displaced from the plantations at different times due to ethnic strife and violence, most notably in 1983. All these communities told me of the significant difficulties regarding obtaining land titles, exercising voting rights – which is linked to registered permanent addresses, as well as accessing employment and public services. They attributed some of these difficulties to discrimination from the majority community in the area including the state authorities, as

well as absence of material or financial assistance, including for housing, from the Government." (OHCHR, 20 October 2016)

In a report from October 2016, the international NGO Society for Threatened People (STP), which aims to protect minority peoples worldwide, provides the following conclusions in a report based on research about the situation of local communities and militarisation on the Jaffna Peninsula:

> "- During the armed conflict the military unlawfully grabbed land and displaced people to establish security zones. The military occupation of land and its economic activities deprives local communities of work and livelihood opportunities (particularly in farming and fishing, the main source of income of the local population). […]
>
> - The standard of living in IDP camps is not adequate for families. The insufficient drinking water and sanitary facilities, the flooding after rain and the garbage laying around increases the risk of disease spreading and accidents happening to the inhabitants.
>
> - The inhabitants of IDP camps are living in very precarious conditions. Families cannot generate income every day and monthly expenses often exceed income. In women-headed households hunger and malnutrition are even common. They struggle to meet their families' basic needs.
>
> - Discrimination of IDP camp inhabitants persists on the Jaffna Peninsula. They are considered as untouchables or a lower caste of people, which results in their being denied equal treatment." (STP, October 2016, pp. 46 - 47)

In its October 2016 concluding observations, the UN Committee on the Elimination of Racial Discrimination (CERD) also voices concerns about the situation of IDPs:

> "25. The Committee is concerned by the situation of internally displaced persons, a majority of whom belong to the Tamil, Moor and Muslim ethnic and ethno-religious minority groups, who continue to remain displaced and face challenging living conditions in camps and delays in reintegration into society. Once reintegrated, those communities also face challenges in access to basic services, employment and adequate housing." (CERD, 6 October 2016, p. 6)

In August 2016, the Ministry of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs published a National Policy on Durable Solutions for Conflict-Affected Displacement which addresses issues such as "Release and Return of Land Occupied by the Military and Police", "Provision of Shelter and Basic Infrastructure" and "Support for Sustainable Livelihoods" (National Policy on Durable Solutions for Conflict-Affected Displacement, 16 August 2016, pp. 20-22). The National Policy on Durable Solutions for Conflict-Affected Displacement can be accessed via the following link:

- National Policy on Durable Solutions for Conflict-Affected Displacement, 16 August 2016 (published by Ministry of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs)
  http://resettlementmin.gov.lk/site/images/stories/pdf/final%20policy.pdf

2.3 Human rights abuses by LTTE

Alan Keenan, Sri Lanka senior analyst at the International Crisis Group, notes in an e-mail response dated 26 December 2016 that "there has been no activity at all by the LTTE since the middle of 2009 and certainly no violence, human rights abuses". Keenan continues stating that "to the best of my knowledge, the LTTE no longer exists as an organised entity in or out of Sri Lanka and hasn't since mid-2009." (Keenan, 26 December 2016)

For the period from 2002 and 2011, the report of the OHCHR investigation on Sri Lanka (OISL) provides information on human rights abuses committed by both the Liberation Tigers of Tamil Eelam (LTTE) and the Government of Sri Lanka, which includes unlawful killings, violations related to the deprivation of liberty and abduction as well as forced recruitment. The report can be accessed via the following link:

- OHCHR - Office of the United Nations High Commissioner for Human Rights: Report of the OHCHR Investigation on Sri Lanka (OISL) [A/HRC/30/CRP.2], 16 September 2015 (published by HRC, available at ecoi.net)
  http://www.ecoi.net/file_upload/1930_1475231531_55ffb1d04.pdf

In a query response from March 2016, the Immigration and Refugee Board of Canada (IRB) summarises the following information on current activities of the LTTE:

> "According to the 2015 Crime and Safety Report for Sri Lanka, published by the US Department of State's Overseas Security Advisory Council (OSAC), '[t]he LTTE leadership did not survive the war, and there have been no terrorist attacks since 2009' (US 4 May 2015). Similarly, sources report that there have not been any instances of extortion, disappearances, bombings or human rights violations perpetrated by the LTTE against the Sri Lankan population since 2009 (Researcher 18 Feb. 2016; International Crisis Group 29 Feb. 2016; Chair 15 Feb. 2016). In correspondence with the Research Directorate, the Chair of the Department of Conflict Analysis and Dispute Resolution (CADR) at Salisbury University, who specialises in conflict and peace-related issues in Sri Lanka, stated that the LTTE no longer has the capacity to engage in such activities (ibid.). Information on incidents of extortion, disappearances or bombings committed by LTTE since 2010 could not be found among the sources consulted by the Research Directorate within the time constraints of this Response." (IRB, 15 March 2016)

The Country Report on Terrorism 2013 from the US Department of State (USDOS) reports that "[n]o arrests related to terrorism were made, but the Government of Sri Lanka remained concerned that the LTTE's international network of financial support was still functioning" (USDOS, 30 April 2014). The following year, the USDOS Country Report on Terrorism 2014 notes that the Sri Lankan government "continued to voice concern about the possible re-emergence of pro-LTTE sympathizers" (USDOS, June 2015). The Country Report on Terrorism 2015 by the USDOS notes that "[t]he security services' focus on a possible LTTE resurgence affected the government's attention to emerging threats, such as reports of Sri Lankan foreign terrorist fighters joining the Islamic State of Iraq and the Levant (ISIL)" (USDOS, 2 June 2016). The same report also notes that "Sri Lanka continued to operate a one-year long rehabilitation program for former alleged LTTE combatants" (USDOS, 2 June 2016).

Public Safety Canada, a governmental entity responsible for the coordination across federal departments and agencies in the area of national security, provides a list of terrorist entities including an entry about the LTTE, which was last reviewed in November 2014. It is noted that "[a]lthough the LTTE was militarily defeated in May 2009, subversion, destabilization, and fundraising continue, particularly in the diaspora" (Public Safety Canada, last reviewed 20 November 2014). In 2014, Colonel Hariharan, a former military intelligence officer of the Indian army, published an article on the revival of the LTTE in the Centre for Land Warfare Studies' journal Scholar Warrior. The article states that, "[w]hile the revival of the LTTE in Sri Lanka is possible, the current socio-political environment is not conducive for it. Neither the historical context nor the popular upsurge for an independent Eelam that fostered Tamil militancy in the 1980s exists today". Hariharan further argues that "[w]ith a huge military presence in their midst, the Tamils would be wary of supporting any militancy for fear of retribution from the state. In this environment, any leader attempting to revive the LTTE will find it extremely difficult to find support among the population" (Hariharan, 2014, pp. 71-72). Responding to an email inquiry in December 2016, Colonel Hariharan denied that there have been any recent incidences such as extrajudicial and targeted killings, arbitrary arrest and detention, forced recruitment or abuses of deserters, or forced displacement of human rights abuses perpetrated by the LTTE in Sri Lanka. Hariharan also denies the question whether the LTTE still has the capacity to carry out such activities. He notes that while "Tamil political trends indicate a tendency to perpetuate the glory of its leader Prabhakaran, particularly among the student community", presently "the government and Tamil leaders are working together to rationalize the ethnic reconciliation process and its progress could be a disincentive for the return of extremism" (Hariharan, 3 December 2016).

In January 2015, the BBC published an article about post-war Sri Lanka which raises the question of there being "any chance of a return to Tamil militancy", arguing that "[t]he overwhelming majority of analysts agree that in the short term at least the answer is a resounding 'no'" (BBC News, 9 January 2015). The 2016 crime and safety report from the US Department of State's Overseas Security Advisory Council (OSAC) also states that there were no terrorist attacks since 2009" (OSAC, 30 March 2016). It further provides the following information on an incident involving the LTTE from 2014:

> "In March 2014, police and local media reported the disruption of a small, pro-LTTE cell involved in spreading separatist propaganda in the Northern Province. Dozens of detentions and arrests stemmed from an incident that involved one police officer being shot by the alleged leader of the cell. The alleged cell leader and two associates were killed during a police/military manhunt near Vavuniya. Some civil society activists were arrested or detained in a crackdown that followed the investigation." (OSAC, 30 March 2016)

3 Rule of Law / Administration of Justice

3.1 Judicial independence

The German non-profit think tank Bertelsmann Stiftung describes the development of judicial independence in its Transformation Index 2016, which covers the period from February 2013 to 31 January 2015, as follows:

> "Sri Lanka has an active lawyers' association, but political appointments to the bench (at every level) and the intimidation and transfer of judges have severely limited the judiciary's independence. Corruption and political influence have undermined public confidence in the judiciary. The judiciary is not empowered to rule on the constitutionality of legislation after it is enacted, although bills can be challenged before they become law.
>
> The president appoints judges to the Supreme Court and the Court of Appeal with minimal consultation. The right of the president to appoint the Judicial Services Commission (which administers appointments, promotions, transfers and disciplinary action among the lower levels of judiciary) has further politicized the judiciary." (Bertelsmann Stiftung, 2016, p. 7)

The same report notes that "[t]he law specifies protection of civil rights. In practice, however, the politicization of the judiciary and the police have ensured differential enforcement of these rights". According to the report "[i]n the north and east, Tamils are subject to abuse by officials", including denial of equal access to justice or to due process under rule of law (Bertelsmann Stiftung, 2016, p. 8). The Bertelsmann Stiftung further provides the following information on judicial independence:

> "The new president's pledge to restore the independence of the judiciary and to transfer some of his powers to the legislature is a positive sign which, if enacted, will represent a major step towards parliamentary democracy (similar to that which existed before 1978). However, for the period under review parliament was a rubber stamp for presidential decisions and the Supreme Court virtually an extension of the executive branch.
>
> The parliament's impeachment of the chief justice of the Supreme Court, and her subsequent dismissal by the president in January 2013, shattered the illusion of an independent judiciary in Sri Lanka. The action against Shirani Bandaranayake came after she declared legislation proposed by the government unconstitutional. Her removal was widely seen as a political act, as was the appointment of Mohan Peiris, one of Rajapaksha's close advisors, as her successor. The new government, clearly wishing to remove a hostile chief justice, argued that Bandaranayake's removal had been illegal and re-installed her in January 2015. When she resigned after just a few days, Kanakasabapathi Sripavan was appointed in her place. Sripavan is respected in legal circles and his appointment should restore some confidence in the independence of the judiciary, but the summary removal of a Chief Justice of two years' standing has raised concerns. The wider concern is the legacy of political interference in judicial decisions at every level. Given the institutional decay experienced by the judiciary over the past 15 years, it will be some time before it is able to operate efficiently and professionally in enforcing checks and balances. An initial minimum requirement is the removal of the president's virtually unfettered power over judicial appointments." (Bertelsmann Stiftung, 2016, p. 8)

In its May 2016 report on the reform process since the elections in 2015, the International Crisis Group (ICG) assesses institutional reforms as follows:

> "With political leaders no longer regularly interfering in cases, courts and police have been more willing to pursue investigations and make rulings that would have been taboo under the former regime. The challenge now is to institutionalise these changes, so freedom of expression and equal enforcement of laws do not depend on the goodwill of those in power. The modest moves so far to institutionalise checks on executive power and abuses by the state have had limited effect and are not yet backed by a coherent policy." (ICG, 18 May 2016, p. 8)

Freedom House provides the following information on the independence of the judiciary in its Freedom in the World 2016 report covering the year 2015:

> "Although the judiciary had become less independent and more politicized under Rajapaksa, the appointment of a new, Tamil chief justice in January 2015 was a positive step taken by the new administration, as was the reformation of an independent commission to oversee judicial appointments. Corruption remains common in the lower courts, but the levels of threats and political interference that occurred under Rajapaksa abated under the new government." (Freedom House, 27 January 2016)

In its country report on human rights practices covering the year 2015, the US Department of State (USDOS) notes:

> "Citizens may file fundamental rights cases to seek redress for alleged human rights violations. The judiciary exhibited some independence and impartiality in adjudicating these cases and awarded plaintiffs damages in a number of instances. Observers, however, cited bureaucratic inefficiencies in this system leading to delays in resolving many cases. Where courts awarded damages, there were relatively few problems in enforcing court orders." (USDOS, 13 April 2016, section 1e)

The preliminary observations of the Special Rapporteur on the independence of judges and lawyers published by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in May 2016 note with regard to strengthening an independent administration of justice:

> "The country needs to conduct a strict exercise of introspection, so as to improve the quality of its judiciary and of the Attorney-General's office. This includes reviewing and publicizing the criteria for the appointment of judges and the causes for removal through disciplinary proceedings, providing quality legal and technological training, including mandatory training in international human rights law. [...]
>
> In general, the administration of justice deserves to be more transparent, decentralized and democratic. The instances participating in the appointment of judges, counsels of the Attorney-General's office and judicial staff should publish the selection procedure, including the criteria and methods to be followed. The Constitution provides for the Chief Justice to head many instances dealing with administrative matters in the field of justice

and this restricts very much his abilities to manage such an important branch of government.[…]

Promotions of judges, entrusted to the Judicial Service Commission, should take into consideration not only the seniority of a person but also his or her merits. Yet, no proper evaluation of the performance of judges is in place. Decisions on promotions lack transparency. There are no known and established criteria, which gives too much discretion to the Judicial Service Commission.

Further, the Judicial Service Commission is in charge of the transfer of lower court judges to the different jurisdictions in the country. While transferring judges after a certain number of years from one jurisdiction to another can certainly contribute to judicial independence, attention should be paid to the conditions in which such transfers are done. Judges are usually asked about their preferences, but there seems to be no clear criteria and procedures in place on the grounds of which decisions are taken. When it comes to the transfer of judges, transparency will improve if the Judicial Service Commission sets up clear guidelines for the transfer of judges and publicizes them." (OHCHR, 7 May 2016b)

With regard to accountability of judges, the Special Rapporteur notes:

"Accountability of the judges of the Supreme Court and the Court of Appeal is currently carried out through an impeachment procedure before Parliament. This procedure, which is foreseen in the Constitution, lacks regulation by an ordinary law. It is implemented by the Parliament through a Standing Order. The extreme politicization of the removal procedure in force prevents its legitimacy." (OHCHR, 7 May 2016b)

The May 2016 ICG report on the reform process of the government since the elections in 2015 provides a summary of criminal investigations and arrests:

"Within these significant institutional constraints, courts and police have acted against at least some powerful interests. In January 2016, hard-line Buddhist monks, including leaders of extremist groups responsible for anti-Muslim and anti-Christian attacks under the Rajapaksas, were arrested for contempt of court. There were also two important convictions of military personnel in 2015: on 6 October, four soldiers were found guilty of the 2010 sexual assault of two Tamil women in Vishvamadu, Kilinochchi; and on 25 June, a soldier was convicted of the 2000 massacre of nine Tamils in Mirusuvil, Jaffna. In their rarity and overcoming of threats faced by witness and victims, they illustrate the institutional obstacles to justice, especially when the accused are police or military. Magistrates have also directed important investigations into alleged political killings under the old regime. Some have led to arrests of members of military intelligence units. [...] Investigators are examining criminal allegations against many members of the Rajapaksa family […]. The family members implicated have denied all allegations and call the investigations and arrests 'political revenge'. How well these investigations go will be an indicator of the government's ability to restore rule-of-law." (ICG, 18 May 2016, pp. 9-11)

In September 2016, the BBC writes about the conviction of a Member of Parliament, Duminda Silva, reporting that "[a] Sri Lankan court has sentenced a former MP to death for the murder

of a rival politician five years ago". According to the BBC article, "[h]e was a close ally of the powerful Defence Secretary Gotabaya Rajapaksa, whose brother Mahinda was president until losing elections in 2015. Many hailed the verdict as proof that judicial independence had been restored in Sri Lanka." (BBC News, 8 September 2016)

3.2 Torture and ill-treatment of criminal suspects

This section can be read in conjunction with section 2.2.7 of this compilation, which looks at torture in the context of issues surrounding the security forces and the military.

According to Article 11 of the Sri Lankan Constitution, "no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (Constitution, amended as of 15 May 2015, Article 11). The Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment mentions in his May 2016 preliminary observations that the Torture Act passed in 1994 "made torture a criminal offense that largely coincides with the international definition in the UN Convention Against Torture (CAT)" (OHCHR, 7 May 2016a).

In its concluding observations from December 2016, the UN Committee Against Torture (CAT) raises the following concerns about torture:

> "The Committee remains seriously concerned over consistent reports from national and UN sources, including the UN Special Rapporteur on torture, indicating that torture is 'a common practice carried out in relation to regular criminal investigations in a large majority of cases by the Criminal Investigation Department of the police,' regardless of the nature of the suspected offence." (CAT, 7 December 2016, p. 2)

The Special Rapporteur on torture further provides the following information in his preliminary observations:

> "After many interviews conducted by my team and myself at random throughout my visit with both detainees and those who have been released, I am persuaded that torture is a common practice carried out in relation to regular criminal investigations in a large majority of cases by the Criminal Investigation Department (CID) of the police. In cases where there is a real or perceived threat to national security there is a corresponding increase in acts of torture and ill-treatment during detention and interrogation in Terrorism Investigation Division (TID) facilities.
>
> I have interviewed survivors and examined documentation regarding the practice of torture from previous years as well as its prevalence today. Fewer cases are reported today than during the conflict period and perhaps the methods used by the police forces are at times less severe. But sadly, the practice of interrogation under physical and mental coercion still exists and severe forms of torture, albeit probably in less frequent instances, continue to be used." (OHCHR, 7 May 2016a)

The Special Rapporteur continues stating that "[b]oth old and new cases continue to be surrounded by total impunity" and that "procedural norms that entrust the police with investigative powers over all criminal cases and [...] allow for prolonged arbitrary detention without trial, are still very much in place". These norms "open the door to – almost invite –

police investigators to use torture and ill-treatment as a routine method of work." The report goes on to describe methods of torture:

> "The nature of the acts of torture consists mainly of transitory physical injuries caused by blunt instruments (essentially punches, slaps and, occasionally, blows with objects such as batons or cricket bats) which heal by themselves without medical treatment and leave no physical scars. There were also several accounts of brutal methods of torture, including beatings with sticks or wires on the soles of the feet (falanga); suspension for hours while being handcuffed, asphyxiation using plastic bags drenched in kerosene and hanging of the person upside down; application of chili powder to face and eyes; and sexual violations including mutilation of the genital area and rubbing of chili paste or onions on the genital area. While these methods of torture were of short duration in some cases, in others, torture occurred over a period of days or even weeks during interrogation." (OHCHR, 7 May 2016a)

In a report from October 2015, Human Rights Watch (HRW) also mentions torture methods used by the police:

> "Human Rights Watch documented an appalling variety of torture methods used by the police, including severe beatings; electric shocks; use of stress positions, including suspending detainees from ropes and iron bars in painful positions; the rubbing of chili paste over the body, including the genitals; and disorienting detainees by rotating them while they are suspended from a pole, a torture technique known as a dharmachakra." (HRW, October 2015, p. 2)

The Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment elaborates on the role of confessions that may lead the use of torture:

> "While there are many reasons that may lead to the practice of torture, there are particulars in the Sri Lankan criminal justice system and investigations practices that somehow may indirectly incentivize its use. The first is the role of confessions of suspects in criminal investigations, which currently seems to be the primary tool of investigation for the police. [...] I have been assured by the authorities that confessions alone are not sufficient evidence for a conviction, as other corroborating evidence is needed. In practice, however, 90 per cent of convictions are based on a confession alone or as the main evidence." (OHCHR, 7 May 2016a)

In its World Report 2016, Human Rights Watch (HRW) states that "[p]olice in Sri Lanka continued to routinely torture and ill-treat individuals taken into custody to extract 'confessions', but also for personal vendettas or to extort funds." The report further specifies:

> "While Sri Lanka has legislation prohibiting torture, the government failed to ensure disciplinary or criminal prosecutions against police officers and their superiors. Many alleged perpetrators remained in active duty or were merely transferred to another police station. Only in a handful of particularly egregious cases in the media spotlight was serious action taken against the offending officers. Even in those cases, superior officers were not held to account as a matter of command responsibility.

> Victims of torture and their families faced a daunting path to redress and justice. Those of limited means, particularly from rural communities, often found the various procedural steps overwhelming and prohibitively expensive. Many reported ongoing harassment by the police when back in their villages." (HRW, 27 January 2016)

The UN Committee Against Torture (CAT) refers to the protection of torture victims in its concluding observations from December 2016:

> "The Committee is concerned about information indicating that victims are reluctant to bring allegations of torture to the police because of fear of retaliation. […] While appreciating the adoption of the Victim and Witness Protection Act No. 4 of 2015, the Committee is concerned at the information provided by the delegation that the Victim and Witness Protection Division foreseen by the law is to be located within the institutional hierarchy of the police, despite the fact that the police has been identified as responsible in the majority of alleged cases of torture." (CAT, 7 December 2016, p. 5)

The same concluding observations provide the following information on reported torture cases and convictions:

> "The Committee notes with concern that only 17 cases of torture were filed under the Convention against Torture Act since 2012, and only two resulted in convictions, suggesting that a small number of allegations of torture have been actually investigated. The Committee notes with concern the considerable discrepancy between the low number of complaints of torture reportedly received by the police since 2012 (150 cases), and the high number of allegations of torture received by the Human Rights Commission of Sri Lanka during the same period (2,259 cases)." (CAT, 7 December 2016, p. 6)

In its October 2015 report on police accountability, Human Rights Watch (HRW) describes the problem of torture in Sri Lanka as follows:

> "The problem of torture is not new and has been well documented for decades. But the common excuse offered in Sri Lanka was the general collapse of law and order stemming from the armed conflicts that wracked the nation for nearly 30 years. With the end of the war, that excuse no longer explains this scourge. In 2005, prominent human rights advocate Radhika Coomaraswamy, then chairperson of the National Human Rights Commission, reported that police torture was not an issue stemming from a handful of rogue police officers but instead was rooted in 'the routine use of torture as a method of investigation' and required 'fundamental structural changes' to be eradicated. This led to little if any change." (HRW, October 2015, pp. 3-4)

HRW refers to figures provided by the Asian Human Rights Commission, a Hong Kong-based nongovernmental organization, which "has filed 32 urgent appeal petitions regarding custodial deaths and 181 urgent appeals regarding torture" since 2009 (HRW, October 2015, p. 4). The report continues to describe failing mechanisms for victims of police abuse:

> "The Sri Lankan legal system has several mechanisms available for victims of police abuse. Each routinely fails victims. As an initial step, victims can file a First Information Report (FIR) with the police. These are almost always unsuccessful, as police either refuse to record the

> complaint or try to pressure victims not to file the FIR. The police not only reject allegations of torture and other abuse, but often respond to complaints brought by victims or their families with harassment and threats of arrest on trumped-up charges. In some cases they seek to buy off a victim with a quietly paid bribe. Victims can file complaints against police abuse with the local courts, but lawyers and rights activists say that there are several barriers to securing justice through this process, particularly in rural areas where the police engage in intimidation and threats against victims. In addition to court fees, there are regular court appearances and attorney fees for each appearance, and it typically takes years before cases are heard properly, if at all. In many cases Sri Lankan law allows for a direct appeal to the Supreme Court of Sri Lanka if a fundamental right enshrined in the constitution has been violated. However, these 'fundamental rights' applications need to be filed within 30 days of the alleged abuse, a period during which victims are often still traumatized or attempting redress through the FIR system. Complicating matters, fundamental rights applications have to be filed in the Supreme Court in Colombo, which is not easily accessible to most Sri Lankans." (HRW, October 2015, p. 4)

The same HRW report states that "the police use torture and other forms of coercion as a shortcut to obtain confessions or other information to facilitate convictions" in many cases. The abuses "often occurred in police custody, and appeared to end when the victim was finally produced before a magistrate and remanded to jail pending trial" (HRW, October 2015, p. 20). The report summarises:

> "Our findings corroborate those of domestic human rights defenders who report that the use of torture and other ill-treatment is common, even for minor offenses. Too often, crime scenes are not properly investigated as police seek quick confessions through coercive means; detainees are not brought before a magistrate within 24 hours as required by law; and magistrates do not give serious consideration to allegations of mistreatment, including by ensuring that the detainee receives proper medical attention from a judicial medical officer (JMO). 'Due to lack of time in policing and investigation of crimes,' said J.C. Weliamuna, a prominent human rights lawyer, '[police] resort to shortcuts.'" (HRW, October 2015, pp. 1-2)

In its December 2015 state party report to the UN Committee Against Torture, the Government of Sri Lanka "rejects the allegations that torture remains widespread and unpunished", stating that it "enforces strict rules against police officers held responsible for any act of torture." (Government of Sri Lanka, 11 December 2015, p. 7)

In an addendum to its state party report to the UN Committee Against Torture from June 2016, the Government of Sri Lanka notes that "a number of public officers have been tried and convicted of the offence of torture". As a recent example it mentions the December 2015 conviction of two police officers to seven years rigorous imprisonment by the Kandy High Court in Case No. 183 of 2007 (Government of Sri Lanka, 20 June 2016, p. 3).

In October 2016, a Sri Lankan NGO Collective published a Joint Alternative Report to the Committee Against Torture in which the claim of the government that the reported number of incidents of torture have significantly decreased is "vehemently rejected":

> "The report submitted by the GoSL, [Government of Sri Lanka] (CAT/C/LKA/5), states that there were only 3 reported cases of torture in 2014. Information made available by the Human Rights Commission of Sri Lanka (HRCSL) to the Right to Life Human Rights Centre (R2L), states that the Commission alone received 481 complaints regarding incidents of torture during the year of 2014 [...]. The Right to Life Human Rights Centre has also recorded information of more than 200 incidents of torture since 2011, which clearly contradicts the statistics given in the report submitted by the GoSL. This clearly demonstrates that the GoSL has deliberately misled or has been severely remiss in ascertaining the number of reported cases of torture in Sri Lanka. The GoSL report specifically states that information relating to number of cases was ascertained from the Police Department. It is strikingly noticeable that the Police Department fails to receive complaints of torture, which means none of the complaints that are lodged with the HRCSL are subjected to a police investigation for the purpose of prosecuting the offence. This also highlights the serious gap of an effective public complaints mechanism when it comes to complaints relating to torture." (Sri Lankan NGO Collective, 13 October 2016, p. 6)

The October 2016 Joint Alternative Report of the Sri Lankan NGO Collective continues to state:

> "The information provided by the State Party in Paragraph 12 and in the attached Table I to prove that reported cases of alleged torture attributed to the Sri Lanka Police have declined over the last 4 years, is false and misleading. While indicating a decrease of incidents of torture, the said table (Table I in the State party report) indicates that reported incidents of Torture have decreased down to 3 cases in 2014. The words 'reported cases' in the said paragraph carries an ambiguous meaning, while the source of information is the Department of Police. It is unclear if this means cases of torture by police or complaints of which are received by the police itself. In fact, incidents of torture reported by media and reported to human rights organizations including Right to Life (R2L) are over 200 in number, during the 2011 to 2015 period, as elaborated in Annexure 1. This which clearly contradicts the statistics given in the report submitted by the GoSL. The Human Rights Commission (HRCSL) states that they have received 413 complaints on incidents torture within the year of 2015 alone. The HRCSL further states in this report that they have received 53 complaints regarding torture incidents during the first 3 months of 2016, which clearly dismiss the claim of GoSL that incidents of torture have declined." (Sri Lankan NGO Collective, 13 October 2016, p. 22)

3.3 Impunity for extrajudicial killings, disappearances, and other human rights violations by state actors

This section can be read in conjunction with section 2.2 (Overview of issues surrounding security forces, military) of this compilation, which includes sections on enforced disappearances (section 2.2.4) and extrajudicial killings (section 2.2.5).

In a November 2016 report, Amnesty International (AI) notes that "[t]he police have consistently failed to investigate allegations of violations committed by the police and the military". In cases submitted to magistrates by the police, "proceedings have stalled often on the basis of lack of evidence. When magistrates have sent cases to the Attorney General's

Department to prepare an indictment and seek a trial at the High Court, the Attorney General has often failed to indict suspects." (AI, 8 November 2016, p. 10)

The USDOS human rights report provides the following summary on the impunity of state actors during the year 2015:

> "Widespread impunity continued for the crimes committed during the armed conflict and other crimes committed following the end of the conflict, particularly for cases of torture, sexual violence, corruption, and human rights abuses. The government arrested and detained a number of military, police, and other officials implicated in old and new cases that included the killing of parliamentarians and the abduction and suspected killings of journalists and private citizens." (USDOS, 13 April 2016, executive summary)

In July 2016, the UN Human Rights Council (HRC) published the report of the Working Group on Enforced or Involuntary Disappearances (WGEID) on its mission to Sri Lanka, which contains the following information on impunity for human rights violations:

> "45. Impunity for enforced disappearances remains a major challenge in Sri Lanka. Progress in establishing accountability for violations committed in the past has been slow. Victims seek more accountability as many believe that the majority of the perpetrators have escaped justice so far. […]
>
> 46. The Working Group received information on a few cases relating to enforced disappearances into which investigation and prosecution proceedings had been initiated. For the vast majority of cases, there is absolute impunity. The State should take decisive action in this regard. Overcoming the pattern of structural impunity will require strong leadership, political will and concerted efforts.
>
> 47. The Working Group received extensive and consistent information indicating that fear discouraged relatives from filing complaints in relation to enforced disappearances. The Working Group also received innumerable testimonies from families expressing their strong mistrust in the administration of justice in Sri Lanka, including the courts, the investigative bodies and the Attorney General's Department." (HRC, 8 July 2016, p. 11)

According to the Freedom in the World 2016 report from Freedom House covering the year 2015, "[a] November 2015 visit by the UN Working Group on Enforced Disappearance urged the government to hasten its review of more than 23,000 unsolved disappearances." (Freedom House, 27 January 2016). The human rights report from the US Department of State (USDOS) for the year 2015 notes that "[t]here were no official statistics regarding disappearances, and fear of reporting such incidents made reliable accounting difficult" (USDOS, 13 April 2016, section 1b).

