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Country Policy and Information Note

Sri Lanka: Tamil Separatism

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Preface

Purpose

This note provides country of origin information (COI) and analysis of COI for use by Home Office decision makers handling particular types of protection and human rights claims (as set out in the [Introduction](#) section). It is not intended to be an exhaustive survey of a particular subject or theme.

It is split into two main sections: (1) analysis and assessment of COI and other evidence; and (2) COI. These are explained in more detail below.

Assessment

This section analyses the evidence relevant to this note – i.e. the COI section; refugee/human rights laws and policies; and applicable caselaw – by describing this and its inter-relationships, and provides an assessment of, in general, whether one or more of the following applies:

- A person is reasonably likely to face a real risk of persecution or serious harm
- The general humanitarian situation is so severe as to breach Article 15(b) of European Council Directive 2004/83/EC (the Qualification Directive) / Article 3 of the European Convention on Human Rights as transposed in paragraph 339C and 339CA(iii) of the Immigration Rules
- The security situation presents a real risk to a civilian's life or person such that it would breach Article 15(c) of the Qualification Directive as transposed in paragraph 339C and 339CA(iv) of the Immigration Rules
- A person is able to obtain protection from the state (or quasi state bodies)
- A person is reasonably able to relocate within a country or territory
- A claim is likely to justify granting asylum, humanitarian protection or other form of leave, and
- If a claim is refused, it is likely or unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers **must**, however, still consider all claims on an individual basis, taking into account each case's specific facts.

Country of origin information

The country information in this note has been carefully selected in accordance with the general principles of COI research as set out in the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#), dated April 2008, and the Austrian Centre for Country of Origin and Asylum Research and Documentation's (ACCORD), [Researching Country Origin Information – Training Manual, 2013](#). Namely, taking into account the COI's relevance, reliability, accuracy, balance, currency, transparency and traceability.

All information included in the note was published or made publicly available on or before the 'cut-off' date(s) in the country information section. Any event taking place or report/article published after these date(s) is not included.

All information is publicly accessible or can be made publicly available, and is from generally reliable sources. Sources and the information they provide are carefully considered before inclusion. Factors relevant to the assessment of the reliability of sources and information include:

- the motivation, purpose, knowledge and experience of the source
- how the information was obtained, including specific methodologies used
- the currency and detail of information, and
- whether the COI is consistent with and/or corroborated by other sources.

Multiple sourcing is used to ensure that the information is accurate, balanced and corroborated, so that a comprehensive and up-to-date picture at the time of publication is provided of the issues relevant to this note.

Information is compared and contrasted, whenever possible, to provide a range of views and opinions. The inclusion of a source, however, is not an endorsement of it or any view(s) expressed.

Feedback

Our goal is to continuously improve our material. Therefore, if you would like to comment on this note, please email the [Country Policy and Information Team](#).

Independent Advisory Group on Country Information

The [Independent Advisory Group on Country Information](#) (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to support him in reviewing the efficiency, effectiveness and consistency of approach of COI produced by the Home Office.

The IAGCI welcomes feedback on the Home Office's COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy. The IAGCI may be contacted at:

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Information about the IAGCI's work and a list of the documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector's pages of the [gov.uk website](#).

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Assessment

Updated: 25 May 2021

1. Introduction

1.1 Basis of claim

- 1.1.1 Fear of persecution or serious harm by the state due to the person's actual or perceived support for, or involvement with, Tamil separatist groups.

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2. Consideration of issues

2.1 Credibility

- 2.1.1 For information on assessing credibility, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).
- 2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](#)).
- 2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the [Asylum Instruction on Language Analysis](#)).

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2.2 Exclusion

- 2.2.1 The LTTE has been responsible for serious human rights abuses. It has been proscribed in the UK since March 2001 under the Terrorism Act 2000.
- 2.2.2 The Tribunal in [KK and RS \(sur place activities: risk\) Sri Lanka \[2021\] UKUT 130 \(IAC\)](#) held that consideration must be given to whether the exclusion clauses under Article 1F of the Refugee Convention are applicable (paragraph 536 (29)).
- 2.2.3 If the person is excluded from the Refugee Convention, they will also be excluded from a grant of humanitarian protection. Each case must be considered on its individual facts and merits.
- 2.2.4 For further guidance on the exclusion clauses and restricted leave, see the Instructions on [Exclusion under Articles 1F and 33\(2\) of the Refugee Convention](#), [Humanitarian Protection](#) and [Restricted Leave](#).

