Flygtningenævnets baggrundsmateriale

Bilagsnr.:	**615**
Land:	Sri Lanka
Kilde:	UK Home Office
Titel:	Country Policy and Information Note. Sri Lanka: Tamil Separatism
Udgivet:	maj 2020
Optaget på baggrundsmaterialet:	8. oktober 2020

Home Office

Country Policy and Information Note
Sri Lanka: Tamil Separatism

Version 6.0

May 2020

Preface

Purpose

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

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

Assessment

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

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

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

Country of origin information

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

The structure and content of the country information section follows a terms of reference which sets out the general and specific topics relevant to this note.

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

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

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

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

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

Each piece of information is referenced in a brief footnote; full details of all sources cited and consulted in compiling the note are listed alphabetically in the bibliography.

Feedback

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

Independent Advisory Group on Country Information

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

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

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

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Assessment

Updated: 12 May 2020

1. Introduction

1.1 Basis of claim

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

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2. Consideration of issues

2.1 Credibility

2.1.1 For information on assessing credibility, see the Asylum Instruction on Assessing Credibility and Refugee Status.

2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants).

2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the Asylum Instruction on Language Analysis).

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2.2 Exclusion

2.2.1 The LTTE has been responsible for serious human rights abuses. It has been proscribed in the UK since March 2001 under the Terrorism Act 2000.

2.2.2 If there are serious reasons for considering that the person has been involved with the LTTE then decision makers must consider whether any of the exclusion clauses are applicable.

2.2.3 If the person is excluded from the Refugee Convention, they will also be excluded from a grant of humanitarian protection. Each case must be considered on its individual facts and merits.

2.2.4 For further guidance on the exclusion clauses and restricted leave, see the Instructions on Exclusion under Articles 1F and 33(2) of the Refugee Convention, Humanitarian Protection and Restricted Leave.

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2.3 Refugee convention reason

2.3.1 Actual or imputed political opinion.

2.3.2 Establishing a convention reason is not sufficient to be recognised as a refugee. The question is whether the particular person has a well-founded fear of persecution on account of their actual or imputed convention reason.

2.3.3 For further guidance on the 5 convention grounds, including particular social groups, see the Asylum Instruction on Assessing Credibility and Refugee Status.

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2.4 Risk

a) General points

2.4.1 In the country guidance case of GJ & Others (post –civil war: returnees Sri Lanka CG [2013] UKUT 00319 (IAC) (5 July 2013) (heard on 5-8 and 11-12 February 2013, 15 March 2013 and 19 April 2013), the Upper Tribunal held that amongst other things that not all Tamils are at risk on return to Sri Lanka (paragraph 337).

2.4.2 The findings in GJ & Others were upheld by the Court of Appeal in the case of MP (Sri Lanka) & Anor (18 June 2014).

2.4.3 The Upper Tribunal in GJ & Others found that:

- 'The focus of the Sri Lankan government's concern has changed since the civil war ended in May 2009. The LTTE in Sri Lanka itself is a spent force and there have been no terrorist incidents since the end of the civil war.' (Paragraph 356 (2)).
- 'The government's present objective is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state enshrined in Amendment 6(1) to the Sri Lankan Constitution in 1983, which prohibits the "violation of territorial integrity" of Sri Lanka. Its focus is on preventing both (a) the resurgence of the LTTE or any similar Tamil separatist organisation and (b) the revival of the civil war within Sri Lanka.' (Paragraph 356 (3))
- 'If a person is detained by the Sri Lankan security services there remains a real risk of ill treatment or harm requiring international protection.' (paragraph 356 (4))
- '…Any risk for those in whom the Sri Lankan authorities are or become interested exists not at the airport, but after arrival in their home area, where their arrival will be verified by the CID or police within a few days (paragraph 356 (6))'.