In a November 2016 report on the establishment of mechanisms to deliver justice, truth and reparation to victims, Amnesty International (AI) notes that "[w]hen Sri Lanka co-sponsored UN Human Rights Council Resolution 30/1 in October 2015, the authorities finally acknowledged the need to end the island's long cycle of violence and impunity for violations of human rights"

(AI, 8 November 2016, p. 4). The USDOS human rights report provides the following overview of developments in addressing impunity for enforced disappearances:

> "On December 10 [2015], the country signed the International Convention for the Protection of All Persons from Enforced Disappearance. In September, the Cabinet approved the issuance of a 'certificate of absentee' for persons reported missing in lieu of a death certificate to enable family members to access government benefits. […]
>
> On October 16, the president delivered to members of parliament, but did not make public, the Presidential Commission of Inquiry to Investigate into Complaints Regarding Missing Persons' (COI) report. The COI was established in 2013 by former president Rajapaksa. By June the COI had received a total of 15,593 complaints from the Northern and Eastern provinces and 5,000 from security force personnel. Of the former number, it took public testimony on 1,744 complaints.
>
> Observers identified numerous problems in the COI's work. These included the intimidation of commission witnesses; the provision of transport by the military for witnesses to travel to and from the testimony sites; the presence of intelligence officers at public testimony (including taking photographs of witnesses and those present); COI questioning that overly focused on LTTE culpability and witness compensation; and poor or misleading interpretation of witness testimony, which undermined the quality of evidence gathered in the first instance." (USDOS, 13 April 2016, section 1b)

In June 2016, the Government of Sri Lanka provides the following information on the prosecution of perpetrators in a report submitted under the Convention to UN Committee Against Torture (CAT):

> "36. The GOSL currently cooperates with the UN Working Group on Enforced Disappearances and has engaged the Working Group on 12,341 cases relating to Sri Lanka. 6,591 of these cases have been clarified by the GOSL to date. Out of the remaining 5,750 cases, the GOSL provided clarifications and information on a further 1,997 cases, which includes clarifications on 309 cases submitted by the GOSL in April 2016. The GOSL now awaits the Working Group's consideration of these cases.
>
> 37. A draft law establishing a new permanent Office on Missing Persons has received the approval of the Cabinet of Ministers and will be tabled in Parliament later in 2016. The GOSL will endeavour to clarify the remaining 3,753 cases through the new Office. The new Office will be empowered to provide appropriate mechanisms for searching and tracing of missing persons. Thus the work of the Office will advance the right to the truth and will provide a mechanism through which families could obtain information about their missing relatives.
>
> 38. Meanwhile, the draft law criminalising enforced disappearance will strengthen Sri Lanka's legal system in terms of prosecuting and punishing perpetrators and preventing enforced disappearances in the future." (Government of Sri Lanka, 20 June 2016, p. 7)

In November 2016, the Sri Lankan government provided a report in response to the list of issues raised by the UN Committee Against Torture, which notes that "[t]he Office on Missing Persons Act, No. 14 of 2016 was passed by Parliament and was certified by the Speaker on 23 August 2016" and that "[s]teps are currently being taken to operationalise the Act" (Government of Sri Lanka, 7 November 2016, p. 29). For further information on the criminalisation of enforced disappearance and the Office on Missing Persons (OMP) also see section 2.2.4 on enforced disappearances of this compilation. The law establishing an Office on Missing Persons can be accessed via the following link:

- Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act [An Act to Provide for the Establishment Of The Office On Missing Persons; To Provide For The Searching And Tracing Of Missing Persons; […]] certified on 23 August 2016 (published by Gazette of the Democratic Socialist Republic of Sri Lanka, 26 August 2016) http://www.parliament.lk/uploads/acts/gbills/english/6016.pdf

In a written statement to the UN Human Rights Council (HRC) from August 2016, Amnesty International (AI) provides the following cases to illustrate persisting impunity:

> "Despite repeated promises to progress investigations, impunity persists in most cases, including the January 2006 extrajudicial executions of five students in Trincomalee by Sri Lankan security personnel; the August 2016 shootings of 17 aid workers with Action Contre La Faim; the enforced disappearance of human rights defender Stephen Suntharaj in 2009 after his abduction by security personnel; the disappearance of cartoonist Prageeth Eknaligoda in January 2010; and the disappearance of political activists Lalith Weeraraj and Kugan Muruganandan, last seen in Jaffna in December 2011. Families have waited years for truth and justice in these cases." (AI, 29 August 2016, p. 3)

In its concluding observations from December 2016 (advance unedited version), the UN Committee Against Torture (CAT) notes that "[t]he Committee remains deeply concerned that, according to numerous reports from UN and non-governmental sources, impunity prevails in most cases of torture in the State party" (CAT, 7 December 2016, p. 6).

3.4 Due process (including arrest and detention procedures)

The US Department of State (USDOS) human right report covering the year 2015 provides the following summary of trial procedures:

> "The law presumes defendants are innocent in judicial cases. In High Court criminal cases, juries try defendants in public. Authorities inform defendants of the charges and evidence against them, and they have the right to counsel and the right to appeal. There are no formal procedures for ensuring how quickly arrested persons may contact family or legal counsel, but authorities allowed them to make calls on their cell phones to such persons. The government provided counsel for indigent persons tried on criminal charges in the High Court and the courts of appeal but not in cases before lower courts. Private legal aid organizations assisted some defendants. There are no juries in cases brought under the PTA, but defendants in such cases have the right to appeal. Defendants have the right to

> confront witnesses against them, present witnesses and evidence, and access government-held evidence, such as police evidence. […]
>
> The law requires court proceedings and other legislation to be available in English, Sinhala, and Tamil. Most courts outside of Jaffna and the northern and eastern parts of the country conducted business in English or Sinhala. A shortage of court-appointed interpreters restricted the ability of Tamil-speaking defendants to receive a fair hearing in many locations, but trials and hearings in the north and east were in Tamil and English." (USDOS, 13 April 2016, section 1e)

In May 2016, the Special Rapporteur on the independence of judges and lawyers published her preliminary observations, providing the following information on the Sri Lankan justice system and the diversity represented within:

> "The society is predominantly Sinhalese, with important Tamil and Muslim minorities, which in the North and East of the country are in a majority position. Yet, the diversity of the population is not reflected in the composition of the judiciary, the Attorney General's office, or the police, or in the language in which proceedings are conducted. For instance, there are very few Tamil-speaking judges appointed at the highest levels of the judiciary – in fact, with the exception of the current Chief Justice, there are no Tamils in the superior courts (Supreme Court and Court of Appeal). Police forces, in charge of investigations and the first steps to initiate criminal proceedings, are also composed of a large majority of Sinhala-speaking people. There are also very few Tamil-speaking State counsels in the Attorney-General's office. Thus, diversity should not only be clearly set among the criteria for the appointment of judges and the recruitment of State counsels and police officers, but qualified interpreters should be assigned to tribunals as a measure to guarantee due process." (OHCHR, 7 May 2016b)

Arrest and detention

The USDOS human rights report covering the year 2015 describes arrest and detention procedures, providing the following information:

> "By law authorities are required to inform an arrested person of the reason for the arrest and arraign that person before a magistrate within 24 hours for minor crimes, 48 hours for some grave crimes, and 72 hours for crimes under the PTA [Prevention of Terrorism Act]. In practice, however, days, weeks, and sometimes months elapsed before detained persons appeared before a magistrate, particularly in PTA cases. A magistrate may authorize bail or continued pretrial detention for up to three months or longer. Judges need approval from the Attorney General's Office to authorize bail for persons detained under the PTA, which they normally did not grant. Police may make an arrest without a warrant for certain offenses such as killing, theft, robbery, and rape. In homicide cases, regulations require the magistrate to remand the suspect, and only the High Court may grant bail." (USDOS, 13 April 2016, section 1d)

According to the May 2016 preliminary observations of the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, "[t]here does not seem to

be a clear rule in the law that says that arrests have to be authorized by a judge. In practice, the decision to arrest a person is made by a police officer". He further argues that "[f]or that reason, it is important that arrests are made transparent, with proper identification of the arresting officer, and offering reasons based on objective evidence. Otherwise, distrust of the authorities will persist" (OHCHR, 7 May 2016a). The UN Committee Against Torture (CAT) raises the following concerns about the consequences of the polices' powers to arrest in its concluding observations from December 2016:

> "The Committee is concerned that the broad police powers to arrest suspects without a court warrant has led to the practice of detaining persons while conducting the investigations as a means to obtain information under duress. The Committee notes allegations that police investigators often fail to register detainees during the initial hours of deprivation of liberty or to bring them before a magistrate within the time-limit prescribed by law, during which time torture is particularly likely to occur. It also notes with concern that neither the Attorney General nor the judiciary exert sufficient supervision over the legality of the detention or the conduct of police investigations to prevent this practice. In this regard, the Committee shares the concern of the that magistrates often do not inquire into potential ill -treatment during pre-trial hearings, and accept the requests of police officers to keep suspects in remand custody without further scrutiny" (CAT, 7 December 2016, pp. 2-3)

The preliminary observations of the Special Rapporteur on torture further contains the following information on arbitrary arrest and detention:
"I have received allegations of recent so-called 'white van abductions' – a reference to practices that in the past led to enforced disappearance of persons. The situation today cannot be compared to the past, but the persistent allegations of white van abductions are a reminder that arrests should be conducted transparently and that senior officers must be accountable for them. I raised this issue with the authorities who have said that all arrests are done by police in uniform using officially marked vehicles. The cases that we looked into seem to have resulted in acknowledgement of the detention of the person. However, I intend to continue to look further at the evidence." (OHCHR, 7 May 2016a)The USDOS human rights report for the year 2015 notes that "[t]he law prohibits arbitrary arrest and detention; however, this requirement was not always respected in practice". The USDOS refers to reports from the Centre of Policy Alternatives (CPA), stating that "21 persons were arrested or detained under the PTA without charge from January through the end of September [2015]" (USDOS, 13 April 2016, section 1d). In a press statement from June 2016, Human Rights Watch (HRW) notes that "[s]ince April 2016, the government has arrested at least 11 people under the PTA for alleged terrorist activities instead of using appropriate provisions under the criminal code" (HRW, 13 June 2016). In its concluding observations from December 2016, the UN Committee Against Torture (CAT) voices the following concerns about the PTA:

> "21. Although the state of emergency was lifted in 2011, the Committee remains deeply concerned that the administrative detention regime established in the Prevention of Terrorism Act (PTA) No.48 of 1979 remains in force.[…] The Committee notes with concern that, in practice, PTA suspects have been held for as long as 15 years without having been indicted, and even those who have been charged, have remained in detention without a

verdict for as long as 14 years. The committee also concerned over the large number of documented allegations of torture of former and current PTA detainees, who also allege violations of their due process rights during detention, in particular restrictions to access their lawyers." (CAT, 7 December 2016, p. 6)

Detention procedures under the PTA are described in the May 2016 preliminary observations of the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment in the following terms:

> "A special piece of legislation called the Prevention of Terrorism Act (PTA) applies to investigations into national security-related offences. It provides for detention without trial for prolonged periods of up to 18 months, with judicial supervision. A magistrate must periodically review the detention order. During my interviews with PTA detainees it appeared that a number of them are transferred around various TID or CID facilities in the country without lawyers or families being informed.
>
> Under Section 28 of the Human Rights Commission Act the detention authorities are bound to inform the National Human Rights Commission (NHRC) within 48 hours of an arrest made under the PTA or other emergency regulations as well as in case of transfer or change of location. I understand that nowadays, with the changes at the NHRC, such arrests and detentions are again communicated, more or less regularly, but this is not the case with transfers or changes of detention facility.
>
> Under Section 15(a) of the PTA, some detainees continue to be detained in TID facilities (as opposed to remand prisons) because the Secretary of Defence considers them a threat to national security. The hearings held before a magistrate, for the purpose of judicial control of the detention, do not amount to meaningful safeguards against either arbitrariness or ill-treatment. The magistrates essentially rubber-stamp detention orders made by the Executive Branch and do not inquire into either conditions of detention or potential ill-treatment during interrogation.
>
> Persons detained under the PTA then go on to be prosecuted at the High Court for security-related offences, most frequently based on charges related to aiding or abetting the LTTE insurgency. These cases have languished in court for years with the defendants remaining in detention. In random interviews, I found several inmates who have spent ten years in remand detention under the PTA, or under charges of ordinary offences, without having been proven guilty of any offence. Some are bailed out by courts, though they continue to be prosecuted. Others are sent to 'rehabilitation' in lieu of prosecution, which is supposedly voluntary on their part." (OHCHR, 7 May 2016a)

For further information on the PTA see section 1.3.2 (Prevention of Terrorism Act and emergency legislation) of this compilation. Further information on arbitrary arrest and detention can be found in section 2.2.6 of this compilation.

In May 2016, the Special Rapporteur on the independence of judges and lawyers published her preliminary observations, which provide the following assessment of judicial proceedings:

> "Judicial proceedings are too long, and the time they involve especially affect people deprived of liberty. It amounts to a denial of justice. Cases are regularly postponed. Judges cannot cope with the number of cases they have to deal with. The Criminal Investigations Department and the Government Analyst Department are centralized in Colombo and conduct investigations for the whole justice system. Criminal prosecutors are overburdened. The backlog of tribunals, in both civil and criminal matters, should be considered so as to be the object of some work plan to tackle the delays and to prevent their occurrence. [...] 335 judges at all instances and in the whole country, a number given to us by the Judicial Service Commission, seem insufficient for a population of more than 20 million inhabitants." (OHCHR, 7 May 2016b)

The same preliminary observations elaborate on the role of the Attorney-General and delays in the justice system:

> "The Attorney-General is also de Chief Prosecutor, and, as such replaced the position of the Independent Prosecutor which existed in the past. In such a capacity, the Attorney-General should issue clear and proper guidelines for the investigation and prosecution of crimes. […] He should also monitor how cases are substantiated so as to avoid the delays incurred by his office. Even in 'ordinary' non-conflict-related and non-political cases, the Attorney-General's office takes too much time to produce an indictment. This is but one of the reasons for the long judicial delays in the administration of justice in Sri Lanka which court users have to endure." (OHCHR, 7 May 2016b)

The conditions of pre-trial and administrative detention as well as delays of the judicial process are described in the USDOS human rights report covering the year 2015:

> "The judicial process moved slowly, and in a total prison population of 19,067 reported as of October 13, 9,004 were 'unconvicted' and the cases of another 1,065 were in appeal. Lengthy legal procedures, large numbers of detainees, judicial inefficiency, and corruption often caused trial delays. Legal advocacy groups asserted it was common for the length of detention to equal or exceed the sentence for the alleged crime.
>
> Persons held under administrative detention did not enjoy the same rights as those awaiting trial. For example, lawyers were required to apply for permission from the Terrorism Investigation Division to meet clients detained at the Boosa detention center, with police frequently present at such meetings. Pretrial detainees did not have the right to legal counsel during questioning by police. Persons convicted and undergoing appeal did not receive credit toward their original sentence for time served in prison while the appeal continued. Appeals often took several years to resolve." (USDOS, 13 April 2016, section 1d)

The preliminary observations of the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment from May 2016 provides the following information on detention and protracted remand periods:

> "An aggravating factor is that the congested prisons are a direct result of lengthy sentences for non-violent and drug related offences. Suspects are subjected to lengthy remand periods with many being detained for years and some even up to ten to 15 years. We

understand that the average delay for State Counsel to bring a criminal case before the High Court after remand ranges from five to seven years. This is a serious violation of due process and the presumption of innocence, and results in what is commonly known as an 'anticipated penalty' without trial. It also violates the principle that provisional detention should be the exception and not the rule." (OHCHR, 7 May 2016a)

The same report provides the following information on confessions obtained while in custody:

> "Authorities have on a regular basis justified prolonged detention on the ground that the investigation was complex or evidence hard to find, ignoring the fact that, with the exception of detentions in flagrante delicto, the evidence should be procured before the arrest. This access to the detainee for continuous questioning can also be an incentive for torture, aside from other considerations regarding conditions and legality of detention.
>
> The Attorney-General told my delegation that statements made to the police do not form part of the criminal record in ordinary crime cases, although he acknowledged, that under the PTA, statements made to a senior police officer are fully admissible in court. In both cases, however, police routinely extract self-incriminatory statements, so the admissibility, or not, of the statement does not protect the detainee from possible coercion. […] I have been assured by the authorities that confessions alone are not sufficient evidence for a conviction, as other corroborating evidence is needed. In practice, however, 90 per cent of convictions are based on a confession alone or as the main evidence. […]
>
> The result of these normative gaps in the rights of a criminal defendant is that the accused provides a statement to the police as a routine practice and is never informed about the right to a lawyer. This amounts to inadequate and meaningless legal protection, which fuels the widespread fear and mistrust of the police system among the population." (OHCHR, 7 May 2016a)

In its concluding observations from December 2016, the UN Committee Against Torture (CAT) provides the following information on forced confessions:

> "Recalling its previous recommendation (CAT/C/LKAICO/3-4, para. II), the Committee remains concerned that under the PTA, confessions obtained at or above the rank of Assistant Superintendent of Police are still admissible as sole evidence in Court, even if they were taken without the presence of a lawyer and are later retracted by the accused on the grounds of coercion. The Committee is concerned that, even after the so called voire dire or admissibility inquiries take place, the judge enjoys final discretion to admit evidence or not and, for persons detained under the PTA the burden of proof remains on those persons to prove that their confessions were made under duress. The Committee is alarmed by information that the same rule has been carried over in the proposed draft Framework which will replace the PTA. It is also seriously concerned at information that 90 percent of convictions are based on a confession alone or as the main evidence and that, in numerous documented cases of torture, the accused persons alleged that they were forced to sign self-incriminatory statements in blank sheets of paper or in a language they did not understand." (CAT, 7 December 2016, pp. 9-10)

The USDOS human rights report notes that "[c]onfessions obtained by coercive means, including torture, are generally inadmissible, except in PTA cases. Defendants bear the burden of proof, however, to show that authorities obtained their confessions by coercion" (USDOS, 13 April 2016, section 1e). The right to legal representation is described by the USDOS report in the following terms:

> "In all cases suspects have the right to legal representation, although there is no legal provision specifically providing the right of a suspect to legal representation during interrogations in police stations and detention centers. There were credible reports that detainees often did not have a lawyer present at the time of interrogation. The government provided counsel for indigent defendants in criminal cases before the High Court and courts of appeal but not in other cases." (USDOS, 13 April 2016, section 1d)

In October 2016, 20 civil society organisations from Sri Lanka jointly submitted an alternative report to the UN Committee against Torture providing the following information on access to legal counsel:

> "5.43. There is no effective legal aid system to assist victims. Legal Aid Commission provides legal assistance to persons whose income level may not exceed Rs. 8,000/= per month. This income limit incapacitates many of the population to access legal aid.
>
> 5.44. Lawyers who attempt to visit detainees held under the PTA are frequently denied meeting them, preventing the right of legal counsel. Lawyers have limitations in meeting suspects held by the CID and the TID, and if they are permitted, such permission is not granted immediately after the arrest.
>
> 5.45. The government has proposed an amendment to Section 37 of the Criminal Procedure Code (Bill proposing the amendment was issued on 15th of August 2016 as a supplement to the Gazette of 12th August 2016), which explicitly states that a suspect will only be able to access a lawyer after his or her statement is recorded by the police. This amendment regresses the current situation in which suspects are able to access lawyers at any stage. This measure also runs completely contrary to the need for positive legislation to enshrine a right to legal representation and moreover legal aid.
>
> 5.46. The Bill has been criticized by the Human Rights Commission of Sri Lanka (HRCSL), the BAR Association of Sri Lanka (BASL) and several civil society organisations." (Sri Lankan NGO Collective, 13 October 2016, pp. 15-16)

The UK-based NGO Freedom from Torture published a report in August 2015 based on a study conducted of 148 torture cases committed in Sri Lanka from May 2009 to September 2013. The report notes that "[o]ne hundred and thirty-six of the 148 people were detained without observance of any due process rights (92%)". This means "[f]or example there was no formal charge or sentencing, no access to legal representation, no hearing before a judge, no official notification to family members and no access to an independent medical examination" (Freedom from Torture, 13 August 2015, p. 34).

Fundamental rights cases

In a report from November 2016, Amnesty International (AI) provides the following assessment of the justice process and fundamental rights cases in Sri Lanka:

> "Cases that do proceed to trial are often subject to repeated delays. Petitions to the Supreme Court seeking redress for violation of a petitioner's Constitutional Rights ('fundamental rights petitions'), while occasionally successful in securing compensation have failed to provide reliable and effective remedies for most victims. In many cases, victims and others seeking justice on their behalf as well as magistrates, judges and lawyers involved in cases, have been threatened, intimidated and attacked. As a consequence, some individuals have felt little choice but to leave Sri Lanka." (AI, 8 November 2016, p. 10)

The UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment refers to fundamental rights petitions in his May 2016 preliminary observations in the following terms:

> "Fundamental rights applications involve complex litigation and are thus not accessible to all. Such applications must be filed within 30 days from the occurrence of the violation. In addition, even if successful, they result in compensation as the only remedy. The application is, for example, not available to vacate a court order that has been based on a forced confession as it does not lie against judicial decisions." (OHCHR, 7 May 2016a)

The US Department of State (USDOS) human rights report covering the year 2015 includes the following information on the effectiveness of fundamental rights cases:

> "Citizens may file fundamental rights cases to seek redress for alleged human rights violations. The judiciary exhibited some independence and impartiality in adjudicating these cases and awarded plaintiffs damages in a number of instances. Observers, however, cited bureaucratic inefficiencies in this system leading to delays in resolving many cases. Where courts awarded damages, there were relatively few problems in enforcing court orders." (USDOS, 13 April 2016, section 1e)

3.5 Prison conditions

The US Department of State (USDOS) human rights report covering the year 2015 provides the following description of prisons in Sri Lanka:

> "The Ministry of Law and Order and Prison Reforms [...] operated three 'closed prisons' designed for convicted prisoners and 19 remand prisons for those awaiting trial. Separate from this were 10 work camps, two open prison camps for prisoners who had committed minor offenses, a training school, and two correctional centers for youthful offenders. The large majority of the convict and remand prisons were supposed to have separate wards for women and juveniles, but strict separation was not always the case in practice. In some cases juveniles were not held separately from adults. Authorities often did not hold pretrial detainees separately from convicted prisoners. Authorities often incarcerated petty criminals with perpetrators of more serious crimes. Female prisoners were held separately from male prisoners within the same jail." (USDOS, 13 April 2016, section 1c)

The same report notes that "[p]rison conditions were poor due to old infrastructure, overcrowding, and shortage of sanitary and other basic facilities" (USDOS, 13 April 2016, section 1c). The USDOS further provides the following information on conditions in prison:

> "In many prisons inmates reportedly slept on concrete floors and often lacked natural light or sufficient ventilation. According to the Prison Headquarters Statistics Division, there was a total of 19,067 prisoners, both convicted (10,063) and unconvicted (9,004) as of October. (Unconvicted prisoners refer to those held on 'remand' while awaiting trial.) The commissioner of prisons estimated that on average the prison population exceeded the system's capacity by 60 percent." (USDOS, 13 April 2016, section 1c)

In his May 2016 preliminary observations, the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment describes prison and detention conditions as follows:

> "With regard to the treatment of prisoners by staff in penitentiaries and remand prisons, I note with satisfaction that in conducting my interviews I did not receive any serious complaints.
>
> I am deeply concerned, however, about the conditions of life in all prisons. All are characterized by a very deficient infrastructure and pronounced overcrowding. As a result, there is an acute lack of adequate sleeping accommodation, extreme heat and insufficient ventilation. Overpopulation also results in limited access to medical treatment, recreational activities or educational opportunities. These combined conditions constitute in themselves a form of cruel, inhuman and degrading treatment.
>
> TID [Terrorism Investigation Division] detainees also suffer from inhumane detention conditions, including excessive heat, absence of ventilation, limited access to daylight and exercise, prolonged or indefinite isolation in some cases, and lack of electricity so that some of them spend about 12 hours a day in the dark.
>
> I visited the underground detention cells located inside the Trincomale Naval Base, which were discovered in 2015. These cells, which were presumably used to hold persons who are now counted among the disappeared, are currently under seal as a crime scene. I understand that the CID is heading an investigation that has not yet resulted in indictments. Needless to say, the conditions must have been horrific." (OHCHR, 7 May 2016a)

The same preliminary observations from May 2016 include the following information on overcrowding in prisons:

> "During my visit I observed levels of population exceeding capacity by well over 200 or 300 per cent. Vavuniya Remand Prison offered a striking example of such overcrowding.
>
> One of its halls hosted 170 prisoners in what my team and I estimated to measure less than 100 square meters, providing less than 0.6 metres per person. In the same building, other prisoners were forced to sleep on the staircase for lack of space in the detention areas. In addition, we saw cells designed for one person occupied by four or five inmates. The larger prisons in Colombo were built in the mid-19th century and walls, roofs and staircases are

> literally crumbling on the prisoners. The Government has indicated that Welikada prison will be closed and a new prison will be built in Tangelle, but we understand the latter is not even in the planning stages yet. While replacement of old prisons is a good idea, in the meantime it is urgent to conduct maintenance and repair the unsafe conditions that amount to cruel, inhuman and degrading treatment or punishment." (OHCHR, 7 May 2016a)

Following the publication of the preliminary observations, the UN Committee Against Torture (CAT) notes in its concluding observations from December 2016 that it is "alarmed by the assessment of the Special Rapporteur on Torture" as his preliminary observations are "indicating that the conditions of detention in prisons and detention facilities, in particular those of the Terrorist Investigation Department, could amount to cruel, inhumane and degrading treatment" (CAT, 7 December 2016, p. 11).

In its October 2016 alternative report to the UN Committee against Torture, the Sri Lankan NGO Collective notes that "[p]rison overcrowding is a major issue of concern in Sri Lankan prisons" and that "[t]here is a lack of places to sleep and not enough infrastructures to support the overwhelming number of prisoners" (Sri Lankan NGO Collective, 13 October 2016, p. 14). The same report provides the following information on conditions in Sri Lankan prisons:

> "5.35. Prison conditions need immediate attention to ensure that prisoners are not treated in a cruel, degrading or inhuman manner.
>
> 5.35.1. The meals given to prisoners lack nutrition. In addition, there are health issues faced by detainees in remand prisons and prisoners when consuming food brought by family members and relatives, which are contaminated during the inspection of food. Jailors and other officials do not follow a proper methodology for such inspections.
>
> 5.35.2. Monthly visiting hours at the female wards, especially the Welikada Prison, are a traumatic experience for inmates as well as family and friends due to the lack of space as well as less than conducive environment for meaningful interaction.
>
> 5.35.3. There is also a lack of medical facilities and there are no recreational activities available for the prisoners. The detention center of the TID has no proper ventilation for the detainees. Low standard in prison hospitals and severe shortage of medicinal drugs in prison hospitals, insufficient hospital staff necessary for diagnosing and treating prisoners, lack of medical attention and treatment for HIV patients are also issues that need to be addressed. Furthermore, the lack of training to identify and report on sexual violence is a serious point to be taken into consideration." (Sri Lankan NGO Collective, 13 October 2016, pp. 14-15)

In June 2015, the British High Commission Colombo published an information pack for British prisoners in Sri Lanka, which states the following under "details on prisons and prison conditions":

> "Sri Lankan prisons are extremely overcrowded. This is in part owing to the lack of facilities. The accused spend a considerable time on remand before they are formally charged or

> before cases are heard. Conditions within prisons are difficult because of the overcrowding and the heat. However, inmates do receive appropriate medical attention and are provided with a balanced diet." (British High Commission Colombo, 1 June 2015, p. 15)

The same publication of the British High Commission Colombo from June 2015 notes that "[a] medical practitioner visits all institutions on given dates to attend to the needs of the inmates. More serious medical or dental conditions will be referred to doctors in a public hospital close to the prison" (British High Commission Colombo, 1 June 2015, p. 10). According to the USDOS human rights report covering the year 2015, "[a] few of the larger prisons had their own hospitals, but the majority were staffed only by a medical unit. Authorities transferred prisoners requiring medical care in smaller prisons to the closest local hospital for treatment" (USDOS, 13 April 2016, section 1c). The UK-based NGO Freedom from Torture published a report in August 2015 based on a study of 148 cases involving torture committed in Sri Lanka from May 2009 to September 2013. Referring to a range of different detention facilities (such as military, police, intelligence and prison) the report states that "[t]he overwhelming majority of people did not report access to medical treatment whilst in detention" (Freedom from Torture, 13 August 2015, p. 35). In June 2016, the Sri Lankan English-language newspaper Daily News published an article about healthcare in prison providing the following information:

> "Dr. Lakshman Jayamanne is the Medical Officer in Charge of the Prison Hospital at Welikada. [...] According to him, 75 percent of those who come into prison suffer from depression, anxiety and suicidal thoughts between the first two to six months inside: 'Only repeat offenders are mentally strong,' Dr. Jayamanne said. But the prison doctor only has access to the patient between 9 a.m-5 p.m in a day: 'If the patient is to suffer from an attack at night, there is no doctor on call to attend to him immediately,' he said.
>
> The doctors are sent to work in hospital through the Ministry of Health and are not part of the prison system. They are required to practice 'preventive, curative, rehabilitative and corrective medicine,' amid dismal prison conditions. The lack of hygiene, resources and basic facilities however make the job of keeping prisoners healthy an uphill task.
>
> 'Prisoners suffer from both physical and mental injury. Then you have acquired diseases such as physical and sexual attacks. Overcrowding on the other hand causes further mental harassment. Young people especially, are victims of physical and sexual harassment,' Dr. Jayamanne said." (Daily News, 9 June 2016)

The joint alternative report by the Sri Lankan NGO Collective from October 2016 provides the following information about doctors in prisons as well as their capacities when dealing with torture cases within prison:

> "5.32. Prison doctors are graduate doctors coming under the supervision of the Ministry of Health (MoH). There is also a Director, Prison Health that functions within the same Ministry. Prison doctors have not received any specialized training in the management of torture survivors. These doctors continue to be a neglected for training and capacity building. It is only recently that a training was conducted for prison doctors for the first time by the College of Forensic Pathologists of Sri Lanka working with the ICRC.

> 5.33. In cases of torture within prisons the prison doctor cannot send a victim of torture to a JMO [Judicial Medical Officer] directly for examination. The doctor has to obtain permission from the prison management, after which the respective case will be called up before the Magistrate and the Magistrate will be requested to make an order to the respective prison to present the prisoner to the JMO. In most instances, when the prison doctor recommends referring a victim to a JMO the prison does not give permission. The prison hospital too is reluctant to send its inmates to a JMO for examination when recommended by the prison doctor. According to the Prison's Ordinance, prison officials are not bound to carry out doctor's instructions. Hence there is a great delay in referring suspected victims of torture to a JMO for a medico legal examination. Sometimes these cases do not get referred at all. In addition, a JMO cannot visit a prison to check on the wellbeing of its inmates as there is no such system." (Sri Lankan NGO Collective, 13 October 2016, pp. 13-14)

With regard to death in custody, the USDOS human rights report covering 2015 refers to the commissioner of prisons reporting a total of 58 deaths in custody as of October 2015, noting that "[t]he majority of deaths were due to natural causes, with a minority of these the result of suicide" (USDOS, 13 April 2016, section 1c). The same report refers to a 2012 prison riot in Welikada Prison where 27 prisoners were killed and more than 40 persons injured, indicating that "[i]n July the Commission of Inquiry submitted a report, but the inspector general of police did not release it to the public. Media reports suggested further investigation would occur." (USDOS, 13 April 2016, section 1c; see also Sri Lankan NGO Collective, 13 October 2016, p. 14)

For information on torture and ill-treatment of criminal suspects see section 3.2 of this compilation. Section 2.2.7 of this compilation looks at torture in the context of issues surrounding the security forces and the military.

In his May 2016 preliminary observations, the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment mentions that "[i]n the prison system there is no formal complaint mechanism available to inmates" (OHCHR, 7 May 2016a). The USDOS human rights report covering the year 2015 provides the following information on complaint mechanisms and monitoring:

> "There were no ombudsmen to handle prisoner complaints. The law mandates that magistrates visit prisons once a month to monitor conditions and hold private interviews with prisoners, but this rarely occurred because the backlog of cases in courts made it difficult for magistrates to schedule such visits. Authorities allowed prisoners and detainees, except those held in informal detention facilities, access to family members and religious observance.
>
> Independent Monitoring: The Prison Welfare Society was the primary domestic organization conducting visits to prisoners and was supposed to visit each prison once per month. It was charged with examining the conditions of detention for prisoners and conveying their complaints to the individual prison superintendent and commissioner of prisons." (USDOS, 13 April 2016, section 1c)

The Sri Lankan NGO Collective refers to the Human Rights Commission of Sri Lanka (HRCSL) in its joint alternative report from October 2016, noting that "[t]hough the HRCSL is authorized to visit detention centres, they often cite the lack of resources as a reason for its failure to conduct visits to detention centres to address issues of torture and to respond effectively to emergency situations" (Sri Lankan NGO Collective, 13 October 2016, p. 15).

4 Human Rights Issues

4.1 Ethnicity

This section on ethnicity can be read in conjunction with section 4.2 (freedom of religion) of this compilation.

4.1.1 Domestic legal framework for the protection of ethnic minorities

According to Article 12(2) of the Constitution, "[n]o citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds" (Constitution, amended as of 15 May 2015, Article 12(2)). In its concluding observations from October 2016, the UN Committee on the Elimination of Racial Discrimination (CERD) comments on the provision of this article as follows:

> "8. The Committee notes that article 12 (2) of the Constitution provides for the prohibition of discrimination, including on the basis of race and caste. However, it is concerned that the definition of racial discrimination does not include all grounds as stipulated in article 1 of the Convention [for the Elimination of all Forms of Racial Discrimination], including colour or national or ethnic origin. The definition also does not specify the prohibition of both direct and indirect forms of discrimination (art. 1)." (CERD, 6 October 2016, pp. 2-3)

Chapter VI of the Constitution deals with the "Directive Principles of State Policy and Fundamental Duties" and contains the following provisions which are relevant to ethnicity:

> "27. […] (5) The State shall strengthen national unity by promoting co-operation and mutual confidence among all sections of the People of Sri Lanka, including the racial, religious, linguistic and other groups and shall take effective steps in the fields of teaching, education and information in order to eliminate discrimination and prejudice.
>
> (6) The State shall ensure equality of opportunity to citizens, so that no citizen shall suffer any disability on the ground of race, religion, language, caste, sex, political opinion or occupation. […]
>
> (10) The State shall assist the development of the cultures and the languages of the People." (Constitution, amended as of 15 May 2015, Article 27).