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2.3 Refugee convention reason

- 2.3.1 Actual or imputed political opinion.
- 2.3.2 Establishing a convention reason is not sufficient to be recognised as a refugee. The question is whether the particular person has a well-founded fear of persecution on account of their actual or imputed convention reason.
- 2.3.3 For further guidance on the 5 convention grounds, including particular social groups, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

2.4 Risk

a. General points

- 2.4.1 The country guidance case of [KK and RS \(sur place activities: risk\) Sri Lanka \[2021\] UKUT 130 \(IAC\)](#) found that the existing country guidance [GJ & Others \(post –civil war: returnees Sri Lanka CG \[2013\] UKUT 00319 \(IAC\) \(5 July 2013\)](#) (heard on 5-8 and 11-12 February 2013, 15 March 2013 and 19 April 2013) is still **broadly accurate** in reflecting the situation facing returnees to Sri Lanka (paragraph 535). The case of [GJ & Others](#) was restated in its entirety in the judgment. The Upper Tribunal held, however, that it was necessary to tweak, ‘clarify and supplement the existing guidance, with particular reference to sur place activities’ (paragraph 535).

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b. Tamil ethnicity and perceived political links

- 2.4.2 The Tribunal [KK and RS](#) held that: ‘GoSL [Government of Sri Lanka] views the Tamil diaspora with a generally adverse mindset, but does not regard the entire cohort as either holding separatist views or being politically active in any meaningful way.’ (paragraph 536(4)).

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c. Actual and perceived supporters of Tamil Separatism

- 2.4.3 The Tribunal in [KK and RS](#) held that: ‘Whilst there is limited space for pro-Tamil political organisations to operate within Sri Lanka, there is no tolerance of the expression of avowedly separatist or perceived separatist beliefs.’ (paragraph 536(3)).
- 2.4.4 It continued: ‘TGTE is an avowedly separatist organisation which is currently proscribed. It is viewed by GoSL with a significant degree of hostility and is perceived as a “front” for the LTTE. GTF and BTF are also currently proscribed and whilst only the former is perceived as a “front” for the LTTE, GoSL now views both with a significant degree of hostility.’ (paragraph 536(6)).
- 2.4.5 With regard to non-proscribed diaspora organisations, the Tribunal held: ‘Other non-proscribed diaspora organisations which pursue a separatist agenda, such as TS [Tamil Solidarity], are viewed with hostility, although they are not regarded as “fronts” for the LTTE (paragraph 536(7)).
- 2.4.6 The Tribunal in [KK and RS](#) also sought to develop the definition of what constitutes a ‘significant role’ in Tamil Separatism. It found:

‘The term “significant role” does not require an individual to show that they have held a formal position in an organisation, are a member of such, or that their activities have been “high profile” or “prominent”. The assessment of their profile will always be fact-specific, but will be informed by an indicator-based approach, taking into account the following non-exhaustive factors, none of which will in general be determinative:

- the nature of any diaspora organisation on behalf of which an individual has been active. That an organisation has been proscribed under the

2012 UN Regulations will be relatively significant in terms of the level of adverse interest reasonably likely to be attributed to an individual associated with it;

- the type of activities undertaken;
- the extent of any activities;
- the duration of any activities;
- any relevant history in Sri Lanka;
- any relevant familial connections.’ (paragraph 536(21))

2.4.7 See also paragraphs 374, 391, 393, 439-502 of [KK and RS](#) for consideration.

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d. **Sur place activities**

2.4.8 With specific regard to sur place activities, the Tribunal in [KK and RS](#) held:

‘Sur place activities on behalf of an organisation proscribed under the 2012 UN Regulations is a relatively significant risk factor in the assessment of an individual’s profile, although its existence or absence is not determinative of risk. Proscription will entail a higher degree of adverse interest in an organisation and, by extension, in individuals known or perceived to be associated with it. In respect of organisations which have never been proscribed and the organisation that remains de-proscribed, it is reasonably likely that there will, depending on whether the organisation in question has, or is perceived to have, a separatist agenda, be an adverse interest on the part of GoSL, albeit not at the level applicable to proscribed groups.’ (paragraph 536(5)).

