UNHCR ELIGIBILITY GUIDELINES FOR ASSESSING THE INTERNATIONAL PROTECTION NEEDS OF ASYLUM-SEEKERS FROM SRI LANKA

United Nations High Commissioner for Refugees (UNHCR)

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NOTE

UNHCR *Eligibility Guidelines* are issued by the Office to assist decision-makers, including UNHCR staff, Governments and private practitioners, in assessing the international protection needs of asylum-seekers from a given country. They are authoritative legal interpretations of the refugee criteria in respect of specific groups on the basis of objectively assessed social, political, economic, security, human rights, and humanitarian conditions in the country of origin concerned. The pertinent protection needs are analyzed in detail and recommendations made as to how the applications in question should be decided upon in line with the relevant principles and criteria of refugee law as per, notably, the 1951 Convention and its 1967 Protocol, the UNHCR Statute and relevant regional instruments such as the Cartagena Declaration, the 1969 OAU Convention and the EU Asylum Directives. The recommendations may also touch upon, as relevant, complementary or subsidiary protection regimes.

UNHCR issues its *Eligibility Guidelines* pursuant to its responsibility to promote the accurate interpretation and application of the above-mentioned refugee criteria as envisaged by Article 8 of its Statute, Article 35 of the 1951 Convention and Article II of its 1967 Protocol and based on the expertise it has developed over several years in eligibility and refugee status determination matters. It is expected that the positions and guidance contained in the *Guidelines* should be weighed heavily by the relevant decision-making authorities in reaching a decision on the asylum applications concerned. The *Guidelines* are researched strictly and are written based on factual evidence provided by UNHCR's global network of field offices and information from independent country specialists, researchers and other sources which is rigorously reviewed for reliability. The *Guidelines* are posted on UNHCR's Refworld website at http://www.refworld.org.

Table of Contents

LIST OF ACRONYMS

EPDP	Eelam People's Democratic Party
HRC	Human Rights Commission
HSZ	High Security Zone
IFA/IRA	Internal flight or relocation alternative
LTTE	Liberation Tamil Tigers of Eelam
PCI	Presidential Commission of Inquiry
PLOTE	People's Liberation Organization of Tamil Eelam
SLA	Sri Lankan Army
SLMM	Sri Lanka Monitoring Mission
STF	Special Task Force
TMVP	Tamil Makkal Viduthalai Pulikal
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UPFA	United People's Freedom Alliance

I. Introduction

Sri Lankan nationals have been seeking protection as refugees in neighbouring countries and much further a field in ever increasing numbers. This paper provides guidance for UNHCR and State adjudicators in deciding claims submitted by Sri Lankan asylum-seekers, and in otherwise understanding and responding appropriately to their protection needs. These Guidelines supersede the "*UNHCR Position on the International Protection Needs of Asylum–Seekers from Sri Lanka",* issued in December 2006.[1]

The Guidelines are divided into three sections including this Introduction (Section I). Section II provides background information regarding Sri Lanka, including an overview of the current political, security and human rights situation and a summary of the main groups at risk. Section III provides guidance on the assessment of eligibility of Sri Lankan asylum-seekers in light of the available country of origin information and the legal framework under Article 1A(2) of the 1951 Convention, and sets out UNHCR's recommendations on the international protection needs of Sri Lankan asylum-seekers.

When UNHCR's 2006 position was issued, the armed conflict between the Sri Lankan Army (SLA) and the Liberation Tamil Tigers of Eelam (LTTE) had resumed following the failure of the Ceasefire Agreement of 2002. Fighting was heavily concentrated in the North[2] and the East[3] of the country, where civilians were exposed to widespread insecurity and the risk of serious and indiscriminate harm related to the conflict. Furthermore, in these regions, and throughout Sri Lanka, targeted human rights violations were being committed by both State and non-State entities. While individuals from each of the three major ethnic groups, Sinhalese, Muslim and Tamil, were affected, Tamils from the North and the East were considered to be at particularly high risk of human rights violations in Sri Lanka.

In the 2006 position, UNHCR recommended that claims by asylum seekers from Sri Lanka be examined carefully in fair and efficient refugee status determination procedures and that individuals who met the criteria in the 1951 Convention relating to the Status of Refugees[4] ("1951 Convention") and/or its 1967 Protocol[5] be recognized on this basis. The 2006 position further recommended that, in view of the situation of generalized violence resulting from the armed conflict in the North and the East, asylum seekers from these regions who did not meet the criteria for recognition under the 1951 Convention, and were not considered to have a realistic internal flight or relocation alternative (IFA/IRA) in other parts of the country, should be recognized under an extended refugee definition, where applicable, or otherwise granted a complementary form of protection. As Tamils from the North and East were considered to be at risk of serious harm in all parts of the country, UNHCR considered that no IFA/IRA was available to Tamils from these regions and that all were in need of international protection.

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1 UN High Commissioner for Refugees (UNHCR), *UNHCR Position on the International Protection Needs of Asylum-Seekers From Sri Lanka*, 22 December 2006, (Hereafter: "2006 position"), available at http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=459a1fcb2.

2 For the purposes of this paper, the North is defined as Jaffna, Kilinochchi, Mullaittivu, Mannar and Vavuniya Districts.

3 For the purposes of this paper, the East is defined as Trincomalee, Batticaloa and Ampara Districts.

4 UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951. United Nations, Treaty Series, vol. 189, p. 137, available at: http://www.unhcr.org/refworld/docid/3be01b964.html.

5 UN General Assembly, *Protocol Relating to the Status of Refugees*, 30 January 1967. United Nations, Treaty Series, vol. 606, p. 267, available at: http://www.unhcr.org/refworld/docid/3ae6b3ae4.html.

Since the issuance of UNHCR's 2006 position, important developments have taken place in Sri Lanka, most notably with respect to the fighting between the SLA and the LTTE in the North and East and the intensification of the Government's security and anti-insurgency operations in many parts of the country. Updated eligibility guidance is therefore considered to be necessary to take into account these new developments.

Throughout Sri Lanka, the acts of violence and human rights abuses highlighted in the 2006 position paper, including abductions, disappearances, assaults, extortion, forced recruitment and extra-judicial killings continue to be committed with impunity by multiple actors. As the SLA has recaptured LTTE-controlled territory in the North, the LTTE has engaged in human rights violations and breaches of humanitarian law against civilians in the North and stepped up attacks on Government and civilian targets in other parts of Sri Lanka, in particular in and around the capital, Colombo. The Government's counter-insurgency operations and heightened security measures to curtail LTTE activities have themselves been associated with serious violations of human rights, in particular against Tamils from the North and East, and have not been effective in containing the incidents of political and ethnic violence which continue to undermine the security of civilians in many communities in the country. Freedom of expression is seriously curtailed in Sri Lanka. Journalists, human rights activists, politicians, humanitarian workers and others who criticize, or are otherwise perceived to oppose Government or LTTE actions or policies are at risk of suffering serious harm. Violations of the rights of women and children, in particular in the conflict zones and areas of heavy displacement, are a serious problem. There are growing concerns regarding the rule of law, the administration of justice and the investigation and punishment of criminal acts, including serious violations of human rights. Many individuals from Sri Lanka who seek asylum as a result of these developments will be eligible for refugee protection under the 1951 Convention.

In view of the prevailing human rights situation, claims by individuals from Sri Lanka should continue to be assessed in fair and efficient refugee status determination procedures, taking into consideration the evolving security and human rights situation in specific regions of the country and the information in these updated Guidelines regarding the categories of individuals who may be in need of international protection.

Where the availability of an internal flight or relocation alternative (IFA/IRA) is considered, this determination should be based on an assessment of both the relevance and the reasonableness of an identified IFA/IRA for the asylum seeker in light of his or her individual profile and circumstances. Careful consideration should be given *inter alia* to the specific security and human rights situation in the relevant parts of the country, the significant restrictions on the mobility of persons fleeing harm in Sri Lanka, and the broad geographic reach of both State and non-State agents of persecution. Because of the activities and affiliations frequently attributed to Tamils from the North and East, UNHCR considers that Tamils from these regions continue to be at risk of human rights violations in other parts of the country and are, therefore, without a reasonable IFA/IRA in Sri Lanka. Given the regular LTTE attacks in Colombo and the adverse impact of the Government's anti-terrorism measures upon Tamils, Colombo is not considered to be a reasonable IFA/IRA for Tamils fleeing the North and East of the country.

In view of the ongoing situation of generalized violence related to the ongoing armed conflict in the North, UNHCR's recommendation in the 2006 position regarding the eligibility of asylum seekers from the North of Sri Lanka remains unchanged. Claims by asylum seekers who do not meet the criteria for recognition under the 1951 Convention, and do not have an

IFA/IRA in another part of the country, should be considered under an extended refugee definition, where applicable, or accorded a complementary form of protection[6]. Given the extensive and reliable evidence of widespread targeted human rights violations against Tamils in and from the North, by the parties to the armed conflict and other paramilitary actors, UNHCR considers that Tamil asylum-seekers from the North of Sri Lanka should be recognized as refugees under the 1951 Convention absent clear and reliable indicators that they do not meet the relevant criteria. In contexts where individual refugee status determination is not feasible to determine the claims of Tamil asylum seekers from the North of Sri Lanka, UNHCR encourages the adoption of a *prima facie* approach.

As open fighting related to the armed conflict has essentially ended in the East, the risk to civilians of serious and indiscriminate harm in the cross-fire of fighting is now considered to be remote. UNHCR is, therefore, no longer recommending the application of an extended refugee definition, or complementary forms of protection on this basis alone and UNHCR's advice is revised accordingly in these Guidelines. Nevertheless, in light of the regular incidents of ethnic and communal violence in the East and the widespread human rights violations committed by both State and non-State actors against individuals of specific profiles, in particular Tamils, many asylum seekers from the East will continue to be in need of international protection and their eligibility should continue to be evaluated in light of the criteria in the 1951 Convention.

During the protracted civil war which has been waged in Sri Lanka, extensive violations of human rights and international humanitarian law have occurred. Exclusion issues may, therefore, arise in individual claims for refugee status, in particular those involving individuals who have participated in the armed conflict. The possible application of the exclusion clauses should be examined in claims by former members of the LTTE or other paramilitary groups, as well as former members of military, security or law enforcement forces in Sri Lanka. Given the potentially serious consequences of exclusion from international refugee protection, the exclusion clauses should be applied with great caution and only after a full assessment of the individual circumstances of the case.

Should asylum seekers from Sri Lanka who are determined not to be eligible for international refugee protection demonstrate needs for which another form of protection may be required, the appropriate response should be assessed accordingly. In this regard, States' obligations under international human rights law remain unaffected.

II. Background Information and Developments

A. Political Developments

Among the most significant political developments since the 2006 position was issued was the decision taken by President Rajapaksa's Government to withdraw from the Cease-fire Agreement signed between the Government of Sri Lanka and the LTTE in 2002. The announcement came in the context of escalating hostilities and repeated ceasefire violations

[6] The term "complementary protection" is used in these Guidelines to refer to the range of mechanisms which have been adopted by States to complement the protection accorded under the 1951 Convention, in particular to extend protection to individuals who, while not meeting the criteria in Article 1 A(2) of the 1951 Convention, are outside of their country of nationality or habitual residence and are unable to return there owing to serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order. (See section III C – Eligibility under an Extended Refugee Definition and/or Complementary Forms of Protection).

on both sides. As a result of the Government's decision, the Sri Lanka Monitoring Mission (SLMM), which drew its mandate from the Cease-Fire Agreement, announced the termination of its operational activities in Sri Lanka effective 16 January 2008.[7]

Local elections and provincial elections took place in the East in March and May 2008 respectively, with the participation of national parties in several localities for the first time in 14 years. President Rajapaksa's coalition United People's Freedom Alliance (UPFA), which includes the pro-Government Tamil Makkal Viduthalai Pulikal (TMVP),[8] won the elections. President Rajapaksa hailed this election victory in the East as a mandate to push ahead with the fight against the LTTE in the North.[9] The second-in-command of the TMVP, S. Chandrakanthan was appointed Chief Minister of the Eastern Provincial Council following the elections. Reported incidents of violence, intimidation of opposition candidates and voters, and vote rigging, many allegedly involving armed members of the TMVP, are considered to have undermined the confidence of many in the East in the elections and the legitimacy of the Provincial Council which came into place as a result.[10]

On 8 October 2008, V. Muralitharan, otherwise known as Karuna, the founder of the TMVP, was sworn into Parliament as a member of the Government's coalition UPFA. Karuna's membership in Parliament has been heavily criticized by local and international observers because of his alleged activities in his former role as a commander of the military wing of the TPMV, and, before that, the LTTE.[11] The Government has, however, pointed to the increased prominence of TMVP in the political sphere as an indicator of greater representation of Tamils in Government. Some observers have expressed the view that TMVP does not enjoy wide support within the Tamil community. The credibility of the TMVP as a political actor has been undermined by the party's refusal to disarm and its continued engagement in paramilitary activities.[12]

Effective political and administrative control remains highly centralized in Sri Lanka, though the Government has indicated its commitment to a progressive devolution of powers to

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7 Sri Lanka Monitoring Mission (SLMM), 'SLMM Statement 3 January 2008', available at http://www.slmm.info/STATEMENTS/2008/03%2F01%2F08+SLMM+Statement.9UFRrM2V.ips [accessed March 2009]. SLMM ceased to exist mid January 2008 when the Agreement was terminated by the Government of Sri Lanka, in accordance with its article 4.

8 The TMVP is the political party of the "Karuna group", a group of armed Tamils in the East, founded by Karuna Amman, which broke away from the LTTE. The TMVP has maintained an armed wing which has fought with the SLA against the LTTE since 2004.

9 'Sri Lankan president says election victory is a mandate for war against rebels', *International Herald Tribune*, 11 May 2008, available at http://www.iht.com/articles/2008/05/11/asia/11lanka.php.

10 International Crisis Group (ICG), *Sri Lanka's Eastern Province: Land, Development, Conflict*, page 10 15 October 2008. Asia Report N°159, available at http://www.unhcr.org/refworld/docid/48f6ed862.html (hereafter "ICG, *Sri Lanka's Eastern Province: Land, Development, Conflict*), describing extensive irregularities as reported by eyewitnesses and civil society monitors of the election.

11 Amnesty International, *Karuna's Presence in Parliament a Travesty of Justice,* 7 October 2008, available at http://www.amnesty.org/en/for-media/press-releases/sri-lanka-karuna-s-presence-parliament-travesty-justice-20081007. "As commander of the TMVP and previously as a commander in the LTTE, Karuna is suspected of a string of human rights abuses and war crimes including the abduction of hundreds of teenagers to serve as child soldiers and for the torture, holding as hostage and killing of hundreds of civilians in Sri Lanka".

12 See IGC, *Sri Lanka's Eastern Province: Land, Development, Conflict*, above footnote 10; see also 'Sri Lanka break-away group disarms seeks IOM assistance', *Integrated Regional Information Network*, 9 March 2009, available at http:www.unhcr.org/refworld/docid/49b8dfd7c.html. While the TMVP formally handed over arms to the Government in March 2009, a significant faction of the TMVP, including Karuna and his supporters has retained its arms and is not a party to the disarmament agreement.

regional Provincial Councils as contemplated by the Thirteenth Amendment to the Sri Lankan Constitution.[13]

B. Armed Conflict and Security Situation

i) Situation in the North

The armed conflict has persisted in the North and escalated progressively since mid-2008 as the SLA mounted a concerted offensive to take LTTE-controlled areas. Widespread insecurity and generalized violence resulting from the fighting continue to cause significant displacement within and from the region. Intense shelling and artillery fire by both sides in civilian areas, including IDP camps, hospitals, and areas designated by the Government as "safe zones", have resulted in heavy civilian casualties, including among children and the elderly.[14] The SLA has been widely criticized for shelling civilian targets and demonstrating disregard for the safety of civilians trapped in the "safe zones",[15] a charge the Government has denied.[16] The LTTE has also reportedly carried out attacks in areas in the North where civilians are known to have taken shelter, including launching a suicide attack using a Tamil female in an IDP centre housing Tamils who have fled the fighting to the Government-controlled areas, killing and wounding many civilians, including children.[17] While independent monitoring of the situation is extremely limited, sources relied on by the UN indicate that more than 2,800 civilians may have been killed and over 7,000 injured since 20 January 2009. Over two thirds of the reported deaths and injuries have reportedly occurred in the designated safe zones.[18]

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[13] To access the Thirteen Amendment to the Sri Lanka Constitution, see LawNet Government of Sri Lanka, available at http://www.lawnet.lk/section.php?file=http://www.lawnet.lk/docs/statutes/cons_acts_2006/indexes/1987Y0V0C0A13S.html [accessed March 2009].