Cultural and language rights are provided for in Article 14 of the Constitution, which notes that "[e]very citizen is entitled to […] the freedom by himself or in association with others to enjoy and promote his own culture and to use his own language" (Constitution, amended as of 15 May 2015, Article 14(1)(f)). Chapter IV of the Constitution deals with languages and specifies that "[t]he National Languages of Sri Lanka shall be Sinhala and Tamil" (Constitution, amended as of 15 May 2015, Article 19) and that "[a] person shall be entitled to be educated through the medium of either of the National Languages" (Constitution, amended as of 15 May 2015, Article 21(1)). In order to "monitor and supervise compliance with the provisions contained in Chapter IV of the Constitution" as well as "to take all such actions and measures as are necessary to ensure the use of the languages referred to in Article 18 of the Constitution", the Official Languages Commission was established through the Official Languages Commission Act, published in March 1991 (Official Languages Commission Act, 27 March 1991, Article 6(a), (b)).

In its report on international religious freedom from August 2016, the USDOS notes that "[m]atters related to family law, including divorce, child custody, and property inheritance, are adjudicated according to either the customary law of the applicable ethnic or religious group or Sri Lankan civil law" (USDOS, 10 August 2016, section II). In a report submitted under the International Convention for the Elimination of All Forms of Racial Discrimination (CERD), covering the period from August 2001 to September 2015, the government of Sri Lanka also notes that in "areas such as marriage, divorce, succession to personal property etc., in addition to the general law of the country, there are special laws applicable to those from specific communities or ethnic/religious groups" (Government of Sri Lanka, 7 December 2015, p. 5). The report further provides the following information on the different laws in this respect:

> "10. As such, those of an Islamic faith have the option of subscribing to Muslim Personal laws (including statutes), Tamils hailing from the Jaffna Peninsula (also called the Malabar inhabitants of the Jaffna Province) fall within the ambit of the 'Thesavalame Law' and people from the historic Kandyan region and ancestry (i.e. descendants of families that were living in the provinces that came under the Kandyan Kingdom at the commencement of British colonial rule) are at liberty to follow the Kandyan law traditions established over centuries." (Government of Sri Lanka, 7 December 2015, p. 5)

The same government report notes that "measures such as the promulgation of the Prevention of Social Disabilities Act No. 21 of 1957 and the Citizenship Act No. 35 of 2003, have been adopted by successive Governments to address issues related to minority communities" (Government of Sri Lanka, 7 December 2015, p. 6).

The Prevention of Social Disabilities Act which was last amended in 1971, notes that "[a]ny person who imposes any social disability on any other person by reason of such other person's caste shall be guilty of an offence" and therefore is "liable to imprisonment of either description for a term not exceeding three years with or without a fine not exceeding three thousand rupees" (Prevention of Social Disabilities Act, 1971, Article 2(1)).

The US Department of State (USDOS) human rights report covering the year 2015 summarises legislation dealing with issues of citizenship for stateless ethnic minorities as follows:

> "The 2003 Grant of Citizenship to Persons of Indian Origin Act recognized the nationality of previously stateless persons, particularly hill-country Tamils. The government passed laws in 2009 to grant citizenship to hill-country Tamils living among other Sri Lankan ethnic Tamils in refugee camps in India's Tamil Nadu, but progress was slow in finding and registering these persons and granting them citizenship. UNHCR supported birth and citizenship documentation mobile campaigns in three districts in the plantation areas where the majority of stateless Tamils of Indian origin resided." (USDOS, 13 April 2016, section 2d)

Concerning possible incitement of ethnic or racial tensions, the Prevention of Terrorism Act (PTA) regulates that anyone who "by words either spoken or intended to be read or by signs or by visible representations or otherwise causes or intends to cause commission of acts of

violence or religious, racial or communal disharmony or feelings of ill-will or hostility between different communities or racial or religious groups" shall "on conviction be liable to imprisonment of either description for a period not less than five years but not exceeding twenty years." (Prevention of Terrorism Act, 1979, amended as of 15 July 1988, Article 2)

In its concluding remarks from October 2016, the UN Committee on the Elimination of Racial Discrimination (CERD) notes, however, that "the Prevention of Terrorism Act has a disproportionate impact on ethnic and ethno-religious minorities, such as Tamils, who have reportedly been targeted for arbitrary arrests and detentions under the Act" (CERD, 6 October 2016, p. 4).

4.1.2 Treatment of ethnic groups / ethnic minorities in practice

The CIA World Factbook notes that according to 2012 estimates, 74.9 per cent of the Sri Lankan population is ethnic Sinhalese, 11.2 per cent are Sri Lankan Tamil, 9.2 per cent Sri Lankan Moors, 4.2 per cent are Indian Tamil and 0.5 per cent are listed as "other". It further states that 74 per cent of the Sri Lankan population speak Sinhala, 18 per cent speak Tamil and 8 percent are speakers of other languages (CIA, last updated 10 November 2016).

The Freedom in the World 2016 report from Freedom House, covering the year 2015, states that, "Tamils report systematic discrimination in areas including government employment, university education, and access to justice" (Freedom House, 27 January 2016). The US Department of State (USDOS) provides the following information on the discrimination of Tamils in its human rights report for the year 2015:

> "Both local and Indian-origin Tamils maintained they suffered longstanding, systematic discrimination in university education, government employment, and other matters controlled by the government. Tamils claimed the government intentionally supported Sinhalese emigration to the north and east to diminish the Tamil-speaking group's claim to majority status in any single geographical region of the country. Tamils throughout the country, but especially in the north and east, reported security forces regularly surveilled or harassed members of their community, especially young and middle-aged Tamil men." (USDOS, 13 April 2016, section 6)

In its October 2016 concluding observations, the UN Committee on the Elimination of Racial Discrimination (CERD) expresses concerns about the Prevention of Terrorism Act (PTA), stating that it "has a disproportionate impact on ethnic and ethno-religious minorities, such as Tamils, who have reportedly been targeted for arbitrary arrests and detentions under the Act" (CERD, 6 October 2016, p. 4). Section 1.3.2 of this compilation provides further information on the Prevention of Terrorism Act (PTA).

The concluding observation of CERD also reflect on the situation of ethnic minority women in the North and East, providing the following information:

> "27. The Committee expresses concern at the situation of women from ethnic and ethno-religious minority groups, in areas affected by the war, in particular in the North and East, who are now female heads of households and are reportedly experiencing high rates of

> poverty and unemployment. The Committee is concerned by information that those women are vulnerable to sexual and gender-based violence, including rape, by security forces." (CERD, 6 October 2016, p. 6)

The Minority Rights Group International (MRG) annual report covering the year 2015 notes that "[t]he defeat of Rajapakshe brought new hopes and aspirations for the country's Tamils, who had faced increasing incidents of targeted human rights violations since he took office in 2005" (MRG, 12 July 2016, p. 140). MRG further provides the following information on changes initiated by the Sirisena government:

> "In a significant and reconciliatory move, the new parliament appointed Rajavarothiam Sampanthan, leader of the Tamil Nationalist Alliance (TNA) – considered the political proxy of the Tamil Tigers during Sri Lanka's armed conflict – as opposition leader. Other immediate measures taken by the Sirisena government to win the confidence of minorities included appointing the country's first Tamil chief justice and removing a controversial Sinhalese former military official from the post of governor of the Northern Province." (MRG, 12 July 2016, p. 141)

The International Movement Against All Forms of Discrimination and Racism (IMADR), an international non-governmental human rights organization, notes in a submission to the UN Committee on the Elimination of Racial Discrimination (CERD) in July 2016 that "[f]ollowing a change in the electoral system to a proportional representation system, minority political parties can play an influential role in Sri Lankan politics" (IMADR, July 2016, p. 3). The IMADR further provides the following information about the political participation of minority parties:

> "The Sri Lanka Muslim Congress (SLMC), the largest Muslim political party, and the Ceylon Workers Congress (CWC), representing Tamils of Indian origin, have been in a position to make and break governments. Because these parties held sufficient seats to enable the formation of coalition governments, the party leadership was able to negotiate with the ruling party and win several key ministerial portfolios." (IMADR, July 2016, p. 3)

The Colombo-based Centre for Policy Alternatives (CPA), which conducts research and advocacy in the areas of democratic governance and peace in Sri Lanka, indicates in a report from April 2016 that "Sirisena's electoral victory represented a positive and historic mandate to re-establish democratic norms", but points out that "[h]is victory, however, cannot be construed as a rejection of ethnonationalism" (CPA, April 2016, p. 6). According to the CPA report from April 2016, "a substantial proportion of the Sinhala-Buddhist population continues to strongly relate to the ethno-nationalism espoused by Sinhala nationalist political leaders" (CPA, April 2016, p. 6).

The concluding observation of CERD from October 2016 provide the following assessment of hate speech, incitement to violence and violent attacks against ethnic minority groups:

> "16. The Committee is alarmed by reports of hate speech, incitement to violence and violent attacks, including riots, against ethnic and ethno-religious minority groups, which have resulted in deaths, injuries and destruction of property. The Committee is concerned that groups or individuals inciting violence and undertaking violent attacks against ethnic

> and ethno-religious minorities are not held accountable. The Committee notes recent efforts by the State party to introduce draft legislation to criminalize hate speech." (CERD, 6 October 2016, p. 4)

Regarding draft legislation to criminalise hate speech, the above-cited CPA report notes that "the Government's decision to withdraw the Penal Code Amendment Bill to render hate speech a crime punishable by a two-year prison term is welcome", since "it could have been potentially dangerous in view of the fact that successive governments have used such provisions to selectively target political opponents" (CPA, April 2016, p. 29). In November 2016, the CPA releases a press statement, which refers to ethnic tensions in the following terms:

> "The Centre for Policy Alternatives (CPA) is deeply concerned by a spate of recent events with ominous portents for ethnic and religious harmony and reconciliation in Sri Lanka. These include the murder of two university students in Jaffna, the seeming exploitation by others of the disabled soldiers' protest outside the Presidential Secretariat, the increasing use of hate speech against minorities by some members of the Buddhist clergy and by other protest groups, and by widespread anti-minority hate speech in social media." (CPA, 15 November 2016)

In June 2016, the Tokyo-based current affairs magazine The Diplomat notes that "Sinha Le, a grassroots Sinhala-Buddhist nationalist movement in Sri Lanka, has stoked ethnic tensions". The Diplomat notes that the movement Sinha Le came "to national attention in late 2015" and despite Sinhala-Buddhist nationalism not being a new phenomenon in Sri Lanka, "the Sinha Le campaign's popularity and social media presence has set itself apart" (The Diplomat, 29 June 2016). The April 2016 CPA report states that "[t]he popularity of 'Sinha-Le' campaign, which appears to be politically-backed and well-organised evinces ethno-nationalism's continued power as a tool to mobilise insecure masses" (CPA, April 2016, p. 29). According to the report "[t]he growing disenchantment in the Sinhala-Buddhist community on many fronts, their economic and cultural insecurity in particular, at least in part has made it easier for nationalistic political posturing to re-capture its lost appeal" (CPA, April 2016, p. 6).

Tamils of Indian origin

In a submission to the UN Committee on the Elimination of Racial Discrimination (CERD) from July 2016, the International Movement Against All Forms of Discrimination and Racism (IMADR) notes that the situation of Tamils of Indian origin, also known as "plantation Tamils" is "exceptional and requires specific attention" (IMADR, July 2016, p. 3). The US Department of State (USDOS) human rights report covering the year 2015 provides the following information on Tamils of Indian origin:

> "Tamils of Indian origin, also known as 'Hill Country' or 'Up Country' Tamils, constitute 4.2 percent of the country's population. Many of them are descended from Tamils of Indian origin brought to the country in the 19th and 20th centuries to work on coffee, tea, and rubber plantations. The three largest populations of this community reside in the Central, Uva, and Sabaragamuwa provinces, respectively. Economically their socioeconomic condition was below the national average, rendering them strong supporters of the Ceylon

Worker's Congress party led by G. Thondaman. Minister of National Dialogue Mano Ganesan, appointed by the president following parliamentary elections in August, belonged to this community." (USDOS, 13 April 2016, section 6)

The IMADR assesses the situation of Tamils of Indian origin as follows:

> "The community has been marginalized and side-lined for decades and faced major political, economic and social rights violations. As Sri Lanka charters its post-conflict future, it is crucial that this community does not continue to be neglected. Although plantation Tamils were not directly involved in the conflict, because of their Tamil name and identity they have faced similar human rights violations to North-Eastern Tamils such as arbitrary arrests and detention under the Prevention of Terrorism Act (PTA). Historically, the civil and political rights of plantation Tamils in Sri Lanka have been violated. Many of them were stateless and faced problems of citizenship through successive post-independence governments. They received Sri Lankan citizenship only in 2003 under the Citizenship Act
>
> 35. However, over 200,000 people in this community still have problems of documentation, since many lost their citizenship documents in the ethnic riots in July 1983. Several thousand do not have national identity cards (NICs), which has led to arrests and detention. The lack of basic documentation affects their ability to seek proper employment, own property, benefit from social security, vote and open a bank account." (IMADR, July 2016, pp. 3-4)

In its concluding observations from October 2016, the UN Committee on the Elimination of Racial Discrimination (CERD) provides the following information on the treatment of Tamils of Indian origin:

> "20. While welcoming the establishment in 2015 of the Ministry of Hill Country New Villages, Infrastructure and Community Development and its establishment of a five-year national plan of action for the period 2016-2020 on social development of the plantation community, the Committee notes that Tamils of Indian origin, also referred to as 'Plantation Tamils' continue to face the following challenges:
>
> (a) High levels of poverty, poor compensation for work and poor working conditions;
> (b) Poor housing conditions and difficulty in gaining access to health services;
> (c) Lack of quality education and higher dropout and child labour rates than the national average;
> (d) Difficulty in obtaining citizenship papers or identity documents, leading to problems with owning housing, opening bank accounts and avoiding detention;
> (e) Caste-based discrimination (arts. 1 and 5)." (CERD, 6 October 2016, p. 5)

The five-year National Plan of Action (NPA) for the Social Development of the Plantation Community 2016-2020 described by CERD was published in March 2016. It notes that "[t]his community has been confined to the plantations ever since their migration and without much integration outside their community" and that they are "identified as a separate ethnic group and classified as Tamils of recent Indian origin or upcountry Tamils". According to the NPA, the plantation sector "employs directly or indirectly around 1.5 million people" and "is the most

deprived sector in terms of social development with poverty, education, health, nutrition, housing, safe drinking water, sanitation and women's empowerment being areas of concern". It further notes that "this community has not been integrated into the national health, education, housing and other service delivery systems of the government" (Ministry of Hill Country New Villages, Infrastructure and Community Development, March 2016, pp. vi-x). The five-year NPA for the Social Development of the Plantation Community 2016-2020 can be accessed via the following link:

- Ministry of Hill Country New Villages, Infrastructure and Community Development: National Plan of Action for the Social Development of the Plantation Community 2016-2020, March 2016 http://www.mpid.gov.lk/en/index.php?option=com_wrapper&view=wrapper&Itemid=294&lang=en

Indigenous People

Referring to indigenous communities and the rights of the Adivasi and Veddah communities, the government of Sri Lanka notes in its state report submitted under the International Convention for the Elimination of All Forms of Racial Discrimination, covering the period from August 2001 to September 2015, that "Sri Lanka does not recognize the concept of 'indigenous peoples' as all people of Sri Lanka share a common heritage of over 2,500 years and contribute to the diversity and richness of the Sri Lankan civilization" (Government of Sri Lanka, 7 December 2015, p. 9).

The USDOS human rights report covering the year 2015 provides the following information on indigenous people in Sri Lanka:

> "The country's indigenous people, known as Veddas, by some estimates numbered fewer than 1,000. Some preferred to maintain their traditional way of life, and the law nominally protected them. There were no legal restrictions on their participation in political or economic life, but lack of legal documents was a problem for many. Vedda communities complained the creation of protected forest areas pushed them off their lands and deprived them of traditional livelihoods." (USDOS, 13 April 2016, section 6)

The UN Committee on the Elimination of Racial Discrimination (CERD) voices the following concerns about the situation of the Adivasi/Veddah people:

> "23. The Committee is concerned at the situation of Adivasi/Veddah people in the State party, including reported discrimination, socioeconomic marginalization and poverty, and restrictions in their use of traditional lands and cultural rights and problems gaining access to quality education and health services. The Committee notes the State party's statement during the dialogue that it wants to preserve the traditions and rights of indigenous peoples, including their access to education, health and livelihood support, yet it is concerned by the lack of specific information on any measures undertaken in that regard and their impact (art. 5)." (CERD, 6 October 2016, p. 6)

4.2 Freedom of religion

This section on freedom of religion can be read in conjunction with section 4.1 (ethnicity) of this compilation.

4.2.1 Domestic legal framework for the protection of religious minorities

The Constitution declares that "[t]he Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by Articles 10 and 14(1)(e)" (Constitution, amended as of 15 May 2015, Article 9). Article 10 stipulates that "[e]very person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice" (Constitution, amended as of 15 May 2015, Article 10). Article 14(1)(e) states that "[e]very citizen is entitled to – […] the freedom, either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching" (Constitution, amended as of 15 May 2015, Article 14(1)(e)). Additionally, Article 12 deals with the right to equality and contains the following provisions, which take a reference to freedom of religion:

> "12. (1) All persons are equal before the law and are entitled to the equal protection of the law.
>
> (2) No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds […].
>
> (3) No person shall, on the grounds of race, religion, language, caste, sex or any one of such grounds, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion." (Constitution, amended as of 15 May 2015, Article 12 (1))

Article 15 of the Constitution also contains rules on restrictions to the "exercise and operation" of fundamental rights such as the above described Articles 12 and 14:

> "15. […] (7) The exercise and operation of all the fundamental rights declared and recognized by Articles 12, 13(1), 13(2) and 14 shall be subject to such restrictions as may be prescribed by law in the interests of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society. For the purposes of this paragraph 'law' includes regulations made under the law for the time being relating to public security.
>
> (8) The exercise and operation of the fundamental rights declared and recognized by Articles 12(1), 13 and 14 shall, in their application to the members of the Armed Forces, Police Force and other Forces charged with the maintenance of public order, be subject to such restrictions as may be prescribed by law in the interests of the proper discharge of their duties and the maintenance of discipline among them." (Constitution, amended as of 15 May 2015, Article 15(7), (8))

Furthermore, Article 16(1) notes that "[a]ll existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this Chapter" (Constitution, amended as of 15 May 2015, Article 16(1)).

Chapter VI of the Constitution deals with the "Directive Principles of State Policy and Fundamental Duties" and contains the following provisions which are relevant to religion:

> 27 […] (5) The State shall strengthen national unity by promoting co-operation and mutual confidence among all sections of the People of Sri Lanka, including the racial, religious, linguistic and other groups and shall take effective steps in the fields of teaching, education and information in order to eliminate discrimination and prejudice.
>
> (6) The State shall ensure equality of opportunity to citizens, so that no citizen shall suffer any disability on the ground of race, religion, language, caste, sex, political opinion or occupation. […]
>
> (11) The State shall create the necessary economic and social environment to enable people of all religious faiths to make a reality of their religious principles." (Constitution, amended as of 15 May 2015, Article 27(5), (6), (11))

In a working paper from July 2016, the Colombo-based Centre for Policy Alternatives points out that while Constitutional Assembly and its subcommittees "are deliberating on the content of what might become Sri Lanka's third republican constitution, one of the major issues they will have to address is the role of religion in the new constitution". According to the working paper, "[a] foremost place for Buddhism – while assuring freedom of religion – has been a central feature of the two republican constitutions since 1972, but also a heavily disputed one" (CPA, July 2016, p. 3). The paper, which discusses the role of religion in the new constitution, can be accessed via the following link:

- CPA – Centre for Policy Alternatives: Buddhism and the regulation of religion in the new constitution: Past debates, present challenges, and future options (authors: Schonthal, Benjamin and Welikala Asanga), July 2016
  http://www.cpalanka.org/wp-content/uploads/2016/08/Buddhism-and-the-regulation-of-religion-in-the-new-constitution-Working-Paper-3.pdf

Chapter XV of the Penal Code of Sri Lanka deals with offences in relation to religion. It contains Article 290 on injuring or defiling a place of worship with intent to insult the religion of any class of persons and Article 291B, dealing with deliberate and malicious acts intended to outrage religious feelings of any class of persons, by insulting its religion or religious beliefs, which both "shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both" (Penal Code, 1885, amended as of 24 April 2006, Articles 290, 291B).

Articles dealing with acts in relation to places of worship with the intention to insult the religion of any class (Article 290A), disturbing a religious assembly (Article 291) and uttering words with deliberate intent to wound religious feelings (Article 291A) as well as trespassing on burial places (Article 292) are each punishable "with imprisonment of either description for a term

which may extend to one year, or with fine, or with both" (Penal Code, 1885, amended as of 24 April 2006, Article 290A, Article 291, Article 291A, Article 292).

In July 2014, the Colombo-based Centre for Policy Alternatives published a brief on the constitutional and legal framework governing religious freedom and related issues which includes legal remedies and laws and procedures in this respect. The brief can be accessed via the following link:

- CPA – Centre for Policy Alternatives: Constitutional and Legal Framework Governing Religious Freedom and Related Issues, July 2014
  http://www.cpalanka.org/constitutional-and-legal-framework-governing-religious-freedom-and-relatd-issues/

In a report from December 2015, submitted to the UN Committee on the Elimination of Racial Discrimination (CERD), the Government of Sri Lanka notes that "in areas such as marriage, divorce, succession to personal property etc., in addition to the general law of the country, there are special laws applicable to those from specific communities or ethnic/religious groups" (Government of Sri Lanka, 7 December 2015, p. 5). According to the report "those of an Islamic faith have the option of subscribing to Muslim Personal laws (including statutes)" (Government of Sri Lanka, 7 December 2015, p. 5). The US Department of State (USDOS) report on international religious freedom covering the year 2015, provides the following information on the appliance of customary laws in Sri Lanka:

> "Matters related to family law, including divorce, child custody, and property inheritance, are adjudicated according to either the customary law of the applicable ethnic or religious group or Sri Lankan civil law, although religious community members report the practice varies by region and exceptions exist. For example, Muslim community members state that marriages are governed by customary law derived from sharia and cultural practice, while civil law applies to property rights. Tamil Hindus residing in Northern Province state that marriages are governed by civil law, while Tamil Hindu custom governs the division of property according to traditions codified in religious texts. They state that Hindu Tamils from Eastern Province, however, follow civil law, which also applies to citizens who claim no religious affiliation. In order to record marriages legally, parties must register their marriage at the Divisional Secretariat office in their home district." (USDOS, 10 August 2016, section II)

In October 2016, the Sri Lankan newspaper Daily News, published by a government-owned cooperation, writes that "[t]he Muslim Marriages and Divorce Act (MMDA) enacted by the Sri Lankan Parliament in 1951 governs the Muslims of Sri Lanka" (Daily News, 31 October 2016). The same month, Hyshyama Hamin, a gender consultant and researcher, and Hasanah Cegu Isadeen, a lawyer and independent researcher, published a study about the Muslim Marriage and Divorce Act and its influence on Muslim women in Sri Lanka. The study from October 2016 states that Muslims do not have the option to marry under the Sri Lankan (General) Marriage Registration Ordinance (GMRO) "as only the Muslim Marriage and Divorce Act 1951 (MMDA) governs 'inhabitants of Sri Lanka who are Muslims' and who marry another Muslim (including converts to Islam)". According to the study, "Muslims however are allowed to marry partners who are of a different ethnicity or religion under the GMRO" (Hamin/Cegu Isadeen, October

2016, p. 5). The study further provides the following information on Muslim's options to marry under either the GMRO or the MMDA:

> "According to legal expert Professor Savitri Goonesekera the marriage of two Muslims who get married under the GMRO, while both were Muslim at the time of marriage, is rendered null and void. If so this raises questions pertaining to marriage of said individuals and their children, especially if problems with divorce, custody and maintenance were to come up subsequently. At the time of this study, it is unclear what the legal implications are for Muslim couples who do marry under the GMRO, albeit out of ignorance and slipping through the system." (Hamin/Cegu Isadeen, October 2016, p. 29)

The study from October 2016 further notes that, due to Article 16, the Sri Lankan constitution does not provide remedy from discrimination through Article 12(2):

> "Article 12(2) of the 1978 Constitution of Sri Lanka states that:
>
> 'No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such groups'. However, Article 16(1) of the constitution supersedes this provision: 'All existing written and unwritten laws valid and operative notwithstanding any inconsistencies with the preceding provisions of the (Bill of Rights) Chapter'.
>
> The existence of Article 16 means that Muslim women and men are unable to seek remedy and redress for any violation of their fundamental rights, which occur under the MMDA. This is further restricted by Article 80(3), which prevents judicial review of Acts once passed through Parliament. Therefore despite the whole gamut of issues discussed arising with regard to the MMDA, Muslims who feel discriminated against and are not treated equally before law are not able to challenge the violations caused by the Act or its implementation, nor do they have the choice to opt out and marry under the GMRO instead." (Hamin/Cegu Isadeen, October 2016, p. 29)

The MMDA establishes a legal system which is summarised in the following terms.

> "The MMDA [Muslim Marriage and Divorce Act] established a Quazi (Muslim judge) court system, including a Board of Quazis [Footnote 10: also referred to as qadi, qazi, or kazi] and an Advisory Board. There are 65 Quazi courts in Sri Lanka with one Quazi each, serving a population of approximately two million Muslims. […]
>
> The Board of Quazis is a five-member board tasked with overseeing appeals that arise from Quazi court judgments or proceedings, and provide clarification on 'any question of Muslim law which may arise in connection with the administration of the MMDA or of any regulation made thereof." (Hamin/Cegu Isadeen, October 2016, p. 6)

In a state report submitted to the Committee for the Elimination of Discrimination Against Women (CEDAW) from May 2015, the Government of Sri Lanka states that "[t]he personal laws of Sri Lanka contain provisions that are deeply rooted in custom. As has been stated in previous Periodic Reports proposals for reform of these laws are welcome when initiated by the respective communities" (Government of Sri Lanka, 29 May 2015, p. 8). In October 2016, the

Sri Lankan English language newspaper Daily News reports that "the Cabinet has decided to appoint a Sub-Committee of Ministers to study and recommend reforms to the Muslim law in Sri Lanka, with a view to bringing it in line with Sri Lanka's international human rights treaty obligations" (Daily News, 31 October 2016).

4.2.2 Treatment of members of religious minorities

The US Department of State (USDOS) report on International Religious Freedom covering the year 2015 provides the following overview of religious minorities in Sri Lanka:

> "The U.S. government estimates the total population at 22.1 million (July 2015 estimate). Approximately 70 percent is Buddhist, 13 percent Hindu, 10 percent Muslim, and 7 percent Christian. According to 2012 census data, the Theravada Buddhist Sinhalese community is a majority in Central, North-Central, Northwestern, Sabaragamuwa, Southern, Uva, and Western Provinces. The Tamil community known as 'Sri Lankan Tamils' constitute a majority in Northern Province and are strongly represented in Eastern Province. Another segment of the Tamil community known as 'Indian Tamils' has a large presence in Sabaragamuwa and Uva Provinces. Most Tamils are Hindu, but many also converted to Christianity in earlier eras. The largest concentration of Muslims is in Ampara District and urban areas of Eastern Province, with sizable portions of this community also residing in Central, North-Central, Northwestern, Sabaragamuwa, Uva, and Western Provinces. Christians have a sizable presence in Eastern, Northern, Northwestern, and Western Provinces, and a smaller presence in Sabaragamuwa and Uva Provinces among Indian Tamil converts to Christianity." (USDOS, 10 August 2016, section I)

In its Freedom in the World 2016 report, covering the year 2015, Freedom House provides the following information on religious freedom and the treatment of religious minorities:

> "The constitution gives special status to Buddhism, and religious minorities face discrimination and occasional violence. Tensions between the Buddhist majority and the Christian and Muslim minorities—particularly evangelical Christian groups, which are accused of forced conversions—sporadically flare into attacks by Buddhist extremists." (Freedom House, 27 January 2016)

In its concluding observations from October 2016, the UN Committee on the Elimination of Racial Discrimination (CERD) assesses freedom of religious minorities as follows:

> "18. The Committee is alarmed by the difficulty faced by ethnic and ethno-religious minority groups, such as Moors, or including Muslims, Hindus and Christians of Tamil or Sinhala ethnicity, to freely practise their right to freedom of religion. In particular, it is concerned by reported cases of desecration of places of worship, disruptions of religious services, denials of building permits to construct religious buildings and denials of burials in public cemeteries of members of ethnic or ethno-religious groups." (CERD, 6 October 2016, p. 5)

The USDOS report on international religious freedom covering the year 2015 refers to sources stating that "Buddhist monks continued to operate with government protection, and some monks, particularly outside Colombo, regularly tried to close down Christian and Muslim places

of worship on the grounds they lacked the Ministry of Justice and Buddha Sasana's approval" (USDOS, 10 August 2016, executive summary). The same report notes, however that, according to civil society sources, "the new government, which took office in January, pursued an agenda including a renewed commitment to the rule of law and willingness to investigate and prosecute state officials implicated in or responsible for inciting past religiously based violence." The USDOS continues saying that "[t]here were instances, however, in which local police and local government officials appeared to act in concert with Buddhist nationalist organizations, although not to the extent as previously" (USDOS, 10 August 2016, executive summary). Referring to governmental responses to attacks of religious sites and places of worship, the USDOS report provides the following information:

> "In multiple instances, police reportedly failed to respond or were reluctant to arrest or pursue criminal cases against individuals instigating attacks on minority religious sites. Throughout the year NGOs continued to say authorities were reluctant to investigate or prosecute individuals for attacks on churches, Hindu kovils, and mosques. Legal experts also noted the prosecution of perpetrators was rare." (USDOS, 10 August 2016, section II)

A summary of reported incidents of religiously motivated attacks occurring during the year 2015 is also provided by the USDOS:

> "The National Christian Evangelical Alliance of Sri Lanka (NCEASL) documented a total of 87 cases of attacks on churches, intimidation and violence against pastors and their congregations, and obstruction of worship services during the year. NCEASL had reported a total of 96 such incidents in 2014. The Secretariat for Muslims (SFM) recorded 82 incidents of hate speech, acts of discrimination, attempts to desecrate or destroy Muslim religious edifices, and verbal insults upon or use of physical force to impede Muslim cultural practices and rituals, a 62 percent reduction from the previous year. There were no reported deaths related to interreligious disputes. The Bodu Bala Sena (BBS), or Buddhist Power Force, continued to promote the supremacy of the country's ethnic Sinhalese Buddhist population and propagated views hostile toward members of religious and ethnic minorities." (USDOS, 10 August 2016, executive summary)

In a submission to the Committee on the Elimination of Racial Discrimination (CERD) from July 2016, the International Movement Against All Forms of Discrimination and Racism (IMADR) provides lists with descriptions of incidents against Muslims and Christian during 2013 (table 01 and table 02), as well as a list of such incidents against Muslims, Hindus, and Christians during 2014 (table 03). These lists can be accessed via the following link:

- IMADR - International Movement Against All Forms of Discrimination and Racism: Racial Discrimination in Sri Lanka, July 2016 (published by CERD, available at ecoi.net) http://www.ecoi.net/file_upload/1930_1479827850_int-cerd-ngo-lka-24535-e.pdf

Amnesty International (AI) provides the following information on the occurrence of incidents against religious minorities in its human rights report covering the year 2015:

> "Muslims and Christians continued to report incidents of harassment by police, members of the public and politicians, particularly in the context of political campaigning by hardline Buddhist political parties in the lead-up to parliamentary elections in August. Earlier

> incidents of violence and intimidation against religious minorities were not investigated. Deaths, injuries and property loss sustained by Muslim residents of Aluthgama Dharga Town and Beruwala in riots in June 2014 went unpunished." (AI, 24 February 2016)

The above-mentioned riots are also described in the above referenced submission to the Committee on the Elimination of Racial Discrimination (CERD) by IMADR from July 2016:

> "The main anti Muslim riot in 2014 – South Sri Lanka Muslims and their property were attacked by Sinhalese Buddhists in the towns of Aluthgama and Beruwala, as well as in Dharga Town in Kalutara District. At least 4 people were killed and 80 were injured. Hundreds were made homeless following attacks on homes, shops, factories, mosques, and a nursery. Ten thousand people (8,000 Muslims and 2,000 Sinhalese) were displaced by the riots. The riots followed rallies by BBS. The mainstream media in Sri Lanka censored news about the riots following orders from the Sri Lankan government." (IMADR, July 2016, p. 14)

The USDOS human rights report covering the year 2015, points out that "Muslims were viewed as the least assimilated of all the country's many ethnic and religious communities. They were also frequently the target of criticism, especially by Sinhalese, for their distinct cultural practices in dress, food, and lifestyle" (USDOS, 13 April 2016, section 6). In a study about Muslim women from October 2016, the gender consultant Hyshyama Hamin, and Hasanah Cegu Isadeen, a lawyer and activist, further provide the following information about Muslims in Sri Lanka:

> "The 'Muslim community', as it is often referred to is diverse and comprises of many different minority communities based on ethnic origin – including Sri Lanka Moors, Coastal Indian Moors, Malays, Bohra's (including Dawoodi Bohra's) and Memons. The community also includes members of the two main sects - Sunni (in majority) and Shi'a." (Hamin/Cegu Isadeen, October 2016, p. 6)

In its annual report covering the year 2015, Minority Rights Group International (MRG), also elaborates on the situation of Muslims in Sri Lanka:

> "While the civil conflict was primarily between authorities and the Tamil minority, Sri Lanka's small Muslim minority were also deeply affected by the civil conflict and many are still in a limbo decades after being displaced from their homelands. October saw Sri Lanka's northern Muslims mark 25 years of being forcibly evicted by Tamil militants in what was the country's largest single case of ethnic cleansing during the conflict. Some of them, now numbering close to 300,000, remain in displacement camps in poor conditions, emphasizing the importance of including the concerns of the Muslim population in any transitional justice arrangement. Since the end of the conflict a hate campaign, led by the Buddhist extremist organization Bodu Bala Sena (BBS), has targeted Muslims and focused particularly on the community's religious and social practices, such as their dress codes, prayer rituals and halal slaughter methods. In December, the Sri Lanka Muslim Council warned that the BBS was attempting to reignite their campaign against Muslims by claiming that they were harbouring extremists who were planning a terrorist attack in the country." (MRG, 12 July 2016, p. 142)

The activities of the Bodu Bala Sena (BBS) are also described in the report on religious freedom by the USDOS, covering the year 2015:

> "While a less prominent public voice than previously, the BBS continued to promote the supremacy of the country's Sinhalese Buddhist population and propagated views hostile toward members of religious and ethnic minorities. For example, BBS General Secretary Ven. Galagodaththe Gnanasara Thero regularly made inflammatory statements about 'Islamic invasion and aggression' and 'forced conversions' by Christian groups as posing an existential threat to the country's Buddhism." (USDOS, 10 August 2016, section III)

In its human rights report, the USDOS describes developments surrounding the BBS as follows:

> "The government's reform agenda included a renewed commitment to investigate and prosecute officials implicated in criminal activity or responsible for inciting religiously based violence. For example, in October a court order was issued to arrest BBS [Bodu Bala Sena] General Secretary Galagodaththe Gnanasara Thero for failure to respond to an earlier summons. There were two cases pending against Gnanasara and six others, including defaming the Quran and forcibly disrupting a press conference held by the Jathika Bala Sena in April 2014. Jathika Bala Sena is a group of liberal monks led by Venerable Watareka Vijitha Thero, who advocate on behalf of intercommunal harmony. The BBS leader appeared in court in response to the summons to avoid arrest." (USDOS, 13 April 2016, section 6)

4.3 Freedom of expression and association

4.3.1 Domestic legal framework

According to the Constitution "every citizen is entitled to (a) the freedom of speech and expression including publication; (b) the freedom of peaceful assembly; (c) the freedom of association; (d) the freedom to form and join a trade union" (Constitution, amended as of 15 May 2015, Article 14(1)).