2.4.9 The Tribunal went on to find:

‘GoSL continues to operate an extensive intelligence-gathering regime in the United Kingdom which utilises information acquired through the infiltration of diaspora organisations, the photographing and videoing of demonstrations, and the monitoring of the Internet and unencrypted social media. At the initial stage of monitoring and information gathering, it is reasonably likely that the Sri Lankan authorities will wish to gather more rather than less information on organisations in which there is an adverse interest and individuals connected thereto. Information gathering has, so far as possible, kept pace with developments in communication technology.’ (paragraph 536(8)).

2.4.10 And further held: ‘Interviews at the SLHC continue to take place for those requiring a TTD.’ (paragraph 536(9)).

2.4.11 In assessing the type and level of information GoSL would likely be able to obtain about an individual’s sur place activity, the Tribunal held:

‘Prior to the return of an individual traveling on a TTD, GoSL is reasonably likely to have obtained information on the following matters:

- i. whether the individual is associated in any way with a particular diaspora organisation;

- ii. whether they have attended meetings and/or demonstrations and if so, at least approximately how frequently this has occurred;
- iii. the nature of involvement in these events, such as, for example, whether they played a prominent part or have been holding flags or banners displaying the LTTE emblem;
- iv. any organisational and/or promotional roles (formal or otherwise) undertaken on behalf of a diaspora organisation;
- v. attendance at commemorative events such as Heroes Day; vi. meaningful fundraising on behalf of or the provision of such funding to an organisation;
- vii. authorship of, or appearance in, articles, whether published in print or online;
- viii. any presence on social media;
- ix. any political lobbying on behalf of an organisation;
- x. the signing of petitions perceived as being anti-government' (paragraph 536(10)).

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e. **Returnees, stop and watch lists, including arrest warrants and court orders**

2.4.12 The Tribunal in [KK and RS](#) held that: 'A stop list and watch list are still in use. These are derived from the general electronic database' (paragraph 536(14)).

2.4.13 The Tribunal also found that:

'(15) Those being returned on a TTD will be questioned on arrival at BIA. Additional questioning over and above the confirmation of identity is only reasonably likely to occur where the individual is already on either the stop list or the watch list.

(16) Those in possession of a valid passport will only be questioned on arrival if they appear on either the stop list or the watch list.

(17) Returnees who have no entry on the general database, or whose entry is not such as to have placed them on either the stop list or the watch list, will in general be able to pass through the airport unhindered and return to the home area without being subject to any further action by the authorities (subject to an application of the HJ (Iran) principle).

(18) Only those against whom there is an extant arrest warrant and/or a court order will appear on the stop list. Returnees falling within this category will be detained at the airport.

(19) Returnees who appear on the watch list will fall into one of two sub categories: (i) those who, because of their existing profile, are deemed to be of sufficiently strong adverse interest to warrant detention once the individual has travelled back to their home area or some other place of resettlement; and (ii) those who are of interest, not at a level sufficient to justify detention

at that point in time, but will be monitored by the authorities in their home area or wherever else they may be able to resettle.

(20) In respect of those falling within sub-category (i), the question of whether an individual has, or is perceived to have, undertaken a “significant role” in Tamil separatism remains the appropriate touchstone. In making this evaluative judgment, GoSL will seek to identify those whom it perceives as constituting a threat to the integrity of the Sri Lankan state by reason of their committed activism in furtherance of the establishment of Tamil Eelam’ (paragraph 536 (15-20)). (See para 2.4.6 of [Actual and perceived supporters of Tamil Separatism](#) for exploration of what **could** constitute a ‘significant role’ and ([HJ \(Iran\)](#)).