[14] 'Civilian casualties mount as bombing and shelling continues', *TamilNet*, 15 March 2009 available at http://www.tamilnet.com/art.html?catid=13&artid=28722; Human Rights Watch, '*Don't abuse the displaced*', 9 March 2009, available at http://www.hrw.org/en/news/2009/03/09/sri-lanka-don-t-abuse-displaced; 'Sri Lanka: Growing UN concern as civilians in "safe zones" come under fire', *UN News*, 17 February 2009, available at http://www.un.org/apps/news/story.asp?NewsID=29922 &Cr=sri+lanka&Cr1; see also 'Briefing to the Security Council on the humanitarian situation in Sri Lanka', Statement by Mr. John Holmes, Under Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, 27 February 2009, available at http://ochaonline. un.org/tabid/5362/language/en-US/Default.aspx; 'Deadly strike on Sri Lanka hospital', *BBC News*, 2 February 2009, available at http://news.bbc.co.uk/go/pr/fr/-/2/hi&south asia/7863538.stm.

[15] See Human Rights Watch, 'Sri Lanka: No Let-Up in Army Shelling of Civilians', 23 March 2009, available at http://www.hrw.org/en/news/2009/03/23/sri-lanka-no-let-army-shelling-civilians; see also Human Rights Watch, *War on the Displaced. Sri Lankan Army and LTTE Abuses against Civilians in the Vanni*, 19 February 2009, available at http://www.hrw.org/sites/ default/files/reports/srilanka0209web_0.pdf (hereafter "HRW, *War on the Displaced*");. 'Operation Vananga-Man Inaugurated in Britain', Mercy Mission to Vanni, 15 March 2009, available at http://vannimission.org/2009/03/15/operation-vananga-man-inaugurated-in-britain/ [accessed March 2009].

[16] 'Sri Lanka denies UN charges', *Agence France Press*, 14 March 2009, available at http://www.news24.com/News24/World/News/0,,2-10-1462_2485413,00.html.

[17] 'UN deplores suicide attack in Northern Sri Lanka', *UN News*, 9 February 2009, available at http://www.un.org/apps/news/story.asp?NewsID=29817&Cr=Sri+Lanka&Cr1; 'LTTE continues targeting civilians-Suicide bomb attack at IDP rescue centre Kilinochchi', Sri Lanka Ministry of Defense, 10 February 2009, available at http://www.defence.lk/new.asp?fname= 20090209_06 [accessed March 2009].

[18] '*Serious violations of international law committed in Sri Lanka conflict: UN human rights chief*', OHCHR Press Release, 13 March 2009, available at http://www.unmultimedia.org/radio/english/detail/71133.html.

Since January 2009, the SLA has made significant territorial gains in the North, taking control of the LTTE administrative headquarters in Kilinochchi district, Elephant Pass,[19] and the strategic LTTE bases in Mullaittivu in the north east. The LTTE has retreated to a narrow strip of land along the northern coast of the Mullaittivu district referred to as the Vanni Pocket, from where, despite heavy losses, it has continued its resistance to the SLA the offensive.

Civilian casualties in the North have been compounded by restrictions by both the SLA and the LTTE on the movement of individuals from the areas affected by the fighting. The LTTE has been widely criticized for controlling the movement of civilians to create a human buffer against the SLA attacks and using intimidation and violence against individuals who attempt to flee to Government-controlled areas.[20] Further, as the LTTE has come under increased military pressure, it has reportedly relied more heavily on the forced recruitment of young Tamil men, women and children as fighters and to undertake other dangerous work in combat areas.[21] As the SLA has advanced in the North, tens of thousands of the displaced civilians have been forced by the LTTE, as well as heavy SLA shelling, to follow the LTTE's retreat northward, where they have been trapped in centre of the field of conflict in the Vanni Pocket and isolated from medical and other urgently needed assistance.[22] The International Committee of the Red Cross, one of the only international humanitarian agencies still operating in the conflict area estimates that as many as 150,000 may be trapped in the fighting between the SLA and the LTTE and has called for a mass evacuation of civilians and for the Government to allow more aid to the conflict zone where food shortages are at a critical level.[23]

Individuals who have fled the conflict areas in the North have faced serious restrictions on their ability to move to other parts of the country and many, including family groups, have been forced to remain in high security camps and transit sites established by the Government in Mannar, Vavuniya and Jaffna districts. Human rights observers have expressed concern that the conditions in the sites are not consistent with international standards for the treatment of displaced persons, in particular the restrictions on freedom of movement, the presence of military personnel in the camps and the screening process to identify LTTE suspects, which has reportedly been associated with arrests and disappearances.[24]

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19 The key land route between Jaffna Peninsula and the South of Sri Lanka.

20 International Crisis Group, 'Conflict Risk Alert: Sri Lanka' 9 March 2009, at http://www.unhcr.org/refworld/docid/49b5201e2.html; see also 'Sri Lanka: Growing UN concern as civilians in "safe zones" come under fire', see above footnote 14.

21 Human Rights Watch, 'Don't abuse the displaced', 9 March 2009, available at http://www.hrw.org/en/news/2009/03/09/sri-lanka-don-t-abuse-displaced; see also HRW, *War on the Displaced*, above footnote 15; see also 'Sri Lankan civilians tell of war ordeal', *BBC News*, 6 April 2009, available at http://news.bbc.co.uk/2/hi/south_asia/7985155.stm

22 International Committee for the Red Cross, 'Sri Lanka: ICRC reiterates concern for civilians cut off by the fighting', 4 March 2009, available through Reliefweb at http://reliefweb.int/rw/rwb.nsf/db900SID/EDIS-7PTQ9Q?OpenDocument&rc=3&cc=lka [accessed March 2009].

23 'Sri Lanka faces war catastrophe', *BBC News*, 4 March 2009, available at http://news.bbc.co.uk/2/hi/south_asia/7922096.stm ; see also 'UN expert appeals to LTTE and government of Sri Lanka to save lives of internally displaced persons trapped by conflict, *ReliefWeb*, 7 April 2009, available at http://www.reliefweb.int/rw/rwb.nsf/db900SID/JBRN-7QVHZU?_OpenDocument reporting statements by the Representative of the UN Secretary – General on the Human Rights of Internally Displaced Persons following a four day visit to Sri Lanka.

24 See 'Sri Lanka: UN Humanitarian Chief makes a plea for civilian safety', *Integrated Regional Information Network*, 22 February 2009, available at http://www.irinnews.org/report.aspx?_ReportId=83068; see also HRW, *War on the Displaced,* above footnote 15; see also University Teachers for Human Rights, '*Pawns*

The security and human rights situation throughout the North remains poor. Strict security and anti-insurgency measures implemented by the Government forces to identify LTTE members and suppress LTTE activities in the North have involved increasingly frequent cordon and search operations, arrests, detentions and restrictions on movement of Tamils in and from the region.[25] Tamils who are suspected of having LTTE affiliations are at high risk of suffering harassment, intimidation, arrest, detention, torture, abduction and/or killings at the hands of the military, police and security forces in the North.[26]

Throughout the North, targeted acts of violence and human rights violations continue to be committed against individuals of specific profiles by the Government forces, the LTTE and other actors. Members of the pro-Government Eelam People's Democratic Party (EPDP)[27] and People's Liberation Organization of Tamil Eelam (PLOTE)[28] have been implicated in extensive and serious violations of human rights, including, extortion, detention, torture, disappearances and extra-judicial killings in the North and have acted with impunity.[29] Incidents of rape of Tamil women in police or military custody in the North, including women who are held in Government-run IDP camps, are reportedly occurring.[30] A very significant majority of the reported incidents in the North have involved individuals of Tamil ethnicity.

Humanitarian access remains a serious concern for the civilians living in the conflict areas in the North. Since September 2008, the UN and almost all other international aid agencies have been prevented from operating in the areas of the North affected by the fighting and humanitarian access has been severely limited. IDPs and other vulnerable groups in the North, who remain heavily reliant on food assistance, have been gravely affected by the limited food supplies.[31] Civilians trapped within the fighting zones have extremely limited access to medical care and supplies and throughout the North the health crisis resulting from

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of an Un-heroic War', Special Report No. 31, October 2008 available at http://www.uthr.org/SpecialReports/spreport31.htm#_Toc212879819

25 'Sri Lanka Government implements new system to identify LTTE Tigers', *ColomboPage*, 23 February 2009, available at http://www.colombopage.com/archive_09/February23144256RA.html.

26 Human Rights Watch, *Recurring Nightmare: State Responsibility for "Disappearances" and Abductions in Sri Lanka*, 6 March 2008. Volume 20, No. 2(C), available at http://www.hrw.org/en/reports/2008/08/27/recurring-nightmare (hereafter "HRW, *Recurring Nightmare*"). The European Court of Human Rights is also citing several reports that confirmed the risk of being targeted by the authorities if political affiliation with the Tamils is presumed see *NA. v. The United Kingdom*. Appl. No. 25904/07. Council of Europe: European Court of Human Rights. 17 July 2008, p. 31-35, available at: http://www.unhcr.org/refworld/docid/487f578b2.html. See also Human Rights Watch, *Sri Lanka: Return to War - Human Rights under Siege*, 6 August 2007, available at http://www.hrw.org/en/reports/2007/08/05/return-war.

27 A pro-Government political party and paramilitary group led by Douglas Devanda, a Minister in President Rajapaksa's cabinet. See United States Department of State, *2008 Country Reports on Human Rights Practices - Sri Lanka*, 25 February 2009, available at: http://www.unhcr.org/refworld/docid/49a8f151c.html (hereafter "USDOS, *2008 Country Reports on Human Rights Practices*").

28 See the PLOTE's official website at http://www.plote.org/plote/eindex.html.

29 'Independent media in Jaffna threatened by armed cadre of EPDP', *Free Media Movement*, 29 October 2008, available at http://freemediasrilanka.wordpress.com/2008/10/29/independent-media-in-jaffna-threatened-by-armed-cadre-of-epdp/ [accessed March 2009].

30 'Colombo's war crimes turn to rape of the fleeing – Jaffna MP', *TamilNet*, 28 January 2009, available at http://www.tamilnet.com/art.html?catid=13&artid=28176; see also 'Sri Lanka State Terrorism Rape & Murder of Eelam Tamil Women', *Lanka Newspapers*, 3 April 2008, http://www.lankanewspapers.com/news/2008/4/26384_space.html .

31 International Crisis Group, 'Conflict Risk Alert: Sri Lanka' 9 March 2009, see above footnote 20; 'Growing UN concern as civilians in "safe zones" come under fire', see above footnote 14.

the conflict and displacement in the North exceeds available resources.[32] Displaced persons interviewed by UNHCR recount severe difficulties during their escape and dire humanitarian conditions in the Vanni pocket.

ii) Situation in the East

The SLA captured the last eastern base of the LTTE, the Thoppigala area in Batticaloa, in July 2007, thereby ending LTTE control of the region. While small groups of LTTE fighters continue to target Government security forces in the East,[33] the conflict- related hostilities in this region have been significantly curtailed. Notwithstanding the end of the open armed conflict in the East, a heavy military and paramilitary presence remains on the territory. The SLA and the Sri Lankan counter–insurgency Special Task Force (STF)[34] assert security, military and counter-terrorism imperatives for their heavy operations in the region. The overall security situation in the East continues to be tense and serious violations of human rights by Government and non-State actors are still regularly reported.[35]

The Government commenced IDP return operations in March 2007, in areas in the East where fighting had begun to subside. Agencies in the area, including UNHCR, reported that some of the earlier returns were neither voluntary nor in conditions of safety and dignity. Advocacy interventions and closer involvement and monitoring by UNHCR and other agencies have resulted in an improvement in the quality of information provided to IDPs prior to return enhanced coordination among the different authorities has led to improvement in the system for IDP returns in the East.[36]

A deterioration in the security and human rights situation throughout the East was observed in the last months of 2008.[37] In early 2009, UNHCR expressed its concern regarding the

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[32] 'Sri Lanka: Civilian circumstances dire', *Integrated Regional Information Network*, 5 March 2009 available at ; 'Sri Lankan Conflict curtails access to healthcare for tens of thousands', 24 February 2009, 24 February 2009, available at http://www.un.org/apps/news/story.asp?NewsID=30005&Cr=sri+lanka&Cr1= reporting the World Health Organization's statement that limited access to healthcare in the North is putting tens of thousands at risk; Medcins sans Frontieres, 'Sri Lanka: Desperate and unacceptable situation for trapped population' 26 February 2009, http://www.doctorswithoutborders.org/news/article.cfm?id=3440&cat=field-news

[33] '6 STF commandos killed, 8 injured in 3 separate LTTE attacks in Batticaloa', *TamilNet*, 29 March 2009, available at http://www.tamilnet.com/art.html?catid=13&artid=28869; ICG, *Sri Lanka's Eastern Province: Land, Development*, see above footnote 10; see also ISAC Situation Report 152, 16-19 November 2008, reporting prevailing tension in Sinhalese villages in the south and north of Ampara following armed attacks on security forces guarding these villages; see also Ministry of Defense, 'LTTE assassinates a Police Constable in Kaluwewa (Ampara)', 4 December 2008, available at http://www.defence.lk/new.asp?fname=20081204_06 [accessed March 2009]. Fighting is also reportedly continuing along the Forward Defense Line in the North of Trincomalee.

[34] According to the website of the Sri Lanka Police Service, the STF is the paramilitary arm of the Service, deployed in counter-insurgency and counter-terrorism operations, see Sri Lanka Police Service, 'Special Forces', available at http://www.police.lk/divisions/stf.asp [accessed March 2009].

[35] According to information made available to the UN, between 1 January 2008 to 30 November 2008, 42 abductions in Town & Gravets (including 2 refugee returnees from India), 13 in Thampalagamam, 8 in Kuchchaveli (including two refugee returnees from India), 6 in Mutur, 5 in Eachchilampattai; 33 killings have been reported and verified in Town & Gravets, 4 in Mutur, 3 in Thampalagamam, 2 in Kuchchaveli and 1 in Eachchilampattai were reported.

[36] UNHCR, 'Overshadowed by Displacement in Sri Lanka's North, People Return Home in the East', 6 November 2008, available at http://www.unhcr.org/news/NEWS/4913071b4.html. A total of 180.000 internally displaced people returned home in the East.

[37] Human Rights Watch, *Sri Lanka: Human Rights Situation Deteriorating in the East* 24 November 2008, available at http://www.hrw.org/en/news/2008/11/24/sri-lanka-human-rights-situation-deteriorating-east (hereafter "HRW, *Sri Lanka: Human Rights Situation Deteriorating in the East*"); '75 civilians abducted in

security situation, calling upon the Government of Sri Lanka to investigate reported human rights abuses and urging the relevant authorities to provide adequate security to civilians in the region.[38] The regular incidents of violence in the East, including in areas of returns, have increased the atmosphere of fear and distrust that already existed between the different ethnic and political groups in the East and between the returnee community and the security forces.

The majority of the reported incidents of human rights violations in the East have involved young Tamil males. However, Tamil civilians, men and women of all ages, have been among those subjected to serious human rights abuses. Many of the reported incidents have been related to the anti-insurgency measures implemented by the SLA and the STF, which have been associated with significant restrictions on freedom of movement and access to land and livelihoods, arbitrary arrests, mistreatment in detention, sexual assaults, extrajudicial killing and disappearances of Tamils. Cordon and search operations are carried out regularly throughout the East, and are very frequently associated with arrests, primarily of Tamils.[39]

Following the recent rise in LTTE attacks in the East and throughout the country, and on the basis of intelligence information reportedly received regarding planned LTTE attacks, the Government has announced plans to step up security measures in areas outside of the immediate conflict area and Colombo. Increasing the number of military intelligence operatives, deploying Special Forces and Commandos as well as establishing new Army, Navy and Air Force units in the North and East are reportedly part of the special security plan that has been implemented to stop a resurgence of LTTE activities.[40] Given the LTTE methods of operation, which include heavy reliance upon Tamil civilians, together with the indiscriminate manner in which Government security measures have been implemented against Tamils to date, the proposed measures may prolong, and potentially exacerbate, the vulnerability of Tamil civilians to human rights violations.

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last three months - HRC Batticaloa', *TamilNet*, available at http://www.tamilnet.com/art.html?catid=13&artid=28456; 'Resettled Tamils in Moothor east live in fear', *TamilNet*, 31 March 2009, available at http://www.tamilnet.com/art.html?catid=13&artid=28888

38 UNHCR, 'Sri Lanka: UNHCR concerned over deteriorating situation in east', 9 January 2009, available at http://www.unhcr.org/news/NEWS/4967386f11.html.