The US Department of State (USDOS) human rights report covering the year 2015 states that "[t]he constitution provides for the right to free speech. Authorities may subject this right, however, to a host of restrictions, including public morality and national security" (USDOS, 13 April 2016, section 2a). In its report to the CERD from December 2015, the Government of Sri Lanka summarises such restrictions, noting that the Constitution "recognizes the right to freedom of speech and expression, including publication. This right may, however, be restricted in the interest of racial and religious harmony, and such other restrictions as set out in Article 15(2), 15(7) and 15(8) of the Constitution" (Government of Sri Lanka, 7 December 2015, p. 16). The Freedom on the Net 2016 report from Freedom House, covering the time period from June 2015 to May 2016, provides the following summary of restrictions in the Constitution:

> "While the right to freedom of speech, expression, and publishing is guaranteed under Article 14(1)(a) of Sri Lanka's constitution, it is subject to numerous restrictions for the protection of national security, public order, racial and religious harmony, and morality. There is no constitutional provision recognizing internet access as a fundamental right or guaranteeing freedom of expression online." (Freedom House, November 2016)

In its Freedom of the World report covering the year 2015, Freedom House also refers to the constitutional right of freedom of expression, underlining that there are "[a] number of laws and regulations that can restrict this right—including the Official Secrets Act, antiterrorism regulations, and laws on defamation and contempt of court" (Freedom House, 27 January 2016). In a report on the human rights situation in Sri Lanka covering the timeframe from August 2015 to August 2016, the Colombo-based human rights documentation centre INFORM accounts the lack of security sector reform to problems associated with peoples' right to free expression, association and assembly:

> "The government's inability or unwillingness to go ahead with the necessary security sector reforms is eroding its democratic credentials. 30 years of war and decade long Rajapaksa autocracy has given security apparatus power over peoples' right to free expression, association and assembly. The war time and security state mind-set of the security apparatus remained unreformed and there by hampering full enjoyment of rights by the people." (INFORM, 2016, p. 16)

In a written submission from February 2016, published by the UN Human Rights Council (HRC), the International Movement Against All Forms of Discrimination and Racism (IMADR) states that "[t]he main legal basis used by the Government to justify systematic interference with freedom of expression has been the 1978 Prevention of Terrorism Act (PTA)" (IMADR, 19 February 2016, p. 3). The USDOS refers to the right to freedom of association in its human rights report covering the year 2015, noting that "the government did not always respect this right. Some restrictions existed, such as those under the PTA" (USDOS, 13 April 2016, section 2b).

For further information on the Prevention of Terrorism Act (PTA) see section 1.3.2 of this compilation.

In its statement to the UN Human Rights Council (HRC) from February 2016, the international non-governmental organisation IMADR writes that "[i]n July 2015 the government announced the revival of the Press Council, an institution that has in the past been used to sanction journalists and prohibit the publication of 'false' information about the government" (IMADR, 19 February 2016, p. 3). Summarising newspaper articles and press statements, the Freedom on the Net 2016 report, which covers the time period from May 2015 to June 2016, also reports about the reactivation of the Press Council and the correspondent Press Council Act:

> "The Press Council Act No.5 of 1973 had lain dormant under previous administrations until the Rajapaksa regime reactivated it after the end of the war. The act prohibits the publication of profanity, obscenity, 'false' information about the government or fiscal policy, and official secrets. It also allows the president-appointed council to impose punitive measures on the violators of its provisions, including possible prosecution. Six months after his victory at the presidential election, President Sirisena used his executive powers to reactivate the Press Council and appoint three members to it. The move was criticized by publishers, media activists, editors and journalists, who argued that it contradicted President Sirisena's election promise to protect media freedom. Since 2009, local and international media rights organizations have constantly opposed the Press Council Act." (Freedom House, November 2016)

The USDOS summarises the Press Council Act from 1973 in its human rights report covering the year 2015 as follows:

> "The 1973 Press Council Act includes authority to impose punitive measures including fines and lengthy prison terms and proscribes the publishing of articles that discuss internal communications of the government, decisions of the cabinet, matters relating to the military that could affect national security, and details of economic policy that could lead to artificial shortages or speculative price increases. No cases were filed under this act during the year." (USDOS, 13 April 2016, section 2a)

The Vienna-based International Press Institute (IPI), an international network of editors, journalists and media executives, writes in a press statement from February 2016 that "[a]larm bells were set off in July 2015 when President Sirisena announced the reactivation of the much-reviled Sri Lanka Press Council, a statutory regulatory body with expansive powers, including the ability to fine or imprison offenders" (IPI, 1 February 2016). The statement notes that "[t]he decision caught local and international press freedom groups by surprise, many of whom had expected Sirisena to abolish the Council, which had last been revived in 2009 under the Rajapaksa government after lying dormant for years" (IPI, 1 February 2016). In a press release from January 2016, the Sri Lanka Press Institute (SLPI), which offers training for journalists, promotes self-regulation and advocates for media rights, calls the Press Council "a threat on Media Freedom", noting that "[t]he re-establishment of the government appointed Press Council, re-introduces dormant legislation that provides for wide ranging punitive powers including that of imprisoning media personnel". According to the statement, "President Sirisena has proceeded to, illegally re-constitute the Press Council's tribunal without even the basic courtesy of consulting stakeholders as he is, in any event, bound to do by law under sections 3(b)(i) and 3(b)(ii) of the said law" (SLPI, 21 January 2016).

The Sri Lanka Press Council Law 1973 law (not including the amendment from 2002) can be accessed via the link provided below:

- Sri Lanka Press Council Law, 1973 [A Law to Provide for the Appointment of a Sri Lanka Press Council, to Regulate and to Tender Advice on Matters relating to the Press in Sri Lanka, […]] (available at Refworld)
  http://www.refworld.org/docid/4be018692.html

Covering the period from June 2015 to May 2016, Freedom House reports in its Freedom on the Net report that "[d]espite its explicit media freedom guarantees, the current government made a fresh call for websites to register" (Freedom House, November 2016). The report further provides the following information on the legal framework of website registration:

> "In a notice published in the Daily News, the government announced that all websites had to be registered with the Ministry of Parliamentary Reforms and Mass Media by March 31, 2016; websites failing to do so would be considered 'unlawful.' Media freedom activists noted that there is still no legal basis for websites to register with the government. Following considerable pushback from the media and activists, the Acting Minister of Parliamentary Reform and Mass Media Karu Paranavithana stated that the registration drive was not intended to control digital media, but to offer official accreditation, giving

> web journalism the same recognition as mainstream outlets. Yet Paranavithana undercut this conciliatory message when he justified the government's action with reference to a 2012 Supreme Court ruling, which stated that registration was required in order to prevent the publication of defamatory material on websites, and that freedom of expression was not an absolute right." (Freedom House, November 2016)

Sri Lanka Brief, a non-profit association, providing analysis on human and democratic rights in Sri Lanka, writes in an article from March 2016 that "[f]ormer government of Mahinda Rajapaksa slapped restrictions on news websites which had become the most effective medium of dissent during his decade in power", but that "there is no law in Sri Lanka to implement such a registration. The ministry in its latest advertisement did not say under what law it required websites to register" (Sri Lanka Brief, 2 March 2016). According to a report from INFORM, an advocacy and awareness building organisation from Sri Lanka, which covers the period from August 2015 to August 2016, "so far, the Government has not taken any action against the web media that is not registered." (INFORM, 2016, p. 18)

Workers Union's rights

In its Freedom of the World report covering the year 2015, it is noted that "[m]ost of Sri Lanka's trade unions are independent and legally allowed to engage in collective bargaining, but this right is poorly respected". According to the report, with the exception of civil servants, "most workers can hold strikes, though the 1989 Essential Services Act allows the president to declare any strike illegal" (Freedom House, 27 January 2016). The USDOS human rights report covering the year 2015 provides the following information on worker's rights to association:

> "The law prohibits retribution against strikers in nonessential sectors. Seven workers may form a union, adopt a charter, elect leaders, and publicize their views, but a union must represent 40 percent of workers at a given enterprise before the law legally obligates the employer to bargain with the union. The law does not permit public sector unions to form federations or represent workers from more than one branch or department of government. The Labor Ministry may cancel a union's registration if it fails to submit an annual report for three years." (USDOS, 13 April 2016, section 7a)

4.3.2 Treatment of (actual and perceived) members and supporters of political opposition parties

In its Freedom in the World 2016 report covering the year 2015, Freedom House reports that "[a] range of political parties, some of which explicitly represent the interests of ethnic and religious minority groups, are able to operate freely and contest elections" (Freedom House, 27 January 2016). The USDOS human rights report for the year 2015 also states that "[t]here were no undue restrictions on the ability of political parties and individual candidates to participate in the electoral process" (USDOS, 13 April 2016, section 3). The report of the election observation delegation to the August 2015 parliamentary elections in Sri Lanka from the European Parliament notes that "[t]he fact that the leader of the Tamil National Alliance (TNA), Mr. Sampanthan has recently been appointed 'Leader of the Opposition in Parliament' is considered by the EP Delegation an historical turning point towards a full reconciliation" (European Parliament, 2015, p. 5).

The German non-profit think tank Bertelsmann Stiftung published a report about Sri Lanka as part of the Bertelsmann Stiftung's Transformation Index (BTI) 2016, covering the period from 1 February 2013 to 31 January 2015. It provides the following information on the treatment of opposition parties:

> "While those who win elections gain office, the opposition has no access to state-owned media and, until 2015, opposition election campaigns were often disrupted by supporters of the ruling party, paid thugs or members of the state's security sector (i.e., police and army). […] The 2015 presidential election, which unseated an incumbent of ten years' standing who had misused the state apparatus to influence voters, has reinforced confidence in the electoral process. The relative absence of post-election violence in January 2015 was another positive outcome. […] Prior to 2015, gangs associated with individual politicians were known to intimidate voters, and opposition politicians participated in public life at personal risk." (Bertelsmann Stiftung, 2016, pp. 6-7)

In a report on the elections of January 2015, the Centre for Monitoring Election Violence (CMEV), which describes itself as an independent and non-partisan organisation to monitor election-related violence, states that supporters of the incumbent "were identified as the alleged perpetrators in a number of major incidents of violence ranging from attempted murder, assault, threat and intimidation to arson attacks" (CMEV, January 2015, p. 5). CMEV further reports that "[a] number of incidents in which the regime sought to deny the opposition the facilities for holding public meetings were also recorded, resulting in the opposition having to resort to a number of smaller-scale pocket meetings organized by volunteers" (CMEV, January 2015, p. 5). In its Freedom in the World 2016 report covering the year 2015, Freedom House notes that "[h]arassment of the opposition declined markedly for the August parliamentary polls. In the north and east, members of various Tamil political parties, who have faced frequent threats in the past, also faced less intimidation in 2015" (Freedom House, 27 January 2016). The final report of the European Union Election Observation Mission (EU EOM) to the parliamentary elections, published in October 2015, provides the following information on the treatment of the opposition during the election:

> "The police played an active role in maintaining campaign rules. […] In comparison, police activity was more heavy-handed during previous election periods. However, many opposition candidates from the UPFA criticised the police for being slow to take up their complaints. EU EOM observers reported that often police did not act in a consistent manner across the country. Some 700 arrests were made in connection with election law violations. More than 100 arrests were related to election violence. At least 11 candidates were arrested for breaching campaign rules." (EU EOM, 17 October 2015, p. 16)

For further information on the January and August 2015 elections, see section 1.1.1 of this compilation.

Covering the year 2015, the US Department of State (USDOS) human rights report notes that "[t]he government monitored political and civil society meetings, particularly in the north and

east" (USDOS, 13 April 2016, section 2a). The same report further provides the following information on the harassment of opposition candidates and campaigners:

> "Police and intelligence service personnel reportedly harassed organizers and volunteers assisting with the signature campaign of the Tamil Action Committee for International Accountability Mechanism, a group based in the north and east. The chief of the Tamil National People's Front party, Gajendrakumar Ponnambalam, was among those harassed. Similar attempts to stop the signature campaign and intimidate organizers were reported from Trincomalee in the Eastern Province, Jaffna, and other areas in the north." (USDOS, 13 April 2016, section 2b)

Summarising Sri Lankan newspaper articles, the Colombo-based advocacy organisation INFORM, which monitors and documents the human rights situation in Sri Lanka, provides the following information on the right to protest of the political opposition during the timeframe from August 2015 until August 2016:

> "In July 2016 when the so-called joint opposition led by former president Rajapaksa organised a protest march form Kandy to Colombo, police obtained a number of court orders to impose restrictions against the march. The United National Party headed by the Prime Minister planned their own activities to counter the march alongside its route. State controlled media used to tilt against the protest march. Notwithstanding the fact that the Rajapaksa led march was aimed at inciting extreme Sinhala nationalist feelings and to sabotage democratic reforms of the government, their right to protest and peaceful assembly should have been respected." (INFORM, 2016, pp. 15-16)

4.3.3 Treatment of civil society, human rights, and political activists

In its Freedom of the World report, Freedom House describes the conditions for civil society during the year 2015 in the following terms:

> "Conditions for nongovernmental organizations (NGOs) improved dramatically under the new government in 2015, with a lessening of official harassment and interference. Human rights and peace-seeking groups were able to operate much more freely, as state-sponsored surveillance, smear campaigns, death threats, disruption of activities, and criminal investigations into their funding and activities mostly ended and such groups were regularly consulted on policy formulation and able to speak freely at international fora. In recent years, some NGOs have faced difficulty operating in the northern and eastern areas of the country, although the United Nations and humanitarian organizations are generally given adequate access to former conflict zones." (Freedom House, 27 January 2016)

The Colombo-based advocacy organisation INFORM provides the following information on the treatment of civil society in a human rights report covering the timeframe from August 2015 until August 2016:

> "People have been able to challenge the continuation of old practices under the new government. Right to association which was severely restricted under the former regime, especially in the former war zone, has been restored. More and more dissenting activities are taking place in those areas without restrictions. In this field (right to association) too,

> the Government has so far not been able to take the necessary next steps. Although Non-Government Organisations are no longer under the Ministry of Defence, the newly set up NGO Secretariat is planning to co-opt local NGOs in to its networks. According to the official website of the NGO Secretariat one of its objectives is to 'make sure that NGOs act within the national policy framework of the country'. The regulatory mechanism introduced by the Rajapaksa regime to control NGO sector has not been completely dismantled." (INFORM, 2016, p. 17)

In a written statement to the UN Human Rights Council (HRC) from February 2016, the non-governmental organisation International Movement Against All Forms of Discrimination and Racism (IMADR) points to continuations between the new government and the old regime in the following terms:

> "The new Government, despite its promises, has failed to investigate violations perpetrated by the former regime […] Thus impunity continues under the current Government. In a high profile incident in May 2015, a social worker and human rights defender was murdered. To-date, this incident has not been investigated, sending a clear message to human rights defenders. Ongoing measures of intimidation, coupled with impunity and ostensible Government acquiescence, create an environment of fear and a chilling atmosphere." (IMADR, 19 February 2016, p. 3)

In its annual report covering the year 2015, Amnesty International (AI) notes that "[c]omplaints persisted of harassment and surveillance by security forces of people attending gatherings and engaged in activism, particularly in the north and east" (AI, 24 February 2016). The Colombo-based advocacy organisation INFORM also reports that between August 2015 and August 2016,"[c]omplaints of surveillance by state intelligence officers on human rights activists and activism in the North and East are continuing, although with less intensity" (INFORM, 2016, p. 16). The US Department of State (USDOS) human rights report writes that during the year 2015 "[s]ecurity forces conducted searches of property and engaged in widespread surveillance of private citizens with little judicial oversight. This included nonspecific reports of surveillance of private citizens' e-mail, telephone messaging, and other digital communications" (USDOS, 13 April 2016, section 1f). The same report also notes that in 2015, there were "credible reports that civilian and military authorities questioned local residents who met with foreign diplomats or international human rights organizations regarding the content of their meetings" (USDOS, 13 April 2016, section 2a). AI further provides the following information on surveillance of human rights defenders and civil society activists and organisations:

> "Human rights defenders in the north and east continued to report police and military surveillance and questioning around their participation in local NGOs and political meetings, demonstrations, campaigns for human rights accountability and key international events such as the UN Human Rights Council sessions. Activists from eastern Sri Lanka reportedly received anonymous phone calls asking for details of meetings they participated in, as well as anonymous threats after signing a statement calling for an independent international investigation into alleged war crimes." (AI, 24 February 2016)

Surveillance is also described in the USDOS human rights report covering the year 2015:

> "A significant level of surveillance continued, particularly in the country's north and east. Plainclothes personnel belonging to the state's security apparatus visited civil society individuals and groups from these regions. According to civil society, such personnel, frequently deputed from the police and less frequently military officers, attended civil society organizations' training sessions or workshops uninvited, particularly when these programs dealt with human rights, transitional justice, and media freedom, among other issues. They openly took photographs and footage of protesters and victims' families, questioned event organizers, and regularly made follow-up visits directly to their homes." (USDOS, 13 April 2016, section 2a)

The same USDOS report covering the year 2015 also provides the following information on freedom of assembly, the ability to partake in protests and commemorations, and the surveillance thereof:

> "There were a number of cases in which security forces restricted participation in demonstrations or in which authorities denied permits for demonstrations. […] In May authorities allowed some gatherings in the Northern and Eastern provinces to commemorate those killed in the war for the first time since 2009. The commemorations occurred without violence but with extensive police surveillance. Event organizers reported being questioned before, during, and after the event. Government security personnel dressed in plain clothes were observed taking photographs and footage of the events, their organizers, and participants. There were some exceptions to the allowing of gatherings, however." (USDOS, 13 April 2016, section 2b)

On the issue of associational and organizational rights, the Freedom in the World report from Freedom House covering the year 2015 provides the following information:

> "Although demonstrations occur regularly, authorities sometimes restrict freedom of assembly. Police occasionally use excessive force to disperse protesters. The army has imposed some restrictions on assembly in the north and east, particularly for planned memorial events concerning the end of the war." (Freedom House, 27 January 2016)

In a written Statement to the UN Human Rights Council (HRC) from February 2016, the International Movement Against All Forms of Discrimination and Racism (IMADR) provides the following information on the treatment of protesters, referring to a report of the Human Rights Commission of Sri Lanka (HRCSL). At the time of writing this compilation, the English translation of the below cited report from the HRCSL was not available on its website:

> "Incidents involving the deployment of tear-gas and water cannons against protesters have been repeatedly reported during the past year, and students have increasingly been the targets of police brutality. For example, on 29 October 2015, the anti-riot squad suppressed a demonstration in Colombo by employing water cannons, tear-gas and batons against University students. This incident resulted in thirty-nine arrests and nine people were hospitalized. The Police Media Unit has not acknowledged the use of the above mentioned methods and has denied the deployment of Anti-Riot Police personnel.

> […] Following the incident, an investigation conducted by the Human Rights Commission of Sri Lanka (HRCSL) led to the conclusion that the assault had been in breach of students' rights under sections 11 and 12 (1) of the Constitution, as it involved a disproportionate use of force by police. […] Importantly, the Commission highlighted the systematic character of the abuses, emphasising that the events formed part of the 'broader issue concerning the manner in which the ... Security Forces control civil demonstrations and the impact on the freedom of … peaceful assembly guaranteed by the Constitution ... and Sri Lanka's international obligations'. The forceful dispersal of protests, along with the continuing culture of police impunity, dramatically discourages involvement in the political process and prevents the opening of the public space." (IMADR, 19 February 2016, pp. 2-3)

The Colombo-based human rights documentation centre INFROM notes in a report covering the period from August 2015 to August 2016 that "[a]busing police powers in order to intimidate and harass democratic dissent was the hallmark of Rajapaksa politics" and that "[u]nder the present government too, the Police has used disproportional force to disrupt peaceful protests of university students on many occasions" (INFORM, 2016, p. 16).

Governmental impunity is also discussed in the Freedom House Freedom on the Net 2016 report which covers the timeframe from June 2015 to May 2016 and provides the following information on access to internet and freedom of expression:

> "There is no constitutional provision recognizing internet access as a fundamental right or guaranteeing freedom of expression online. A culture of impunity, circumvention of the judicial process through arbitrary action, and a lack of adequate protection for individuals and their privacy, compound the poor enforcement of freedom of expression guarantees." (Freedom House, November 2016)

The Freedom of the World 2016 report, looks at the situation regarding academic freedom during the year 2015, providing the following assessment:

> "Academic freedom is generally respected, but there are occasional reports of politicization in universities and a lack of tolerance for dissenting views by both professors and students, particularly for academics who study Tamil issues, according to the Federation of University Teachers' Associations. Harassment of student leaders and activists continues to be a concern. In October 2015, several peaceful student protests were violently dispersed by police." (Freedom House, 27 January 2016)

Referring to academic freedom, the USDOS human rights report covering the year 2015 notes that "[t]here were allegations that university officials prevented professors and university students from criticizing government officials. Some academics noted the environment of intimidation led to self-censorship" (USDOS, 13 April 2016, section 2a).

Treatment of Unions

The USDOS human rights report covering the year 2015 notes that "[f]reedom of association and the right to bargain collectively were generally, but not always, respected" (USDOS, 13 April 2016, section 7a). The report further provides the following information on unions in Sri Lanka:

> "Unions represented workers in large private firms, but workers in small-scale agriculture and small businesses usually did not belong to unions. Workers in private factories and the export processing zones found it difficult to organize. Union activists and officials remained subject to harassment, intimidation, and other retaliatory practices. Employers arbitrarily transferred or unfairly dismissed union members. […]
>
> Most employees in the public sector belonged to unions. On several occasions throughout the year, public sector workers attached to government hospitals staged strikes. There were no other major strikes in the public sector, although trade unions staged a few isolated protest campaigns, including one by workers attached to the government-owned Road Development Authority stage against termination of their services. While some unions in the public sector were politically independent, most large unions affiliated with political parties and played a prominent role in the political process. Labor unions threatened several strikes over the government's proposed budget, including a December 15 nationwide strike that was called off." (USDOS, 13 April 2016, section 7a)

The Freedom in the World 2016 report from Freedom House, covering the year 2015, notes that "[w]hile more than 70 percent of the mainly Tamil workers on tea plantations are unionized, employers routinely violate their rights. Harassment of labor activists and official intolerance of union activities, particularly in export processing zones, are regularly reported." (Freedom House, 27 January 2016)

4.3.4 Treatment of journalists and other media professionals

In its Transformation Index (BTI) 2016, the German non-profit think tank Bertelsmann Stiftung provides the following information on freedom of the media and the treatment of media professionals and journalists during the reporting period from February 2013 to January 2015:

> "The state controls significant portions of the news media, including major newspapers and state television. There are few independent media outlets critical of the government, and before 2015, they were subject to harassment. Media companies have been attacked and numerous journalists assaulted, many fleeing the country. A degree of criticism of the government is tolerated in the English press (which is only read by about 10% of the population) but there is less tolerance in the vernacular. It is too early to determine whether the new government will permit greater freedom of expression but the early signs are positive." (Bertelsmann Stiftung, 2016, p. 7)

Covering the year 2015, Freedom House provides the following information on the treatment of the media after the elections during the year 2015:

> "Freedom of expression is guaranteed in the constitution, and respect for this right dramatically improved in 2015 under the new administration. […] The level of verbal and physical attacks on journalists also dramatically lessened during the year, although isolated incidents were reported by local monitoring groups. However, Tamil-language outlets such as the Uthayan newspaper faced greater constraints; in April, a freelancer for the daily was arrested for writing a story critical of local police. Investigations into past attacks on journalists and media outlets, such as the high-profile murder of Lasantha Wickremetunge in 2009, were initiated in early 2015. In August, four Sri Lankan army officers were arrested

> and accused of involvement in the January 2010 disappearance of Prageeth Eknelygoda, a political cartoonist and columnist. In addition, a number of exiled journalists were able to return to the country." (Freedom House, 27 January 2016)

The USDOS human rights report refers to media freedom during the year 2015 in the following terms:

> "The government did not seek to censor the media for publishing content critical of government actions. Some in the media practiced self-censorship especially during the first quarter of the year as they adjusted to a freer public information environment under the Siresena government. […]
>
> Journalists at the provincial level complained of routine harassment by local officials, including pressure to avoid negative stories. […] Owners of many media institutions had ties to top political leaders, with concomitant influence over editorial decisions. Nevertheless, in general most outlets and reporters covered the news freely without overt restrictions. […] Politicians sometimes used or threatened libel suits against journalists to intimidate them against publishing negative coverage." (USDOS, 13 April 2016, section 2a)

In February 2016, the International Movement Against All Forms of Discrimination and Racism (IMADR) submitted a written statement published by the UN Human Rights Council (HRC) noting that "[t]o date, certain progress has been made. A number of exiled journalists have been invited to return (however one was then arrested on return)" (IMADR, 19 February 2016, p. 2). In a report covering the time period from August 2015 to August 2016, the Colombo-based human rights documentation centre INFORM states that "[d]uring the first year in power the government has failed to appoint a special commission to investigate the attacks unleased by the Rajapaksa regime upon media and journalists" (INFORM, 2016, p. 18). According to the report, media freedom remains to be an "area of concern" (INFORM, 2016, p. 17). The INFORM report further provides the following information on media freedom for the period from August 2015 to August 2016:

> "Leading politicians of the Government have repeatedly accused media for not covering their achievements sufficiently. In their opinion the Government's major weakness is its inability communicate to people, regarding the development process. This perception has led to occasional but increasing attacks on media and journalists. Both leaders of the Government, the President and the Prime Minister, have been very critical of some media in recent times. PM Wickremesinghe has called editors and newspapers anti –government and implied that those editors might lose their positions if they do not change their editorial line. Government officials serving Ministry of Media have overstepped their mandate on few occasions in censoring or regulating media. In the name of curbing hate speech Minister of Justice tried to introduce an anti-media and anti-democratic legislation in December 2015." (INFORM, 2016, p. 17)

In the written statement from IMADR, published by the UN Human Rights Council (HRC) in February 2016, which summarises sources from 2015 such as newspaper articles, a report by the Colombo-based NGO INFORM and a press statement from the Lanka Socialists Forum, the following examples of harassment of journalists and media workers are given:

> "Under the current Government journalists have been physically attacked, including attempted knife attacks. They have been stopped from reporting, summoned for questioning without translators, and arrested and detained. Human rights defenders have been further restricted from having contact with national and international media. The targeting of media personnel now includes individuals such as newspaper and leaflet distributors." (IMADR, 19 February 2016, p. 2)

In a written statement to the UN Human Rights Council from August 2016, Amnesty International (AI) provides the following example of violence against a journalists:

> "Threats against human rights defenders and journalists persist. For example, Amnesty International was disturbed to learn of the beating on 2 June [2016] of journalist Freddy Gamage by supporters of a Negombo politician. Gamage, who received head injuries and required hospitalisation, had been threatened over articles he wrote exposing the politician's alleged corruption and links to organised crime. Gamage told Amnesty International that he was further threatened by one of the men he accused of attacking him when they met in court after he pointed him out in an identification parade." (AI, 29 August 2016, pp. 3-4)

In its human rights report covering the year 2015, the USDOS provides the following examples on violence and harassment against people working for the media:

> "There were some incidents of journalists subjected to harassment. In April police arrested a television journalist affiliated with Hiru TV, a leading Sinhala private national television station. Uniformed and plainclothes police reportedly stormed the hostel in which the journalist lived and forcibly removed him, claiming he was being held on suspicion of snatching a woman's gold chain the previous night. Two weeks earlier the abducted journalist and two of his colleagues had filed a complaint at a local police station of intimidation by two men whom they suspected of being plainclothes police officers. The police officers in question allegedly attempted a knife attack on the three journalists covering an April 7 protest on water contamination. Police allegedly telephoned the lead journalist, Pratheepan Thambithurai, repeatedly in an unsuccessful effort to compel him to withdraw the complaint." (USDOS, 13 April 2016, section 2a)

Treatment of online media

In its Freedom in the World 2016 report covering the year 2015, Freedom House notes that "[t]he blocking of online media, particularly Tamil-language news sites and other independent outlets, such as the investigative news website Colombo Telegraph, lessened in 2015" (Freedom House, 27 January 2016). Freedom House's Freedom of the Net report provides the following assessment of internet freedom for the time period from June 2015 to May 2016:

> "For the most part, internet freedom continued to improve under President Maithripala Sirisena and Prime Minister Wickremesinghe. All websites blocked by the previous government continue to be accessible, including the exile-run news website TamilNet, which had been blocked since 2007 for reporting on the military campaign against the Liberation Tigers of Tamil Eelam (LTTE). Digital activism continues to strengthen. In the lead

> up to election, activists launched voter education campaigns on Facebook and Twitter, and news websites adopted mobile messaging platforms like WhatsApp to keep citizens informed." (Freedom House, November 2016)

The USDOS human rights report covering the year 2015 provides the following information on access to websites and website registration:

> "The government placed limited restrictions on internet access, including websites it deemed pornographic. Since 2011 websites carrying local news were required to register with the government, previously through the Ministry of Mass Media and Information, now renamed Telecommunication and Digital Infrastructure. The government unblocked many websites blocked by the previous government, especially those connected to the Tamil diaspora." (USDOS, 13 April 2016, section 2a)

4.4 Women

4.4.1 Domestic legal framework

The Constitution of Sri Lanka provides for non-discrimination on the basis of sex (Constitution, amended as of 15 May 2015, Article 12(2)) and stipulates that nobody shall "be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion" on the grounds of sex (Constitution, amended as of 15 May 2015, Article 12(3)). Article 12(4) rules that this shall not prevent "special provision being made, by law, subordinate legislation or executive action, for the advancement of women [...]" (Constitution, amended as of 15 May 2015, Article 12(4)).