2.4.14 The Tribunal held that: ‘The monitoring undertaken by the authorities in respect of returnees in sub-category (ii) in (19), above, will not, in general, amount to persecution or ill-treatment contrary to Article 3 ECHR.’ (paragraph 536(22)).

2.4.15 There is a reasonable likelihood that those detained by the Sri Lankan authorities will be subjected to persecutory treatment within the meaning of the Refugee Convention and ill-treatment contrary to Article 3 ECHR. (paragraph 536(27)).

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f. The “HJ (Iran) principle”

2.4.16 Beyond the application of the country guidance of [KK and RS](#), decision makers are required to consider the HJ (Iran) principle which establishes that a person should not be forced to conceal their sexual identity in order to avoid persecution that would follow if they did not do so. The HJ (Iran) principle also applies to cases concerning political opinions, as confirmed in RT (Zimbabwe).

2.4.17 The Tribunal in [KK and RS](#) held that:

‘... even an individual who does not appear on the watch list or indeed on the general electronic database at all is nonetheless entitled to have their protection claim examined in light of the HJ (Iran) principle if the findings of fact support a conclusion that they would or would wish to openly express genuinely held separatist beliefs on return but would conceal such beliefs in order to avoid the risk of detention and persecutory treatment.’ (paragraph 555).

2.4.18 The Tribunal also held:

‘... facts must then be found as to what the individual would wish to do on return in relation to the expression of his/her genuinely held separatist beliefs. If it is accepted that they would intend to manifest these beliefs in an open fashion (whether by physical protest, campaigning and/or statements in the media and/or on social media), a finding would have to be made as to whether these activities would be reasonably likely to be detected by the authorities, bearing in mind the climate of hostility towards Tamil separatism, the use of informants, and the ability to monitor individuals and most, if not all, forms of media (paragraph 551).

- 2.4.19 'If the individual would engage in the expression of separatist views and these were to become known, it is reasonably likely that they would be detained, with the consequential risk of persecution within the meaning of the Refugee Convention and ill-treatment contrary to Article 3 ECHR.' (paragraph 552).

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g. Post-return requirements including monitoring, rehabilitation and informants

- 2.4.20 With regards to prospect of forced rehabilitation upon return, the Tribunal in [KK and RS](#) held: 'It is not reasonably likely that a returnee subject to monitoring will be sent for "rehabilitation". (paragraph 536(23)).
- 2.4.21 The Tribunal continued: 'In general, it is not reasonably likely that a returnee subject to monitoring will be recruited as an informant or prosecuted for a refusal to undertake such a role.' (paragraph 536(24)).

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h. Journalists

- 2.4.22 The Tribunal in [KK and RS](#) also had specific regard to journalists, and held that: 'Journalists (whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan government, in particular its human rights record, or are associated with publications critical of the government, face a reasonable likelihood of being detained after return, whether or not they continue with their activities.' (paragraph 536(25)).

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i. Lessons Learned Reconciliation Commission (including UN OSIL)

- 2.4.23 The Tribunal in [KK and RS](#) found that: 'Individuals who have given evidence to the LLRC implicating the Sri Lankan security forces, armed forces, or the Sri Lankan authorities in alleged war crimes, also face a reasonable likelihood of being detained after their return. It is for the individual concerned to establish that GoSL will be aware of the provision of such evidence.' (paragraph 536(26) (see also paragraph 348 and 485).

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j. Women

- 2.4.24 The assessment above applies equally to males and females. Decision makers must however take full account of gender issues. There are a large number of female-headed households in the north and east of Sri Lanka, many of which are headed by women who were widowed during the conflict. Women in these situations face many challenges, including a lack of physical security for their family, a lack of permanent housing and economic opportunities and difficulties accessing health services. Women who are forced to seek employment outside the home may face societal discrimination due to cultural restrictions.
- 2.4.25 In the reported case of [PP \(female headed household; expert duties\) Sri Lanka \[2017\] UKUT 00117 \(IAC\) \(promulgated 6 February 2017 and heard on 17 and 24 January 2017\)](#), the Upper Tribunal found that:

- ‘A Tamil female single head of household residing in the former conflict zone of Northern and North Eastern Sri Lanka may be at risk of sexual abuse and exploitation perpetrated by members of police, military and paramilitary State agents. (Paragraph 39 (a)).
- ‘The existence and measurement of this risk will be an intensely fact sensitive question in every case. The case-by-case assessment will be informed by the presence or absence of positive risk factors and decreasing risk factors. (Paragraph 39 (b)).
- ‘The positive risk factors are living in isolation from others, low socio-economic status, dependence upon the distribution of Government aid or the provision of other services by the security forces and a perception of former LTTE membership, links or sympathies. These positive factors do not necessarily have to be satisfied cumulatively in every case: context will invariably be everything. (Paragraph 39 (c)).
- ‘The countervailing factors are higher socio-economic status, little dependence on Government aid or services and the support of male relatives or neighbours. The individual context of the particular case will dictate the force and weight of each of these factors, individually or cumulatively, in any given case. These too will be assessed on a case-by-case basis.’ (Paragraph 39 (d)).

2.4.26 The Tribunal in [KK and RS](#) found that: ‘Nothing in the expert or country evidence before us indicates that women are deemed to be less of a threat than men, whether in respect of violent or non-violent separatist activism’ (paragraph 651) (see paragraph 651 of [KK and RS](#) judgment for further relevant factors).

2.4.27 For further guidance on assessing risk generally, see the Asylum Instruction on [Assessing Credibility and Refugee Status](#). See also the Asylum Instruction on [Gender Issues in the Asylum Claim](#).

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k. Scarring

2.4.28 The Tribunal in [KK and RS](#) did not consider the issue of scarring.

2.4.29 The Tribunal in [GJ & Others](#) noted:

‘...there was only one case in the press reports in which a person with an LTTE tattoo came to harm. A tattoo is a form of scarring; Dr Smith’s evidence was that scarring was relevant only when a person was detained for other reasons, when they would be stripped to their underwear during interrogation and scarring might increase suspicion. We do not consider that there is sufficient evidence to support having an LTTE tattoo as a risk factor’ (paragraph 267).

2.4.30 In considering scarring and allegations of torture generally, decision makers should take full account of any medical evidence produced. Expert medical evidence which potentially corroborates an account of torture must be given considerable weight – but it must still be considered within the sum of evidence to be taken into account. A medical report in support of an account of torture does not necessarily determine its credibility if other evidence

provides good reason to reject the person's account of when and how scars (for example) were caused. Where other significant evidence outweighs the report of scarring there is no requirement to make findings or speculate as to other possible causes of the scarring. However, if the possibility of scarring caused by self-infliction by proxy is being considered, considerable weight should be given to the fact that injuries which are self-inflicted by proxy are likely to be extremely rare (in accordance with the Supreme Court's statements in [KV \(Sri Lanka\) v SSHD \[2019\] UKSC 10](#) (paras 31-35) (see section 4.6 in the [Asylum Instruction on Assessing Credibility and Refugee Status](#)).

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2.5 Protection

- 2.5.1 As the person's fear is of persecution and/or serious harm by the state, they will not be able to avail themselves of the protection of the authorities.
- 2.5.2 For further guidance on assessing the availability of state protection, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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2.6 Internal relocation

- 2.6.1 In [KK and RS](#), it was held that internal relocation is not an option within Sri Lanka for a person at risk from the authorities (paragraph 354).
- 2.6.2 Where the person's fear is of persecution and/or serious harm at the hands of the state, they will not be able to relocate to escape that risk (see Freedom of movement).
- 2.6.3 For further guidance on internal relocation and the factors to be considered, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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2.7 Certification

- 2.7.1 Where a claim is refused, it is unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.
- 2.7.2 For further guidance on certification, see [Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 \(clearly unfounded claims\)](#).

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Country information

For a list of the material considered by the Tribunal in the country guidance case of [KK and RS](#), see [Appendix A](#) of that determination.

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Version control

Clearance

Below is information on when this note was cleared:

- version **7.0**
- valid from **14 June 2021**

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