39 'Police, SLA harass Aalangku'lam Tamil residents', *TamilNet*, 14 March 2009, available at http://www.tamilnet.com/art.html?catid=13&artid=28708; see also 'Sri Lankan commandos sexually abuse 14 year-old Tamil girl in Batticaloa', *TamilNet*, 2 March 2009 available at http://www.tamilnet.com/art.html?catid=13&artid=28566; see also 'Cordon and search operation stepped up in Trincomalee' *TamilNet*, 28 February 2009, available at http://www.tamilnet.com/art.html?catid=13&artid=28559; see also 'STF behind massacre of five Tamil civilians in Ampaa'rai - Parliamentarian', *TamilNet*, 4 November 2008 available at http://www.tamilnet.com/art.html?catid=13&artid=27392; see also Col. R. Hariharan, 'Sri Lanka: An Analysis of Military Situation – Update No. 156', South Asia Analysis Group, 19 November 2008, available at http://www.southasiaanalysis.org/%5Cnotes5%5Cnote482.html [accessed March 2009]. See also, 'Sri Lanka: Communal violence disrupts relief efforts in the east', IRIN, 3 June 2008 available at: http://www.unhcr.org/refworld/docid/4847bb921e.html, describing complaints by residents of the Tamil section of the predominantly Muslim town of Akkaraipattu in Ampara, of a rash of late night house break-ins and sexual assaults in February and March of 2008, allegedly by the STF in which some 50 women are alleged to have been assaulted over a few weeks. Just prior to the rapes, the STF had searched all houses in the Tamil side of town and photographed and videotaped every resident. Multiple eyewitnesses reported having seen a senior STF commander taking part in the late-night searches and assaults.

40 Asif Fuard, 'Moves to stop Tamil Tigers', *Sunday Times*, 15 March 2009, available at http://sundaytimes.lk/090301/News/sundaytimesnews_19.html; 'Concentrate attacks outside of Colombo: Beaten Tigers in another ruse', *Sunday Observer*, 15 March 2009 available at http://www.sundayobserver.lk/2009/03/15/sec01.asp.

Inter-ethnic and political tensions in the East, which have been aggravated by the long conflict as well as the post-conflict administration of the area, continue to result in violent clashes and are affecting individuals from Sinhalese, Tamil and Muslim communities. Sinhalese residents of the East have experienced ethnic backlash resulting from resentment and fear within the Tamil and Muslim communities of a Government population policies designed to establish a Sinhalese ethnic majority in the region.[41] Eethnic tensions, largely related to land disputes, also exist between the Muslims and Sinhalese in the Ampara, in particular, where Muslims represent 40% of the population but where Sinhalese hold 75% of the available land.[42] LTTE cadres are reported to have recently attacked a predominantly Sinhalese village in Inginiyagala in Ampara hacking to death 8 Sinhalese farmers, killing a total of 21 people, including three children and injuring several others.[43] The LTTE has denied responsibility and suggested that pro-Government paramilitary may be responsible.[44]

Longstanding tensions between Muslim and Tamil communities in the East[45] continue to be at the root of incidents of communal violence in the region.[46] Since the appointment of the TMVP leader as Chief Minister of the Eastern Provincial Council in May 2008 there have been violent clashes between the Muslim and Tamil communities. Several killings of TMVP members were followed by abductions and killings of Muslim civilians in Batticaloa.[47] Further, Muslims in the East have been frequently targeted by the TMVP, which has reportedly harassed, extorted, threatened and killed Muslims in the East, with apparent impunity.[48] Clashes between Government forces and the Muslim community in Ampara have been linked to land use in the region.[49]

Incidents of targeted violence are also believed to be related to the power struggle between the LTTE and pro-Government TMVP in the East,[50] and the split within the TMVP into different armed factions. Clashes between the TMVP and the chief political rival in the East, the EPDP, have involved shootings, killings and abductions on both sides. [51]

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41 See ICG, *Sri Lanka's Eastern Province: Land, Development*, above footnote 10

42 Ibid, p. 22

43 '(Update) Death toll of LTTE attack in Eastern Sri Lanka village risen further' , *ColomboPage*, 22 February 2009, available at http://www.colombopage.com/archive_09/February22160117RA.html.

44 "LTTE denies killing civilians in Ampaa'rai', *TamilNet*, 22 February 2009, available at http://www.tamilnet.com/art.html?catid=13&artid=28497.

45 'Tamil Muslim Relations and Unity for peace', *FederalIdea*, 13 September 2008, available at http://federalidea.com/fi/2008/09/tamilmuslim_relations_and_unit.html [accessed March 2009].

46 Ibid.

47 'Sri Lanka: Communal violence disrupts relief efforts in the east', *Integrated Regional Information Networks*, 3 June 2008, available at: http://www.unhcr.org/refworld/docid/4847bb921e.html, reporting that communal clashes between Tamils and Muslims have disrupted humanitarian work in eastern Batticaloa and caused the temporary displacement of 594 families.

48 Leon Berenger, 'TMVP seeks entry into Army, Police', *The Sunday Times*, 27 July 2008, available at http://sundaytimes.lk/080727/News/sundaytimesnews_14.html.

49 See ICG, *Sri Lanka's Eastern Province: Land, Development*, above footnote 10, p. 22.

50 '4 TMVP cadres shot dead', *BBC Sinhala*, 13 March 2009, available at http://www.bbc.co.uk/sinhala/news/story/2009/03/090313_tmvp_samanthurai.shtml, reporting an attack attributed to the LTTE against TMVP Karunafaction cadres in Ampara; 'TMVP Office attacked in Eastern Sri Lanka', *ColomboPage*, 11 January 2009, available at http://www.colombopage.com/archive_09/March1752611RA.html, reporting an LTTE attack on the Batticaloa Office of the TMVP.

51 'Paramilitary killings escalate in Sri Lanka', *Tamil Eelam News Service*, 14 November 2009, available at http://www.tamileelamnews.com/news/publish/tns_10428.shtml, reporting multiple clashes between rival factions, primarily of the TMVP in the East; 'Karuna Group person shot and injured in Batticaloa', *TamilNet*, 2 March 2009, available at http://www.tamilnet.com/art.html?catid=13&artid=28572, reporting a

While the immediate impact of the LTTE on the lives of civilians in the East has been greatly reduced, the TMVP, which now effectively controls Batticaloa and other parts of the East, is reported to engage in terror and crime. Incidents of TMVP involvement in abductions, child recruitment, robberies and repression of dissent are widely documented.[52] It is also reported that TMVP forces are responsible for extrajudicial killings, deaths in custody and abductions, which have apparently been carried out with the knowledge and tacit agreement of Government actors and local authorities.[53] Abductions and forced recruitment by the TMVP group are also reported to have occurred in IDP camps in Batticaloa and Trincomalee districts.[54]

A series of abductions of young women in Batticaloa district were believed to be the work of local TMVP cadres.[55] Human rights watch reported that 30 abductions took place in Ampara Akkairappatu and Adalachennai divisions of Ampara in September and October 2008 and that witnesses to many of the abductions stated that they were carried out by armed men in civilian clothes who spoke Tamil, suggesting that the TMVP or other Tamil paramilitary groups are responsible.[56]

Insecurity resulting from the activities of criminal groups, many of whom received training from the TMVP and fought against the LTTE alongside TMVP and the SLA and are also often reported to act with impunity, has also affected both Tamils and Muslims in the East.[57]

All ethnic groups in the East who have been displaced by the conflict have experienced difficulties in accessing former land and livelihoods.[58] Several areas in the East remain

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shooting incident involving a Karuna group officer in charge of educational affairs who had been a former member of EPDP member. The incident reportedly took place 100 meters from a police sentry post; 'TMVP person recovered dead in Batticaloa', *TamilNet*, 26 February 2009, available at http://www.tamilnet.com/art.html?catid=13&artid=28536, reporting the murder of a week after disappeared which family members attributed to a conflict within TMVP.

52 See Suda Ramachandran, 'Sri Lanka's end game brings new woes' *Asia Times*, 7 February 2009, available at http://www.atimes.com/atimes/South_Asia/KB07Df02.html; see also HRW, '*Sri Lanka Human Rights Situation deteriorating in the East'*, above footnote 37; see also International Crisis Group (ICG), *Sri Lanka's Return to War: Limiting the Damage*, 20 February 2008. Asia Report N°146, available at http://www.crisisgroup.org/library/documents/asia/south_asia/sri_lanka/146_sri_lankas_return_to_war___limiting_the_damage.pdf (hereafter "IGC, *Sri Lanka's Return to War*"); see 'Pillayan Group men abduct Tamil civilian, in Batticaloa', *TamilNet*, 12 January 2009, available at http://www.tamilnet.com/art.html?catid=13&artid=27994, reporting complaint filed with Police by the family of a 28 year-old Tamil male allegedly held and tortured in TMVP Office in Batticaloa.

53 HRW, '*Sri Lanka: Human Rights Situation Deteriorating in the East*', see above footnote 37; see also ICG, *Sri Lanka's Eastern Province: Land, Development*, above footnote 10..

54 Internal Displacement Monitoring Centre (IDMC), *Sri Lanka: Returns in the east but new displacements in the north*, 27 August 2008, available at: http://www.unhcr.org/refworld/docid/48b5428726.html (hereafter "IDMC, *Returns in the east*"). In Trincomalee district police arrested 4 members of the Pillayan faction of the TMVP, including the local leader of the TMVP in Trincomalee, who are believed to be responsible for the recent kidnapping for ransom and murder of a young girl and four other individuals, and who the police claim are involved in over 30 other kidnappings in the district, see 'TMVP strongman leads kidnap group in Eastern Sri Lanka', *ColomboPage*, 17 March 2009, available at http://www.colombopage.com/archive_09/March1752611RA.html; 'Abductor killed by police', *BBC Sinhala*, 15 March 2009, available at http://www.bbc.co.uk/sinhala/news/story/2009/03/090315_abducted_girl.shtml.

55 See "IDMC, *Returns in the east*" above footnote 54.

56 See HRW, '*Sri Lanka Human Rights Situation deteriorating in the East'*, above footnote 37.

57 See HRW, *Recurring Nightmare*, pp. 62-63, above footnote 26; International Crisis Group, *Sri Lanka's Muslims: Caught in the Crossfire*, Asia Report N°134, 29 May 2007, p. 30, available at http://www.crisisgroup.org/library/documents/asia/south_asia/sri_lanka/134_sri_lanka_s_muslims_caught_in_the_crossfire.pdf .

uninhabitable due to the presence of landmines and/or other unexploded ordinances. Returnees in some areas of the East have been unable to access their former places of residence because they are being occupied by security forces. Several hundred returnees in Batticaloa and Trincomalee have been unable to return to their homes because they were inside SLA camps or in buffer zones around them.[59] The designation of the High Security Zones in the East[60] has also cut off access by many Muslims and Tamils to locations used by for agriculture, fishing and cattle grazing and other livelihood activities.

iii) Situation in the Other Provinces and Colombo

While the armed conflict between the LTTE and the SLA is currently concentrated in the North of the country, conflict-related attacks have also taken place in the other regions, in particular the areas in and around Colombo.[61] LTTE attacks have recently been reported in other regions and, as noted above, some observers have suggested that this may reflect a shift in LTTE tactics as the LTTE faces defeat in the formal armed conflict. The Government is reportedly preparing to reinforce security in regions where the LTTE is expected to be active, to prevent LTTE infiltration and attacks.[62]

Bombings, including suicide attacks, and claymore mine explosions, attributed primarily to the LTTE, are occurring regularly in and around Colombo. Many of the attacks have been apparently aimed indiscriminately against civilian targets.[63] Military and Government personnel, including Government officials, have also been targeted.[64]

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58 ICG, *Sri Lanka's Eastern Province: Land, Development*, above footnote 10.

59 Following UNHCR's advocacy interventions with the STF at the Colombo level, in November 2007, some local STF camp commandants in Paddipalai DS Division in Batticaloa reportedly started to take steps to pay rent to families whose houses are being occupied but the Government has not yet communicated a timeframe for compensation or property restitution to those affected.

60 Centre for Policy Initiatives, *A Brief Profile of the Trincomalee High Security Zones and other Land Issues in Trincomalee*, May 2008, available at http://www.cpalanka.org/research_papers/Trinco_land_issues_2008.pdf [accessed March 2009]

61 See 'Tamil Tigers Planes raid Colombo', *BBC News*, 20 February 2009, available at http://news.bbc.co.uk/2/hi/south_asia/7902392.stm [accessed March 2009]; LTTE air cadres have strafed the capital apparently focusing on high value targets such as power stations and military installations; see also 'LTTE Suicide Bomber Exploded in Watalla 5 killed, 4 injured', *Asia Tribune*, 28 December 2008, available at http://www.asiantribune.com/?q=node/14878 [accessed March 2009], reporting an attack on the Civil Defense Force post outside of Colombo; see also 'LTTE retaliated to the loss of Killinochchi by a suicide bomb explosion in Colombo', *Asia Tribune*, 2 January 2009 available at http://www.asiantribune.com/?q=node/14966 [accessed March 2009], reporting an attack on the air force camp on Slave Island.

62 Asif Fuard, 'Moves to stop Tamils in the south' *Sunday Times*, 1 March 2009, available at http://sundaytimes.lk/090301/News/sundaytimesnews_19.html.

63 See 'How can people say this is Peace?', *Globe and Mail*, 27 January 2009, available at http://www.theglobeandmail.com/servlet/story/RTGAM.20090127.wsrilanka27/BNst__, quoting local observers on the likely return of the LTTE to insurgency tactics and the likely adverse impact for Tamils; see also Simon Montlake, 'Sri Lanka nears victory in long war with Tamil Tigers', Christian Science Monitor, 27 January 2009, available at http://www.csmonitor.com/2009/0127/p06s01-wosc.html; see also 'Sri Lanka: UN urges greater protection of civilians after bombs kill 24', *Integrated Regional Information Networks,* 8 June 2008, available at http://www.irinnews.org/report.aspx?ReportID=78629. At least 16 attacks have taken place, most in government-controlled areas, killing more than 200 civilians, see UN Office for the Coordination of Humanitarian Affairs (OCHA), 'UN Humanitarian Chief Condemns Targeting of Civilians in Attacks in Sri Lanka', available at http://www.humanitarianinfo.org/riLanka_hpsl/Files/Media%20Centre/Press%20Releases%20And%20Statements/LKP0019_PR_UN%20Humanitarian%20chief%20condemns%20targeting%20of%20civilians%20in%20Sri%20Lanka.pdf [accessed March 2009]; see also "Bomb explodes in Colombo, 45 wounded", *TamilNet*, 30 August 2008, available at http://www.tamilnet.com/art.html?catid=13&artid=26781; Amnesty International, 'Civilians

As a result of the ongoing LTTE attacks on Government and civilian targets in the country, which have included suicide attacks by Tamil men and women, Tamils, in particular those originating from the North and East have been under suspicion. Wide scale arrests and detention of Tamils have been reported throughout the country.[65] As in the North and the East, they are frequently associated with cordon and search operations and frequently follow bombings or other attacks by the LTTE. Tamils who are without proper identity documents are more likely to be arrested and detained in these operations.[66]

In Colombo and the surrounding areas, heightened security measures have been implemented to prevent LTTE attacks. Cordon and search operations, roundups and arrests of Tamils, in particular Tamils from the North and East, are regularly reported in Colombo.[67] In the fall of 2008, all citizens coming to Colombo and the Western Province from war affected regions, including all those who arrived within the past five years, were required to register with the police.[68] The Colombo police have just announced a further registration for all residents

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Continue to Face Deadly Threat', 11 July 2008, available at http://www.amnesty.org/en/for-media/press-releases/sri-lanka-civilians-continue-face-deadly-daily-threat-20080711.

64 For example, see 'Suicide attack kills 14', *BBC News*, 10 March 2009, available at http://news.bbc.co.uk/2/hi/south_asia/7934095.stm, reporting an attack attributed by the Government to the LTTE on a mosque in the southern town of Akuressa during a Muslim religious festival attended by six Government Ministers, one of whom was among the injured; see also 'Sri Lanka minister survives blast', *BBC News*, 9 October 2008, available at http://news.bbc.co.uk/1/hi/world/south_asia/7660829.stm, reporting that a suspected woman LTTE suicide bomber had killed at least one person and injured five in an attack apparently targeting Agriculture Minister M. Sirisena in the town of Boralesgamuwa, 10km (six miles) east of Colombo.

65 See for example Centre for Policy Alternatives, *A Profile of Human Rights and Humanitarian Issues in the Vanni and Vavuniya*, March 2009, p. 60, available at http://www.cpalanka.org/Policy_Brief/Vanni_Report.pdf [accessed March 2009]; '99 Tamil civilians arrested in Matara district', *TamilNet*, 18 March 2009, available at http://www.tamilnet.com/art.html?catid=13&artid=28756, reporting that the arrests occurred in the district in the Southern Province following a cordon and search operation related to information that the suicide bomber in the Ankuressa attack had spent several months in the district. An additional nine Tamils, most of who originate from the North and East, were reportedly arrested in Matara and are being held in connection with the Ankuressa bombing.