In 2015, the Asian Development Bank (ADB) and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), a German governmental entity specialising in international development, published an update to their country gender assessment for Sri Lanka, providing the following information on the legal status of women:

> "There have been few changes in the legal status of women as, despite the guarantee of fundamental rights and nondiscrimination in the 1978 Constitution, the Women's Rights Bill is yet to be approved, and women's rights, ensured in international instruments— such as Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)— although ratified have not been incorporated into national legislation." (ADB/GIZ, 2015, p. vi)

> "Women are equal to men under the general law, including in inheritance rights, and the 1978 Constitution guarantees fundamental rights and nondiscrimination on grounds of sex (Art. 12[1] and 12[2]). There is also provision for special measures to ensure women's right to equality. There are no legal barriers to women working outside the home, engaging in financial transactions, or obtaining credit." (ADB/GIZ, 2015, p. 4)

In a state report published by UN Committee on the Elimination of Discrimination Against Women (CEDAW) in May 2015, the government of Sri Lanka describes the inclusion of the

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) into the domestic legal system, in the following terms:

> "9. As has been reported to the Committee previously, Sri Lanka's position is that it is not necessary to have a single subject or specific piece of legislation to incorporate Convention obligations into the domestic legal system and that there are adequate provisions in several statutes to honour these obligations (e.g. The Constitution of Sri Lanka, Penal Code, Citizenship Act, Human Rights Commission of Sri Lanka Act, Prevention of Domestic Violence Act)." (Government of Sri Lanka, 29 May 2015, pp. 6-7)

The same state report published by CEDAW in May 2015 notes that "Sri Lanka wishes to emphasize that Article 12(2) of the Constitution of Sri Lanka recognizes the right to equality before the law" and that "the absence of a Women's Rights Bill and the incorporation therein of the principle of equality does not detract from the right that is already recognized in the Constitution of Sri Lanka" (Government of Sri Lanka, 29 May 2015, p. 7). The report of the Government further notes that "any form of discrimination against women can be challenged under the supervisions entrenched in the supreme legal instrument of the country, even in the absence of any separate legal provision" (Government of Sri Lanka, 29 May 2015, p. 7).

In April 2016, FOKUS WOMEN, the Sri Lanka Country Office of the Oslo-based umbrella organisation FOKUS, a resource centre for international women's issues, published a shadow report to CEDAW. The report contains the following information on equality as enshrined in the Constitution:

> "The Sri Lankan Constitution recognises the right to equality as a fundamental right and includes sex as a prohibited ground of discrimination. The violation or imminent violation of a fundamental right by executive or administrative action or omission can be challenged before the Supreme Court within 30 days of such violation. To date however, the Supreme Court has not made a pronouncement on gender discrimination under this right. The fundamental rights chapter does not recognise economic and social rights. The fundamental rights jurisdiction is vested exclusively in the Supreme Court, which makes it inaccessible for women from rural and war affected communities." (FOKUS WOMEN, April 2016, pp. 7-8)

According to the April 2016 shadow report from FOKUS WOMEN, "the only state commitment to the respect of women's rights in Sri Lanka" is "[t]he Women's Charter, a non-binding policy declaration", which was approved by the Government in March 1993 (FOKUS WOMEN, April 2016, p. 8). The Sri Lankan Women's Charta can be accessed via the following link:

- Women's Charter (Sri Lanka), National Committee on Women Ministry of Women's Empowerment and Social Welfare, 3 March 1993 (available at University Grants Commission, Sri Lanka)
  http://eugc.ac.lk/ge_eq/wp-content/uploads/2016/04/Womens_Charter-1.pdf

The US Department of State (USDOS) human rights report covering the year 2015 notes that "[t]he law specifically addresses sexual abuse and exploitation and contains provisions in rape cases for equitable burden of proof and stringent punishments". The same report also outlines

that "[t]he law considers marital rape an offense only in cases of legally separated spouses." (USDOS, 13 April 2016, section 6)

The Sri Lankan Penal Code contains provision in regard to sexual harassment, rape and grave sexual abuse. Sexual harassment is dealt with in Article 345 of the Penal Code, which reads as follows:

> "345. Whoever, by assault or use of criminal force, sexually harasses another person, or by the use of words or actions, causes sexual annoyance or harassment to such other person commits the offence of sexual harassment and shall on conviction be punished with imprisonment of either description for a term which may extend to five years or with fine or with both and may also be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such person." (Penal Code, 1885, amended as of 24 April 2006, Article 345)

Article 365B of the Penal Code deals with "grave sexual abuse" which is punished "with rigorous imprisonment for a term not less than five years and not exceeding twenty years and with fine and shall also be ordered to pay compensation" (Penal Code, 1885, amended as of 24 April 2006, Article 365B(2)(a)).

The offence of rape is described in Article 363 of the Penal Code in the following terms:

> "363. A man is said to commit 'rape' who enactment has sexual intercourse with, a woman under circumstances falling under any of the following descriptions:-
>
> (a) without her consent even where such woman is his wife and she is judicially separated from the man;
> (b) with her consent, while she was in lawful or unlawful detention or when her consent has been obtained, by use of force or intimidation, or by threat of detention or by putting her in fear of death or hurt;
> (c) with her consent when her consent has been obtained at a time when she was of unsound mind or was in a state of intoxication induced by alcohol or drugs, administered to her by the man or by some other person;
> (d) with her consent when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is, or believed herself to be, lawfully married;
> (e) with or without her consent when she is under sixteen years of age, unless the woman is his wife who is over twelve years of age and is not judicially separated from the man." (Penal Code, 1885, amended as of 24 April 2006, Article 363)

The punishment for rape is regulated under Article 364 of the Penal Code and reads as follows:

> "364. (1) Whoever commits rape shall, except, in the cases provided for in subsections (2) and (3), be punished with rigorous Imprisonment for a term not less than seven years and not exceeding twenty years and with fine, and shall in addition be ordered to pay compensation of an amount determined by court, to the person in respect of whom the

> offence was committed for the injuries caused to each person." (Penal Code, 1885, amended as of 24 April 2006, Article 364)

Under aggravating circumstances listed under Article 364(2), the punishment ranges between ten and twenty years of rigorous imprisonment and a fine. Among these circumstances is the rape of a woman who is in official custody or wrongfully restrained by a "public officer or person in a position of authority" taking advantage of his official position (Penal Code, 1885, amended as of 24 April 2006, Art. 364 (2)(a)). The rape of a woman under 16 years of age by a person legally responsible for her is punishable with rigorous imprisonment between fifteen and twenty years and with fine (Penal Code, 1885, amended as of 24 April 2006, Art. 364 (3)).

In July 2016, the North East Women's Action Network (WAN), a network of 8 women's organizations based in the Northern and Eastern provinces of Sri Lanka, provided a report for CEDAW, which contains the following explanation of the Penal Code's description of rape:

> "According to the Sri Lankan Penal Code sexual intercourse with a girl below 16 years of age, with or without consent, amounts to statutory rape. However, pushback from mainly Muslim religious leaders and politicians, during the time the Penal Code was being amended in 1995 to include statutory rape provisions meant that the provision does not apply to married Muslim girls under the age of 16 and above the age of 12, unless judicially separated. As a result, in case of Muslims, the relevant age for statutory rape is 12 years. Furthermore, because there is no provision of judicial separation in the event of a talaq [Divorce initiated by husband] divorce and the wife is required to stay at the husband's residence for a period of up to 3 months (iddat period) after the first pronouncement of divorce, women are not protected by the Penal Code provision even in the event that forced sexual intercourse (martial rape) occurs during this time." (WAN, July 2016, p. 3)

In terms of legal age to marry, the Marriage Registration Ordinance (General) stipulates that "[n]o marriage contracted after the coming into force of this section shall be valid unless both parties to the marriage have completed eighteen years of age" (Marriage Registration Ordinance (General), 1907, amended as of 8 May 2013, Article 15). In its Freedom in the World 2016 report covering the year 2015, Freedom House outlines that customary laws differs in regard to family matters:

> "Although women have equal rights under civil and criminal law, matters related to the family—including marriage, divorce, child custody, and inheritance—are adjudicated under the customary law of each ethnic or religious group, and the application of these laws sometimes results in discrimination against women." (Freedom House, 27 January 2016)

The Muslim Marriage and Divorce Act (MMDA) states that "[…] a marriage contracted by a Muslim girl who has not attained the age of twelve years shall not be registered under this Act unless the Quazi for the area in which the girl resides has, after such inquiry as he may deem necessary, authorized the registration of marriage" (Muslim Marriage and Divorce Act, 1975, Article 23).

For further information on customary law of ethno-religious groups as well as the ability of Muslim women to marry under the Muslim Marriage and Divorce Act (MMDA) and/or the General Marriage Ordinance see section 4.2 (freedom of religion) of this compilation.

The Prevention of Domestic Violence Act

In a state party report under the International Covenant on Economic, Social and Cultural Rights from February 2016, the Government of Sri Lanka provides the following information on the Prevention of Domestic Violence Act (PDVA):

> "99. The Prevention of Domestic Violence Act, No. 34 of 2005 provides for the issue of Protection Orders (POs) where acts of domestic violence have been committed or are envisaged. It provides for the procedure to obtain a protection order in response to domestic violence. Marital rape is recognized in cases where parties are judicially separated." (Government of Sri Lanka, 4 February 2016, p. 20)

The Sri Lankan Ministry of Women and Child Affairs, in cooperation with the United Nation Population Fund (UNPF) in Sri Lanka, published an explanatory commentary on the provisions of the Prevention of Domestic Violence Act in May 2012, explaining that the act is "designed to achieve the objective of providing speedy and meaningful protection to victims through an order of court called a 'Protection Order'" (Ministry of Women and Child Affairs/UNPF, May 2012, p. 4). The commentary further provides the following information on the scope and objective of the act:

> "Punishment of the offender is not an objective of the Act. However, court orders are expected to be observed and therefore, those who violate court orders can be punished. Accordingly, in implementing the Act, primacy is expected to be given to the objective of providing protection from violence. […] The PDVA is designed to deal with violence. In the case of physical abuse, it seeks to provide a remedy only in respect of acts which are recognized as crimes under the Penal Code." (Ministry of Women and Child Affairs/UNPF, May 2012, pp. 4-5)

The Prevention of Domestic Violence Act can be accessed via the following link:

- Prevention of Domestic Violence Act [An Act to Provide for the Prevention of any Act of Domestic Violence and for Matters Connected Therewith or Incidental Thereto], certified on 3 October 2005 (published by Gazette of the Democratic Socialist Republic of Sri Lanka, 7 October 2005)
  http://www.parliament.lk/uploads/acts/gbills/english/5698.pdf

4.4.2 Overview of current issues regarding women

Rape and other forms of sexual violence

In its human rights report covering the year 2015, the US Department of State (USDOS) notes that "[t]he law prohibits rape and domestic violence, but enforcement of the law was inconsistent. Sexual assault, rape, and spousal abuse remained pervasive societal problems" (USDOS, 13 April 2016, section 6). According to the Freedom in the World 2016 report, during

the year 2015 "[r]ape of women and children and domestic violence remain serious problems, with hundreds of complaints reported annually; existing laws are weakly enforced" (Freedom House, 27 January 2016). Reporting on the year 2015, the USDOS human rights report further provides the following information on rape and sexual violence in Sri Lanka:

> "Estimating the prevalence of sexual abuse and domestic violence, in June [2015] former state minister of women's and children's affairs Rosy Senenayake said, 'A woman is raped every 90 minutes in Sri Lanka and of 300,000 cases, only 600 perpetrators are remanded. Only 2 percent of the perpetrators in such cases are actually punished.' There were also a number of high-profile cases of rape and sexual violence that made national headlines and sparked intense debate." (USDOS, 13 April 2016, section 6)

The same USDOS human rights report covering the year 2015 notes that "[a]n average rape case took six to 12 years to complete" (USDOS, 13 April 2016, section 6). In a shadow report to the UN Committee on the Elimination of all Forms of Discrimination against Women (CEDAW) from June 2016, the NGO Sri Lanka Women's Group provides the following information on the handling of rape cases and the average timeframe thereof:

> "Even though the Penal Code was amended in 1995, to provide for mandatory minimum sentences of 10 years in cases such as rape, gross sexual abuse and acts of gross indecency, the courts are now back to giving suspended sentences of 1 or 2 years for such offences.
>
> Laws delays: Rape litigation also takes an inordinate amount of time; the case of murder and attempted murder, a rape case must first go through a non-summary inquiry at the Magistrate Court to determine whether there is a prima facie case against the accused and whether the accused should be committed to stand trial in the High Court. […] These inquiries are supposed to be concluded in three months, however this initial non-summary inquiry can take up to three years, while the trial itself will take several more years- up to 15 years in some instances. One of the most important deterrents to women seeking redress from the law, especially in cases of sexual violence is the length of time it takes for a case to be concluded. Non-summary inquiries are conducted only in respect of three offences: murder, attempted murder and rape." (Sri Lanka Women's Group, 10 June 2016, p. 5)

The same June 2016 report from the NGO Sri Lanka Women's Group looks at rape complaints between 2007 and 2013, outlining that "[t]he number of complaints of rape received by the Department of Police has been steadily increasing over the years" (Sri Lanka Women's Group, 10 June 2016, p. 4). In its Freedom in the World 2016 report covering the year 2015, Freedom House notes that "[t]he presence of the army in the north and east has increased the risk of harassment and sexual abuse for female civilians in those areas" (Freedom House, 27 January 2016). The USDOS human rights report covering the year 2015 also indicates that "[t]here were a number of credible reports of sexual violence against women in which the alleged perpetrators were armed forces personnel, police officers, army deserters, or members of militant groups." The USDOS continues stating that due to fear of retaliation many women did not file official complaints. (USDOS, 13 April 2016, section 6)

In April 2016 the UN Security Council published a report on conflict-related sexual violence which includes information on past and present abuses by security forces in Sri Lanka and accountability in this regard:

> "82. The 30-year civil war in Sri Lanka disproportionally affected women, who continue to face sexual abuse and threats. The results of an investigation by OHCHR that covered the period from 2002 to 2011 highlighted the extent of the sexual violence committed in detention by the security forces against both women and men [...]. These were not isolated incidents, but rather part of a policy. Nevertheless, accountability has been limited. The conviction of four soldiers in October by the High Court of Jaffna for the rape of two women in 2010 is the first of its kind. The report further states that women living in the militarized north continue to be vulnerable to sexual violence committed by members of the armed forces. In Tamil communities, lone women who head nearly 60,000 households describe an ever-present threat of sexual exploitation by the military." (UN Security Council, 20 April 2016, p. 26)

The Amnesty International (AI) annual report covering the year 2015 also notes that "sexual violence may have been used systematically against Tamils […] during and in the immediate aftermath of the conflict." According to the report, "[t]he 7 October [2015] conviction of four soldiers for the 2010 gang-rape of a woman in a Kilinochchi resettlement camp was widely seen as a small victory against the pervasive climate of impunity" (AI, 24 February 2016).

In August 2015, the Colin Powell School for Civic and Global Leadership at City College New York published a white paper by visiting professor Gowrinathan Nimmi, who is also director of the Politics of Sexual Violence Initiative, and the human rights lawyer and political scientist Kate Cronin, who holds a post-doctoral fellowship in Law and International Security at Stanford University. The report looks at the current challenges faced by Tamil women in northern Sri Lanka based on testimony from Tamil women living in the Northern Province and discussions with victims' representatives as well as activists and provides the following information on sexual violence in the Northern Province:

> "The situation remains particularly grave for Tamil women […]. Militarization has meant both the omnipresent possibility of sexual violence by state security forces, and the deterioration of community networks. Many Tamil women have been raped by Sri Lankan military, especially in the immediate post-war period, but many more have seen their activities constrained by the climate of fear. And while the rate of sexual violence perpetrated by security forces against Tamil women has declined (but not disappeared), earlier violations remain unaddressed, and the strictures on women's lives have only been further entrenched." (Colin Powell School for Civic and Global Leadership, 28 August 2015, p. 5)

In a query response from June 2016 about the situation of women in the Northern Province, the Norwegian Country of Origin Information Centre Landinfo summarises the situation as follows:

> "The Northern Province is still militarized, and some sources state that women in the region in general are vulnerable of being exposed to sexual abuse. There are however not many

> documented cases of sexual abuse of local women by military personnel. The cases reported indicate that violence and sexual abuse of women, first and foremost is a domestic and a community problem." (Landinfo, 23 June 2016, p. 4)

In a written statement submitted by the NGO Association des étudiants tamouls de France, which was published by the UN Human Rights Council in June 2016, it is noted that "reports of sexualized violence in Sri Lanka are hard to investigate" (Association des étudiants tamouls de France, 3 June 2016, p. 2). The statement quotes an anonymous Tamil Women Rights activist who claims that "pro-government forces currently abduct and rape girls or young women for several days, then send them home blindfolded so they are unaware of where they were held" and that "survivors are prevented from reporting the rapes through fear of retaliation" (Association des étudiants tamouls de France, 3 June 2016, p. 3).

The study on Tamil women in Post-War Sri Lanka, published by the Colin Powell School for Civic and Global Leadership in August 2015, provides the following information on rape and sexual violence the basis of personal interviews with a human rights lawyer in Colombo and an activist and a nun from Jaffna:

> "Alongside, and more immediate than, the threat from state security forces sits another risk to women's safety: sexual violence perpetrated by 'known people', members of their own community. A hostel in the North that once used to safely deliver the babies of military rape is now a refuge to Tamil women who have been raped by members of the community, with both perpetrators and victims old as sixty years old. While cautioning that the data is not available, one long-time Tamil activist in the North says that there 'appears to be an increase in sexual violence amongst Tamils, including concerns like marital rape.' This came suddenly, and brutally, to the forefront in the case of Vithya, an 18 year old school girl who was raped and murdered in May 2015, allegedly by three members of the Tamil community. Protests expressing outrage at her fate became a political flashpoint, mired in a web of competing agendas." (Colin Powell School for Civic and Global Leadership, 28 August 2015, p. 10)

Amnesty International (AI) also mentions this case and a case of another girl when referring to violence against women and girls in its annual report covering the year 2015:

> "In May, the rape and murder of 17-year-old Sivayoganathan Vidhya on the island of Pungudutivu prompted large demonstrations demanding justice for cases of violence against women and girls. Local police were criticized for refusing to search for the missing teenager, reportedly telling her family that she probably ran off with a lover. In September, the rape and murder of a five-year-old girl in Kotadeniyawa led to calls for the death penalty to be reinstated, even after it became known that police had tortured two suspects in an attempt to force false confessions." (AI, 24 February 2016)

The USDOS human rights report covering the year 2015 provides the following exemplary case which occurred in March 2015:

> "An illustrative case occurred in March when a girl age 16 from Kilinochchi was allegedly gang-raped by three men and subsequently died from her injuries. Following the incident,

> human rights activists reported police repeatedly attempted to pressure the girl's grandmother into stating the cause of death was a brain disorder. The girl's body was exhumed in April and sent to the judicial medical officer in Colombo for post-mortem investigation. The officer's report had yet to be released by year's end." (USDOS, 13 April 2016, section 6)

FOKUS WOMEN conducted a survey on the status of Muslim female heads of households as well as a study on the status of female heads of households in Ampara District, which were published in a shadow report to the United Nations Committee on the Elimination of Discrimination Against Women in April 2016. The report notes that "due to the lack of enforcement of laws and the absence of support networks, women who experience violence do not necessarily report it even within the community" (FOKUS WOMEN, April 2016, p. 14). It further provides the following information gained through the respective studies:

> "For instance, 88% (sample of 1000) of Muslim women interviewed for one of the studies reported domestic violence while 49% of Muslim FHH [Female Heads of Households] in the same study stated that they chose to remain silent about the violence they had experienced. In the Ampara study it was revealed that only 3% (sample of 500) of the women who had experienced violence had complained to the police. The absence of an adult male gives rise to a perception that they are physically weak and makes them targets for sexual violence." (FOKUS WOMEN, April 2016, p. 14)

Regarding services offered in assistance to victims of violence, the USDOS human rights report covering the year 2015 provides the following assessment:

> "Services to assist survivors of rape and domestic violence, such as crisis centers, legal aid, and counseling, were generally scarce due to a lack of funding. Language barriers between service providers and victims were also reported. There was one government-established shelter for victims of domestic violence. The Ministry of Health, in partnership with NGOs, maintained hospital-based centers to provide medical assistance to those requiring attention for sexual assault-related injuries before referral to legal and psychosocial services." (USDOS, 13 April 2016, section 6)

Sexual Harassment and "survival sex"

The USDOS human rights report covering the year 2015 provides the following information on sexual harassment of women in Sri Lanka:

> "Some observers acknowledged widespread sexual harassment. Reports of the prevalence of 'survival sex,' whereby vulnerable women engaged in sexual acts for monetary and other kinds of support or compensation, especially with security force personnel, continued to emerge. One report noted members of the security forces approached a woman in the north and told her that if she allowed them to have sex with her on a regular basis, they would compensate her. If she refused, they would rape her by force, so she chose the former course." (USDOS, 13 April 2016, section 6)

In a written statement published by the UN Human Rights Council in June 2016, the NGO Association des étudiants tamouls de France refers to "survival sex" in regard to IDP women, noting that "[a] type of sexualized violence called 'survival sex' also seems to be increasing among internally displaced women. Many who live in displacement villages are becoming sex workers—although the term may be inaccurate, given that they are not freely entering into the sexual relationships" (Association des étudiants tamouls de France, 3 June 2016, p. 4).

Based on personal interviews with a church official and women rights activists in Killinochi, Jaffna and Colombo, Nimmi Gowrinathan, Director of the Politics of Sexual Violence Initiative, and human rights lawyer Kate Cronin provide the following information on sexual harassment of Tamil women in a report published by the Colin Powell School for Civic and Global Leadership in August 2015:

> "Sexual harassment by the military remains a daily reality for Tamil women, particularly young women, who must engage with state forces for basic activities ranging from purchasing vegetables to school registration. In areas with little electricity, many women's only opportunity to charge their cell phones is to visit the nearest military camp. Some, one rights activist notes, 'are asked for sexual favors in exchange for the use of their electricity.' Women's lives, and daily mobility, are shaped by the constant constraint by the presence of military camps. […]
>
> Tamil politician, Ananthi Sasitharan, explains, 'Tamil women are constantly harassed by men, and also have a very serious economic problem'. In most cases the two are inextricably linked. With limited income-generation opportunities available to them, Tamil women are often left to fill positions such as cleaning toilets in military camps where 'they are often subjected to sexual harassment and abuse'. Similarly, the Civilian Security Department [...] offers destitute women a small salary and cell phone in exchange for largely manual labor, placing women under the direct authority of military personnel, forced to 'work under the military's conditions.'" (Colin Powell School for Civic and Global Leadership, 28 August 2015, pp. 9-10)

Forced marriage and early marriage

The Colin Powell School for Civic and Global Leadership in August 2015 provides the following information about the pressure Tamil women face to get married, referring to personal interviews with experts and women's rights activists in Colombo, Mannar and Jaffna:

> "Rumors and the very real presence of women engaged in sex work, along with fear of rape by the military, has led to a conviction that Tamil women require the protection of men. The protection they offer, most often, comes in the form of a hasty or ill-advised marriage where 'even if the guy is very old there is so much pressure to marry the women will do it. In these cases what happens is nothing short of marital rape.' Even those who are married are told now 'they need male protectors. This is a patriarchal form of control – and some issues (like prostitution) may be overstated in the desire to control women's mobility, attire, and friendships.'" (Colin Powell School for Civic and Global Leadership, 28 August 2015, p. 13)

The North East Women's Action Network (WAN), a network of 8 women's organisations based in the Northern and Eastern provinces of Sri Lanka, provides the following information in a report to the Committee on the Elimination of all Forms of Discrimination against Women (CEDAW) from July 2016:

> "Adult Muslim women are considered minors in the eyes of the law, unable to enter a marriage of their own free will and requiring the permission of a male guardian. The concept of wali is so deeply rooted in cultural and religious practice that it restricts women's agency and autonomy in familial matters. These provisions are entrenched in the patriarchal notion that women's decision-making ability in marriage is controlled by male members of her family and by extension - community." (WAN, July 2016, pp. 1- 2)

The human rights report of the USDOS covering the year 2015 contains the following information on early and enforced marriage:

> "According to the 2006-07 Demographic Health Survey, 11 percent of women between the ages 20 and 24 reported being married or in a union before age 18. The Ministry of Women and Children's Affairs conducted programs in many districts to educate the public at the village level on the complications that may result from early marriage." (USDOS, 13 April 2016, section 6)

For more detailed information on early and forced marriages of children see section 4.5.2 of this compilation.

Female Headed Hosueholds (FHH)

In its report to the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) from April 2016, FOKUS WOMEN provides the following information on the interplay between issues of underage marriage and so-called
female heads of households (FHH):

> "Underage marriage and cohabitation on the one hand has resulted in young FHH [Female Heads Of Households] with dependents in rural communities. On the other hand, increase in FHH has contributed to underage marriage due to difficulties experienced by FHH in caring for their dependent children." (FOKUS WOMEN, April 2016, p. 21)

The same report from FOKUS WOMEN notes that "[c]urrently, one in every five households in Sri Lanka is headed by a female" and that "[t]hese FHH have been unable to enjoy their right to equality due to intersecting forms of discrimination arising out of the law; national policies; administrative practice; and due to actions of non-state actors." (FOKUS WOMEN, April 2016, p. 5). In May 2015, the Government of Sri Lanka also refers to the number of FHH, describing governmental initiatives in its state report submitted to the Committee on the Elimination of all Forms of Discrimination against Women (CEDAW):

> "According to the 2012 census of population and housing there are 716,703 widows in Sri Lanka and 1,270,293 female headed households. Single women households and war widows are especially catered to by Legal Aid and mediation mechanisms in the North and East. These mechanisms have undergone continuous improvement since 2010 providing

> awareness. Mobile public services are provided in collaboration with NGOs. Also, more than 70 Legal Aid Centres function island-wide to assist people in need of financial aid to litigate cases or defend themselves in Court." (Government of Sri Lanka, 29 May 2015, p. 13)

In its report from April 2016, FOKUS WOMEN notes that "Certain policy initiatives have been made recently by the GoSL [Government of Sri Lanka] to address some of the needs of some FHH", but that "FHH state that the funds allocated are inadequate; and that policies are designed ad hoc and are revised arbitrarily" (FOKUS WOMEN, April 2016, p. 6). According to FOCUS WOMEN, "[d]ue to the lack of Tamil speaking officers at police stations, and lack of translators during court proceedings, Tamil speaking FHH claim that they are discouraged from seeking legal remedies and also discouraged from pursuing litigation" (FOKUS WOMEN, April 2016, p. 11). Referring to governmental initiatives, a report about Tamil Women published by the Colin Powell School for Civic and Global Leadership in August 2015 states that "one of the military plans most decried by activists and beneficiaries alike is the creation of villages meant exclusively for female-headed households". The report quotes a community mobilizer interviewed in Jaffna in 2015 who reportedly asked, "'What kind of policy is this that vulnerable women are going to be kept in seclusion? Are they not sitting ducks for military violence'?" (Colin Powell School for Civic and Global Leadership, 28 August 2015, pp. 13-14)

The shadow report to CEDAW from FOKUS WOMEN from April 2016 raises the issue of sexual exploitation of FHH, describing the situation in the following terms:

> "FHH report that they are subjected to sexual exploitation and are solicited for sexual bribes. 25 such cases of serious and repeated experiences of sexual exploitation of FHH, including sexual bribery have been documented by FOKUS WOMEN. FOKUS WOMEN partners working in the region, such as WANT (Women's Action Network for Transformation), and FHH living in the Northern Province state that they are under surveillance and are subjected to sexual exploitation when they are ordered to report to an army camp. According to the case studies FHH are subjected to sexual exploitation by public servants and those in charge of public security; health care workers; and employers of civil society organizations. Offenders act with impunity and target FHH who are vulnerable due to several factors. For instance where the spouse is detained or is missing, FHH are dependent on the military and the police to investigate into the matter." (FOKUS WOMEN, April 2016, p. 12)

4.4.3 Situation of women (access to health care, social services, etc)

In 2015, the Asian Development Bank (ADB) in cooperation with the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), a German governmental entity specialising in international development, published an update to their Sri Lanka Country Gender Assessment. The report summarises that "Sri Lanka presents a mixed picture, with positive achievements in education and health indicators, as well as negative developments such as gender inequality in employment and political participation, and issues of gender-based violence" (ADB/GIZ, 2015, p. vi).

In 2016, UNWOMEN asked the Colombo-based NGO Centre for Women's Research (CENWOR) to prepare a shadow report for the Committee on the Elimination of all Forms of Discrimination against Women (CEDAW), based on local consultations in different parts of the country. The resulting report from CENWOR provides the following information on women's access to health care in Sri Lanka:

> "Sri Lanka has sustained the implementation of a free health service to the entire population since independence, which included dedicated health interventions for women and girls, based on a life cycle approach. These included services during pregnancy, at delivery, during early childhood and school ages, particularly adolescence, adulthood, and the older ages. Both preventative and curative services are universally available in rural and urban areas. The service retained its free status since independence. Ante natal care through clinics, and trained care at delivery is available for all pregnant women. These mostly occur in hospital maternity units as decided by most Sri Lankan mothers. This also includes post natal care. Access to all forms of family planning services, and the control of all sexually transmitted infections including HIV/AIDS is available. Life expectancy for women has continued to steadily increase, compared to men. It has, led to a growing population of ageing women, for whom, geriatric and other essential health services are now needed, and which are yet to be fully developed Maternal undernutrition and aneamia remain persisting issuers, and need to be better addressed." (CENWOR, 2016, p. 5)

The ADB and the GIZ provide the following information on the impact of health policies in Sri Lanka in their report from 2015:

> "Universal access to free health services for 7 decades has resulted in a decline in mortality rates, especially among women. Female feticide and infanticide have not been reported. District-wide disparities are high, however, with the highest mortality rates in the plantation sector, the disadvantaged district of Moneragala, and the conflict-affected districts. Issues of concern are the low nutritional status of many women; the increasing incidence of noncommunicable diseases; inadequate provision of health care for the elderly, the mentally ill, and the differently abled; and the health implications of gender-based violence. […]
>
> Utilization of health services such as antenatal and postnatal care and immunization, and institutional births are near universal, but the rising cost of drugs in an unregulated market creates hardships for the poor. The contraceptive prevalence rate is reported to be about 70%, but the reproductive rights of women need to be ensured." (ADB/GIZ, 2015, p. vii)

Additionally, the CENWOR notes in its report from 2016, that "[f]emale sex workers are known to have good access to STI [sexually transmitted infections]/AIDS prevention services, and information. It is reported that they practice a high condom use which is preventative of such infections" and that "[m]other to child HIV transmission is relatively low" (CENWOR, 2016, pp. 5-6).