2.4.4 The UT in GJ & Others identified 4 risk groups, in brief:

- Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are or are perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka.
- Journalists or human rights activists who have criticised the government in particular its human rights record, or who are associated with publications critical of the Sri Lankan government.
- Individuals who have given evidence to the Lessons Learned and Reconciliation Commission implicating the Sri Lankan security forces, armed forces or the Sri Lankan authorities in alleged war crimes. Among those who may have witnessed war crimes during the conflict, particularly

in the No-Fire Zones in May 2009, only those who have already identified themselves by giving such evidence would be known to the Sri Lankan authorities and therefore only they are at real risk of adverse attention or persecution on return as potential or actual war crimes witnesses.

- A person whose name appears on a computerised "stop" list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant.' (para 356(7))

2.4.5 Since the country guidance case of GJ & Others was handed down in 2013, Sri Lanka has changed presidents twice. Between 2015–November 2019 President Sirisena led the government. Elections in November 2019 saw Gotabaya Rajapaksa became the new president (see Sirisena-led Government: 2015– 2019 and Current government 2019-).

2.4.6 During the period of President Sirisena's government there were some positive developments including: curtailing of executive power; attempts at the reestablishment of independent commissions (and in particular the restoration of the legitimacy and independence of Sri Lanka's Human Rights Commission); de-proscription of a number of international diaspora organisations; review of cases held under the Prevention of Terrorism Act and release of some detainees. Measures such as the passing of the Right to Information Bill in June 2016 have also been positive improvements towards more transparent and accountable government. However progress was been slow and little improvement was reported in 2018 and 2019 (see Human Rights Commission of Sri Lanka (HRCSL),De-proscription of separatist groups, Constitutional reform, and Reconciliation process).

2.4.7 President Sirisena had stated that more civilian lands would be freed from military control and this has happened gradually although not all seized land has been returned. He also said that all perpetrators of war crimes committed towards the end of the country's civil war in 2009 would be brought to justice, although virtually no progress was seen in this area (see War crimes investigations and Land repatriation).

2.4.8 President Gotabaya Rajapaksa (brother of Mahinda Rajapaksa, president from 2005 to 2015) came into power in November 2019. Whilst initially stating he would be a leader for those who voted for him as well as those who didn't he later went on to express his disappointment at not having gained the support he expected from the minority groups. At the time of writing there was speculation about the treatment of some groups with some reports suggesting that there are fears of a crackdown among those who have been critical of the Rajapaksa family in the past and some minority groups have expressed fears that they may face repression, there is some evidence of shrinking space for civil society in Sri Lanka at the time of writing this report (see Rajapaksa government (November 2019-)).

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b) Former LTTE members/supporters

2.4.9 The main separatist group before 2009, the LTTE, became a spent force following the end of the civil war in 2009 and there is no evidence that the group has re-formed or is active.

2.4.10 The Tribunal in GJ & Others held that:

'It is not established that previous LTTE connections or sympathies (whether direct or familial), are perceived by the GOSL [Government of Sri Lanka] as indicating now that an individual poses a destabilising threat in post-conflict Sri Lanka… in the evidence before us, the extent to which past links predict future adverse interest will always be fact specific, and for those with close links to the LTTE's operations during the war, the exclusion clauses may well be relevant.' (para 325)

2.4.11 However, in the Court of Appeal (CoA) case KK v SSHD [2019] EWCA Civ 172, heard on 7 February 2019 and promulgated on 19 February 2019 considering a point of law, the judge found the First Tier Tribunal (FFT) determination had not erred in law in departing from GJ & Others by finding that there was 'sufficient cogent and reliable evidence that failed asylum seekers currently returning to Sri Lanka may be at real risk on suspicion of having actual or perceived LTTE connection or involvement in the past' (paragraph 12). But, as the CoA judge acknowledged, the question before him was 'not whether the conclusion reached by the FTT Judge was correct, or even whether it was a conclusion reasonably open to her on the evidence as a whole. The issue is whether [simply] she erred in law in the manner identified by the UT [Upper Tribunal] judge.' (para 32)