66 For example, see '23 arrested in Wellawat', *TamilNet*, 17 March 2009, available at http://www.tamilnet.com/art.html?catid=13&artid=28754, reporting that the individuals who were arrested in cordon and search operations in the Colombo area were Tamils from the North East and Central Provinces. Police reportedly stated that the suspects failed to produce National Identity Documents and to justify their presence in the area and are being held for interrogation; '13 Tamil youths arrested in Gampaha', *TamilNet*, 3 March 2009 available at http://www.tamilnet.com/art.html?catid=13&artid=28588, reporting that the majority were Tamils from the North and East who had failed to prove their identity in search operations and were interrogated to confirm that they were not involved in terrorist activities.

67 For example, see '157 Tamils arrested in outskirts of Colombo', *TamilNet*, 28 March 2009 available at http://www.tamilnet.com/art.html?catid=13&artid=28856; 'Five Tamil youths arrested in Colombo', *TamilNet*, 16 March 2009, available at http://www.tamilnet.com/art.html?catid=13&artid=28732; '18 Tamil youths arrested in the outskirts of Colombo', *TamilNet*, 10 March 2009, available at http://www.tamilnet.com/art.html?catid=13&artid=28674; 'Arrests of Tamil youths escalates in Colombo', *TamilNet,* 4 March 2009, available at http://www.tamilnet. com/art.html?catid=13&artid=28598, reporting that 23 Tamil youths, including 8 women, predominantly from the North and East, had been arrested in the Colombo area in the preceding week, and referring to statements of two Tamil MPs that they receive reports daily from families of Tamil youths who have been arrested in Colombo..

68 'Sri Lankan war displaced register on police order', *Reuters Alertnet*, 21 September 2008, available at http://www.alertnet.org/thenews/newsdesk/COL330644.htm [accessed March 2009], reporting that five bombs had exploded in the three weeks immediately preceding the September registration ''Majority Tamils' in east census', *BBC Sinhala*, 5 October 2008, available at http://www.bbc.co.uk/sinhala/news/story/2008/10/081005_east_census.shtml; see also 'More Sri Lanka war refugees register on police order', *Reuters Alertnet*, 5 October 2008, available at http://www.alertnet.org/thenews/newsdesk/COL335586.htm [accessed March 2009].

from the North and East who were not registered in the earlier exercises and have stated that they intend to carry out a massive search operation after the deadline to identify and prosecute those who fail to register.[69] The Government has stated that the registration exercises are necessary to ensure security in the capital, including the security of Tamils, and that all of the bombs and devices thus far intercepted have been located in Tamil areas of the capital.[70]

The Government has been heavily criticized for the high number of Tamils who have been subjected to arrest and security detention, particularly on the basis of information gathered in registration exercises and questioning at cordons and road checkpoints in and around the capital.[71] In October 2008, Sri Lanka's Deputy Minister of Vocational and Technical Training, P Radhakrishnan, accused the police of arresting "five to 10 Tamil people" every day in Colombo and its suburbs using information from the registration exercises in Colombo. He claimed that there were over 1,000 Tamils already in security detention and that anybody carrying identity cards with addresses from rebel-held areas was immediately arrested.[72] The Supreme Court has also highlighted the unacceptably high number of Tamil civilians in security detention in the Colombo region and has repeatedly called upon the Government to end practices leading to arbitrary arrest and detention.[73]

Abductions of civilians have also been reported in Colombo and the Western Province. The recorded cases involve predominantly Tamil abductees, particularly young Tamils.[74]

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69 David Byers, 'Sri Lankan army in 'final push' against Tamil Tigers', *TimesOnline*, 5 January 2009, available at http://www.timesonline.co.uk/tol/news/world/asia/article5447011.ece.

70 'Census of Northern citizens in Western Province successful', The Official Government of Sri Lanka Website, 22 September 2008, available at http://www.news.lk/index.php?option=com_content&task=view&id=7079&It [accessed March 2009].

71 'Sri Lanka: UN experts deeply concerned at suppression of criticism and unabated impunity', *UN Press Release*, 9 February 2009, http://www.unhchr.ch/huricane/huricane.nsf/0/0D62B94306A51630C12575580053FECC?opendocument.

72 "Police using registration details to arrest Tamils", *Daily Mirror*, 17 October 2008, available at http://www.dailymirror.lk/DM_BLOG/Sections/frmNewsDetailView.aspx?ARTID=29433; see also "Sri Lanka Tamils 'being arrested'", *BBC News*, 15 October 2008, available at http://news.bbc.co.uk/2/hi/south_asia/7672118.stm. In October 2008, Sri Lanka's Deputy Minister of Vocational and Technical Training, P Radhakrishnan, accused the police of arresting "5 to 10 Tamil people" every day in Colombo and its suburbs using information from the registration exercises in Colombo. He claimed that there were over 1,000 Tamils already in security detention and that anybody carrying identity cards with addresses from rebel-held areas was immediately arrested

73 'Sri Lanka court flays arrests of Tamils', *South Asian Post*, February 29, 2008 at http://www.southasianpost.com/portal2/c1ee8c44183985d401183ea6adb30150.do.html

74 'Tamil woman abducted in Wattala', *TamilNet*, 5 April 2009 available at http://www.tamilnet.com/art.html?catid=13&artid=28949 ; 'Tamil lady teacher abducted in Colombo', *TamilNet*, 14 March 2009, available at http://www.tamilnet.com/art.html?catid=13&artid=28684; 'Tamil businessman abducted in Kadawatte', *TamilNet*, 4 February, available at http://www.tamilnet.com/art.html?catid=13&artid=28304; 'White van gunmen abduct young Tamil woman in Colombo', *TamilNet*, 23 January 2009, available at http://www.tamilnet.com/art.html?catid=13&artid=28119; 'Tamil Trader abducted in Colombo', *TamilNet*, 30 December 2008, available at http://www.tamilnet.com/art.html?catid=13&artid=27866; 'Tamil youth abducted in Colombo', *TamilNet*, 20 November 2008, available at http://www.tamilnet.com/art.html?catid=13&artid=27529; 'Sri Lanka abductions 'on the rise'', *BBC Shinala*, 14 November 2008, available at http://www.bbc.co.uk/sinhala/news/story/2008/11/081114_abductions_unp.shtml.

C. General Human Rights Situation

Serious human rights violations continue to be committed by multiple actors in Sri Lanka. In addition to the military, police and security forces, the LTTE, the TMVP and armed factions of other political parties such as the EPDP and the PLOTE as well as criminal groups have all been implicated in the high number of abductions, disappearances, killings, extortions and forced recruitments in Sri Lanka.[75]

The discontinuation of the SLMM following the end of the Cease Fire Agreement in January 2008 has resulted in significantly diminished independent country-wide human rights monitoring, with the most acute gaps in the conflict areas of the North where most UN agencies and NGOs have been unable to maintain any presence since September 2008.[76] Human rights observers have expressed the view that the monitoring and investigative powers of the national Human Rights Commission (HRC) have been undermined by a lack of institutional independence, unwillingness to cooperate on the part of the security forces and insufficient Government support.[77] In December 2007, the HRC's international accreditation was downgraded to 'observer' status because of the presidential appointments of the new members, the Commission's lack of independence and its failure to issue annual reports.[78]

While fundamental human rights are enshrined in the Constitution of Sri Lanka, the Emergency Regulations currently in force in the country accord broad powers and discretion to police and military forces in times of emergency.[79] The Government's intensified counter-insurgency and anti-terrorism operations, including the repeated expansion of the Emergency Regulations, are considered to have contributed to the overall deterioration in the human rights situation in Sri Lanka.[80] Concerns have also been expressed that the broadly defined

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75 'Universal Periodic Review of Sri Lanka – Human Rights Watch Submission to the Human Rights Council', 4 May 2008, available at http://www.hrw.org/en/news/2008/05/04/universal-periodic-review-sri-lanka; Sri Lanka ranked number one on the South Asia Human Rights Violators Index prepared by the Asian Centre of Human Rights on the basis of a comparative assessment of the records on governments in 2007 in nine thematic human rights areas, see Asian Centre for Human Rights, *South Asia Human Rights Index 2008*, 1 August 2008, p. 18, available at http://www.achrweb.org/reports/SAARC-2008.pdf [accessed March 2009]; see also Annie Kelly, 'Traumatized Tamils live in fear of new crackdown in Sri Lanka', *The Observer*, 5 April 2009, available at http://www.guardian.co.uk/world/2009/apr/05/sri-lanka-forces-tamil-tigers

76 Asia Human Rights Commission, 'Stop blocking a UN Human Rights Monitoring Mission in Sri Lanka', 9 May 2008, available at http://www.reliefweb.int/rw/rwb.nsf/db900sid/MUMA-7EG8BL?OpenDocument [accessed March 2009].

77 See HRW, *Recurring Nightmare*, above footnote 26, on the inadequacy of national human rights investigative and monitoring mechanisms.

78 Asian Human Rights Commission, 'Sri Lanka: National Human Rights Commission Downgraded for Failure in Human Rights Responsibilities', 20 December 2007, available at http://www.ahrchk.net/statements/mainfile.php/2007statements/1304/ [accessed March 2009]; see also 'Sri Lanka: National Human Rights Commission Downgraded for Failure in Human Rights Responsibilities', *The Sri Lanka Guardian*, 19 December 2007, available at http://www.srilankaguardian.org/2007/12/sri-lanka-national-human-rights.html.

79 *Emergency (Miscellaneous Provisions and Powers) Regulation, No. 1 of 2005*, 13 August 2005, available at http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=46a9f2b22; and *Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulations No. 07 of 2006*, 6 December 2006, available at http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=45af76a62.

80 'Sri Lanka: Free Journalist and Other Critics', Human Rights Watch, 6 August 2008, available at http://www.hrw.org/en/news/2008/08/06/sri-lanka-free-journalist-and-other-critics; Amnesty International, 'Sri Lanka: Eighth session of the UN Human Rights Council. Review of Sri Lanka under the Universal Periodic Review: Amnesty International's reflections on the outcome', June 2008, AI Index: ASA 37/023/2008, available at http://www.amnestyusa.org/document. php?id=ENGUSA20080612003; Human Rights Watch, World Report 2008, 31 January 2008, available at

crimes in the Emergency Regulations permit their use to unduly curtail dissent[81] and opposition to the Government or its policies. [82]

i) Abductions and Disappearances

Acts of abduction and kidnapping continue to be a serious problem in Sri Lanka, particularly in the North and East of the country and in Colombo. Many of the abductions involve civilians who are suspected to be LTTE members or sympathizers.[83] Reported abductions have also been linked to practices of forced recruitment, particularly by the LTTE in the North and the TMVP in the East. Kidnappings for ransom have also been reported. The vast majority of reported abductions have involved Tamils, but Muslims and Sinhalese have also been targeted.

Disappearances are also widespread, with women, aid workers, educators, journalists, religious leaders, trade unionists and politicians among those unaccounted for. Again, most of the reported cases are in the North, in particular in Jaffna, the East and Colombo. In June 2008, the United Nations Working Group on Enforced or Involuntary Disappearances formally communicated its concerns to the Sri Lankan authorities regarding the high number of enforced disappearances in the country and the lack of progress in bringing perpetrators to justice. [84] The Working Group has expressed grave concern regarding the increase in reported cases of disappearances in 2008 (212 cases) and expressed the view that many disappearances are not reported for fear of reprisals.[85]

While responsibility for the abductions and disappearances are not claimed by any one group, in many of the cases documented by human rights groups there are indications of involvement by Government actors, including security forces, the army, navy, or police. The incidents reported have frequently followed security searches, interviews or other contact with police or security forces and involve perpetrators who are deliberately hiding their identity.[86]

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http://www.hrw.org/legacy/englishwr2k8/docs/ 2008/01/31/slanka17626.htm. On 6 April 2007, the President granted additional police powers to the Army, Navy and Air Force, enabling those of certain rank to search, arrest, disperse unlawful assemblies and seize and remove offensive weapons from unauthorized persons in public places, see 'Sri Lanka: Giving police powers to the military will pave the way to torture chambers in military camps', *Asian Human Rights Commission*, 26 April 2007, available at http://www.ahrchk.net/statements/mainfile.php/2007statements/1005/ [accessed March 2009].

81 See the broadly defined offences under Regulations 18 and 19 of *Emergency (Miscellaneous Provisions and Powers) Regulation, No. 1 of 2005*, and *Emergency (Prevention and Prohibition of Terrorism and specified Terrorist Activities)* above footnote 79.

82 Asian Centre for Human Rights, *South Asia Human Rights Index 2008*, 1 August 2008, p. 18, available at http://www.achrweb.org/reports/SAARC-2008.pdf [accessed March 2009]; see also South Asia Intelligence Review, 'Sri Lanka Assessment 2008', 2008, available at http://satp.org/satporgtp/countries/shrilanka/index.html#.

83 HRW, *Recurring Nightmare*, see above footnote 26.

84 United Nations, 'United Nations Expert Group deplores recent wave of disappearances in Sri Lanka', 11 June 2008, available at http://www.unhchr.ch/huricane/huricane.nsf/view01/D564F9EDD64E959FC12574650049042C?opendocument.

85 United Nations, *Report of the Working Group on Enforced or Involuntary Disappearances*, Human Rights Council, 10th Session, A/HRC/10/9, 6 February 2009 available at http://www.reliefweb.int/rw/RWFiles2009.nsf/FilesByRWDocUnidFilename/EGUA-7PZLN5-full_report.pdf/$File/full_report.pdf [accessed March 2009].

86 IGC, *Sri Lanka's Return to War*, see above footnote 52; HRW, *Recurring Nightmare*, see above footnote 26.

ii) Arbitrary Arrest and Detention

Law enforcement authorities in Sri Lanka have been widely criticized for engaging in arbitrary arrest, which may be followed by periods of *incommunicado* detention. Most of those arrested are Tamils who are suspected of affiliation with the LTTE.[87]

In response to petitions on behalf of security detainees in Sri Lanka, in July 2008 the Supreme Court affirmed that "arrest without reasonable ground or suspicion was contrary to Article 13 (1) of the Constitution and that the search in houses without reasonable ground or suspicion was also a violation of rights." The Court called on the Attorney General to implement measures to prevent and end arbitrary detention under security measures and to release without delay persons against whom there was no evidence to file indictments.[88] Notwithstanding this clear acknowledgement of the widespread practice of arbitrary detention and call for reform by the Supreme Court, the broad powers of arrest and detention accorded to the police and military under the Emergency Regulations continue to effectively supersede relevant constitutional human rights guarantees and are widely used to arrest and detain individuals on limited evidence and without charge for prolonged periods of security detention.

As noted above, the SLA has also held Tamils who are fleeing the fighting in the North in highly militarized camps under quasi-detention conditions. Since March 2008, displaced people from LTTE controlled areas, including many family groups with children and elderly people have been held camps in Mannar and Vavuniya districts, where severe restrictions on movement are imposed. Human rights advocates have criticized the Government's policy as unreasonably limiting the rights of displaced persons to liberty and freedom of movement. In a recent statement, the Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons, recognized the legitimate need to screen armed elements from the civilian population but stated that "internally displaced persons, as citizens, retain their right to freedom of movement and must not be confined to camps. While security screenings may be conducted upon arrival, they should be concluded promptly and individuals retained only in accord with judicial process and on the basis of individual suspicion."[89] The justification for the detention of the IDPs in the North has not been reviewed by the courts and those held have not been charged with any offence.

iii) Freedom of Movement

Tamils and Muslims in Sri Lanka from the North and East of Sri Lanka have been subjected to forcible displacement, return, and relocation, thereby interfering with their right to choose their place of residence. In addition to the restrictions on the movement of IDPs from formerly LTTE-controlled areas referred to above, restrictions on travel caused by road closures, security checks and curfews imposed by the military, security and police forces, as

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87 See USDOS, *2008 Country Reports on Human Rights Practices*, above footnote 27; see also Asian Centre for Human Rights, *South Asia – Human Rights Index*, 1 August 2008, p. 11, available at http://www.achrweb.org/reports/SAARC-2008.pdf [accessed March 2009].

88 '1200 Tamils in detention at Welikada: SC orders all without evidence to be released', *Lankeanews*, 29 July 2008, available at http://www.lankaenews.com/English/news.php?id=6192, delivering its judgment on Ceylon Workers' Congress (CWC) fundamental rights petition against the indiscriminate arrests of Tamils in and around Colombo under the Prevention of Terrorism Act and Emergency Regulations; see also 'Sri Lanka court flays arrests of Tamils', see above footnote 73, referring to Supreme Court call on Government to develop clearer rules regarding arrest and detention.