The same 2016 report from CENWOR states that "[u]niversal free education till undergraduate level in universities since 1945 and a wide range of incentives continue to increase access to

education" (CENWOR, 2016, p. 4). The German think tank Bertelsmann Stiftung notes in its Transformation Index (BTI) 2016, covering the period from 1 February 2013 to 31 January 2015, that "[e]ducational opportunities for women are excellent" (Bertelsmann Stiftung, 2016, p. 2). The CENWOR report published in 2016 further provides the following description of education services for women:

> "Compulsory education was extended to 16 years. Gender parity in enrolment has been achieved in primary and junior secondary education and more female students than male students are enrolled in senior secondary education. Retention rates are higher among female students. […]
>
> More women are enrolled in the 15 universities than men but gender has been a non issue in higher education policy till the establishment of a Gender Centre in the University Grants Commission in 2016. However gender specific courses are conducted in university courses except in Management and Science in the University of Colombo." (CENWOR, 2016, p. 4)

The report of the ADB and the GIZ published in 2015 provides the following information on progress and challenges in the area of education:

> "The provision of free state education supported by extensive incentives such as free textbooks, free uniforms, scholarships, subsidized transport for all, and free school meals for the children of the economically disadvantaged have resulted in a rapid rise in the participation rates at school to over 95% and the achievement of gender parity in enrollment in primary, secondary, and university education. Disparities in the provision of quality education facilities and poverty, however, continue to be barriers to the utilization of available opportunities, and lethargy in the implementation of compulsory education regulations up to 14 years at the local level has prevented universalization of primary and junior secondary education, resulting in a high dropout rate at the senior secondary level. Girls have higher enrollment and retention rates in secondary education and higher performance levels at public examinations. The percentages of female students in universities and nonvocational tertiary education are higher than that of male students. However, wide gender imbalances in enrollment in technological courses including information technology in higher education and technical-related courses in vocational education institutions limit their access to high skilled and remunerative employment in technology-related fields." (ADB/GIZ, 2015, p. vii)

Covering the period from 1 February 2013 to 31 January 2015, the Bertelsmann Stiftung notes however that "[l]ow child mortality and high female higher education levels have not translated into greater equity in economic participation and more decision-making power for women" (Bertelsmann Stiftung, 2016, p. 11). According to the Freedom in the World 2016 report from Freedom House, covering the year 2015, "[f]emale employees in the private sector face sexual harassment as well as discrimination in salary and promotion opportunities" (Freedom House, 27 January 2016).

In its report from 2016, CENWOR indicates that "[t]he prevailing gender ideology is that men are capable of more work than women and women's labour is of less value than that of men, the result being that women are paid almost 50% lower wages than men, and are still not

accepted as equal partners in the production process" (CENWOR, 2016, p. 6). The report further provides the following information on gender disparities in the area of employment:

> "The widest gender inequalities horizontally and vertically are seen in the labour market. In the issue of labour rights, Constitutional provisions are restricted to the public sector, and labour legislation is limited to the public and private formal sectors. The informal sector in which the majority of women work are unprotected and even the ILO Conventions that are applicable to the informal sector have yet to be ratified. […]
>
> Labour force participation rates underscore wide gender inequalities. The unemployment rates of women continue to be at least double those of men despite the decline in unemployment rates in recent years." (CENWOR, 2016, p. 5)

The ADB and the GIZ note in their report from 2015, that "there is a large concentration of economically active women in unpaid family labor, particularly in agriculture" (ADB/GIZ, 2015, p. vii). Summarising the sectors with a high concentration of women, the report refers to employment in "low productivity and low-income agriculture and in the plantation sector, in assembly-line jobs in garment and other industries with minimal opportunities for promotion, in subcontracted occupations which have proliferated, and in domestic service" (ADB/GIZ, 2015, p. vii).

Based on interviews with human rights advocates from Colombo, the August 2015 report of the Colin Powell School for Civic and Global Leadership provides the following information on working opportunities and respective government employment schemes and interventions:

> "One option for income-generation that remains for destitute women is work in the garment industry, an industry managed by a crop of 'middle-men'. Operating in conjunction with, or with the explicit knowledge of, state forces, these men 'assume the 'protection' of Tamil women, taking them to hostels where nobody else is allowed, to work during the week and girls are allowed out only on weekends.' Another large-scale scheme is the recruitment of women into the Civilian Security Department. Started in the 1980s and 90s by the state as a means of creating a home guard in Sinhalese border villages, it functions now as an apparatus of the military police creating menial jobs (sweeping, farm work). While there is no real record of these 'employees', they are given a basic salary and a cell phone, and women are drawn from the ranks of the unemployed as well as those earning a meager income, like preschool teachers. 'People, particularly women, join this force out of a mix of really needing the salary and the fear of saying no.'
>
> At the same time, several industries in which women have customarily worked have become unavailable to them. The military take-over of the hospitality industry, farming, and selling vegetables some feel is actually a 'strategy to manipulate the market and keep the community and poor excluded.' Military vegetable growers, benefiting from cheap labor and free fertilizer, are able to sell at cheaper prices than women who grow vegetables in their home gardens. Military machinery also cuts back the necessity of harvest labor, a seasonal livelihood Tamil women were traditionally a significant part of." (Colin Powell School for Civic and Global Leadership, 28 August 2015, p. 14)

The April 2016 FOKUS WOMEN report describes governmental support for employment in the following terms:

> "FHH [female heads of households] in particular are vulnerable to economic hardship and lack of employment. In the post conflict context FHHs have been provided with livelihood support both by the GoSL and by civil society organizations. However, evidence from the communities suggests that this support has not been effective. […] For instance a woman from Ampara district stated that she was provided with a three wheeler but that due to the gender stereo-typing of the driving of three wheelers she was subject to discrimination in her attempt to work as a three wheeler driver. Another woman from the same district had been provided training on shoe making but she claims that she does not have a market for selling shoes. In the first example, the socio-cultural context has not been duly considered and in the second the economic viability of the support provided has been ignored." (FOKUS WOMEN, April 2016, p. 19)

In May 2015, the government of Sri Lanka submitted its state party report under the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which provides the following information on livelihood programs designed for women ex-combatants:

> "104. In view of the need to make the rehabilitated women ex-combatants employable, special vocational training programmes were organized for them in the fields such as bridal and hair dressing, modelling, beauty and make up, nursery management, and Juki machine operations." (Government of Sri Lanka, 29 May 2015, p. 26)

The report published by the Colin Powell School for Civic and Global Leadership in August 2015 argues that "[t]he livelihoods approach embraced by the Sri Lanka state and the international community to addressing Tamil women's needs is particularly damaging for those who had been involved in the LTTE (even those coercively recruited)" (Colin Powell School for Civic and Global Leadership, 28 August 2015, p. 17). Referring to personal interviews with two ex-combatants and a military commander from Jaffna, the report provides the following insights on reported issues with such governmental programmes:

> "On a practical level, this population has a high rate of prosthetic limbs and/or other serious injuries. Some ex-combatants with artificial legs have been given support in the form of a pastry push-cart they are unable to push. Another ex-combatant describes the one-year sewing program she was forced to do, despite having 'no sensation in my hands and feet due to a war injury, so have no hope to work in sewing.'
>
> Further, having been socialized within the LTTE, many of these women balk at the idea of doing traditionally 'feminine' tasks. […] Beyond the feminizing impact, the livelihoods approach is overtly de-politicizing, ignoring the political opinions, and often the active political identities of Tamil women. In the case of ex-combatants, this actively plays into the agenda of the state. One senior military commander in July 2015 insists that they are responsible for helping Tamil women find their femininity again." (Colin Powell School for Civic and Global Leadership, 28 August 2015, p. 17)

Reporting on the availability of safety networks and social services for the general population in need, the ADB and GIZ provide the following information in their country gender assessment published in 2015:

> "Small-scale safety nets are available for the destitute under the Public Assistance Program and from the Ministry of Social Services for vulnerable groups, such as those who are differently abled, but the quantum of assistance and outreach are limited by the lack of funds available to the ministry. In this context, free education and health services have been the most effective forms of social protection for the poor, as seen by the use of compulsory education facilities and health services by about 95% of the population." (ADB/GIZ, 2015, p. 4)

Political participation

In its Freedom in the World 2016 report, covering the year 2015, Freedom House states that "[w]omen are underrepresented in politics and the civil service" (Freedom House, 27 January 2016). The US Department of State (USDOS) human rights report provides the following information on the ability of women to partake in political processes during the reporting period of 2015:

> "Participation of Women and Minorities: There are no laws that prevent women or minorities from participating in political life on the same basis as men or majority citizens. Some cultural and social barriers to women's participation include financial constraints and the sometimes violent nature of local politics. There was no provision for, or allocation of, a set number or percentage of political party positions for women or minorities." (USDOS, 13 April 2016, section 3)

In its shadow report to Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) published in 2016, CENWOR provides the following summary of women's political rights and participation:

> "Since universal franchise in 1931 women have had the right to vote and to seek election to national and local assemblies. Although women have been active as voters their representation in political assemblies has minimal, not exceeding 5% over the years. This situation has not changed since 2011. In 2010, 5.8% members of Parliament were women. At the 2015 election the percentage decreased to 4.9%. Provincial Councils have 17 women out of 417 (4.1%) and in Local Councils 2.03% were women. […]
>
> While multiple reason have been adduced for low representation of women, the significant fact is the decrease in 2015 despite the island wide campaigns by non government organizations and the National Committees on Women. Current evidence is that political parties are the singe major barrier to women's participation. Political parties are male dominated and are reluctant to nominate women as they believe that women are not 'winners'." (CENWOR, 2016, pp. 3-4)

FOKUS WOMEN refers to the participation of female heads of households (FHH) in political activities and public life, underlining that "FHHs face barriers in the political and public life of

the community. The low visibility of women in its public and political life is, in general, a grave concern in Sri Lanka". Referring to a study conducted by FOKUS WOMEN on the status of FHH and their access to economic, social and cultural rights in Ampara District from 2015, it is further noted that these women "felt 'humiliated, threatened and discriminated by the local politicians'". The report further notes that "[i]n the absence of adequate political representation of their interests FHH are compelled to engage with existing patriarchal power structures which often address their issues and needs on the basis of political expediency" (FOKUS WOMEN, April 2016, p. 18).

4.5 Children

4.5.1 Domestic legal framework

The Constitution stipulates that "[t]he State shall promote with special care the interests of children and youth, so as to ensure their full development, physical, mental, moral, religious and social, and to protect them from exploitation and discrimination" (Constitution, amended as of 15 May 2015, Article 27(13)). According to Article 27(12), "[t]he State shall recognize and protect the family as the basic unit of society" (Constitution, amended as of 15 May 2015, Article 27(12)). Article 12 provides for the equality of all persons before the law and specifies that "special provision being made, by law, subordinate legislation or executive action" for the advancement of children are not prevented by this Article (Constitution, amended as of 15 May 2015, Article 12).

In a state party report submitted under the Convention on the Rights of the Child (CRC) in June 2016, the Government of Sri Lanka summarises that the Penal Code "criminalises and prescribes penalties for individuals who engage children (i.e. persons below the age of eighteen years) in debt bondage, forced labour, slavery, armed conflict or trafficking" as well as prescribing "penalties for engaging children in pornography" and criminalising "sexual exploitation of children" (Government of Sri Lanka, 8 June 2016, p. 50).

The provisions mentioned by the Government of Sri Lanka can be found in the Penal Code: Article 358A deals with "[d]ebt bondage, serfdom, forced or compulsory labour, slavery and recruitment of children for use in armed conflict" and foresees a maximum penalty of thirty years imprisonment and a fine if "the offence is committed […] in relation to a child" (Penal Code, 1885, amended as of 24 April 2006, Article 358A). Article 360C contains provisions on trafficking, foreseeing imprisonment between three and twenty years and a possible fine for the trafficking of children (Penal Code, 1885, amended as of 24 April 2006, Article 360C). For further information on internal and external trafficking of persons, see section 4.8 of this compilation.

Penalties between two and ten years and a possible fine for engaging children in pornography are prescribed in Article 286A (Penal Code, 1885, amended as of 24 April 2006, Article 286A). The penalty for sexual exploitation of children is imprisonment between five and twenty years and a possible fine (Penal Code, 1885, amended as of 24 April 2006, Article 360B). Additionally, "soliciting a child" is a criminal offence under Article 360E of the Penal Code (Penal Code, 1885, amended as of 24 April 2006, Article 360E).

Other provisions of the Penal Code referring to children prohibit "[c]ausing or procuring children to beg", which is punishable with a maximum imprisonment of five years and a possible fine (Penal Code, 1885, amended as of 24 April 2006, Article 288). The "[h]iring or employing children to act as procurers" is prohibited under Article 288A and is to be punished with imprisonment between two and five years and a possible fine (Penal Code, 1885, amended as of 24 April 2006, Article 288A). Hiring or employing children to deal with drugs is regulated under Article 288B and is punishable with imprisonment between five and seven years and a possible fine (Penal Code, 1885, amended as of 24 April 2006, Article 288B).

Article 308 of the Penal Code refers to parents or caretakers of children under the age of twelve, who "expose or leave such child in any place with the intention of wholly abandoning" it. They are liable to a maximum imprisonment of seven years, or a fine, or both (Penal Code, 1885, amended as of 24 April 2006, Article 308). Cruelty to children by a person having custody, charge or care of the children is punishable with imprisonment between two and ten years and a possible fine and compensation (Penal Code, 1885, amended as of 24 April 2006, Article 308A).

Regarding offences committed by children, the Penal Code stipulates that an act of a child under the age of eight years cannot be an offence (Penal Code, 1885, amended as of 24 April 2006, Article 75). Regarding children between eight and twelve years of age, Article 76 of the Penal Code rules that "nothing is an offence" if the child has "not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct on that occasion" (Penal Code, 1885, amended as of 24 April 2006, Article 76).

The Penal Code of Sri Lanka can be accessed via the following link:

- Penal Code, 1885 [An Ordinance to Provide a General Penal Code for Ceylon], amended as of 24 April 2006 (available at Refworld)
  http://www.refworld.org/docid/4c03e2af2.html

The Government of Sri Lanka notes in a report submitted under the Convention on the Rights of the Child (CRC) in June 2016, that "one of the principle national laws pertaining to children" is the "Children and Young Persons Ordinance" (Government of Sri Lanka, 8 June 2016, p. 39). The UN Office for the Coordination of Humanitarian Affairs (UN OCHA) provides the following assessment of the Children and Young Persons Ordinance in a report from August 2012:

> "The law governing the children and young persons in Sri Lanka is 73 years old. The Children and Young Persons Ordinance No. 48 of 1939 'fails to fully address the current pressing problems related to the protection of children in Sri Lanka such as a child's right to privacy, places of safety and fit persons to care for their wellbeing' says UNICEF. Therefore, the Ministries of Justice, Child Development and Women's Empowerment with technical and funding assistance from UNICEF are developing the 'Children (Judicial) Protection Bill' to repeal and replace the Children and Young Persons Ordinance." (UN OCHA, 17 August 2012, p. 2)

In June 2016, the Government of Sri Lanka notes in its report submitted under the CRC that "[t]he draft Children (Judicial Protection) Act (CJPA) would be enacted to repeal the Children and Young Person's Ordinance. The proposed juvenile justice system will cover all alleged offenders under the age of eighteen years" (Government of Sri Lanka, 8 June 2016, p. 54). Also in June 2016, the Ministry of Justice published its performance report covering the year 2015 which provides the following information on the proposed Children (Judicial Protection) Bill:

> "This Bill seeks to provide for contemporary realities relating to Child Protection and repeals the antiquated Children and Young Persons Ordinance. It seeks to increase the collaboration between the Court, the Police, Prison and Probation. The best interest of the child is given paramount consideration. A draft incorporating the suggestions made by the Attorney General's representatives has been received and further proposals are to be discussed in the near future." (Ministry of Justice Sri Lanka, 8 June 2016, p. 9)

At the time of publication of this compilation, the Children (Judicial Protection) Bill was not yet published as a bill or an act by the Parliament of Sri Lanka.

The Children and Young Persons Ordinance establishes juvenile courts and the jurisdiction and procedure therein. It contains "special provisions applicable to all courts in relation to children and young persons" as well as provisions for "remand Homes, approved schools, certified schools, and persons to whose care children and young Persons may be committed", the last part of the Ordinance deals with the "Prevention of cruelty and exposure to moral and physical danger" (Children and Young Persons Ordinance, 1939, amended as of 7 November 1956). The Ordinance can be accessed via the following link:

- Children and Young Persons Ordinance, 1939 [An Ordinance to Make Provision for the Establishment of Juvenile Courts. For the Supervision of Juvenile Offenders, for the Protection of Children and Young Persons, and for Connected Purposes], amended as of 7 November 1956 (available on the Human Rights Library, University of Minnesota) http://hrlibrary.umn.edu/research/srilanka/statutes/Children_and_Young_Persons_Ordinance.pdf

According to the Government of Sri Lanka, "[e]mployment of children in Sri Lanka is regulated by the Employment of Women Young Persons and Children Act No. 47 of 1956" (Government of Sri Lanka, 4 February 2016, p. 21). The human rights report of the US Department of State (USDOS), covering the year 2015 summarises the legal provision for child labour and minimum age for employment as follows:

> "The minimum age for employment is 14, although the law permits the employment of younger children by their parents or guardians in limited family agricultural work or technical training. The law prohibits hazardous work for persons under age 18. The law limits the working hours of children ages 14 and 15 to nine hours per day and of ages 16 and 17 to 10 hours per day". (USDOS, 13 April 2016, section 7c)

The above described minimum age for employment can be found in Article 13 of the Employment of Women, Young Persons, and Children Act, which forbids the employment of children (persons under fourteen years). Article 14(1)(a) of the same law allows for the

exception of employing a child in "light agricultural or horticultural work or similar work carried on by members of the same family before the commencement of regular school hours or after the close of school hours". Article 20A refers to the "[p]rohibition against persons under eighteen years of age being employed in hazardous occupations". Article 17 contains "restriction on employment of children attending school" (Employment of Women, Young Persons, and Children Act, amended as of 2006). The Employment of Women, Young Persons, and Children Act can be accessed via the following link:

- Employment of Women, Young Persons, and Children Act [An Act to Regulate the Employment of Women, Young Persons, And Children], amended as of 2006 (available at International Labour Organisation) http://www.ilo.org/dyn/travail/docs/1658/EMPLOYMENT%20OF%20WOMEN1.pdf

The US Department of Labour (USDOL) notes in its 2015 Findings on the Worst Forms of Child Labor that "[t]here are no laws regulating employment in third-party households, which leaves children ages 14 to 18 employed as domestic workers vulnerable to exploitation" (USDOL, 30 September 2016).

With regard to marriage age, Article 15 of the Marriage Registration Ordinance 1907, which was last amended in May 2013 and does not apply to marriages of Muslims, stipulates that "[n]o marriage [...] shall be valid unless both parties to the marriage have completed eighteen years of age" (Marriage Registration Ordinance, 1907, amended as of 8 May 2013, Article 15).

In a periodic report submitted under the UN Convention on the Rights of the Child (CRC) from June 2016, the Government of Sri Lanka refers to the minimum age of marriage in customary laws in the following terms:

> "148. Sri Lanka recognises the existence of customary laws that are applicable to particular communities in the country. The Muslim Marriages and Divorce Act does not specify a minimum age of marriage, and efforts to reach a consensus with the Sri Lankan Muslim community on reforming this law has not yielded positive results as yet." (Government of Sri Lanka, 8 June 2016, p. 40)

4.5.2 Overview of current issues regarding children

In its human rights report covering the year 2015, the US Department of State (USDOS) notes that "NGOs attributed exploitation of children to the lack of enforcement of child abuse laws rather than inadequate legislation. According to the National Child Protection Authority (NCPA), the situation was worse than reported to police" (USDOS, 13 April 2016, section 6). Referring to the NCPA, the Sri Lankan internet newspaper ColomboPage provides the following numbers of reported child abuse cases during the year 2015:

> "Sri Lanka's National Child Protection Authority (NCPA) says it is working on protecting children who have been subject to abuse as over 10,000 child abuse cases were reported last year in the island. The Authority says it has received 10,732 complaints on different forms of child abuse during the year 2015. NCPA Chairperson, Dr. Natasha Balendra said this is a slight increase over the 10,315 cases reported in 2014.

> Of the complaints reported in 2015, the highest number of complaints at 2,317 were related to cruelty to children. While 1,463 cases were on not receiving compulsory education, 885 cases of neglecting of children, 735 cases on sexual harassment and 433 cases of rape, and 365 cases on grave sexual abuse.
>
> District wise, the highest number of complaints of 1,522 had been received from the Colombo District while 1187, 827, 700, 634, 622, 573 and 540 complaints had been received from Gampaha, Kurunegala, Galle, Kalutara, Ratnapura, Anuradhapura and Puttalam districts respectively, according to the NCPA." (ColomboPage, 26 January 2016)

The US-based NGO ChildFund International quotes the United Nations Children's Fund (UNICEF) in an article from February 2016, stating that "[c]hild abuse, neglect and exploitation are on the rise" in Sri Lanka. Among other factors, parental substance abuse, early marriage, educational struggles and family disintegration are identified as driving the increase. (Child Fund International, 24 February 2016)

Rape and other forms of sexual violence

In its Freedom in the World 2016 report, covering the year 2015, Freedom House states that "[r]ape of women and children and domestic violence remain serious problems, with hundreds of complaints reported annually; existing laws are weakly enforced" (Freedom House, 27 January 2016). In August 2016, the Sri Lankan weekly The Sunday Times refers to officials of the National Child Protection Authority (NCPA), who speak of nearly 223 reported child rape cases and "some 435 cases of sexual harassment and 99 cases of grave sexual abuse" this year (The Sunday Times, 7 August 2016).

Looking at the year 2015, the USDOS human rights report provides the following information on sexual abuse of children in schools:

> "There were reports of sexual abuse of children by teachers, school principals, and religious instructors, as well as a number of child rape cases in which government officials were the suspected perpetrators. According to Secretary of the All Ceylon Teachers' Union Joseph Stalin, schools administrators preferred to have sex abuse cases suppressed, due to fear that a scandal might tarnish the name of the school. Complaints against teachers and other government officials often led to investigations and even transfers or removal from their positions, but analysts noted that, despite greater public awareness of such offenses and complaint procedures, the majority of cases were unreported." (USDOS, 13 April 2016, section 6)

According to a joint press release by the United Nations Children's Fund (UNICEF) and the Sri Lankan National Child Protection Authority (NCPA) from April 2015, "the majority of actual reports in the country highlight that 50% of all sexual abuse offences against children were committed by a parent, care-giver or other relative, and in 80% of cases, the abuser is known to the victim" (UNICEF/NCPA, 30 April 2015, p. 1). The press statement further provides the following information on violence and sexual abuse against children:

> "Violence against children is everywhere. Despite the existence of laws and law enforcement, the problem of sexual abuse and violence against children remains hidden and invisible. While sexual abuse of children is often committed in private; there are rarely eyewitnesses; and the child's testimony usually provides most of the information about the crime. Many incidents go unreported due to the prevalent culture of silence and victims do not access much-needed counselling or psychosocial support to promote healing." (UNICEF/NCPA, 30 April 2015, p. 2)

Looking at child prostitution and sex tourism, the USDOS human rights report summarises sexual exploitation of children during the year 2015 as follows:

> "Children under age 18 were not widely engaged in prostitution. Child sex tourism was a problem, however, with the bulk of such tourists coming from European Union countries. The government's tourist police and the NCPA conducted island-wide awareness programs focusing on children, travel guides, and the coastal communities close to tourist destinations. The Department of Probation and Child Care Services provided protection to children who were victims of abuse and sexual exploitation and worked with local NGOs that provided shelter. The NCPA conducted an undercover operation in the southern coastal region to identify sexual tourism perpetrators and victims. As a preventive measure, the NCPA also had awareness programs for schools." (USDOS, 13 April 2016, section 6)

In a state party report submitted under the International Covenant on Economic, Social and Cultural Rights (CESCR) and published in February 2016, the Government of Sri Lanka notes that "Sri Lanka remains concerned that paedophiles travel worldwide including to Sri Lanka for sexual activity with children" (Government of Sri Lanka, 4 February 2016, p. 22). The English language Sri Lankan newspaper Daily News provides the following information on sex tourism in an article from August 2016:

> "The full extent of child sex tourism and exploitation in Sri Lanka has been difficult to document because of its covert nature. We have not conducted any in-depth research on the subject during the past decade and, therefore, studies conducted long ago cannot be used as a true indicator of the situation now. Nobody will deny that we have an issue of child sex tourism but to what extent its prevalent is anybody's guess. […]
>
> Child victims are inadequately protected because of loopholes in legislation and a lack of law enforcement. They are often treated as criminals and left with little recourse other than to re-enter a vicious cycle of abuse and exploitation, which escalates the risk to their very existence." (Daily News, 1 August 2016)

Early marriage

A joint press release by the United Nations Children's Fund (UNICEF) and the United Nations Population Fund (UNFPA) from October 2016 provides the following information on early marriage in Sri Lanka:

> "According to UNICEF's Child Marriage Baseline Estimate 2015, there are over 20,780 girls aged between 12 to 17 years in Sri Lanka who are married or in cohabiting relationships before they reach adulthood. Also, according to the Family Health Bureau, 5.3 per cent of all registered pregnancies are teenage pregnancies. In Sri Lanka, current socio-cultural practices and legal, economic and social security-related factors, are the leading causes of child marriage and teenage pregnancies." (UNICEF/UNFPA, 12 October 2016)

According to a report from the women's resource centre FOKUS WOMEN published in April 2016, "[u]nder age marriage of girls is reported to have increased in Sri Lanka particularly in the North, East and among the rural communities" (FOKUS WOMEN, April 2016, p. 21). The report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) Investigation on Sri Lanka (OISL), published in September 2015 and mainly covering a timeframe from February 2002 until October 2011, notes that "[s]ome parents believed that if their children were married, they would escape recruitment, which led to a pattern of early marriages." (OHCHR, 16 September 2015, p. 138). A report published by the Colin Powell School for Civic and Global Leadership in August 2015 provides further insights into these practices and their consequences today. Based on personal interviews with a civil society activist from Colombo and Tamil politician Ananthi Sasitharan, the report provides the following information on early marriages in Tamil communities:

> "Family relationships have destabilized. The final stages of the war saw a rash of 'early marriages', with teenage girls marrying 'the next door neighbor's son or some uncle' to prevent forced recruitment into the LTTE. Some even tried hastily to get pregnant, in order to be physically unable to fight. The post-war abandonment left young widows hurriedly looking to 're-marry to protect their reputation.' With the institution of marriage, formerly the backbone of community relationships, undermined, Tamil women have been increasingly vulnerable to teenage pregnancies, inter-family and inter-community molestation, harassment, and rape." (Colin Powell School for Civic and Global Leadership, 28 August 2015, p. 11)

FOKUS WOMEN provides the following summary of reasons for underage marriage:

> "Girls below eighteen enter into de facto marriages in the rural communities for several reasons. These reasons include concerns for the physical safety of young girls; destabilisation of community life due to the armed conflict; poverty; discontinuation of education due to the armed conflict; unemployment; romantic relationships resulting in elopement; and due to prevailing cultural norms. As stated by RPK, the practice of underage marriage continues in rural communities even though the initial and armed-conflict related factors that led to the practice have ceased to exist." (FOKUS WOMEN, April 2016, p. 21)

Looking at the practice of early marriages in the Muslim community, the same report from April 2016 provides the following information:

> "The Muslim Marriage and Divorce Act does not prescribe a minimum age of marriage. In practice 12 years is considered to be the minimum age of marriage for Muslim girls. Moreover, except for a Muslim woman of the Hanaffi sect, Muslim women are not required

> by law to sign at the registration of the marriage. The guardian of the woman signs on her behalf. The official marriage ceremony often takes place in the absence of the Muslim woman." (FOKUS WOMEN, April 2016, p. 21)

The non-profit association Sri Lanka Brief, an online news-site providing news and analysis on the human rights situation in Sri Lanka, provides the following information on child marriages in the Muslim community:

> "For over two decades, these concerns have been raised at multiple forums including with religious leaders and Muslim MPs, and are usually ignored on the basis that early marriage is not happening in the Muslim community. However, Muslim women's groups who have been working very closely at the community come across many cases of early marriage on a regular basis. High prevalence of early marriage has also been noted in districts such as Batticaloa, Puttalam and parts of Colombo. In some areas the number of early marriages have in fact increased from 2014 to 2015, and a look at the data on registration of Muslim marriages will reveal the facts and figures. In most cases of early marriage, young girls are removed from schools in order to be married. Thus, early marriage is also closely associated with a denial of educational opportunities and other social, economic and cultural rights. In addition, girls are more vulnerable as a result of their age, inexperience and lack of awareness to reproductive and health problems, gender-based violence, harassment within marriage, economic challenges in case of divorce, or non-maintenance by husbands." (Sri Lanka Brief, 31 March 2016)

4.5.3 Situation of children

Birth Registration

The US Department of State (USDOS) human rights report, covering the year 2015, notes that "[c]hildren obtain citizenship from their parents. Authorities generally registered births immediately, and failure to register resulted in denial of some public services, such as education" (USDOS, 13 April 2016, section 6). The Government of Sri Lanka notes in a state party report to the UN Committee on the Rights of the Child in 2016 that "[r]egistration of birth is compulsory in Sri Lanka. Birth certificates are issued upon registration in every district by the Registrar General's Department." The report further states that "[t]he number of children whose birth is not registered is nominal; the same applies for the registration of neo-natal, infant and child deaths." (Government of Sri Lanka, 8 June 2016, p. 20)

A query response by the Immigration and Refugee Board of Canada (IRB) provides further information on birth certificates and procedures of registration and is available via the following link:

- IRB - Immigration and Refugee Board of Canada: Sri Lanka: Birth certificates, including issuance procedures and appearance; the language(s) that appear on the certificates; circumstances under which a Ministry of Foreign Affairs stamp would appear on the certificate. [LKA105434.E], 2 March 2016 (available at ecoi.net)
  http://www.ecoi.net/local_link/321548/447135_en.html

Child labour

In its Freedom in the World 2016 report covering the year 2015, Freedom House notes that "[a]lthough the government has increased penalties for employing minors, thousands of children continue to work as household servants, and many face abuse" (Freedom House, 27 January 2016). The US Department of State (USDOS) Investment Climate Statement for 2016 notes that "[c]hild labor is prohibited and virtually nonexistent in the organized sectors, although child labor occurs in informal sectors" (USDOS, 5 July 2016, section 15). The USDOS human rights report provides the following information on child labour during the year 2015:

> "The Labor Ministry made some progress in implementing its plan to eliminate the worst forms of child labor by 2016. For example, it continued to hold awareness-raising programs for partner organizations in certain provinces and declared 'child labor free zones' in Ratnapura, Kegalle, and Ampara districts, as part of its declared commitment to eradicate child labor nationwide. The ministry cited lack of funds for the full implementation of the plan. [...]
>
> Agriculture was the largest sector employing child labor, both legally and illegally. Children worked both in plantations and in nonplantation agriculture during harvest periods. In addition to agriculture, children worked as street vendors, domestic helpers, and in the mining, construction, manufacturing, transport, and fishing industries. Children displaced by the war were especially vulnerable to employment in hazardous labor.
>
> Several thousands of children between ages 14 and 18 were employed in domestic service in urban households. Employers reportedly subjected child domestic workers to physical, sexual, and emotional abuse; observers also reported rural children in debt bondage in urban households. Child employment was also common in family enterprises, such as family farms, crafts, small trade establishments, restaurants, and repair shops. Criminals exploited children, especially boys, in prostitution in coastal areas as part of sex tourism." (USDOS, 13 April 2016, section 7c)

For further information on the sexual exploitation of children see section 4.5.2 of this compilation.