2.4.12 Further, KK was based largely on evidence from 2015 contained within the Home Office's Country Information and Guidance on Tamil separatism published in August 2016. This particular case concerned an issue which, as acknowledged by the CoA 'is a narrow one, turning on the specifics of the individual case' (para 1), with the person in question having been sentenced to five years' imprisonment in the UK having played 'an important part of a criminal conspiracy to provide an illegal service to facilitate the movement of Sri Lankan Tamils into and out of the United Kingdom by various devices designed to defeat immigration controls'. (para 4)

2.4.13 Available evidence suggests that whilst Tamils may sometimes be subjected to discrimination, they are unlikely to face persecution based on their ethnicity alone. People returning to Sri Lanka after a long period of absence are, irrespective of their ethnicity, likely to be questioned on arrival by immigration officials. This is a standard procedure to confirm their identity, check for outstanding criminal offences and make relevant checks with local police in the area where the person claims to have previously lived. Where someone has had previous links to the LTTE they may be questioned further but it will depend on the individual case and may not necessarily mean that a person is detained. Tamils returning from abroad are generally monitored in the community and the period of monitoring by local police can vary. There is no evidence to suggest that all returning Tamils are at risk of being perceived to have links to the LTTE, or if they do have links that this is a problem for them on return, as the LTTE is viewed as a spent force with previous combatants having been rehabilitated and absorbed into society with some, for example, being employed by the security forces or civil defence force or given government employment as bus drivers and conductors (see Treatment of Tamils and Exit and return).

2.4.14 Although in KK the Court of Appeal felt there was 'sufficient cogent and reliable evidence that failed asylum seekers currently returning to Sri Lanka may be at real risk on suspicion of having actual or perceived LTTE connection or involvement in the past', this was based on evidence that is now five years old and new country evidence would suggest that this is not the case now with it being unlikely that the government of Sri Lanka would have an interest in a person purely because they were once a member of the LTTE. It should be noted, as mentioned above, that this finding was made in relation to the specific details of this case.

2.4.15 Returnees who have a previous connection with the LTTE but not a significant role in the group and/or post conflict separatism, are able to return to their communities without suffering ill-treatment, although they may be questioned on return at the airport and may be monitored once they return to their communities. Several sources told the 2019 UK Home Office Fact-Finding Team that previous membership of the LTTE would not be enough to make someone of interest and that police interest, if any, would relate to whether the person has committed any criminal act. This is because many had left the country using forged identities and the police were therefore seeking to establish the true identity of the returning person and whether they are wanted for any criminal acts in addition to leaving the country with false documents (see Monitoring and surveillance).

2.4.16 There are reports from 2017 and before of arrest and lengthy pre-trial detentions of former members of the LTTE. However, the scale and extent is difficult to quantify and although some may remain in detention there is no recent evidence of this occurring since then (see Arrest and detention).

2.4.17 Former prominent members of the LTTE, or those who are suspected of raising funds during the war may be of more interest to the authorities, although this will not always mean that they will be detained but they are likely to be monitored on return (see Monitoring and surveillance and Exit and return).

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c) Rehabilitation

2.4.18 Former LTTE cadres in Sri Lanka have undergone rehabilitation to prepare them for civilian life. Those returning from overseas are also offered rehabilitation on return. The certificate issued at the end of the programme proves the person has been rehabilitated and is a document which the person can show to the authorities if they are stopped by the police. The 2019 FFT was told that the last rehabilitee was reintegrated into society earlier that year, although some former LTTE cadres remain in detention and may be rehabilitated when released (see Rehabilitation of former LTTE combatants).

2.4.19 The Tribunal in GJ & Others held that those who have been through rehabilitation are unlikely to return to combat but the authorities monitor them closely. Despite the restrictions on movement, and the reporting conditions which the local commanders impose, the Tribunal held that post-rehabilitation monitoring alone did not amount to persecution (paras 317, 319).