89 United Nations, 'United Nations Expert says world is neglecting major internal displacement crises', UNOG, 13 March 2009, available at http://www.unog.ch/80256EDD006B9C2E/(http NewsByYear_en)/B18311B044D28F05C1257578004196A5?OpenDocument.

well as the LTTE, have seriously interfered with the right of civilians to flee the areas of fighting or other forms of targeted human rights violations, and to seek protection in other parts of the country or asylum abroad and to pursue livelihood activities. As noted above, individuals who do not have the required Government-issued documentation, which would include many returnees and IDPs, are likely to experience even greater interference with their right to freedom of movement within the country.

The use by the Government of its emergency powers to establish High Security Zones (HSZ) in the North and the East has effectively displaced tens of thousands civilians and prevented access to homes and livelihoods.[90] Tamils and Muslims have been most adversely affected by the declaration of High Security Zones. While the Government has promised some resettlement and the allocation of alternative land,[91] those affected and their advocates have argued that the land which has so far been designated for relocation is prone to flooding and is much smaller in area than that from which they have been displaced and does not represent fair compensation.

Ethnic Tamils, in particular those originating from the North and the East, who reside in or seek to enter Colombo, have encountered disproportionate and discriminatory restrictions on their movement and ability to reside in Colombo.

iv) Freedom of Expression

Freedom of expression remains seriously curtailed in Sri Lanka, in part as a result of the Government's counter-insurgency operations and a prevailing intolerance of dissent[92], but also due to the restricted access by journalists to conflict areas. [93]

Media institutions seeking to report independently and critically on elections and the ongoing conflict in Sri Lanka have been increasingly exposed to intimidation and physical attacks and killings by all sides.[94]

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90 Internal Displacement Monitoring Centre (IDMC), 'High Security Zones continuing to prevent the return of IDPs in Jaffna and Trincomalee', May 2008, available at http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/BE787F2199F41DF7C12574A6005B9C5F?OpenDocument, the High Security Zones are demarcated areas near military camps, barracks or checkpoints which are off limits to civilians.

91 For a summary of the legal challenge and the problems with Government schemes for promised returns and compensation as well as development in the HSZ see Centre for Policy Initiatives, *A Brief Profile of the Trincomalee High Security Zones*, above footnote 60.

92 'Sri Lanka: UN experts deeply concerned at suppression of criticism and unabated impunity' *UN Press Release*, 9 February 2009, available at http://www.unhchr.ch/huricane/huricane.nsf/0/0D62B94306A51630C12575580053FECC?opendocument.

93 'Amnesty International condemns "war without witnesses" as journalists prevented from reporting the conflict', Amnesty International, 6 March 2009, available at http://www.amnestyusa.org/document.php?id=ENGUSA20090306001&lang=e.

94 Committee to Protect Journalists (CPJ) 'Sri Lanka Special Report: Failure to investigate', 23 February 2009, available at http://cpj.org/reports/2009/02/failure-to-investigate-sri-lankan-journalists-unde.php [accessed March 2009]; Article 19, 'Sri Lanka – Article 19 Laments murder of editor', 23 January 2009, available at http://www.article19.org/pdfs/press/sri-lanka-article-19-laments-murder-of-editor.pdf [accessed March 2009]; see also Asian Human Rights Commission, '*Sri Lanka – The letter by six former Ambassadors to the President',* 23 January 2009, available at http://www.ahrchk.net/statements/mainfile.php/2009statements/1854/r; see also Amnesty International, 'Media must be allowed to work freely and safely', 23 January 2009, available at http://www.amnesty.org/en/for-media/press-releases/sri-lanka-media-must-be-allowed-work-freely-and-safely-20090123; International Federation for Journalists – Asia Pacific, 'Statement of the International

Media organizations in Sri Lanka have complained that recent statements by the Government and military about the negative role of the media in the war against the LTTE, including denouncing journalists by name, have incited suspicion and hatred against journalists and contributed to the conditions of insecurity and danger in which journalists are working in the country.[95] Journalists have also expressed concern about increasing directives and restraints on broadcasting content from the Government and military and the resulting self-censorship and a loss of independent sources of information in Sri Lanka.[96]

There are increasing reports of journalists being arrested and detained under the anti-terror investigative powers. The anti-terrorism legislation in Sri Lanka has been used to prosecute journalists for political views expressed.[97]

v) Torture and other Inhuman, Cruel or Degrading Treatment

While the use of torture is prohibited by law in Sri Lanka, human rights observers have reported the extensive use of torture by police, security or armed forces in Sri Lanka.[98]

Press Freedom Mission', 25-29 October 2008, available at http://asiapacific.ifj.org/assets/docs/054/091/734a636-77d8a5b.pdf [accessed March 2009]. The International Press Freedom Mission, a coalition of international press freedom and media development organizations has conducted three missions to Sri Lanka since 2006 and has highlighted the progressively restrictive policies regarding the media and the increasing number of violent attacks and targeted human rights violations against journalists in Sri Lanka. For summary of incidents against media personnel see section D vi) below.

95 CPJ 'Sri Lanka Special Report: Failure to investigate', see above footnote 94; 'Sri Lankan Ministry of Defence viciously attacks independent media', *Free Media Movement*, 5 June 2008, available at http://freemediasrilanka.wordpress.com/2008/06/05/sri-lankan-ministry-of-defence-viciously-attacks-independent-media/ [accessed March 2009], expressing concern at statements by the Ministry of Defence accusing the Free Media Movement and other independent newspapers and journalists in Sri Lanka of effectively assisting the LTTE; see also 'Sri Lankan Defence Ministry brands media as "internal enemy" in the war against LTTE', *Newswatch*, 9 June 2008, available at http://www.newswatch.in/newsblog/1221 [accessed March 2009], referring to two articles which were posted on the Defence Ministry website entitled "*Stop media treachery against armed forces members!*" and *"Deriding war heros for a living – the ugly face of defence analysts in Sri Lanka."* Newswatch expressed the view that these and other statements by the Ministry of Defence have vilified the media and others who express criticism of the military.

96 Reporters without Borders (RSF), 'Newspaper editor injured in stabbing attack, other journalists forced to flee island' 23 January 2009, available at http://www.rsf.org/article.php3?id_article=30095 [accessed March 2009], referring to the 10 January 2009 closure of 'Lankadissent', a news website with a reputation for being outspoken and the closure of 'Lakima' newspaper after pressure from the authorities; see also 'Statement of the International Press Freedom Mission', see above footnote 94, deploring media rules gazetted on October 10th by the Sri Lankan Government provide for a number of contingencies under which broadcasting licenses can be cancelled, including seven different grounds related to broadcast content. See also 'Defense Ministry sets out guidelines for media self-censorship', *Free Media Movement*, 18 June 2008, available at http://freemediasrilanka.wordpress.com/2008/06/18/defence-ministry-sets-out-guidelines-for-media-self-censorship/ [accessed March 2009], referring to an editorial posted on a Ministry of Defense with guidelines for media-related matters which openly advise the media not to engage in any criticism of scrutiny of military strategies, positions, promotions or transfers, or procurements.

97 For example, J.S. Tissainayagam has been detained since March 2008 and charged under the Prevention of Terrorism Act (PTA). 'IFJ Joins Sri Lanka International Mission Statement', *International Federation of Journalists*, 30 October 2008, available at http://asiapacific.ifj.org/en/articles/ifj-joins-sri-lanka-international-mission-statement [accessed March 2009]. See also 'Leading Tamil radio journalist released after 8 days', *Reporters without Borders*, 24 November 2008, available at http://www.rsf.org/article.php3?id_article=29317 [accessed March 2009], reporting the arrest of A.R.V. Loshan by the Terrorist Investigations Department on 14 November 2008.

98 'Torture endemic in Sri Lanka Police – rights group', *Reuters,* 25 June 2008, available at http://in.reuters.com/article/southAsiaNews/idINIndia-34230920080625, reporting findings of the Asian Human Rights Commission; Bureau of Democracy, Human Rights and Labour, '2008 Human Rights

Following a monitoring visit in October 2007, the UN Special Rapporteur on Torture and Cruel and Degrading Treatment stated that "torture is widely practiced in Sri Lanka and prone to become routine in the context of counter-terrorism operations."[99] He reported having received "numerous, consistent and credible allegations" from detainees of ill-treatment by the police to extract confessions, or to obtain information in relation to other criminal offences. Similar allegations were received with respect to the army.[100] The Special Rapporteur attributed the extremely low number of convictions on indictments against officials accused of committing torture to the absence of effective investigation, intimidation against filing complaints as well as the inadequate protection for victims and witnesses of torture and a very high minimum sentence for torture.[101]

In the same report, the Special Rapporteur expressed the view that "the combination of severe overcrowding with antiquated infrastructure of certain prison facilities amounts to degrading treatment." For suspects held in police lock-ups under detention orders pursuant to the Emergency Regulations for periods of several months up to one year, "conditions are inhuman."

vi) Impunity

While the number of reported political crimes and human rights violations in Sri Lanka has increased since hostilities intensified in 2006, police investigations and convictions have not increased proportionally. The Government of Sri Lanka has been widely criticized for failing to acknowledge the extent of the problem and for lacking the commitment to effectively punish perpetrators of human rights violations, in particular those among members of the police, security and military forces.[102] In a recent statement, a group of 10 UN independent experts expressed their "deep concern at the deteriorating human rights situation in Sri Lanka, particularly the decreasing space for critical voices and the fear of reprisals against victims and witnesses which – together with a lack of effective investigations – has led to unabated impunity for human rights violations."[103]

Report: Sri Lanka', 25 February 2009 available at http://www.state.gov/g/drl/rls/hrrpt/2008/sca/119140.htm [accessed March 2009].

99 Statement by Manfred Nowak to the Third Committee at the 62nd session of the General Assembly, 29 October 2007, available at http://www.eyeontheun.org/assets/attachments/documents/5681.pdf [accessed March 2009].

100 The allegations of torture referred to methods including suspension from by the wrist or feet in contorted position, burning with cigarettes, blows to the ears, asphyxiation with plastic bags and various forms of genital torture. Detainees reported broken bones and other serious injuries as a result of the mistreatment.

101 UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak: mission to Sri Lanka*, 26 February 2008. A/HRC/7/3/Add.6, available at http://www.unhcr.org/refworld/docid/47d683cf2.html.

102 Asian Legal Resource Centre 'Sri Lanka: Prevention of impunity requires clear leadership from the government', 25 February 2009, available at http://www.ahrchk.net/statements/mainfile.php/2009statements/1905/ [accessed March 2009]; see also Asian Legal Resource Centre, 'Sri Lanka: The abdication of the duty to investigate crimes', 26 February 2009, available at http://www.alrc.net/doc/mainfile.php/alrc_st2009/539/ [accessed March 2009]; see also International Press Institute, 'IPI calls immunity a dark stain on Sri Lankan Government', 19 January 2009, available at http://www.freemedia.at/cms/ipi/statements_detail.html?ctxid=CH0055&docid=CMS12323635 82054 [accessed March 2009]; see also ICG, *Sri Lanka's Return to War*, above footnote 52; HRW, *Recurring Nightmare*, see above footnote 26

103 'Sri Lanka: UN experts deeply concerned at suppression of criticism and unabated impunity' *UN Press Release*, 9 February 2009. available at http://www.unhchr.ch/huricane/huricane.nsf/0/0D62B9430 6A51630C12575580053FECC?opendocument.

The Government has created a number of *ad hoc* commissions, including the Presidential Commission of Inquiry (PCI), mandated to investigate high-profile incidents of human rights abuses.[104] However, the independence and effectiveness of the commissions has been challenged, and many observers feel that they have not had a significant impact on the prevailing environment of immunity.[105] Investigations of complaints of human rights transgressions are reported to be slow and inconclusive and the number of prosecutions and convictions remains extremely low.[106] In this environment there are growing concerns regarding the rule of law and the administration of justice in Sri Lanka.

D. Groups at Risk of Targeted Human Rights Violations

For the assessment of the eligibility of asylum-seekers from Sri Lanka under the refugee definition in the 1951 Convention, the following categories of asylum-seekers are considered to be particularly at risk of suffering serious harm because of their individual profile. The groups highlighted below are neither collectively exhaustive nor mutually exclusive. Such targeting may indeed exist but due to restrictions on monitoring and reporting in many parts of Sri Lanka, and the limited information at its disposal, UNHCR is not aware of specific incidents that would justify highlighting additional groups.

i) Tamils Originating from the North or the East of Sri Lanka

The significant majority of reported cases of human rights violations in Sri Lanka involve persons of Tamil ethnicity who originate from the North and East. These individuals are at risk within these regions, and in other parts of Sri Lanka, by Government actors, the TMVP and other pro-Government paramilitary groups as well as the LTTE, because of their race (ethnicity) and/or (imputed) political opinion.

In Government-controlled areas, Tamils who originate from the North and the East, which are, or have been under LTTE control, are frequently suspected as being associated with the LTTE. For this reason, Tamils from the North and the East are at heightened risk of human rights violations related to the implementation of anti-terrorism and anti-insurgency measures. While this risk exists in all parts of Sri Lanka, it is greatest in areas in which the LTTE remains active, and where security measures are heaviest, in particular the North and parts of the East, and in and around Colombo.

Because of the heavy reliance of the LTTE on support and assistance of Tamils in areas which they have administered or controlled, which has included mandatory military training and recruitment of men and women and children, the use of civilians, including women in suicide attacks, and the requirement that civilians provide financial and other support for LTTE activities, few Tamils from these regions are without ties to the LTTE. Those who are

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104 For details of these Commissions, see International Crisis Group, *Sri Lanka's Human Rights Crisis*, Asia Report No. 135, 14 June 2007, available at http://www.crisisgroup.org/home/index.cfm?id=4896, pp. 20-24.

105 See 'International rights panel quits Sri Lanka', *Agence France Presse*, 6 March 2008, available through Reliefweb at http://www.reliefweb.int/rw/RWB.NSF/db900SID/LSGZ-7CGHFB?OpenDocument&rc=3&cc=lka [accessed March 2009], reporting that statement of the International Independent Group of Eminent Persons (IIGEP) set up to observe investigations into allegations of serious human rights abuses, that it would be terminating its activities in Sri Lanka; see also IGC, *Sri Lanka's Return to War*, above footnote 52.

106 HRW, *Recurring Hightmare*, see above footnote 26.

vulnerable to suspicion of having LTTE ties are, therefore, not limited to individuals who are presently actively engaged in LTTE activities and/or carrying out acts related to the armed conflict. Categories of Tamils from the North and East who are most likely to be suspected of LTTE affiliations, and are, therefore, at significant risk of suffering serious human rights violations, include, but are not limited to:

- Young Tamil males, in particular those who are not able to establish their affiliation with the TMVP, or one of the other pro-Government Tamil groups
- Tamils, male or female, who were trained by the LTTE, in particular those who have served with LTTE fighting forces
- Tamils who are not in possession of proper civil documentation, such as National Identity Cards
- Tamils who have had contacts with the political offices that the LTTE opened in several areas of the North and the East after the signing of the Cease Fire Agreement of 2002[107]
- Tamils who were born in the North or the East who and are outside of the region, in particular those who reside in or seek to enter Colombo.

In addition, Tamils in the North who remain under LTTE control are at risk of serious human rights violations by the LTTE, including heavy restrictions on their freedom of movement and expression, compelled to provide financial and other support for LTTE activities and forced recruitment by the LTTE for labour or military service. Any Tamil who refuses a request to participate in, or provide support for, LTTE activities risks being viewed as an opponent and suffering serious reprisals, which may include torture and killing. Individuals who have been former LTTE members who have defected, in particular those who are now providing, or are perceived to be providing, assistance to Government forces or other Tamil groups could, depending on their former role in the LTTE and current activities, also be at risk of retaliation by the LTTE.

Tamils from the North and the East may also be vulnerable to human rights abuses resulting from the inter-ethnic violence, which remains a serious problem in the East, in particular. Further, certain Tamils may be at risk of violence related to divisions within the Tamil community, frequently resulting from power struggles within and between emerging Tamil groups in the East and the North.