According to the same USDOS human rights report covering the year 2015, "[c]hildren between ages 14 and 18 and women working as live-in domestic workers in some homes were vulnerable to forced labor" (USDOS, 13 April 2016, section 7b). Similarly, the US Department of Labor (USDOL) writes in its 2015 Findings on the Worst Forms of Child Labor that "children ages 14 to 18 employed as domestic workers" are "vulnerable to exploitation". According to the same USDOL report, "[t]he Government's enforcement efforts also continued to be weak, particularly with regards to hazardous child labor", but that "[i]n 2015, Sri Lanka made a moderate advancement in efforts to eliminate the worst forms of child labor" (USDOL, 30 September 2016, summary). In its Trafficking in Persons Report 2016 report, the USDOS provides the following insights into issues arising from children's economic activities:

> "Children, individuals with physical deformities, and those from socially vulnerable groups are forced to beg or engage in criminal activity in Sri Lanka's largest cities. Some child

> domestic workers in Colombo, generally from the Tamil tea estate sector, are subjected to physical, sexual, and mental abuse, non-payment of wages, and restrictions of movement—indicators of labor trafficking." (USDOS, 30 June 2016)

In October 2015, the governmental news portal News.lk announced that "[t]he Ministry of National Policy and Economic Affairs has taken steps to conduct Child Activity Survey – 2015/16 through the Department of Census and Statistics". The same article notes that "Child Activity Surveys have been conducted in 1999 and 2008/2009 to collect information on child activities and child labour in Sri Lanka" (News.lk, 20 October 2015). In July 2016, the Sri Lanka Guardian, a non-profit web portal founded by journalists, activists, academics and retired civil servants, which features writers from around the world, published an article referring to a survey on child labour conducted by the Government of Sri Lanka, which reportedly provides the following data:

> "There are almost 100,000 child workers in Sri Lanka, with girls working mostly as domestic helper in towns and boys doing agricultural work in the villages. […] Schooling is a distant dream for many children, the survey by the Labour and Trade Union Relations Ministry shows, with 13.9 per cent of the child labour population being aged five to 14 years – the period when school attendance is compulsory.
>
> Most – 70.3 per cent – of 107,259 children from 20,000 households surveyed last year were in the age group of five to 16 years, working in 'elementary occupations' as street vendors and mobile vendors, street services, domestic helpers, agricultural and related labour workers, labourers engaged in mining, construction, manufacturing, transport and related workers. […]
>
> Three in every five child labourers are engaged in hazardous work, the survey stated. Employed children who work for more than 43 hours a week in any industry are considered to be engaged in hazardous forms of child labour. […] 'Last year, the Labour Department received 155 complaints with regard to child labour cases but there could be many other hidden cases,' a departmental spokesman said." (Sri Lanka Guardian, 3 July 2016)

The US Department of Labor (USDOL) report on the worst forms of child labour covering the year 2015 refers to data from Children's Work Project's analysis of statistics from Child Activity Survey, 2008–2009, noting that 9.2 per cent (302,865 children) of five to fourteen year olds are working and that 10.4 per cent of children between seven to fourteen years of age are combining work and school (USDOL, 30 September 2016, p. 1; see also ILO/IPEC, 1 August 2011).

The Child Activity Survey 2015-2016 was not published by the time of publication of this compilation.

Education

Covering the period from September 2010 to June 2016, the Government of Sri Lanka provides the following information on primary and secondary education in a state party report submitted to the UN Committee on the Rights of the Child (CRC):

> "155. Sri Lanka has a high primary education completion rate of 99.5 per cent. The primary enrolment rate is 98.26 per cent and the primary dropout rate is 0.23 per cent. The retention rate at Grade 5 is 98.5 per cent and the survival rate at Grade 9 is 97.8 per cent.
>
> 156. According to the information available, there are very few dropouts in secondary education. The secondary education enrolment rate is 98.5 per cent and the secondary education completion rate is also 98.5 per cent. The status of secondary school dropouts in rural areas will be studied further through in depth research and surveys.
>
> 157. Overall, the student-teacher ratio is 17:1, the literacy rate is 94.5 per cent, and the computer literacy rate is 38 per cent." (Government of Sri Lanka, 8 June 2016, pp. 41-42)

The US Department of Labor (USDOL) refers to statistics from the Child Activity Survey 2008–2009, noting that 97,8 per cent of five to fourteen year olds attend school (USDOL, 30 September 2016, p. 1). The UNESCO Institute for Statistics country page for Sri Lanka, which at the time of publication of this compilation provides data up to the year 2014, indicates that in 2014 a total of 46,806 children were out of school (Female: 31,010; Male: 15,796) (UNESCO, undated).

The UNESCO Country Programming Document for Sri Lanka 2013 – 2017, published in October 2013, summarises data on education in Sri Lanka. The Programming Document for Sri Lanka 2013 – 2017 notes that "[g]ender in Education Sri Lanka enjoys a high level of gender parity in education" (UNESCO, October 2013, p. 12). Referring to a World Bank study from 2007, the Programming Document also indicates that "[t]he difference in the enrolment rate of children in the poorest income quintile and the richest income quintile is said to be infinitesimal" (UNESCO, October 2013, p. 10). Based on the Millennium Development Goals country reports 2005 and 2009, the Programming Document further provides the following summary of issues to be addressed in primary education:

> "- Extreme poverty is still the main reason for non-participation of children at the primary stage.
> - Children are employed to supplement family income and the opportunity cost for education is very high among these groups.
> - There is no systematic programme to identify disabled children and enroll them in schools, and educational facilities for disabled children are inadequate. Inadequate resources are provided for primary classes.
> - Unequal distribution of teachers among different regions of the country has a negative impact on the education of children in the less developed and poorer regions.
> - Teacher absenteeism is significant.
> - The quality of textbooks is inadequate, and there are delays in distributing them.
> - The primary curriculum content is too heavy, resulting in cognitive stress for children.

- Many of the schools in rural areas and the north-east suffer from lack of basic infrastructure such as buildings, laboratories, libraries and educational equipment." (UNESCO, October 2013, p. 10)

In March 2016, the World Bank published a description of projects and operations concerning education in Sri Lanka, which contains the following information on challenges in this regard:

> "Sri Lanka has approximately 4 million school children with 215,000 teachers and around 10,000 schools. The main obstacle is that public investments in education were modest when compared to countries with similar income status. Education expenditure accounted for 1.9 percent of GDP, which was roughly 7.3 percent of the government budget in 2014. More education investments are needed to improve schools to meet the demands of the modern global economy. In addition, education for key skills for a knowledge hub, such as English language, ICT, science and mathematics, are limited and need to expand considerably. And lastly, there are wide regional disparities in the current education system." (The World Bank, 16 March 2016)

The USDOS human rights report underlined the following challenges in education for specific groups of children during the year 2015:

> "Authorities generally permitted children with disabilities to attend mainstream schools, but due to societal stigma against persons with disabilities, many parents of children with disabilities chose to keep their children out of school. [...]
>
> The Centre for Sex Workers' Rights claimed that public schools sometimes refused to enroll the children of commercial sex workers but did not provide estimates of the number of schools involved or children affected. [...]
>
> Displaced Children: Children in IDP welfare centers and relocation sites were exposed to the same difficult conditions as adult IDPs and returnees in these areas. Many school facilities were in poor condition and lacked basic supplies." (USDOS, 13 April 2016, section 6)

In a desk review on Violence against children in South Asia from April 2016, the United Nations Children's Fund (UNICEF) writes that "conflict-related VAC [Violence Against Children] in education settings" has been reported in Sri Lanka (UNICEF, April 2016, p. 9).

A report by the Global Initiative to End All Corporal Punishment of Children on corporal punishment in Sri Lanka, which was last updated in April 2016, summarises a study from 2013 in the following terms:

> "A study involving 194 parents living in Colombo found that 76.3% had physically punished their child in the past month by shaking them, hitting them on the bottom with an object or bare hand, slapping them, pinching them, pulling their ear or hair or hitting them on the head; 40.7% had kicked, choked, beaten, burned, threatened with a weapon, thrown, knocked down, punched or hit their child anywhere other than their bottom with an object in the past month. Nearly 90% had used psychological aggression such as threatening or insulting their child in the past month; nearly 80% had used nonviolent discipline strategies

such as explaining why something was wrong. When asked about their attitude to corporal punishment, 30% said they were completely against it and a similar number said they were completely for it. After taking part in a two-hour information and discussion session in which they were given information about the negative effects of corporal punishment on children and about alternative discipline strategies, the rates of psychological aggression and corporal punishment declined significantly." (Global Initiative to End All Corporal Punishment of Children, last updated April 2016, p. 7)

The above summarised study from 2013 was conducted by Piyanjali de Zoysa, a senior lecturer in clinical psychology at the University of Colombo can be accessed via the following link:

- De Zoysa, Piyanjali: A Study on Parental Disciplinary Practices and an Awareness Program to Reduce Corporal Punishment and Other Forms of Negative Parental Practices, 2013 (available at CPC Learning Network) http://www.cpcnetwork.org/wp-content/uploads/2014/04/Report-on-Corporal-Punishment.pdf

Recruitment of Children for Military Means

In a state party report submitted to the UN Committee on the Rights of the Child in 2016, the Government of Sri Lanka notes that "[t]he minimum age for voluntary recruitment in the armed forces is eighteen years and there are no provisions in the Sri Lankan law requiring compulsory conscription" (Government of Sri Lanka, 8 June 2016, p. 50). The USDOS human rights report covering the year 2015 refers to the OHCHR Investigation on Sri Lanka (OISL) which looked at developments in Sri Lanka between February 2002 and October 2011 and "documented extensive recruitment and use of children in armed conflict by the LTTE during many years". According to the OISL investigation there were also "reasonable grounds to believe that government security forces may have known that the Karuna group recruited children" and "OISL also noted the government's failure to prosecute those responsible, including individuals widely suspected of child recruitment, some of whom were later appointed to public positions" (USDOS, 13 April 2016, section 6). In June 2016, the NGO Association des étudiants tamouls de France refers to the arrest of former child soldiers in a written statement published by the UN Human Rights Council (HRC), noting that "[e]ven a child who had joined the LTTE when he was 13 years old was detained under the PTA twice and tortured" (Association des étudiants tamouls de France, 9 June 2016, p. 2).

No information could be found about current practices of child recruitment.

4.6 Persons of diverse sexual orientations or gender identities (SOGI)

4.6.1 Domestic legal framework

In a state party report from the Government of Sri Lanka, submitted to the Human Rights Committee (HRC) in September 2014, which features replies to a list of issues identified by the HRC, the following information is given concerning constitutional protection of persons of diverse sexual orientations or gender identities (SOGI):

> "Article 12 of the Constitution recognizes non-discrimination based on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds as a Fundamental Right. This measure protects persons from stigmatization and discrimination on the basis of sexual orientation and gender identities." (Government of Sri Lanka, 2 September 2014)

Following the publication of the report, the US-based NGO OutRight Action International noted in an article from October 2014, that "[l]ocal LGBT activists in Sri Lanka are generally pleased that their government has publicly acknowledged that it interprets Article 12 of the Constitution as also relevant for LGBT people". Referring to a report by the International Gay and Lesbian Human Rights Commission (IGLHRC), the same article from OutRight Action International also indicates, however, that "the Sri Lankan Constitution's lack of specific anti-discrimination language on sexual orientation and gender identity places LGBT people at a disadvantage in accessing rights, protections and legal guarantees" (OutRight Action International, 20 October 2014). In its annual report, covering the year 2015, Human Rights Watch (HRW) refers to the Government's statement, providing the following information:

> "In 2014, government officials told the United Nations Human Rights Committee that the Sri Lankan Constitution's equal protection clause 'protects persons from stigmatization and discrimination on the basis of sexual orientation and gender identities,' but neither the constitution nor any other law expressly prohibits discrimination on such grounds." (HRW, 29 January 2016)

In its Freedom in the World 2016 report, Freedom House mentions that "government officials have stated that LGBT people are constitutionally protected from discrimination". The same report states that "Sex 'against the order of nature' is a criminal offense, but cases are rarely prosecuted" (Freedom House, 27 January 2016). In a report from August 2016, Human Rights Watch (HRW) describes the constitutional and other legal protection for Persons of SOGI as follows:

> "Article 12 of Sri Lanka's constitution does in fact guarantee that 'all persons are equal before the law' and have the right to equal protection of the law. The grounds of protection stated in article 12 are 'race, religion, language, caste, sex, political opinion, place of birth or any such grounds.' But Sri Lanka's laws offer no specific protection from discrimination on the basis of gender identity or sexual orientation—even though the government has stated that article 12 includes sexual orientation and gender identity—and some laws, including sections 365 and 365A of the Penal Code, explicitly discriminate against some LGBTI people." (HRW, August 2016, p. 52)

According to a shadow report by the Sri Lanka Women's Group published by the Committee on the Elimination of all Forms of Discrimination against Women (CEDAW) in June 2016 the rights of the SOGI community are under discussion in the framework of constitutional reforms:

> "The Public Representations Committee on Constitutional Reforms recommended that the rights of the LGBTIQ community to equality, dignity and non-discrimination should be provided for in the new constitution and called for the inclusion of the terms sexual and

> gender orientations in the equality clause of the Constitution." (Sri Lanka Women's Group, 10 June 2016, pp. 5-6)

The Public Representations Committee on Constitutional Reform was appointed by the government of Sri Lanka in order to receive public representations on the constitutional reform process. In its report from May 2016, it is noted that "[r]epresentations to protect the rights of the LGBTIQ community came from many sources". According to the report, the Committee "felt it necessary to provide some input into initiating a dialogue on the rights and protection of this community as well as to recommend certain Constitutional protections." (Public Representations Committee on Constitutional Reform, May 2016, p. 112). Based on public input, the report discusses the "Rights of People with Diverse Sexual and Gender Identities" on pp. 112 to 114. It can be accessed via the following link:

- Public Representations Committee on Constitutional Reform: Report on Public Representations on Constitutional Reform, May 2016 http://www.yourconstitution.lk/PRCRpt/PRC_english_report-A4.pdf

In a report about discrimination on grounds of gender identity and sexual orientation in Sri Lanka from August 2016, Human Rights Watch (HRW) notes that Article 365 ("unnatural offence"), 365A ("Acts of gross indecency between persons"), 360A ("procreation") and 399 ("cheating by personation") of the Penal Code criminalise same-sex relations and gender non-conformity (HRW, August 2016, p. 14). These articles are summarised by HRW in the following terms:

> "Sri Lanka's Penal Code, a relic of British rule, dates to 1883. Section 365 punishes 'carnal intercourse against the order of nature' with imprisonment up to 10 years and a fine. Section 365A punishes 'any act of gross indecency' with imprisonment up to two years and a fine. These provisions are widely understood to criminalize consensual sex between same-sex partners. Section 365A originally criminalized same-sex relations between men; however, the provision was amended in 1995 after the law was criticized for being discriminatory on the basis of sex, so that now it covers same-sex relations between women as well as men. […]
>
> Although no laws specifically criminalize transgender or intersex people, the offense of 'cheat[ing] by personation' under section 399 of the Penal Code has been used to target transgender persons for arrest, based on the assumption that a transgender person taking measures to assume a gender identity that is different from the sex assigned at birth has the malicious intent of cheating others. […]
>
> Various provisions in the Vagrants' Ordinance and the 1885 Brothels Ordinance also criminalize sex work among consenting adults, while section 360A of the Penal Code prohibits 'procuring' any person to become 'a prostitute,' regardless of consent. A senior police officer affirmed in an interview with Human Rights Watch that police occasionally conduct raids to arrest women and men engaged in commercial sex work in public places. Trans women and other sexual and gender minorities, regardless of whether they are engaged in sex work, are often caught up in these raids." (HRW, August 2016, pp. 15-17)

The Sri Lankan Penal Code can be accessed via the following link:

- Penal Code, 1885 [An Ordinance to Provide a General Penal Code for Ceylon], amended as of 24 April 2006 (available at Refworld)
  http://www.refworld.org/docid/4c03e2af2.html

The US Department of State (USDOS) human rights report, covering the year 2016, also refers to the above-mentioned Vagrants Ordinance and Article 399 of the Penal Code:

> "UN human rights officials noted police used the Vagrancy Ordinance to target and harass transgender individuals on suspicion they were prostitutes. Police used Section 399 to harass persons who express themselves in gender nonconforming ways on grounds of 'impersonation.' Actual criminal prosecutions under these statues were rare, however." (USDOS, 13 April 2016, section 6)

In a shadow report to the UN Committee on the Elimination of all Forms of Discrimination against Women (CEDAW) from June 2016, the non-profit organisation Equal Ground, which promotes human and political rights for the LGBTIQ community of Sri Lanka, refers to the above mentioned Vagrants' Ordinance, summarising a report from the Women's Support Group in the following terms:

> "4.7 Similarly, Sri Lanka's Vagrancy Ordinance of 1842, which empowers authorities to detain people loitering in public, is often used to harass, arrest and detain individuals on the basis of their appearance (for example, 'masculine-looking' women who are perceived to be lesbians). Release from detention is often conditional upon payment of a bribe." (Equal Ground, June 2016 p. 7)

The August 2016 HRW report notes that transgender and gay men stated in interviews that "they were arrested under the Vagrants' Ordinance, a vague regulation dating to 1841 that prohibits soliciting or committing acts of 'gross indecency,' or being 'incorrigible rogues' procuring 'illicit or unnatural intercourse.'" (HRW, August 2016, p. 16; see also Vagrants Ordinance, 1841, amended as of 1978)

4.6.2 Overview of current issues regarding persons of diverse SOGI

In a report on discrimination on grounds of gender identity and sexual orientation from August 2016, Human Rights Watch (HRW) provides the following information on discrimination of persons of diverse SOGI:

> "The criminalization of consensual sex between same-sex partners and the misuse of penal laws to harass gender non-conforming individuals leaves LGBTI people vulnerable to abuses by government officials as well as ordinary people and poses a barrier to LGBTI people reporting abuses to police." (HRW, August 2016, p. 17)

The same report from August 2016 summarises societal attitudes towards people of diverse SOGI in the following terms:

> "For many Sri Lankans, attitudes toward gender non-conformity and homosexuality are shaped by social and cultural beliefs about how women and men should look and act, according to which a 'normal' sexual relationship is between a woman and man and

> homosexuality is an illness and 'foreign' import counter to national culture. 'I am totally against lesbian, gay, bisexual and transsexual rights. This is not the need of the human being,' said lawmaker Nalinda Jayatissa said in a media interview in December 2015, echoing widely held views. 'Same sex marriage is unnatural. It is against the evolution of the human being.' People who violate gender norms—not just trans people but lesbian and bisexual women who look 'masculine,' and gay and bisexual men deemed to be 'effeminate'—may be singled out for abuse and discrimination. Transgender and intersex people are often not considered to be 'real' men or women. Some said the manner in which they were treated, positively or negatively, depended on whether they looked 'convincing' as men or women. However, managing appearance to look more masculine or feminine does not necessarily protect from abuse." (HRW, August 2016, pp. 10 -11)

According to the Freedom House report Freedom in the World 2016, covering the year 2015, "LGBT (lesbian, gay, bisexual, and transgender) people face societal discrimination, occasional instances of violence, and some official harassment" (Freedom House, 27 January 2016). The US Department of State (USDOS) human rights report covering the year 2015 refers to reports of human rights organisation, noting that "while not actively arresting and prosecuting members of the LGBTI community, police harassed and extorted money or sexual favors from LGBTI individuals with impunity and assaulted gay men and lesbians in Colombo and other areas" (USDOS, 13 April 2016, section 6).

In its report on Gender Identity and Sexual Orientation published in August 2016, HRW researchers interviewed 61 LGBTI people between November 2015 and January 2016, including 19 transgender people of diverse sexual orientations from various ethnic groups (46 Sinhalese, 11 Tamil, and 4 Muslim, Burgher, Sinhalese/Tamil, and Sinhalese/Indian. The report notes that "LGBTI people arrested based on their gender expression, gender identity, or sexual orientation are typically detained without proper cause or evidence" and that "nearly two dozen of the LGBTI people whom Human Rights Watch interviewed said they had suffered sexual, physical, or severe verbal abuse by the Sri Lankan police" (HRW, August 2016, p. 30). The report also notes however that "[n]ot all encounters with police that LGBTI people reported to Human Rights Watch were negative. In some cases, individual police officers stepped in to protect people from abuse from private citizens and other police officers" (HRW, August 2016, p. 35). The consequences of police abused are described by HRW in the following terms:

> "Personal experiences of police abuse—or even hearing about abuses against others—may contribute to fear and distrust of police among LGBTI people. When that happens, LGBTI people become reluctant to report crimes to the police. As a result, those crimes—including hate crimes committed based on the perceived gender identity or sexual orientation of the victim—may go unreported and unaddressed. This contributes to a climate of impunity, in which private citizens believe that they can engage in homophobic or transphobic violence with no consequences." (HRW, August 2016, p. 34)

The Sri Lankan non-profit organisation Equal Ground describes in a submission to the UN Committee on the Elimination of all Forms of Discrimination against Women (CEDAW) from June 2016 that "[t]here have been a number of reports, by both individuals and NGOs, of

institutional discrimination against lesbians and bisexual women within the Sri Lankan police" (Equal Ground, June 2016, p. 6).

The US Department of State (USDOS) human rights report also states that during the year 2015 "discrimination against LGBTI persons remained a problem" (USDOS, 13 April 2016, section 6), providing the following information:

> "There were reports that persons undergoing gender-reassignment procedures had difficulty amending government-issued identity documents to reflect those changes, hindering their ability to procure employment, and obtain housing. […] Furthermore, the process of obtaining identity documents was not just procedural but required a court order and judge's ruling. […] A civil society group that worked to advance LGBTI rights reported close monitoring by security and intelligence forces." (USDOS, 13 April 2016, section 6)

Difficulties to register and amendment documents is described by HRW in August 2016 in the following terms:

> "Under the laws of Sri Lanka, individuals are considered to be the gender (male or female) registered on their birth certificates. The national identity card (compulsory for all Sri Lankan citizens 16 and older) and passport are issued based on the birth certificate. Such documents are needed to access employment, education, housing, international travel, and public and private services, such as obtaining a driver's licence or bank account. Transgender people whose appearance does not match the expectations of others face curiosity about their gender identity as it is. But when transgender people carry documents that list a sex or gender that does not match their identity or appearance, their documents trigger additional scrutiny and pose obstacles navigating everyday life." (HRW, August 2016, p. 18)

The HRW report from August 2016 also outlines that "[w]hile it is not impossible to change one's legal gender in Sri Lanka, there is no clear and simple procedure" (HRW, August 2016, p. 21). According to HRW, transgender people who were actually able to change their birth certificates successfully, were not provided with a new certificate by the Registrar General's Department, but "[i]nstead, it amended their birth certificates in such a way that made it obvious that the original gender designation had been changed" (HRW, August 2016, p. 26). Consequently, "[t]ransgender people reported to Human Rights Watch that they struggle to find stable employment—often because, as discussed earlier, their official documents do not reflect the gender with which they identify" (HRW, August 2016, p. 48). The Sri Lankan non-profit organisation Equal Ground also reports in a shadow report to UN CEDAW from June 2016 that "[n]on-heterosexual sexual orientation is not readily accepted or recognised in the Sri Lankan workplace, making it extremely difficult for individuals to express their sexual identity without fear of abuse or persecution" (Equal Ground, June 2016, p. 11).

The HRW report published in August 2016 also reports of difficulties in finding accommodation, which are described in the following terms:

> "In Sri Lanka, it is common and even widely socially expected for adults, especially women, to live with parents until they marry. LGBTI people who seek to move out, or whose parents

> force them to leave because of their gender identity or sexual orientation, often struggle to find a place to live. Their situation becomes more difficult when they face discrimination because their identity or appearance does not match the expectations of others." (HRW, August 2016, p. 49)

Considering (forced) marriage of LGBTI persons, the shadow report from Equal Ground published by CEDAW in June 2016, provides the following information:

> "4.24 Sri Lankan law does not protect LGBTI individuals from being forced into heterosexual marriages. Lesbian and bisexual women's sexuality is generally not recognised by their families, and they are expected to marry men. Individuals are often coerced and threatened, and this has a significant impact on their wellbeing." (Equal Ground, June 2016, p. 10)

In terms of access to health care, the August 2016 HRW report cites a Colombo psychiatrist who "sensed a greater openness from the Ministry of Health about addressing transgender health issues with the change of Sri Lankan government in January 2015" (HRW, August 2016, p. 40). The same report does however also point out the following challenges in accessing health care:

> "Transgender people, in particular, told Human Rights Watch that medical professionals in Sri Lanka tend to consider them as mentally ill. They reported that very few doctors address transgender health issues such as access to hormones or sex reassignment surgery, and most of them are in large cities, like Colombo and Kandy. Identifying a doctor who is able and willing to work with transgender people is a significant barrier to health, some said." (HRW, August 2016, p. 39)

4.7 Freedom of Movement

4.7.1 Domestic legal framework

The Constitution stipulates that "[e]very citizen is entitled to – […] (h) the freedom of movement and of choosing his residence within Sri Lanka; and (i) the freedom to return to Sri Lanka" (Constitution, amended as of 15 May 2015, Article 14(1)).

In a report from October 2014, Amnesty International (AI) notes that the freedom of movement can be restricted through the Prevention of Terrorism Act (PTA) and summarises the relevant provisions as follows:

> "Under Section 9(1) of the PTA, people can be arrested without charge and detained for up to 18 months under a detention order issued by the Minister of Defence while police investigate the possibility of their involvement in illegal activity. After release, the Defence Minister can issue additional orders restricting an individual's freedom of movement, association and expression (such as restricting travel or place of residence, prohibiting his or her involvement in organizations or associations, or preventing the individual from addressing public meetings).These orders cannot be challenged in court. Section 10 of the PTA states specifically that 'an order made under section 9 shall be final and shall not be

called in question in any court or tribunal by way of writ or otherwise.'" (AI, 7 October 2014, p. 35)

The above described provision are outlined in Articles 9 to 11 of the Prevention of Terrorism Act (PTA), which can be accessed via the following link:

- Prevention of Terrorism Act (Temporary Provisions), 1979 [An Act to Make Temporary Provision for the Prevention of Acts of Terrorism in Sri Lanka [...]] (amended as of 15 July 1988) (available at Refworld)
  http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=printdoc&docid=4561dac84

In a state party report submitted to the UN Committee on the Elimination of Racial Discrimination (CERD) from December 2015, the Government of Sri Lanka refers to the right to freedom of movement noting that "[e]very citizen is entitled to obtain a passport according to law for purposes of travel outside the country. [...] Freedom to return to the country has been further facilitated by the implementation of regulations pertaining to the granting of dual citizenship" (Government of Sri Lanka, 7 December 2015, p. 14).

The USDOS human rights report covering the year 2015 provides the following information on the legal context of High Security Zones that restrict the accessibility of property for their owners:

> "According to the 1950 Land Acquisition Act, the government may acquire private property for a 'public purpose', but the law requires posting acquisition notices publicly and providing proper compensation to owners. The former government frequently posted acquisition notices for HSZ [High Security Zone] land that were inaccessible to property owners, many of whom initiated court cases, including fundamental rights cases before the Supreme Court, to challenge these acquisitions. According to the acquisition notices, most of the land acquired was for use as army camps and bases, but among the purposes listed on certain notices were the establishment of a hotel, a factory, and a farm. Throughout the year, many lawsuits, including a Supreme Court fundamental rights case and numerous writ applications filed with High Courts, remained stalled. Although there was no legal framework for HSZs following the lapse of emergency regulations in 2011, they still existed and remained off-limits to civilians." (USDOS, 13 April 2016, section 1e)

The Land Acquisition Act, as amended in 1979 (but not including the last amendment from 1986) can be accessed via the following link:

- Land Acquisition Act, 1950 [An Act to Make Provision for the Acquisition of Lands and Servitudes for Public Purposes and to Provide for Matters Connected with or Incidental to such Provision], amended as of 1979 (available at faolex.fao.org)
  http://faolex.fao.org/docs/pdf/srl13617.pdf

4.7.2 Imposition of movement restrictions for certain groups and in certain areas

Freedom House states in its Freedom in the World 2016 report covering the year 2015, that "[f]reedom of movement is restricted by security checkpoints, particularly in the north." (Freedom House, 27 January 2016). In 2014, the Sri Lanka Advocacy (SLA), a non-profit network of NGOs based in Germany, which aims to raise international awareness about the human

rights situation in Sri Lanka, reports in a submission to the UN Human Rights Committee (HRC), that "[i]n December 2007, the Supreme Court ordered to dismantle all permanent security checkpoints as they are running against the right to freedom of movement but most of the permanent checkpoints continued to operate" (Sri Lanka Advocacy, 2014). Reporting about the year 2015, the British Foreign and Commonwealth Office (FCO) notes in its Human Rights and Democracy Report that "[r]eversing the downward trend of recent years", among other improvements, "the government of Sri Lanka took positive steps to improve […] freedom of movement" (FCO, 21 April 2016). The USDOS human rights report covering the year 2015 states that "[a]ccess was limited on and near most military bases and HSZs [High Security Zones]. Residents, particularly in the Northern Province, had difficulty traveling and obtaining access to agricultural lands and fishing zones in these areas" (USDOS, 13 April 2016, section 2d). The same report provides the following information on the closure of a major military checkpoint in August 2015:

> "On August 29, military spokesperson Brigadier General Jayanath Jayaweera reported to media that the long-standing Omanthai military checkpoint in Vavuniya on the A9 highway to Jaffna was officially closed. That checkpoint had played a significant role in controlling ingress into government-held territory during the war. Following a relaxation of security measures at the checkpoint beginning in February, heavy vehicles continued to be inspected regularly, but passenger vehicles only intermittently. Security forces continued to register all vehicles until the August 20 closure of the checkpoint." (USDOS, 13 April 2016, section 2d)

In April 2016, the People for Equality and Relief in Lanka (PEARL), a non-profit organisation registered in the US, which describes itself as "organization led by human rights activists concerned about the situation in Sri Lanka", published a report on accountability and militarisation. Referring to an interview taken by PEARL and an article in the current affairs magazine The Diplomat, PEARL notes that "[o]ne noticeable difference in the past year is that military checkpoints have been reduced, and troops largely remain in their barracks in sprawling High Security Zones (HSZ), most established during the war and some after its end." (PEARL, 20 April 2016, p. 12). The above mentioned article in the Tokyo-based current affairs magazine The Diplomat was published in February 2016 and is based on an interview with Sri Lankan journalist Shalin Uthayarasa. The article notes that "[i]n the Northern Province, community members have been speaking up more, as there is more space to publicly criticize the government. There's also been modest progress regarding freedom of movement and the military's intervention into civilian life." (The Diplomat, 18 February 2016)

On its informational webpage about Passports & International Travel, the USDOS Bureau of Consular Affairs provides information about safety and security in Sri Lanka, which was last updated in July 2016. It is noted that "[t]he Sri Lankan military continues to maintain a significant presence in the north. The system of military roadblocks and checkpoints has largely been dismantled except in the vicinity of military installations and assets known as 'high security zones (HSZ)" (USDOS Bureau of Consular Affairs, last updated 26 July 2016).

The US-based non-profit organisation People for Equality and Relief in Lanka (PEARL) also refers to HSZs and their impact on the freedom of movement:

> "The military presence in the North-East is preventing large sections of the population from accessing work and livelihood opportunities, particularly fishing and farming, given the extensive spread of HSZs which enclose vast tracts of private lands captured during military operations and/or forcibly appropriated with state authority." (PEARL, 20 April 2016, p. 15)

In 2014, the Colombo-based human rights documentation centre INFORM provides the following information on movement restriction for certain groups of people:

> "Freedom of movement was curtailed against those who were considered as persons who could pass critical comments against the government. On two separate occasions, a wife and a mother of a Tamil man, who was killed for allegedly being involved in attempting to revive the Liberation Tigers of Tamil Eelam (LTTE), were prevented from going abroad, although they possessed valid visas and had no formal court orders restricting overseas travel. Foreign passport holders were barred from travelling to most parts of the war-ravaged Northern Province without permission of the Ministry of Defense, and a UN official was turned back when going for an event related to the World Food Day." (INFORM, October 2014, p. 3)

In a report from October 2014, Amnesty International notes that "[p]ersistent surveillance, intimidation and monitoring of former LTTE members by the security forces continues to restrict their freedom of movement and association" (AI, 7 October 2014). Among the sources consulted, no information of movement restrictions specifically targeting former LTTE members could be found during 2015 and 2016. For further information on the treatment of people associated with or perceived to be supporters of the LTTE see section 2.2.3 of this compilation.

In January 2015, the official government news portal of Sri Lanka, News.lk, states that "Sri Lanka lifted the travel restriction for foreign passport holders to the former war zone in the North" (News.lk, 17 January 2015). The USDOS human rights report covering the year 2015 also reports that "[i]n January the president lifted the travel ban to the north imposed on foreign passport holders introduced by the former government's Ministry of Defense in October 2014" (USDOS, 13 April 2016, section 2d).