2.4.20 Sources told the 2019 UK Home Office Fact-Finding Mission that rehabilitees may be under surveillance by the Security Intelligence Service (SIS) who may restrict their movements and monitor their activities, although this will not be the same for all rehabilitees and more high-profile former cadres may face more monitoring/scrutiny. Sources also stated that employers are often reluctant to employ rehabilitees who are under surveillance, even though the government encourage employers to recruit rehabilitees by paying 50% of their salary (see Monitoring and surveillance and Discrimination/harassment).

2.4.21 The level of monitoring and discrimination of former rehabilitees does not in general, by its nature or repetition, amount to a real risk of persecution and/or serious harm as found in GJ & Others.

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d) Post-conflict Tamil separatism

2.4.22 The Tribunal GJ & Others identified as one of its 4 risk categories:

'Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are or are perceived to have a significant role in relation to post-conflict Tamil separatism within the Diaspora and/or a renewal of hostilities within Sri Lanka.' (para 356 (7a)).

2.4.23 The Tribunal in GJ & Others also found that:

'The Sri Lankan authorities' approach is based on sophisticated intelligence, both as to activities within Sri Lanka and in the diaspora. The Sri Lankan authorities know that many Sri Lankan Tamils travelled abroad as economic migrants and also that everyone in the Northern Province had some level of involvement with the LTTE during the civil war. In post-conflict Sri Lanka, an individual's past history will be relevant only to the extent that it is perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan state or the Sri Lankan Government' (paragraph 356 (8)).

2.4.24 Those Tamils most at risk are those outlined in GJ & Others – namely persons who are, or are perceived to be, a threat because they are, or are perceived to have a 'significant role' in relation to **post-conflict** Tamil separatism. The Tribunal did not provide a definition of what it meant by 'significant role', but factors that may be relevant in determining whether the state perceives the person to have a significant role may include their:

- role and activities in 'post conflict separatism'
- episodes of arrest and detention
- continuing state interest while the applicant was in Sri Lanka and since their departure
- role and level of activity for organisations/diaspora groups that promote a separate Tamil state since the end of the LTTE.

2.4.25 The onus is on the person to demonstrate that they have or are perceived to have a 'significant role' in relation to post-conflict Tamil separatism within the diaspora and/or an interest in the renewal of hostilities within Sri Lanka

and/or that their activities will be, or will be perceived as being, a threat to the integrity of Sri Lanka as a single state.

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e) Diaspora groups and sur place activities

2.4.26 The Tribunal in GJ & Others observed that there over a million Sri Lankan Tamils outside of the country, with London being one of the diaspora activity hotspots (para 335). The Tribunal added that the '… the diaspora are heavily penetrated by the security forces. Photographs are taken of public demonstrations and the GOSL may be using face recognition technology…' (para 336).

2.4.27 The Tribunal considered that '...the question which concerns the GOSL is the identification of Tamil activists working for Tamil separatism and to destabilise the unitary Sri Lankan state. We do not consider that attendance at demonstrations in the diaspora alone is sufficient to create a real risk or a reasonable degree of likelihood that a person will attract adverse attention on return to Sri Lanka' (paragraph 336).

2.4.28 Further finding that

'… the GOSL has sophisticated intelligence enabling it to distinguish those who are actively involved in seeking to revive and re-fund the separatist movement within the diaspora, with a view to destabilising the unitary Sri Lankan state. Attendance at one, or even several demonstrations in the diaspora is not of itself evidence that a person is a committed Tamil activist seeking to promote Tamil separatism within Sri Lanka. That will be a question of fact in each case, dependent on any diaspora activities carried out by such an individual' (paragraph 351).

2.4.29 Since GJ & Others was handed down, the previous government under President Sirisena de-proscribed a number of Tamil groups/diaspora organisations, which indicated that involvement with such organisations was not of itself seen as a threat to the integrity of the state (see De-proscription of separatist groups).

2.4.30 There has been no change to the list of proscribed terrorist groups since Gotabaya Rajapaksa took over a president (see Rajapaksa government (November 2019-)).