Internally displaced Tamils from the North and the East who are unlikely to be able to return to their original homes in this area, for example due to the destruction of their houses, or confiscation or occupation of their property by the military, and who are, therefore, likely to

[107] The terms of the 2002 truce between the Government and the LTTE allowed the group to begin political work in Government-controlled areas in phases and to open offices in Lavonia, Batticaloa, Trincomalee, Mannar and Ampara districts. See K. Venkataramanan, 'LTTE preparing to open political offices in govt-controlled areas in Sri Lanka', *Rediff.com*, 10 March 2002, available at http://www.rediff.com/news/2002/mar/10lanka.htm [accessed March 2009]. It gave the LTTE free access to towns like Batticaloa, Jaffna, and Trincomalee, previously under army control, for the purpose of opening political offices, see also Human Rights Watch, *Sri Lanka: Political Killings during the Ceasefire*, 7 August 2003, available at http://hrw.org/backgrounder/asia/srilanka080603.htm [accessed March 2009].

be in situation of displacement would be vulnerable to serious human rights abuses, in particular if they belong to any of the categories referred to above.

ii) Tamils Originating from Colombo and the Western Province

In Colombo there is a large population of ethnic Tamils who have been living in the area for generations.[108] Tamils who originate from this region have also been subjected to greater scrutiny and suspicion and are at risk of human rights violations associated with the security and counter-terrorism measures described above. Ethnic Tamils from Colombo who are perceived to oppose Government policies or the LTTE, in particular those who fall within categories v) – viii) below, are considered to be at greater risk.

iii) Muslims

In the context of the inter-ethnic and political tensions, Muslims have experienced targeted violence and other human rights violations by Government actors as well as pro-Government Tamil groups, in particular in the North and East. In addition, Muslims who are perceived to oppose Government policies or to be outspoken against the LTTE or other Tamil groups, in particular those who fall within categories v) – viii) below, are considered to be at greater risk of harassment, threats and violence.

iv) Sinhalese

While targeted incidents involving Sinhalese are less common than those involving Tamils and Muslims, as noted above, ethnically-motivated attacks against Sinhalese have been reported, in the East and the North, in particular. Sinhalese who are perceived to oppose Government policies or to be outspoken against the LTTE or other Tamil groups, in particular those who fall within categories v) – iii) below, are considered to be at greater risk of harassment, threats and violence.

v) Humanitarian Workers and Human Rights Advocates

Activities by humanitarian workers have been concentrated in the North and East of Sri Lanka, where assistance and protection needs resulting from the armed conflict have been the most acute. The work of humanitarian workers in areas of heightened ethnic and political tension leaves them more vulnerable to being suspected of supporting or acting against the interests of one of the parties to the conflict. Restrictions by both the LTTE and the Government on NGO activities in the conflict areas have seriously limited NGO activities, particularly in the North, but also in the East. As a result, there has been heavy reliance upon local staff to implement NGO programmes in the North and East. Local staff are often more vulnerable to persecution for their real or perceived support for, or failure to support, the interests of the ethnic or political groups with which they, or their families, have traditionally been associated. Because of their own profiles, which may be largely similar to those of the

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[108] Tamil people in Colombo District are composed of a majority who are originally from Colombo and some people from elsewhere primarily from the North and East of Sri Lanka. The exact number of Tamil people not originally from Colombo but living there is not known but, as part of this group, there would be an estimated 15-20,000 Tamils living in lodges in Colombo who are likely not to be originally from the capital. This estimation is quoted by the National Peace Council of Sri Lanka in an analysis; see Dr. J. Perera, 'Supreme Court restrains abuse of power', The National Peace Council for Sri Lanka, 11 June 2007, available at http://www.peace-srilanka.org/current_situation_detail.php?id=212 [accessed March 2009].

actors in the conflict, the risk of persecution as a result of the political opinions or allegiances attributed to them is very high. At greatest risk are local male staff of Tamil origin, but humanitarian workers of all ethnicities have been affected.[109]

In the context of counter-insurgency operations, relationships between the Government and local and international NGOs and human rights defenders have continued to be strained.[110] Human rights advocates workers and human rights advocates, in particular those operating in formerly LTTE-controlled areas and Colombo, are at risk of targeted attacks, abductions, disappearances and killings due either to their present work or due to perceived or actual former activities. Human rights advocates who oppose Government policies, in particular with respect to the conduct of the war and the treatment of Tamils, and who openly criticize official corruption or abuses are at high risk of serious human rights abuses by Government agents or pro-Government paramilitary groups. Government lawyers representing alleged victims of human rights abuses, in particular lawyers who represent Tamil suspects arrested under anti-terrorism legislation have been increasingly subjected to intimidation, threats and violence.[111]

Civil society groups, and human rights advocates and NGOs have been individually and publicly criticized by the President and other members of the Government and Military.[112]

Lawyers representing alleged victims of human rights abuses and in corruption cases are reportedly at increasing risk of harassment, attacks, death threats and other forms of

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109 For details regarding the situation of humanitarian workers and human rights advocates in Sri Lanka see above under the General Human Rights Situation.

110 ICG, *Sri Lanka's Eastern Province: Land, Development*, see above footnote 10.

111 See 'Sri Lanka fury at 'aid coalition'', BBC News, 24 March 2009, available at http://news.bbc.co.uk/1/hi/world/south_asia/7961088.stm; 'Sri Lanka: UN experts deeply concerned at suppression of criticism and unabated impunity', *UN Press Release*, 9 February 2009, available at http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/336663129F8B047CC1257558005525C6?OpenDocument [accessed March 2009], in which the Special Rapporteur on the situation of human rights defenders stated "A climate of fear and intimidation reigns over those defending human rights, especially over journalists and lawyers. The safety of defenders has worsened considerably over the past year".

112 See, for example 'Unfounded, lacks credibility, Minister says', Ministry of Defense Sri Lanka, 14 March 2009, available at http://www.defence.lk/new.asp?fname=20090314_01 [accessed March 2009], in which statements by the Disaster Management and Human Rights Ministry posted on the website of the Ministry of Defense criticize the High Commissioner for Human Rights' statement regarding the Government's treatment of civilians in the war in the North. "The Ministry deplores the apparently unprofessional manner in which the Office of the High Commissioner has conducted itself in repeating information from un-named and unverified 'credible sources'"; see also, Secretariat for Coordinating the Peace Process, 'Wrong again Ms. Hogg', 15 March 2009, available at http://www.defence.lk/new.asp?fname=20090315_03 [accessed March 2009], in which the Secretariat strongly criticizes Human Rights Watch and, in particular, researcher Charu Lata Hogg following the publication of an article which was highly critical of the Government: "Lying now seems to be perfectly acceptable to these modern day crusaders…Human Rights Watch must have its reasons for this whole deception, and for the relentlessness of its efforts to denigrate the Sri Lankan Government."; The Secretary General of the Secretariat for Coordinating the Peace Process, has also criticized the head of the International Crisis Group Gareth Evans and Alan Keenan Senior Analyst for International Crisis Group in Colombo: "It seems that Gareth Evans and his heartless crew not only want to see more sacrifices on the part of the Sri Lankan Army, but insist on lying about it."; see also 'Sinhala mob stones ICRC Office', *TamilNet*, 6 February 2009 available at http://www.tamilnet.com/art.html?catid=13&artid=28324, reporting the mob attack on the ICRC office in Colombo hours after a Government politician called for the expulsion of head of the ICRC in Sri Lanka, Paul following statements regarding the war in the North by the Head of the Agency Paul Castella.

harassment.[113] In October 2008, a group calling itself Mahason Balakaya, reportedly sent a notice to all court registrars and to several human rights lawyers threatening death or serious bodily injury to lawyers who represent suspects arrested under the anti-terrorism legislation.[114] Four lawyers complained that their names were placed on the Ministry of Defense website as lawyers who regularly appear for alleged terrorists. The accompanying passage indicated that their work was "unpatriotic."[115]

vi) Journalists

Journalists, publishers and other media personnel associated with the dissemination of views critical of Government policies, in particular relating to the conduct of the war and the treatment of ethnic minorities, are at serious risk of targeted human rights violations including, attacks, abductions, arbitrary arrest and detention, and killing. Similarly, journalists who are openly critical of the conduct and activities of the LTTE, the TMVP and other paramilitary groups are at risk of retaliation by these groups. While the majority of reported acts of violence have involved Tamil journalists, Muslim and Sinhalese journalists have also been targeted.[116]

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113 Asian Human Rights Commission, 'Sri Lanka: Grenade attack against lawyer appearing for human rights victims', 30 September 2008, available at http://www.ahrchk.net/ua/mainfile.php/2008/3018/ [accessed March 2009]. See also 'New threats emerge for Sri Lankan rights lawyers', *Reuters AlertNet*, 29 September 2008, available at http://www.alertnet.org/thenews/newsdesk/COL57574.htm, reporting that the Supreme Court had ordered an investigation into the threats to lawyers in a court case involving alleged police torture and quoting the Asian Human Rights Commission Director B. Fernando, a lawyer from Sri Lanka, who said that lawyers are unwilling to take cases involving politicians or police.

114 Asian Human Rights Commission, 'Sri Lanka: A death squad formation against human rights lawyers needs to be investigated urgently', 22 October 2008, http://www.ahrchk.net/statements/mainfile.php/2008statements/1735/ [accessed March 2009].

115 Asian Legal Resource Centre, '*Sri Lanka: The abdication of the duty to investigate crimes'*, see above footnote 102, referring to several incidents of attacks and threats in 2008 and early 2009 against lawyers who appear in cases of human rights abuse and bribery cases and noting that despite formal complaints by the victims and the Bar Association of Sri Lanka no credible inquiry had been undertaken with respect to the incident.

116 For recent attacks on media in Sri Lanka see, for example, Reporters without Borders (RSF) 'Tamil Newspaper Editor Arrested in Colombo', 26 February 2009, available at http://www.rsf.org/article.php3?id_article=30401; see also RSF, 'Newspaper editor injured in stabbing attack and others forced to leave the Island', 23 January 2009, available at http://www.rsf.org/article.php3?id_article=30095 , regarding an assault on the editor of a privately owned Sinhala newspaper known for its articles denouncing human rights abuses and corruption; See also 'Top Sri Lankan editor shot dead', *BBC News*, 8 January 2009, available at http://news.bbc.co.uk/2/hi/south_asia/7817422.stm, reporting the killing of the Editor-in-Chief of the Sunday Leader, L. Wickramatunga, by a hit squad of eight helmeted men on four motor cycles about 200 yards from an army base checkpoint. Wickramatunga was known to be highly critical of Government policy and the war with the LTTE. He had received numerous death threats through his career and was detained on several occasions because of the controversial nature of his stories. In his last editorial he had accused the President of pursuing the war to stay in power; see also 'Sri Lankan journalist critically injured in gun attack', *Committee to Protect Journalists*, 11 September 2008, available at http://www.cpj.org/asia/sri-lanka [accessed March 2009], reporting the shooting by unidentified gunmen of Tamil Sri Lankan journalist R. Devakumar, at her home in Batticaloa; 'Journalist beaten in Sri Lanka', *The Guardian*, 2 July 2008, available at http://www.guardian.co.uk/media/greenslade/2008/jul/02/journalistbeateninsrilanka, reporting that N. Perera, the deputy head of the advocacy section of Sri Lanka press institute, and M. Ratnaweera, a political officer with the British High Commission in Colombo, were badly beaten in kidnapping attempt on their way home from work; see also 'TV reporter hacked to death in Jaffna', *Reporters Without Borders*, 29 May 2008, available at http://www.rsf.org/article.php3?id_article=27233 reporting the killing of a Tamil television journalist, P. Devakumar on his way home from work in a high security area; 'Journalist beaten,

vii) Government Officials or other Political Actors

Government officials and politicians may also be at risk of serious human rights violations because of their political affiliations and/or views expressed.[117] Politicians and Government officials who are outspoken opponents of the LTTE, as well as those who are affiliated with pro-Government parties, including the TMVP, EPDP and PLOTE, may be at risk of targeted attacks by the LTTE. Where such individuals have previously held functions within the LTTE they are considered to be at heightened risk of reprisals by the LTTE.

Political figures and officials of any party or ethnic profile who are perceived to be pro-Tamil, or who express public criticism of the policies or actions of the Government, are at risk of targeted action by Government actors or pro-Government paramilitary groups.

viii) Women and Children, in Certain Circumstances

Women in Sri Lanka, in particular women in the conflict areas of the North and the heavily militarized North and East may be vulnerable to gender-based violence. Incidents of rape have been regularly reported in the North and the East, where military and paramilitary actors have the heaviest presence, and act with a high degree of impunity and incidents of violence and other crimes are regularly occurring. Women in these areas regularly complain that they are exposed to sexual violence and enforced sex with soldiers and other armed men. Women in camp and detention situations are particularly vulnerable.[118] Domestic violence is a serious social problem throughout Sri Lanka, and is reportedly on the rise.[119] With the partial breakdown of social structures related to the protracted conflict, incidents of domestic violence, affecting both women and children, are high in the conflict zones and within the communities in the North and the East.

Recruitment of children as soldiers, often forcibly, is practiced by both the LTTE and TMVP. The LTTE allegedly recruits and abducts children as young as 11 years to serve in combat

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editor assaulted and robbed', *Free Media Sri Lanka*, 20 May 2008, available at http://freemediasrilanka.wordpress.com/2008/05/20/journalist-beaten-editor-assaulted-and-robbed/ [accessed March 2009]; 'Police harass journalists in Batticaloa', *FreeMedia Sri Lanka*, 12 February 2008, available at http://freemediasrilanka.wordpress.com/2008/02/12/ [accessed March 2009]; 'Police attempt to abduct a senior journalist', *Free Media Movement*, 10 January 2008, available at http://freemediasrilanka.wordpress.com/2008/01/10/police-attempt-to-abduct-a-senior-journalist/ [accessed March 2009], reporting on the arrest, detention and suspected torture of the editor and two other staff of a trade unionist publication following complaints by trade unionists to the courts against salary hikes granted to Sri Lankan Ministers and the President. It was subsequently reported that the men had been arrested on suspicion of assisting the LTTE.

117 For example, 'Village Officer reported missing in Batticaloa', *TamilNet*, 11 February 2009, available at http://www.tamilnet.com/art.html?catid=13&artid=28384; see also 'Sri Lanka minister survives blast', *BBC News*, 9 October 2008, available at http://news.bbc.co.uk/1/hi/world/south_asia/7660829.stm, reporting an attack by a suspected woman LTTE suicide bomber on a convoy carrying a Government Minister outside of Colombo.

118 ICG, *Sri Lanka's return to War*, above footnote 52, pp. 9-10.

119 'Sri Lanka: Violence against Women on the Rise', *Integrated Regional Information Network*, 27 November 2008, available at http://www.irinnews.org/report.aspx?ReportId=81693, reporting the findings of the Gender-based Violence Forum in Sri Lanka, a consortium of NGOs, UN agencies and Government representatives on gender-based violence in Sri Lanka. The group found that women living in the conflict zones in the North and East of the country, in particular those in shelters, detention centers and other institutions faced the highest risk. "In Sri Lanka, the most prevalent types of violence against women are rape, domestic violence, sexual harassment, sexual violence, forced prostitution and trafficking." See also, International Crisis Group, 'Sri Lanka's Return to War: Limiting the Damage', 20 February 2008, available at http://www.crisisgroup.org/home/index.cfm?id=5305&l=1 p. 10, on the implications of the return to war for the enjoyment of human rights by women in Sri Lanka.

and in various battlefield support functions.[120] While the TMVP is reported to have released 39 child fighters to UNICEF in April 2008, UNICEF records indicate that many more underage recruits continue to be used by the TMVP and that at least 14 underage fighters were recruited or re-recruited between May and September 2008.[121] No TMVP officials involved in the reported cases of forced recruitment of children have been prosecuted.[122] The 4 December 2008 signing by the Government, TMVP and UNICEF of an Action Plan to end child recruitment by the TMVP represents a clear political acknowledgement of the problem, though it is too early to assess the impact of this development.[123] UNICEF reports that in LTTE controlled areas, child recruitment is ongoing and reportedly increasing as the SLA makes territorial gains in the North.[124]

The prostitution of children is reportedly widespread in Sri Lanka.[125] Child labour in Sri Lanka is used for work on plantations and in small-scale farming, as well as in seasonal family agriculture. Children also work in the informal sector, family enterprises, small restaurants, stores, repair shops, small-scale manufacturing, and crafts. Children also work as domestic servants, and some have reported experiencing sexual abuse. Children are reportedly trafficked internally for commercial sexual exploitation and, less frequently, for forced labor.[126]

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120 Watch list on children in armed conflict, 'No Safety No Escape: Children and the Escalating Armed Conflict in Sri Lanka', April 2008, available at http://www.watchlist.org/reports/pdf/sri_lanka/ENGLISH%20REPORT%20LR%20p.pdf [accessed March 2009]; Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report 2008 – Sri Lanka*, 20 May 2008, available at http://www.childsoldiersglobalreport.org/content/sri-lanka [accessed March 2009].

121 UINICEF, 'Underage recruitment database', 31 August 2008.

122 ICG, *Sri Lanka's Eastern Province: Land, Development, Conflict*, above footnote 10, p. 15.

123 See Ministry of Defense, 'TMVP signs action plan on child recruitment', 4 December 2008, available at http://www.defence.lk/new.asp?fname=20081204_05 [accessed March 2009]. The Action Plan reportedly gives a time table for required actions over the following three months.

124 'Sri Lanka: Unicef expresses concern for children victimized by conflict', *UN News*, 18 February 2009, available at http://www.un.org/apps/news/story.asp?NewsID=29942&Cr=sri+lanka&Cr1.