The same report provides the following information on travel restrictions of human rights activists:

> "The Attorney General's Department and police Terrorism Investigation Division kept open an investigation against prominent human rights activist Ruki Fernando. The activist remained under a gag order, and his confiscated communications equipment had not been returned by year's end. On June 30, a 15-month travel restriction was lifted, but he was unable to travel freely before August 26.
>
> An overseas travel ban on human rights activist Balendran Jeyakumari [...] was imposed for an indefinite period." (USDOS, 13 April 2016, section 2d)

For further information on the treatment of human rights defenders, see section 4.3.3 of this compilation.

Looking at the government's actions in relation to exile, the USDOS human rights report covering the year 2015 notes that "[t]he government did not expel citizens from one part of the country to another, nor did it forcibly exile any citizens abroad. It allowed citizens under threat from the government to leave the country through self-exile, unless they were charged with criminal or civil violations." (USDOS, 13 April 2016, section 2d). The same report notes that "[t]he government also invited exiled journalists to return to the country" (USDOS, 13 April 2016, section 2a).

In its Freedom of the Press report covering the year 2015, Freedom House notes that "[f]reedom of movement for journalists, including foreign journalists, improved somewhat during the year" (Freedom House, April 2016). For further information on the treatment of journalists see section 4.3.4 of this compilation.

4.7.3 Treatment of persons returning from abroad (regarding freedom of movement)

In August 2016, the UK Home Office published Country Information and Guidance on Tamil separatism, which contains a July 2014 letter from the British High Commission (BHC) in Colombo describing the airport immigration control procedure on arrival in Sri Lanka as follows:

> "Passengers seeking entry to Sri Lanka must present themselves to an immigration officer and are required to hand over their passport and (if a foreign national) arrival card. […] Each immigration officer's desk has a terminal connected to the DIE [Department of Immigration and Emigration] Border Control System. This system […] is not linked to any police or military database; however, there is an alert list containing information relating to court orders, warrants of arrest, jumping bail, escaping from detention, as well as information from Interpol and the State Intelligence Service (SIS) computer system. […] Passengers may be detained for further questioning by DIE and/or the Criminal Investigation Department (CID) and/or the State Intelligence Service (SIS) and/or the Terrorist Investigation Department (TID)." (UK Home Office, August 2016, pp. 49-50)

The same UK Home Office report cites another letter from the BHC in Colombo from July 2014, which was written after the UN Security Council proscribed 16 Tamil Diaspora organisations. According to the letter, the BHC Colombo has "consulted the Ministry of External Affairs (MEA), the Department of Immigration and Emigration (DIE), the State Intelligence Service (SIS) and an international Non-Government Organisation (NGO) who specialise in migration", which stated that arrests of returnees have not taken place due to the association with any of the proscribed groups, with the NGO stating that it wasn't aware of any such arrests (UK Home Office, August 2016, p. 36). The Department of Immigration and Emigration (DIE) further provides the following information:

> "The spokesperson from the DIE stated that returnees may be questioned on arrival by immigration, CID [Criminal Investigation Department], SIS [State Intelligence Service] and TID [Terrorism Investigation Division]. They may be questioned about what they have been doing whilst out of Sri Lanka, including whether they have been involved with one of the Tamil Diaspora groups. He said that it was normal practice for returnees to be asked about

> their activities in the country they were returning from." (UK Home Office, August 2016, p. 37)

According to the annual Human Rights Watch (HRW) report covering the year 2014 "[t]he government's treatment of Tamils forcibly returned to Sri Lanka after being denied asylum overseas continues to be a significant concern" (HRW, 29 January 2015). Reporting about the year 2015, HRW states in its annual report that "[t]he law [the Prevention of Terrorism Act, PTA] has been used since the end of the war, including under the present government, to detain and torture people suspected of links to the LTTE, including forcibly returned asylum seekers" (HRW, 27 January 2016).

In a query response from July 2015, the Norwegian Country of Origin Information Centre Landinfo provides the following English summary on the situation of returnees:

> "Since the end of the military conflict in 2009, reports have been published about Tamils in the UK who have allegedly been tortured upon return to Sri Lanka. Media have also reported arrests of returnees at the airport in Colombo. Landinfo has not received any information that Tamils returning to Sri Lanka from Norway have been exposed to particular security arrangements or experienced physical violence." (Landinfo, 3 July 2015 p. 3)

In its key findings, the above-mentioned report published by Freedom from Torture in August 2015 refers to the Tamil diaspora (in the UK) and the possibility of facing torture upon return to Sri Lanka due to possible connections with the LTTE:

> "The Sri Lankan authorities take a strong interest in the activities of the Tamil diaspora in the UK and many returning to Sri Lanka with a real or perceived past connection to the LTTE, at whatever level and whether directly and/or through a family member or acquaintance, have been tortured and interrogated about their activities and contacts in the UK." (Freedom from Torture, 13 August 2015, p. 9)

> "It is a striking feature of this study that more than one third of the people whose cases we reviewed were detained and tortured since the end of the conflict in 2009 after return from the UK (55 of 148 cases or 37%)."(Freedom from Torture, 13 August 2015, p. 23)

In June 2016, the Human Rights Council (HRC) notes in a report promoting reconciliation, accountability and human rights in Sri Lanka that "[s]ome groups have also reported cases of torture and sexual abuse of Tamils returning to Sri Lanka from abroad who are suspected of LTTE involvement" (HRC, 28 June 2016, p. 5).

Also in June 2016, the British newspaper The Guardian reports about a British Tamil man who has lived in the UK for 16 years. When he returned to Sri Lanka he was reportedly detained and tortured. According to the man's family, "two men arrived on motorbikes, beat him up in front of his mother and older sister and then bundled him into a van. He was then taken to Jaffna prison". The article states that he was charged with assault, but his "family believe the real reason why he was arrested and detained is that he was previously involved with LTTE" (The Guardian, 11 June 2016).

In May 2016, The Guardian reports about the arrest of Tamils upon their return to Sri Lanka, providing the following information:

> "The 12 Sri Lankan asylum seekers deported from Australia's Cocos Islands have been arrested and taken into police custody in Colombo. […] The group was taken from the airport directly into the custody of the criminal investigation department of the Sri Lanka police. […] Lakshman Soysa, an immigration and emigration media spokesman, told the Daily Mirror in Sri Lanka that all of the deportees had been arrested on arrival and handed over to the Criminal Investigation Department. Typically, asylum seekers who are returned to Sri Lanka are held in police custody or Negombo prison. They face a magistrate's court and are usually fined for the offence of illegally leaving the country. Some spend weeks, or even months in jail, and the fines can be up to 100,000 rupees ($A930)." (The Guardian, 7 May 2016)

A fine is also mentioned in an article of the Integrated Regional Information Network (IRIN) from February 2016 about asylum seekers who are returned to Sri Lanka. The article notes that "[m]any returnees face crippling debt after spending large sums to pay for the journey, and they can be fined 100,000 rupees ($700) for attempting to emigrate illegally" (IRIN, 18 February 2016).

In November 2015, the UN High Commissioner for Refugees (UNHCR) published a report with results of household visit protection monitoring interviews taken during 2014, which looks at the experiences of refugee returnees (not IDP returnees or failed asylum-seekers). The report notes that "[a]lthough the sample size (145 households) is relatively limited, it represents a significant proportion (50%) of all 2014 returnee households and reaches all Districts with significant refugee return" (UNHCR, November 2015, p. 3). The report notes that it attempts to gather data "regarding the close surveillance of civilians in the North and East by security or intelligence personnel, including repeated visits to homes" (UNHCR, November 2015, p. 3). The following results were published for the year 2014:

> "- Except one family, all the returnees (99%) have registered with the local governmental (DS [Divisional Secretary Division] or GN [Grama Niladhari Division]) authorities at the time of the Tool Two survey. […]
>
> - 54% (69% in 2013) of respondents stated that persons other than local DS/GN authorities, such as the military, police and NGOs, had visited their residence at least once (Figure B.1). Mainly CID/TID (38%), military (37%) and Police (22%) have visited them (Figure B.2). In most of these cases, such visits were for additional 'registration' requirements.
>
> - 41% (55% in 2013) of respondents stated that their residence was visited by other individuals or groups for interviews other than for registration purposes (Figure B.3). The majority (85%) of these visits were conducted by the military (35%) and police (50%) (Figure B.4)." (UNHCR, November 2015, p. 11)

4.7.4 Situation of internally displaced persons (IDPs) (regarding freedom of movement)

In October 2016, the UN Committee on the Elimination of Racial Discrimination (CERD) voices concerns about the situation of internally displaced persons in its concluding observations on the combined tenth to seventeenth periodic reports of Sri Lanka:

> "25. The Committee is concerned by the situation of internally displaced persons, a majority of whom belong to the Tamil, Moor and Muslim ethnic and ethno-religious minority groups, who continue to remain displaced and face challenging living conditions in camps and delays in reintegration into society. Once reintegrated, those communities also face challenges in access to basic services, employment and adequate housing. The Committee notes efforts by the State party to demine and release land, but is concerned by reports that land is also still being held by the military in the North and East." (CERD, 6 October 2016, p. 6)

The Ministry of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs of Sri Lanka reports at it website that the total number of IDPs to be resettled as at 31 August 2016 was 43,607 (Ministry of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs, undated). In July 2015, the Internal Displacement Monitoring Centre (IDMC) published a discussion paper on protracted displacement in Sri Lanka, which notes that "up to 73,700 people remain internally displaced in the country's Northern and Eastern Provinces. The overwhelming majority belong to the Tamil and Muslim minorities" (IDMC, 1 July 2015, p. 1). It further provides the following information on displacement:

> "People currently still displaced in Jaffna, Puttalam and Mannar, who together make up two thirds of all current IDPs, have been displaced for 25 years or more. Most remained displaced for the whole period. Some in Puttalam and Mannar were able to return after the 2002 ceasefire, only to be displaced again in 2006 (Puttalam) or 2007 (Mannar)." (IDMC, 1 July 2015, p. 4)

Covering the year 2015, the US Department of State (USDOS) human rights report describes the number of IDPs and their freedom of movement in the following terms:

> "According to the government's Ministry of Resettlement, Rehabilitation, Hindu Religious Affairs, and Prison Reforms, 44,934 citizens remained IDPs as of May. Conversely, the International Office of Migration placed the number of IDPs at 90,000. The large majority resided in Jaffna, Kilinochchi, Puttalam, and Trincomalee districts in the north and east. While all IDPs had full freedom of movement, most were unable to return to their lands of origin due to uncleared land mines; restrictions designating their home areas as part of HSZs [High Security Zones] or exclusive economic zones; lack of opportunities to earn a livelihood; inability to access basic public services, including acquiring documents verifying land ownership; and lack of government resolution of competing land claims and other war-related destruction. [….] Among the long-term, protracted displaced were nearly 30,000 individuals displaced by HSZs or exclusive economic zones, persons living in welfare centers in the Jaffna area, persons living with host families, and others in transit camps in Trincomalee." (USDOS, 13 April 2016, section 2d)

In its discussion paper from July 2015, the IDMC notes that "[m]any IDPs who have lost access to all or some of their agricultural land and fishing grounds as a result of their displacement depend on irregular daily labour" (IDMC, 1 July 2015, p. 5). The Society of Threatened Peoples (STP), an international human rights organisation that supports minorities and indigenous peoples, published a report about local communities and militarization on the Jaffna Peninsula in October 2016, stating that "[i]n some resettlement areas, access to arable land and fishing resources is denied" (STP, October 2016, p. 46). Looking at the former high security zone Palaly Cantonment, the report states that "[d]ue to the ongoing military occupation of land in the Palaly Cantonment local fishers and farmers have no access to land and sea in that area. More than 25 years ago the former inhabitants were displaced by the military" (STP, October 2016, p. 22).

In August 2016, the Cabinet approved a National Policy on Durable Solutions for Conflict-Affected Displacement (Office of the Cabinet of Ministers, Sri Lanka, 16 August 2016). The policy can be accessed via the following link:

- National Policy on Durable Solutions for Conflict-Affected Displacement, 16 August 2016 (published by Ministry of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs)
  http://resettlementmin.gov.lk/site/images/stories/pdf/final%20policy.pdf

Land-related issues

The USDOS human rights report covering the year 2015 states that "[u]nder the Rajapaksa administration, the military seized significant amounts of land during the war to create security buffer zones around military bases and other high-value targets, known as HSZs [High Security Zones]" (USDOS, 13 April 2016, section 1e). The same report provides the following information on issues related to landownership:

> "Land ownership disputes between private individuals in former war zones, as well as between citizens and government entities such as the military continued during the year, although some former residents returned to areas abandoned many years before. Multiple displacements occurred in the northern and eastern areas during the many years of war, and land often changed hands several times. Documentation of land claims was difficult for a number of reasons. Many persons displaced multiple times were not able to preserve original land deeds, and intense fighting between government and LTTE troops damaged or destroyed some official government land records." (USDOS, 13 April 2016, section 1e)

The international non-profit, non-governmental human rights organization International Movement Against All Forms of Discrimination and Racism (IMADR) notes that "[l]and has been a highly politicized and ethicized issue in Sri Lanka since independence." (IMADR, July 2016, p.5). Freedom House provides the following information on access to land and settlement of ethnic Sinhalese in its Freedom in the World 2016 report covering the year 2015:

> "Following the end of the Sri Lankan Civil War in 2009, the traditionally Tamil areas of the north and east have seen a heightened military presence. The Rajapaksa government encouraged settlement by ethnic Sinhalese civilians by providing land certificates, housing,

> and other infrastructure with the aim of diluting Tamil dominance in these areas. While such policies have ended under the new government, and some land has been released, displacement of Tamil civilians remains a concern, and a significant amount of land - 44,000 acres - is still under military control." (Freedom House, 27 January 2016)

Looking at Northern Sri Lanka, a report from November 2015 by The Maatram Foundation, which is available at Journalists for Democracy in Sri Lanka (JDS), an organisation founded by journalists, writers and human rights defenders living in exile, provides the following estimates on the amount of land appropriated by the military in this region:

> "It is difficult to be accurate about the extent of military occupation of private land and state land for obvious reasons in that collection of data might lead to security problems. […] In a debate held on the 10th of October 2014 at the Northern Provincial Council members provided statistics from three districts which suggested that more than 67,000 acres of land had been taken over for use by the military in the districts of Jaffna, Mullaithivu and Mannar. In Jaffna according to NPC statistics 10, 919 acres, in Mullaithivu 34,362 acres and Mannar 22,247 acres have been taken over for military use. It was stressed that this was only a conservative estimate and that the figure could be more than reported." (The Maatram Foundation, November 2015, p. 6)

Summarising findings from the above referenced report of The Maatram Foundation as well as from the Sri Lankan Centre for Policy Alternatives (CPA), the US-based non-profit human rights organisation People for Equality and Relief in Lanka (PEARL) argues that "[t]here has been significant international attention on three main areas of illegal land acquisition: Valikamam North in Jaffna; Keppapilavu in Mullaitivu; and Mullikulum in Mannar", but "it should be noted that illegal land acquisition by the military has also occurred on a far more systemic and historical basis throughout the North-East." (PEARL, 20 April 2016, p. 28)

The USA-based policy think tank Oakland Institute published a report on land conflicts and displacement in Sri Lanka for the period between December 2014 and January 2015, which describes the HSZ in the following terms:

> "Sri Lanka's army still occupies 'high security zones' in the North and East of the country. […] This military occupation is not about ensuring security. The army has expanded non-military activities and is engaged in large-scale property development, construction projects, and business ventures such as travel agencies, farming, holiday resorts, restaurants, and innumerable cafes that dot the highways in the Northern and Eastern Provinces. The army officially runs luxury resorts and golf courses that have been erected on land seized from now–internally displaced peoples." (The Oakland Institute, 2015, p. 3)

In a discussion paper on protracted displacement from July 2015, the IDMC notes that "[i]n the more than five and a half years since the end of the war in May 2009, crucial opportunities to create conditions for durable solutions for IDPs were lost as a result of the previous government's preoccupation with large-scale and prestigious development projects" (IDMC, 1 July 2015, p. 3). The same paper also outlines however, that "[t]he election of a new Sri Lankan government in January 2015 has brought about a new openness in terms of political debate, including around issues key to resolving protracted displacement and promoting durable

solutions for IDPs" (IDMC, 1 July 2015, p. 1). Summarising newspaper and UN sources from 2014 and 2015 however, it states that "[a]ssistance or compensation for destroyed housing has not yet been forthcoming" and "[m]any IDPs have been deterred from going to court to contest state acquisition of their land for fear of intimidation by agents of the state" (IDMC, 1 July 2015, p. 5). The discussion paper further provides the following information:

> "Displaced owners have not been receiving rent from the military, and their protracted displacement is continuing. IDPs thus trapped in poverty include the up to 8,200 IDPs living in slum-like conditions in camps in the Northern and Eastern Provinces and many living with host communities. Assistance to camps has dwindled in recent years. In Jaffna, the owners of land on which some of the camps are located want their land back and IDPs are faced with the threat of forced eviction." (IDMC, 1 July 2015, pp. 5-6)

In its Freedom in the World 2016 report covering the year 2015, Freedom House states that "[t]he Sirisena administration, however, has released some military-held land for resettlement by displaced civilians. There have been few official attempts to help Muslims forcibly ejected from the north by the LTTE in the early 1990s to return to their homes" (Freedom House, 27 January 2016). In its report on the militarization on the Jaffna Peninsula, the Society of Threatened Peoples (STP) refers to a talk of its research team with a Development Officer of the Jaffna District Secretariat on August 2016, stating that resettlement process is very slow and that "[t]he problem is that the military only releases occupied land step by step. The military does not want to release the land because they run farms and hotels in these areas" (STP, October 2016, p. 40). In October 2016, the UN Committee on the Elimination of Racial Discrimination (CERD) states in its concluding observations on the combined tenth to seventeenth periodic reports of Sri Lanka, that "[t]he Committee notes efforts by the State party to demine and release land, but is concerned by reports that land is also still being held by the military in the North and East" (CERD, 6 October 2016, p. 6). In a June 2016 report from the UN Human Rights Council (HRC), the HRC provides the following assessment on release of land by the government:

> "13. The Government has also not moved fast enough with other tangible measures that would help to build confidence among victims and minority communities. In 2015, the Government made initial progress in the identification and release of civilian land in the North and East still held by the military, with 3,136 acres returned to some 2,200 families. In 2016, the Armed forces have reportedly released further 2,652 acres, mostly in Jaffna and Mannar areas. During his visit, the High Commissioner was told of some of the complexities being encountered in the release of land and relocating structures built by the military, but he was assured a new task force was expected to complete the process by June. Since then, little progress has been reported and civilian leaders and officials seem to be struggling to secure cooperation from the military. Reports continue of military engagement in commercial activities, including farming and tourism. During his visit to displaced communities in Jaffna, the High Commissioner observed that the lack of transparency and information is feeding new levels of frustration and disenchantment. As one IDP camp resident in Jaffna told him: 'We have good governance now, but we just want to go home.'" (HRC, 28 June 2016, pp. 4-5)

In August 2016, the Ministry of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs published a National Policy on Durable Solutions for Conflict-Affected Displacement. The policy calls for mapping of "all land that is or was owned, claimed or used by civilians and is currently occupied by any of the three security forces" and states that "[a]ll such lands, particularly private land, should be released and returned to civilian use and ownership urgently, unless the State determines that it is required for public purpose" (National Policy on Durable Solutions for Conflict-Affected Displacement, 16 August 2016, p. 20). According to the policy "[t]his also means, inter alia, releasing land that is being used by the military for purposes not related to security including but not limited to agricultural production, tourist enterprises, or recreation" (National Policy on Durable Solutions for Conflict-Affected Displacement, 16 August 2016, p. 20). In September 2016, the IDMC published a blog post by Laurie S. Wiseberg, an expert working with IDPs, and Mirak Raheem, an independent researcher, who worked as a consultant for the development of the above described policy, which provides the following information:

> "The challenge, of course, is implementation. Sri Lanka is currently at a critical juncture where the issue of conflict-affected displacement can be addressed and resolved. […] The implementation of the policy is to be monitored by a committee within the Ministry which is to report regularly to an Inter-Ministerial Committee on Resettlement and the National Policy Committee chaired by the President. The Ministry is also to ensure that there are grievance mechanisms established at the district and central levels to hear, decide and take steps to resolve complaints filed by IDPs, refugee returnees and other persons of concern under this policy." (IDMC, 2 September 2016)

Section 2.2.8 (forced displacement) of this compilation provides further information on Internally Displaced Persons in the context of issues surrounding security forces and the military (IDPs).

4.8 Trafficking of persons (internal and external)

The USDOS Trafficking in Persons Report 2016 notes that "Article 360(c) of the penal code prohibits all forms of trafficking, although the law also covers non-trafficking offenses, such as selling children". Trafficking is punished with "up to 20 years' imprisonment, which are sufficiently stringent and commensurate with those prescribed for other serious offenses, such as rape" (USDOS, 30 June 2016; see also Penal Code, 1885, amended as of 24 April 2006).

Roar, a Sri Lankan new media platform which "seeks to bridge gaps between mainstream media and local audiences", notes that "[a] National Task Force on Human Trafficking has also been set up in partnership with the International Organization for Migration to support successful prosecutions and protect victims" (Roar, 4 December 2016). In a report submitted under the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in May 2016, the Government of Sri Lanka also notes that "[t]he Task Force aims to strengthen the co-ordination among key government stakeholders to increase prosecutions, and to improve the identification and protection of victims" and that it "consists of 22 representatives from government institutions which were recognized responsible in addressing human trafficking in the country" (Government of Sri Lanka, 31 May 2016, p. 4).

The US Department of State (USDOS) places Sri Lanka on its Tier 2 Watch List and notes that "[t]he Government of Sri Lanka does not fully meet the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so" (USDOS, 30 June 2016). Freedom House published a written testimony by its president, Mark P. Lagon, which comments on trafficking in Sri Lanka in the following terms:

> "Sri Lanka has been on the Tier 2 Watch List for 3 years and needs a waiver or tier change so as not to fall into the 'cellar' category. When I visited Sri Lanka in 2008 as Ambassador at Large, it was argued that the civil war and lack of government openness and capacity stood in the way of addressing trafficking. Trafficking there still ranges from what one could call the 'South Asia bonded labor syndrome' (extending beyond India), to Sri Lankan migrant workers given insufficient help by their government when abroad, to male and female child sex trafficking. In an improved situation of governance, tackling trafficking should be somewhat easier, and if not tackled, it should not get 'grade inflation.'" (Freedom House, 23 March 2016)

The USDOS Trafficking in Persons Report 2016 states that "Sri Lanka is primarily a source and, to a lesser extent, a destination country, for men, women, and children subjected to forced labor and sex trafficking" (USDOS, 30 June 2016). The report further provides the following information on internal trafficking in Sri Lanka:

> "Within the country, women and children are subjected to sex trafficking in brothels. Boys are more likely than girls to be forced into prostitution in coastal areas for child sex tourism. Children, individuals with physical deformities, and those from socially vulnerable groups are forced to beg or engage in criminal activity in Sri Lanka's largest cities. Some child domestic workers in Colombo, generally from the Tamil tea estate sector, are subjected to physical, sexual, and mental abuse, non-payment of wages, and restrictions of movement—indicators of labor trafficking. A small number of women from Asia, Central Asia, Europe, and the Middle East have been subjected to forced prostitution in Sri Lanka in recent years. Police accept bribes to permit brothels to operate, some of which exploit trafficking victims. Sub-agents collude with officials to procure fake or falsified travel documents to facilitate travel of Sri Lankans abroad." (USDOS, 30 June 2016)

Looking at external trafficking, the same report provides the following information:

> "Some of the Sri Lankan men, women, and children who migrate to the Middle East, Southeast Asia, and Afghanistan to work in the construction, garment, and domestic service sectors are subjected to forced labor. Before leaving Sri Lanka, many migrant workers go into debt to pay high recruitment fees imposed by unscrupulous labor recruitment agencies—most of them members of Sri Lanka's Association of Licensed Foreign Employment Agencies—and their unlicensed sub-agents. Migrant laborers receive a monetary advance as an incentive to move abroad, only to be trapped in debt bondage upon arrival at their destination. Some recruitment agencies commit fraud by changing the agreed upon job, employer, conditions, or salary after the migrant's arrival. Some Sri Lankan women are subjected to forced prostitution in Jordan, Maldives, Malaysia, Singapore, and elsewhere." (USDOS, 30 June 2016)

In its annual report covering the year 2015, Human Rights Watch (HRW) also refers to the risks of Sri Lankan migrant workers:

> "More than one million Sri Lankans are employed overseas and many remained at risk of abuse at every stage of the migration cycle, from recruitment and transit, to employment, repatriation, and reintegration. More than a third of Sri Lanka's migrants are domestic workers, almost exclusively female. The government took some steps to protect their rights abroad, but many continued to face long working hours with little rest, delayed or unpaid wages, confinement in the workplace, and verbal, physical, and sexual abuse." (HRW, 27 January 2016)

According to the USDOS Trafficking in Persons Report 2016, the Bureau of Foreign Employment "maintained its ban on migration of domestic workers younger than age 23 to the Middle East and, as of August 2015, required all female migrant workers to submit a 'family background report' to ensure the woman did not have children younger than age 5", but "observers reported these policies increased the likelihood such women would migrate illegally and therefore heightened risks of human trafficking" (USDOS, 30 June 2016).

In November 2016, the Sri Lankan English newspaper Sunday Observer reports that "[o]fficers of the special investigation unit of the Foreign Employment Bureau recently uncovered a prostitution ring operating out of Sri Lanka to the Maldives which revealed that around 100 Sri Lankan women have been sent overseas as sex workers" (Sunday Observer, 27 November 2016). Also in November 2016, the Sri Lankan English daily newspaper Ceylon Today reports that "Malaysian Police last Saturday (26) busted a human trafficking syndicate operating in Kuala Lumpur for the past 8 months". Five victims were reportedly from Sri Lanka and a 32-year-old Sri Lankan had been identified as the head of the syndicate. According to the article "[t]he victims were duped into coming to Malaysia with the promise of work as maids and shop assistants, as well as in the plantation sector" (Ceylon Today, 28 November 2016).

In terms of governmental prosecution of trafficking in Sri Lanka, the USDOS Trafficking in Persons Report 2016 provides the following information:

> "The government demonstrated limited progress in law enforcement efforts to address human trafficking. […] The government initiated investigations of six trafficking cases in 2015, compared with 20 cases investigated in 2014. The government reported 12 prosecutions in 2015, five under article 360(c) and seven under the procurement statute, compared with a total of 10 prosecutions in 2014. The procurement statute criminalizes obtaining a person to become a prostitute and carries lesser penalties than article 360(c); procurement cases, unlike trafficking cases, are not considered grave offenses and are brought before a magistrate judge generally without a prosecutor from the attorney general's office. As in 2014, courts did not convict any traffickers under article 360(c). Authorities convicted one trafficker under the procurement statute, the same number as in 2014, and sentenced the offender to two years' imprisonment and a fine of 5,000 Sri Lankan rupees ($35). The government's reliance on procurement charges, and the absence of prosecutions under the trafficking statute, resulted from police not thoroughly investigating potential human trafficking cases for elements of force, fraud, or coercion.

> Most complaints migrant workers filed with police officers in the Bureau of Foreign Employment (SLBFE) were automatically categorized as an 'employment or contract dispute' and were not screened for labor trafficking; instead, if a crime was alleged the case was prosecuted under the Foreign Employment Act before a magistrate judge who could only issue penalties up to two years' imprisonment." (USDOS, 30 June 2016)

Looking at the prosecution of recruiters, the USDOS Trafficking in Persons Report 2016 notes that "[d]uring the reporting period, SLBFE's [Bureau of Foreign Employment] legal division filed a total of 189 cases against illegal recruiters and recruitment agencies for fraudulent practices, compared with 172 cases in 2014". The report also notes that "[t]he government did not have the ability to regulate sub-agents under SLBFE, which officials recognized as a problem contributing to trafficking" (USDOS, 30 June 2016).

The Sri Lankan internet news platform Roar notes in an article from December 2016 that "[t]here are two main bodies that directly receive and investigate complaints of human trafficking in Sri Lanka: the Criminal Investigations Department (CID) and the Counter Human Trafficking Unit of Sri Lanka Bureau of Foreign Employment (CHTU)" (Roar, 4 December 2016). The article further provides the following number of complaints received by the CHTU between April and November 2016:

> "Since April 2015 to November 2016, the CHTU has received 11 complaints through Sri Lankan embassies in other countries, and 42 direct complaints. From those complaints, 11 have been referred to the CID for further investigation, 28 have been referred to the Investigation Division of the Foreign Employment Bureau for taking action against the offenders, and 23 complaints have been referred to the Foreign Affairs Ministry for the repatriation of victims. The CHTU also noted that one case involving a minor had been referred to the Child Protection Authority. Accordingly, since initiation, the CHTU has successfully assisted in repatriating six individuals." (Roar, 4 December 2016)

The USDOS Trafficking in Persons Report 2016 also refers to official complicity in regard to the prosecution of trafficking cases, providing the following information:

> "Official complicity in trafficking offenses remained a serious problem. Allegations continued that police and other officials accepted bribes to permit brothels to operate; some of the brothels exploited trafficking victims. Some sub-agents reportedly worked with officials to procure forged or modified documents, or genuine documents with falsified data, to facilitate travel abroad. The government did not report any investigations, prosecutions, or convictions of government officials complicit in human trafficking offences; however, during the reporting period the government charged a supreme court judge with sexual abuse and assault—potential indicators of trafficking—following his alleged mistreatment of a domestic worker employed in his home." (USDOS, 30 June 2016)

In November 2014, the UN Human Rights Committee (HRC) voices the following concerns about the rate of prosecution of perpetrators and the protection of trafficking victims in its concluding observations:

> "20. While noting that the State party has established an anti-trafficking task force under its Ministry of Justice, the Committee is nonetheless concerned at the lack of effective measures to protect victims and provide them with effective remedies, including compensation and rehabilitation. It is concerned that there has been low rates of prosecution and insufficient punishment of perpetrators (art. 8)." (UN Human Rights Committee, 21 November 2014, p. 7)

In March 2015, the International Organisation for Migration (IOM) published a press release about the launch of "Standard Operating Procedures (SOP) on the Identification, Protection and Referral of Victims of Human Trafficking" in Sri Lanka, stating that "Sri Lanka steps up to international standards regarding human trafficking victims". The SOP are described as "a step-by-step guide to all agencies involved in the identification and provision of assistance and protection to victims of human trafficking, with a special focus on the Sri Lanka police" (IOM, 20 March 2015). The USDOS Trafficking in Persons Report 2016 refers to the protection of victims in the following terms:

> "The government had standard operating procedures (SOPs) for the identification of victims and their subsequent referral to protection services. […] However, officials' ability to implement these procedures and ensure victims were not jailed or penalized for crimes committed as a direct result of being subjected to human trafficking remained impaired. Observers continued to report Sri Lankan authorities jailed and charged some sex trafficking victims for prostitution or immigration offenses. The Victims and Witnesses Protection Act and the SOPs call for the consideration of protection mechanisms when victims testify in court; however, it is unclear if these provisions were used during the year." (USDOS, 30 June 2016)

In regard to the number of identified victims and the provision of shelter for such, the USDOS Trafficking in Persons Report 2016 report provides the following information:

> "The police and the National Child Protection Authority reported identifying 30 trafficking victims, compared with 29 victims in 2014. The Ministry of Women and Child Affairs continued to operate a shelter for female trafficking victims; during the reporting period the shelter accommodated one victim, although all other identified female victims were offered shelter. The government allocated 1.5 million Sri Lankan rupees ($10,400) for the operation of the shelter. SLBFE [Bureau of Foreign Employment] continued to operate short-term shelters in Sri Lankan embassies overseas and a transit shelter near the international airport for returning female migrant workers who encountered abuse abroad. The transit shelter provided medical, counseling, and protection services to 645 women returning from abroad, some of whom may have been trafficking victims. The government did not have other specialized care available to female trafficking victims and did not have any care services for male victims. Until they could be placed in a state-run or state-approved home, authorities held child victims in facilities housing juvenile criminals." (USDOS, 30 June 2016)

Sources (all sources accessed 22 December 2016)

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