125 United States Department of Labor, *2007 Findings on the Worst Forms of Child Labor - Sri Lanka*, August 2008. Online. UNHCR Refworld, available at http://www.unhcr.org/refworld/docid/48caa4903c.html .

126 United States Department of State, *Trafficking in Persons Report 2008 - Sri Lanka*, 4 June 2008. Online. UNHCR Refworld, available at http://www.unhcr.org/refworld/docid/484f9a3d48.html.

III. Eligibility for international protection

A. General Approach

In light of the security and human rights situation in Sri Lanka, as described in greater detail in Section II of this paper, UNHCR reiterates its recommendation in the 2006 position that asylum claims by individuals from Sri Lanka should be examined in fair and efficient refugee status determination procedures in light of the criteria in the 1951 Convention.

As the situation of generalized violence related to the armed conflict in the North, which was highlighted in the 2006 position, still prevails, individuals who do not meet the criteria for recognition under the 1951 Convention and do not have an IFA/IRA in another part of the country should be considered under an extended refugee definition, where applicable, or accorded another complementary form of protection. In view of the extensive and reliable evidence of widespread targeted human rights violations against Tamils in and from the North, which has affected men and women of all ages, UNHCR considers that Tamil asylum-seekers from the North of Sri Lanka should be recognized as refugees under the 1951 Convention, absent clear and reliable indicators that they do not meet the criteria in Article 1A (2). In contexts where individual refugee status determination is not feasible to determine the claims of Tamil asylum seekers from the North of Sri Lanka, a *prima facie* approach should be adopted.

Given that the open hostilities related to the armed conflict have essentially ended in the East, asylum seekers originating from the East are no longer considered to be in need of refugee protection due to serious and indiscriminate threats arising from generalized violence associated with the armed conflict. Nonetheless, as highlighted earlier in this paper, serious and widespread violations of human rights are being committed in the East against individuals of various profiles, in particular individuals of Tamil ethnicity. Many asylum seekers from the East will thus be in need of international protection and their eligibility should continue to be evaluated in light of the criteria in the 1951 Convention.

The security and human rights situation in the distinct regions of Sri Lanka is varied and evolving, reflecting the territorial scope and progression of the armed conflict, the ethnic breakdown of the population in the distinct regions, and the range of State and non-State actors who exercise control in specific parts of the country. The objective risks faced by individuals or groups with specific profiles, and the availability of an IFA/IRA may not be the same in all parts of the country. The individual assessment of eligibility should take into account current and reliable information regarding the situation in the country and the categories of persons who are at risk in specific areas, together with the guidance provided in this paper regarding the issues and principles which should be considered in determining eligibility of asylum seekers from Sri Lanka for international protection.

B. Inclusion for Refugee Status under the 1951 Convention

To be eligible for refugee protection under the 1951 Convention, an asylum seeker must have a well-founded fear of persecution in his or her country of origin because of one or more of the five grounds set out in the 1951 Convention.

i) Well-Founded Fear of Persecution

Whether or not an individual's fear is well-founded must be assessed in the context of the situation in the country of origin, taking into account the personal profile, experiences and activities of the individual which could put him or her at risk. While having been subjected to persecution or mistreatment in the past would normally be an indicator of the risk of some form of harm in the future, this is not a precondition for recognition as a refugee.[127] The experiences of others who have a similar profile or are otherwise associated with the asylum seeker can also be an indicator the harm that could await him or her.[128]

Fear of persecution will be well-founded if there is a *reasonable possibility* that an individual will experience persecution if he or she returns to the country of origin.[129] On the basis of the objective evidence of frequent and persistent human rights violations against Tamils from the North, UNHCR considers that there is a reasonable possibility that a Tamil asylum seeker from the North will experience serious harm if returned to Sri Lanka. While many of the reported cases of human rights violations against Tamils in the North involve individuals who have been individually targeted, through abductions, disappearances and execution-style killings, as noted above, others have involved attacks on neighbourhoods and villages and other places where Tamils reside or gather, or result from the actions of the Government forces and the LTTE with respect to communities or groups of Tamil ethnicity. Given the wide range of profiles of the victims of reported incidents, it is not possible to identify particular categories of Tamils from the North who would not have a reasonable possibility of experiencing serious harm. For these reasons, UNHCR considers that, absent reliable information to the contrary, in the examination of asylum claims by Tamils from the North of Sri Lanka, the well-foundedness of fear of persecution should be presumed.

In other parts of the country, Tamils, in particular, but also Sinhalese and Muslims, who belong to certain groups or professions, or who are perceived to have particular views or affiliations as set out in Section II D above, are also considered to be at a relatively higher risk of suffering serious harm in Sri Lanka. For individuals who have the profiles noted, the threshold of "reasonable possibility" of serious harm may be met, even though not every individual who has this profile is experiencing the harm feared.

Due to the fact that multiple actors are known to perpetrate human rights violations in Sri Lanka, and the regular and reliable reports of incidents involving unidentified individuals and unmarked vehicles, the failure of an asylum seeker to identify the agent(s) of the persecution experienced or feared should not alone be interpreted an indicator of the lack of credibility of this part of the claim.

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127 UN High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, (UNHCR Handbook) 1 January 1992, available at http://www.unhcr.org/ refworld/docid/3ae6b3314.html (hereafter "UNHCR Handbook"), paragraph 45.

128 UNHCR Handbook, paragraph 43.

129 UNHCR Handbook, paragraph 42.

Where an asylum seeker is at risk of harm by a non-State actor, the analysis of the well-foundedness of his or her fear requires an examination of whether or not the State, including the local authority, is able and willing to provide protection. Given the absence of control by the Government of Sri Lanka over the area in the North which the LTTE continues to hold, as well as the apparent impunity with which certain paramilitary groups are reportedly acting in areas under Government control, many asylum seekers from Sri Lanka will not have effective State protection from harm feared. In claims by individuals, including some ethnic Tamils from the North and East, politicians, journalists, human rights activists and others who do not support Government policies, even where the Government is not the agent of persecution, the possibility that State protection would be denied because of their individual profile, in particular, their ethnicity or real or imputed political views or affiliations, should be taken into consideration when assessing the risk of harm.

ii) Persecution

Persecution is not limited to acts which cause physical harm. Acts which restrict human rights can also amount to persecution, in particular where the consequences are substantially prejudicial to the individual concerned. In Sri Lanka, forcible displacement, relocation and return, including through the declaration of HSZs, have interfered with the rights of Tamils and Muslims from the North and East to choose their place of residence. Restrictions resulting from road closures, security checks, curfews, and containment in camps, have severely restricted the right to freedom of movement for those affected.

When evaluating whether being subjected to these kinds of limitations constitutes persecution in an individual case, consideration should be given to the nature of the restrictions, the manner in which they are implemented, as well as their impact, including their cumulative effect, on the individual concerned.[130] In Sri Lanka, there are reliable indications that many of the security and counter-terrorism measures adopted by the police, security and military forces are being implemented in a discriminatory manner, targeting individuals of Tamil ethnicity, in particular those who originate from the North or East, and that they are not proportional to the objectives served. Further, in some cases, these restrictions have impeded access to homes and livelihoods and have had a very serious impact upon the individuals affected.

Regular exposure to measures such as security checks, raids, interrogation, personal and property searches, and restrictions on freedom of movement may, in some cases, result in undue hardship for the persons affected and cumulatively amount to persecution. Additionally, the human rights violations which have, in many cases, been associated with these security measures in Sri Lanka have contributed to a prevailing sense of insecurity and may compound the impact of these measures upon certain individuals. These factors should be taken into consideration when assessing whether the treatment to which an individual may be subjected amounts to persecution.

iii) Link to 1951 Convention Grounds

The well-founded fear of being persecuted must be related to one or more of the Convention grounds. That is, it must be "for reasons of race, religion, nationality, membership of a particular social group, or political opinion." This requirement will be met if an asylum seeker faces persecution because of a 1951 Convention ground, but also in cases where this is

[130] UNHCR Handbook, paragraph 53.

the reason for the unavailability of State protection. As noted above, in the context of Sri Lanka, individuals of certain ethnic groups or political profiles may have greater difficulty in obtaining effective State protection from persecution by non-State actors.

While criminal acts and human rights abuses committed against Tamil and Muslims in the East and North may not in all cases be linked to a 1951 Convention ground, in some cases, the race (Tamil ethnicity) and/or (imputed) political opinion of the predominantly Tamil and Muslim victims of these acts may be a significant factor in the failure of the State to intervene to offer protection.

The risk of persecution may result from grounds which are imputed to an individual. Many Tamils face problems as a result of political opinions, activities or affiliations which are imputed to them because, among other factors, of their Tamil ethnicity, gender, age, place of residence, or assistance which they have provided, voluntarily or under compulsion, to the LTTE. Given the breakdown of the rule of law, individuals with relatives who were killed or disappeared, and now are seeking justice and redress, could be subjected to mistreatment by members of the police, military or security forces because of their imputed political opinion.

A person's membership in a particular social group may be a relevant factor, often in combination with other Convention grounds, in the risk faced. In the context of Sri Lanka, certain forms of persecution against women, including rape and domestic violence, are related to their membership in the social group of women in Sri Lanka. Tamil women from the North and the East, where rape is a common form of persecution, may experience this harm because of their race (Tamil ethnicity) as well as their membership in a social group. Children in Sri Lanka also experience particular forms of persecution because of their age, including underage recruitment and labour and exploitation in the sex trade, because of their age. Children who face this harm may be recognized under the ground of membership in a particular social group.

The ground of membership in a particular social group may be relevant in claims by individuals who are at risk because of the activities or profile of a family member. This may arise in the North for family members who are subjected to harm because of the desertion of family members from the LTTE ranks or the refusal of family members to otherwise provided services demanded by the LTTE. In such cases a link between the harm feared and their membership in the social group of family may be established.

Individuals who exercise certain professions may also form a particular social group. As noted above, in Sri Lanka, journalists, politicians, aid workers, human rights advocates and members of other professions are being targeted because of their professional activities. Such individuals are also commonly at risk because of another one the grounds, in particular, their ethnicity or political opinion.

iv) Eligibility under the 1951 Convention in Situations of Armed Conflict

Asylum seekers who are compelled to flee their homes in situations of civil war or armed conflict, may have a well-founded fear of persecution because of one or more of the 1951 Convention grounds.[131] This is particularly relevant where, as in Sri Lanka, the civil war and armed conflict are rooted in ethnic and political differences, and where specific groups are victimized. Given the widespread human rights violations against individuals or specific

[131] UNHCR Handbook, paragraph 164.

profiles in all parts of Sri Lanka, it can be expected that many asylum seekers from Sri Lanka, including those originating from areas where the armed conflict is being fought, will be eligible for refugee protection under the 1951 Convention.

When examining the link to a 1951 Convention ground in the claims of persons who are fleeing a situation of armed conflict, there is no requirement that the individual be known to, and sought personally by, those perpetrating the harm. Whole communities may risk or suffer persecution for 1951 Convention reasons, and there is no requirement that an individual suffer a form or degree of harm which is different than that suffered by other individuals with the same profile. Further, many ordinary civilians may be at risk of harm from bombs, shelling, suicide attacks, and improvised explosive devices. As noted above, these methods of violence may be used against targets or in areas where civilians of specific ethnic or political profiles predominantly reside or gather, and for this reason, may be linked to a 1951 Convention ground.

In the ongoing fighting between the SLA and the LTTE in the North of Sri Lanka it is generally accepted that the LTTE's treatment of civilians in the Vanni Pocket, in particular forcing civilians to follow their retreat into this territory, shooting at civilians who attempt to flee, is linked to their Tamil ethnicity and/or political opinion, and the importance the LTTE has attached to maintaining a strong Tamil support base and fighting force. Similarly, there are indications that the military measures employed by the Government forces, which have involved extensive shelling of targets where civilians were known to be located, including hospitals and schools, may not be entirely unrelated to the ethnic and/or political profile of the Tamil civilian population affected.

When determining the basis for the eligibility of asylum seekers from the North of Sri Lanka it will be necessary to consider the reasons why the asylum seeker is at risk of serious harm. Specifically, it will be necessary to consider whether the harm feared is indiscriminate, or whether the profile of the asylum seeker is a contributing factor to the risk he or she is facing.

C. Eligibility under an Extended Refugee Definition and/or Complementary Forms of Protection

Given the continuing situation of generalized violence related to the armed conflict being waged in the North of Sri Lanka, UNHCR considers that all asylum seekers originating from the North who do not have an IFA/IRA (see below) in another part of Sri Lanka are in need of international protection. The circumstances in the North justify the recognition of such individuals under an extended refugee definition, where applicable, or through another complementary form of protection.[132]

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[132] In the EU, for example, where "subsidiary protection", is available to asylum seekers who are at risk of serious harm in their country of origin, UNHCR considers that asylum seekers originating from the North of Sri Lanka who are found not to qualify for refugee status should receive subsidiary protection under Article 15(c) of the Qualification Directive (*Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status*, 2 January 2006. http://www.unhcr.org/refworld/docid/4394203c4.html). UNHCR considers that the degree of indiscriminate violence which characterizes the armed conflict in the North of Sri Lanka to be of such a high level that there are substantial grounds for believing that a civilian, if returned to this region, would, solely because of his/her presence in the region, face a real risk of being subject to a serious and individual threat to his/her life or person.

As noted above, in light of the ethnic and political nature of the civil war in Sri Lanka, in many cases, in addition to the indiscriminate harm related to the hostilities, the risk to which civilians are exposed is frequently related to the individual profile of those affected and will therefore be linked to one of the grounds elaborated in the 1951 Convention. Many of those who are in need of international protection in the North of Sri Lanka will be eligible for refugee status under the 1951 Convention criteria and should be recognized on this basis.

D. Availability of an Internal Flight or Relocation Alternative

A detailed analytical framework for assessing the availability of an IFA/IRA is set out in UNHCR's 2003 *Guidelines on International Protection "Internal Flight Alternative" within the context of Article 1A(2) of the 1951 Convention and/ or the 1967 Protocol relating to the Status of Refugees.* [133]

As provided in these Guidelines, in order to assess the possibility of applying IFA/IRA, two main sets of analysis should be undertaken, namely whether internal relocation is (i) **relevant;** and if so, whether it is (ii) **reasonable.** The determination of whether the proposed IFA/IRA is an appropriate alternative in a particular case requires a broad assessment of the circumstances which have given rise to the persecution feared and prompted flight from the original area, as well as whether the proposed area provides a meaningful alternative in the future.

In the context of Sri Lanka, when assessing the relevance of a proposed IFA/IRA, attention should be given to the restrictions on movement and other security measures which are in place in many areas of the country, but in particular in the North and East of the country and Colombo and the Western Province, as well as the broad geographic reach of State and non-State Agents of persecution in the country. The assessment of the availability of an IFA/IRA should be guided by the following considerations:

i) No IFA in the North of Sri Lanka

Given the continuous and widespread violence and insecurity in the North, UNHCR does not consider the North to be an IFA/IRA for any asylum seeker from Sri Lanka. Further, routes into and within the North are unsafe and access to many areas remains highly restricted by Government and/or LTTE forces.

ii) Tamils from the North and the East

Tamils from the North and East of Sri Lanka who flee either indiscriminate violence or targeted human rights violations are not considered to have a realistic internal flight alternative in any other part of the country. As noted above, Tamils from the North and East are at risk of human rights violations in all other parts of Sri Lanka, by Government actors or other pro-Government groups, because of real or imputed LTTE affiliations.

This risk is particularly acute in Colombo, where recent attacks by the LTTE have resulted in heightened security measures, which have been implemented in a discriminatory and

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[133] UNHCR, *Guidelines on International Protection: "Internal Flight or Relocation Alternative" within the Context of Article 1A (2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 23 July 2003, available at http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3f2791a44

disproportionately severe manner against Tamils, in particular Tamils from the North and the East.

Tamils from the North are not considered to have an IFA/IRA in the East because of the volatile security situation, in particular for individuals likely to be suspected of being associated with the LTTE, as well as the heightened risk of human rights violations to which a Tamil from the North in an internal displacement situation in the East would be exposed.

The Central Highlands do not represent a relevant or reasonable IFA/IRA for Tamils originating from the North or East, who are linguistically and culturally different from Tamils in the Central Highlands. Tamils from the North and East would also be easily identified and at risk of human rights violations in this Government-controlled region.

iii) Muslims and Sinhalese Fleeing Generalized Violence in the North

For Muslims and Sinhalese who flee generalized violence related to the armed conflict in the North, an IFA/IRA should normally be available in Government-controlled areas of the country. Nonetheless, an individual assessment should be made in accordance with UNHCR IFA Guidelines.

In assessing the availability of an IFA/IRA for Muslims, consideration should be given to past episodes of general intolerance toward large groups of displaced Muslims in Sri Lanka. Therefore, areas in which there are large numbers of internally displaced Muslims would generally not satisfy the "relevance" test in the UNHCR IFA Guidelines.

iv) Individuals Fleeing Persecution by the LTTE

Asylum seekers of any ethnic group or profile who flee targeted human rights violations by the LTTE and are personally sought by LTTE actors are not considered to have a reasonable IFA/IRA in any part of Sri Lanka given the proven capacity of the LTTE to operate and target opponents in any part of the country, and the inability and/or unwillingness of Government actors to provide effective protection against to individuals who are targeted by the LTTE.

v) Individuals Fleeing Persecution by Government Actors or Pro-Government Paramilitary Groups

The asylum seekers who are fleeing persecution by Government actors or other pro-Government groups, including armed factions of the TMVP, EPDP and PLOTE are not considered to have an IFA in any part of the country due to the ability of these agents of persecution to seek and find the individuals concerned in all parts of the country.

vi) Individuals Fleeing Persecution by Criminal Actors/Groups

Threats and acts of violence, as well as extortion and kidnapping, by criminal groups have been committed by and against individuals of diverse profiles in Sri Lanka. The availability of an IFA/IRA for asylum seekers who are fleeing harm by criminal groups should be considered on a case by case basis in light of the IFA Guidelines. The assessment should take into account the ability of the criminal actor to pursue the individual to the alternative area, as well as any factors relating to the ethnic or political profile of the asylum seeker which may affect the availability and effectiveness of protection by State actors from the harm feared.

E. Exclusion from International Refugee Protection

Given the violations of human rights and humanitarian law that have occurred, and continue to occur, in Sri Lanka, by both State and non-State actors, it will be necessary to carefully assess the possible applicability of the exclusion clauses of Article 1F of the 1951 Convention to particular individual cases.

The exclusion clauses contained in Article 1F of the 1951 Convention provide for the denial of refugee status to individuals who would otherwise meet the refugee definition set out in Article 1A of the 1951 Convention, but who are deemed not deserving of international protection on account of having committed certain serious acts.[134] Detailed guidance on the interpretation and application of Article 1F of the 1951 Convention can be found in UNHCR's Guidelines and Background Note on exclusion.[135]

The standard of proof for findings of fact related to exclusion based on Article 1F is that of "*serious reasons for considering*." For this standard to be met, credible and reliable information is required.[136] The burden of proof lies, in principle, on the decision maker, although, as seen below, in certain circumstances which give rise to a presumption of individual responsibility for excludable acts, a reversal of the burden of proof may be justified.[137]

Persons to whom an exclusion clause applies are not eligible for refugee status. They cannot benefit from international protection under the 1951 Convention, nor under UNHCR's mandate. However, they may still be protected against return to a country where they would be at risk of ill-treatment, by virtue of other international instruments.[138]

i) Profiles Triggering Exclusion Considerations

In the context of Sri Lanka, exclusion considerations may be raised in the cases of asylum-seekers with certain backgrounds and profiles, in particular those who have participated in the armed conflict in Sri Lanka. Asylum claims by former members of the LTTE, TMVP, EPDP, PLOTE and other armed groups should be closely considered given that these groups have been, and continue to be, responsible for the commission of serious human rights violations and violations of international humanitarian law. Given the distinct but substantial role that women play within the LTTE, issues of exclusion should be addressed with regard to both men and women who were affiliated with the LTTE activities. While fewer asylum

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134 Article 1F stipulates that "the provisions of the 1951 Convention shall not apply to any person with respect to whom there are serious reasons for considering that he [or she] (a) has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; b) has committed a serious non-political crime outside the country of refuge prior to his [or her] admission to that country as a refugee; c) has been guilty of acts contrary to the purposes and principles of the United Nations."

135 UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, available at http://www.unhcr.org/refworld/docid/3f5857684.html (hereafter: "UNHCR Guidelines on Article 1F"), and *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, paras. 107-111, available at http://www.unhcr.org/refworld/docid/3f5857d24.html (hereafter: "UNHCR Background Note on Exclusion").

136 See UNHCR Background Note on Exclusion, above footnote 135.

137 Ibid., paras. 105-106.

138 See UNHCR Guidelines on Article 1F, paragraph 9, and UNHCR Background Note on Exclusion, paragraphs 21-22, both above footnote 135.

claims have been submitted by former members of the military, security forces, or local law enforcement, exclusion considerations should be examined in claims by these individuals as well.

ii) Identification and Qualification of Acts giving Rise to Exclusion Concerns

In cases where exclusion considerations arise, it is necessary to identify and assess the acts which may bring an asylum seeker within the scope of Article 1F. It should be recalled that Article 1F exhaustively enumerates the types of crimes which may give rise to exclusion from international refugee protection on account of an individual's conduct.[139] These include crimes against peace, war crimes, crimes against humanity, serious non-political crimes committed prior to admission to the country of refuge, and acts contrary to the purposes and principles of the United Nations.

Potential exclusion due to involvement in the commission of war crimes (Article 1F(a)) is of particular relevance in the context of Sri Lanka. War crimes are serious violations of international humanitarian law (IHL) committed during an armed conflict. In determining whether a particular act constitutes a war crime, it is necessary to determine whether an armed conflict existed at the time, and, if so, whether the armed conflict was international or non-international in nature, as different legal provisions are applicable to acts committed in either.

The current conflict in Sri Lanka is a non-international armed conflict. While the Cease Fire Agreement signed between the Government of Sri Lanka and the LTTE in 2002 resulted in a pause in the hostilities, it did not result in a settlement of the conflict. In light of the repeated violations of the Cease Fire Agreement by both sides and the resumption of the fighting in mid-2006, UNHCR considers that the armed conflict has been ongoing and uninterrupted over this period.

Acts commonly committed by the parties to the armed conflict in Sri Lanka include, *inter alia*, abductions and disappearances, indiscriminate attacks on civilians, use of human shields, restrictions on freedom of movement, forced displacement, torture and other cruel, inhuman and degrading treatment including rape, execution of prisoners of war, extrajudicial executions and forced recruitment for military service or labour, including the recruitment of children.[140]

How these acts are qualified for purposes of exclusion from refugee status depends, in part, on when they were committed. Criminal liability for violations of international humanitarian law applicable during non-international armed conflicts, i.e., Common Article 3 of the 1949 Geneva Conventions, Additional Protocol II and customary international law, was not

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[139] More detailed guidance on the kinds of conduct which fall within the scope of Article 1F of the 1951 Convention can be found at paragraphs 23-49 of UNHCR Background Note on Exclusion, see above footnote 135.

[140] The conscription, enlistment and use of children in hostilities have been frequent practices by both the LTTE and the TMVP. Article 8(2)(e)(vii) of the Statute of the International Criminal Court, adopted in 1998, established as a war crime the conscription, enlistment or active use during hostilities of children under the age of 15 in hostilities as a war crime. Since armed groups such as the LTTE and TMVP have no legal basis on which to conscript anyone into military service, the forcible recruitment of any person would constitute inhumane treatment of civilians and arbitrary a war crime as a violation of Common Article 3 to the four Geneva Conventions of 1949 and Article 4 of Additional Protocol II (requiring humane treatment of persons taking no active part in hostilities). Enlisting volunteers between 15 and 18 is, however, not a war crime.

established until the mid-1990s.[141] As such, only those violations of IHL that occurred after this time would be considered "war crimes" within the scope of Article 1F(a). Violations of IHL committed before this time would need to be assessed under other provisions of Article 1F, most notably as serious non-political crimes under Article 1F(b) or crimes against humanity under Article 1F(a).

The LTTE and TMVP, as well as other armed-groups in Sri Lanka are also reportedly engaged in various criminal activities, such as extortion, illegal taxation, prostitution, and smuggling of humans, arms and other contraband. If these crimes are linked to the armed conflict in Sri Lanka after the mid-1990s and involved violence, coercion or intimidation of civilians, they may constitute war crimes under applicable international humanitarian law. If not considered war crimes, it should be determined whether they constitute serious non-political crimes under Article 1F(b).

iii) Individual Responsibility

For exclusion to be justified, individual responsibility must be established in relation to a crime within the scope of Article 1F. Such responsibility flows from a person having committed or participated in the commission of a criminal act, or on the basis of command/superior responsibility for persons in positions of authority. Applicable defenses, if any, as well as proportionality, should form part of the decision-making process.

It is noted in this regard that many individuals are forced to support the LTTE or to join the organization. In such cases, the defense of duress will need to be closely examined.[142] With regard to support provided to the LTTE, it will need to be determined whether the individual made a "substantial contribution" to any crimes that were committed as a result of this support and whether the individual provided the support with the necessary intent and knowledge to be held individually responsible for the commission of those crimes. Regular contributions of large sums of money, with the knowledge that those funds will be used to commit serious crimes, may also be an independent basis for exclusion.[143]

iv) LTTE Leadership and Membership

Membership in the LTTE is not a sufficient basis, standing alone, to exclude an individual from refugee status. Consideration should be given as to whether the individual was personally involved in acts of violence, or knowingly contributed in a substantial manner to such acts. A plausible explanation regarding the individual's non-involvement or disassociation from any excludable acts, coupled with an absence of serious evidence to the contrary, should remove the individual from the scope of the exclusion clauses.

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[141] Originally, "war crimes" were considered only in international armed conflicts. Only in 1994, with the adoption of the Statute of the International Tribunal on Rwanda (ICTR), were serious violations of Additional Protocol II were considered within the jurisdiction of the Court as war crimes. In 1995, the International Criminal Tribunal for the former Yugoslavia (ICTY) decided that violations of international humanitarian law applicable to non-international armed conflicts could be criminal under customary international law. After these developments, it is now generally accepted that serious violations of international humanitarian law in a non-international armed conflict may give rise to individual criminal responsibility under international law, and thus, that war crimes may also be committed in the context of non-international armed conflicts. See *Prosecutor v. Dusko Tadic aka "Dule", Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction*, IT-94-1, 2 October 1995, para. 134, available at http://www.unhcr.org/refworld/docid/47fdfb520.html.

[142] See Article 31(d) of the Rome Statute.

[143] See UNHCR Guidelines on Article 1F and UNHCR Background Note on Exclusion, both above footnote 135

The LTTE has been designated by certain countries and regional groupings as a "terrorist organization." Individual responsibility for excludable acts in relation to persons affiliated or associated with "terrorist organizations or groups" may exceptionally be presumed if: (1) membership is voluntary, and (2) when the members of such groups can be reliably and reasonably considered to be heavily and individually involved in acts giving rise to exclusion. As a result of the highly secretive nature of the LTTE, and the absence of independent monitoring in LTTE-controlled areas, limited information is available regarding the precise organization of the LTTE, in particular the mechanisms for decision-making, the command structure and reporting lines within the LTTE. Given this lack of information, and the wide range of activities which civilians are known to have provided to the LTTE in areas under LTTE control, UNHCR does not consider it appropriate to presume that all persons who join the LTTE were heavily and individually involved in acts giving rise to exclusion.

However, given the nature and frequency of violent crimes committed by the LTTE, a presumption of individual responsibility may be applied with regard to those holding leadership positions in the organization. For such individuals, the burden of proof would be reversed, requiring that they demonstrate why they should not be excluded from refugee status. This burden will be discharged if the applicant can provide a plausible explanation of non-involvement in, or disassociation from, any excludable acts, coupled with an absence of serious evidence to the contrary.

G. Continued Protection Needs of Formerly Recognized Refugees

Individuals already recognized as refugees, whether on a *prima fac*ie basis or following individual status determination, should retain this status. Consequently, any return of a refugee to Sri Lanka must be on a strictly voluntary basis. Refugee status of such persons should be reviewed only if there are indications, in an individual case, that there are grounds for cancellation of refugee status which was wrongly granted in the first place; revocation of refugee status on the grounds of Article 1F(a) or (c) of the 1951 Convention; or cessation of refugee status on the basis of Article 1C(1-4) of the 1951 Convention.

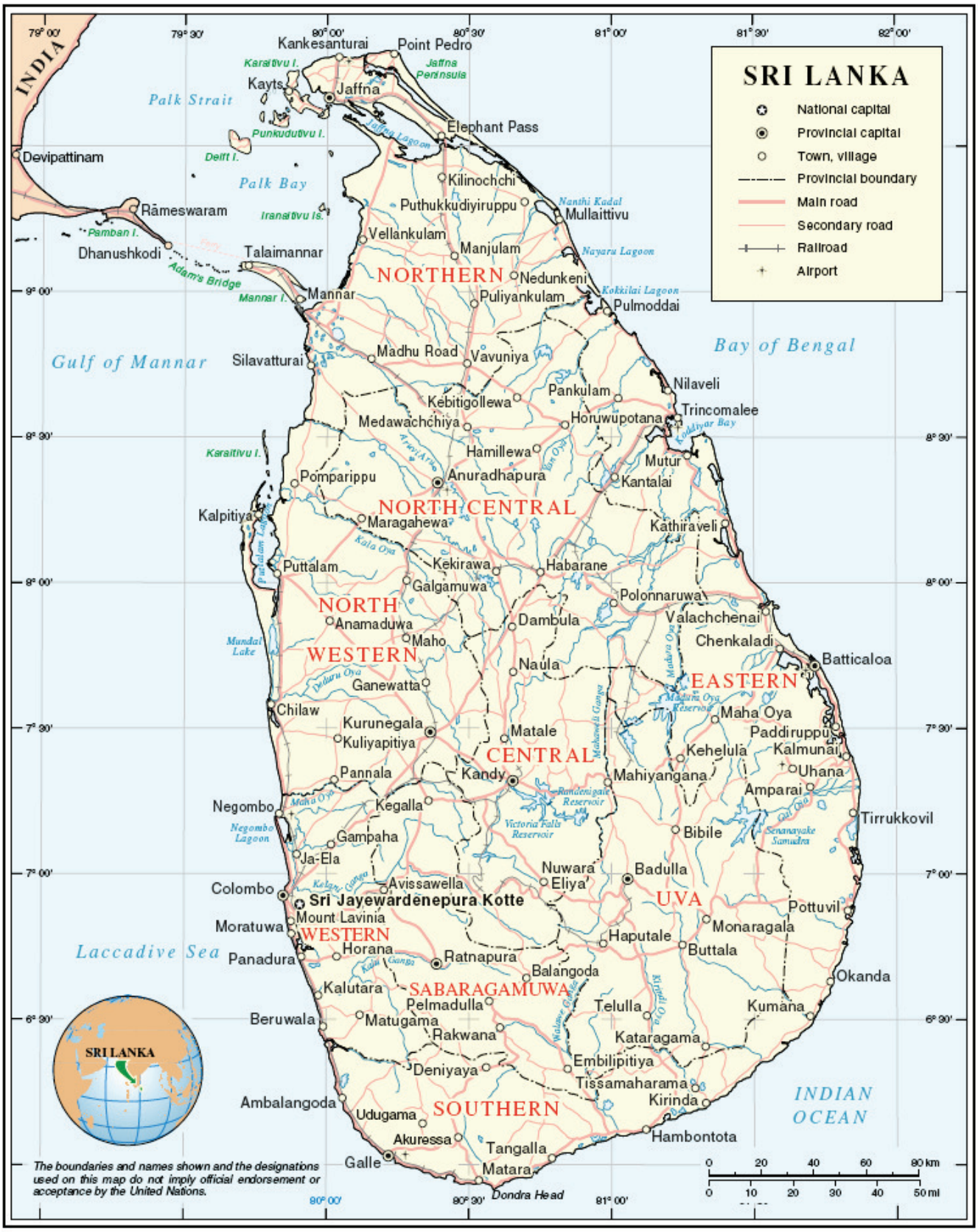
H. States Not Parties to the 1951 Convention

Where States are not parties to the 1951 Convention and do not have refugee status determination systems, individuals originating from Sri Lanka and who are in need of international protection, as indicated above, either because of a well-founded fear of persecution in the meaning of Article 1(A)2 of the 1951 Convention, or because of a fear of indiscriminate harm resulting from the situation of generalized violence and absence of an IFA/IRA within Sri Lanka, should be protected against forcible return, and be permitted lawful stay as well as possibilities to exercise their basic rights under relevant national laws until the situation in various parts of Sri Lanka improve substantially.

This position will be updated as substantial changes in the situation take place in Sri Lanka.

Division of International Protection Services
UNHCR Headquarters
Geneva
April 2009

Maps of Sri Lanka



Map No. 4172 Rev. 2 UNITED NATIONS
January 2007 (Colour)

Department of Peacekeeping Operations
Cartographic Section

SRI LANKA

As of June 2008

FICSS
Field Information and Coordination Support Section
Division of Operational Services

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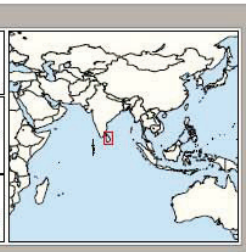

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