2.4.31 Diaspora groups who advocate for a separate Tamil state are likely to remain of interest to the Sri Lankan authorities and are likely to be the subject of some monitoring. Prominent or active individuals may be monitored on return to Sri Lanka, as the authorities are fearful of an uprising, although this is likely to depend on the individual person's profile and is more likely to apply to prominent activists (see Treatment of Tamil separatist groups outside of Sri Lanka).

2.4.32 Some members of diaspora groups have been able to return to Sri Lanka without encountering any problems on return. Genuine members or supporters of diaspora groups which are proscribed may be at risk on return although this is more likely to apply to high profile members or active members involved in activities such as raising funds or actively advocating a return to violence to achieve a Tamil state. Mere membership or support of a

proscribed group is unlikely to make someone of interest to the authorities (see Treatment).

2.4.33 Decision makers should consider a range of factors when assessing someone's sur place activities, these include (but are not limited to);

- The diaspora groups they are involved with; whether this groups is on the proscribed list of organisations (see Proscribed/de-proscribed groups)
- the nature of the demonstrations attended/nature of diaspora activities involved in;
- a person's role in any demonstration- are they a leader/organiser;
- how many demonstrations have they attended;
- have the demonstrations attracted media attention;
- the profile of the person- were the authorities in Sri Lanka previously aware of them- are they known to be an opponent, or have they had/do have a significant profile in Sri Lanka.

2.4.34 Decision makers must consider each case on its facts and consider whether any diaspora activities or membership of a diaspora group such as the Transnational Government of Tamil Eelam (TGTE) is likely to make them of ongoing interest to the Sri Lankan authorities. Membership of diaspora groups such as the TGTE will not necessarily mean that the person would be at risk of persecution on return to Sri Lanka and a person's mere support of these groups is unlikely to make them of interest to the authorities. The assumption that the Sri Lankan authorities have penetrated many diaspora groups will not be enough to support the conclusion that this will lead to an individual to being at risk on return. The question to be addressed is whether such membership is likely to be detected on return and/or whether or not the person's activities in the UK are, or will be perceived to be, a threat to the integrity of the state, and if so, will they be subject to legitimate prosecution rather than persecution.

2.4.35 The Sri Lankan government has a legitimate right to act against terrorism – including those within the TGTE which is viewed as an organisation who instigate violence to disrupt the post war situation – and to use all lawful and proportionate means to do so. This includes prosecuting those who belong to, or profess to belong to, or invite support for, the organisation.

2.4.36 Those fleeing prosecution or punishment for a criminal offence are not normally refugees. However, prosecution may amount to persecution if it involves victimisation in its application by the authorities; for example, if it is the vehicle or excuse for persecution or if only certain groups are prosecuted for a particular offence and the consequences of that discrimination are sufficiently severe. Punishment which is cruel, inhuman or degrading (including punishment which is out of all proportion to the offence committed) may also amount to persecution.

2.4.37 In order for the person to qualify on the basis of a breach of Article 6 of the European Convention on Human Rights (right to a fair trial), they need to demonstrate a real risk of a flagrant violation of that right. Decision makers should consider whether a person has demonstrated that the alleged

treatment in the country of return would be so serious as to amount to a flagrant violation or a flagrant denial of the protected right. For further information, see the Asylum Instruction on Considering human rights claims.

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f) Lessons Learned and Reconciliation Commission

2.4.38 The third of the four risk categories identified in GJ & Others is:

'Individuals who have given evidence to the Lessons Learned and Reconciliation Commission implicating the Sri Lankan security forces, armed forces or the Sri Lankan authorities in alleged war crimes. Among those who may have witnessed war crimes during the conflict, particularly in the No-Fire Zones in May 2009, only those who have already identified themselves by giving such evidence would be known to the Sri Lankan authorities and therefore only they are at real risk of adverse attention or persecution on return as potential or actual war crimes witnesses' (paragraph 356 (7c)).

2.4.39 The Lessons Learned and Reconciliation Commission (LLRC) was established by the Sri Lanka government in May 2010 and reported in December 2011 (see paragraphs 230–231 of GJ & Others).

2.4.40 The Mahinda Rajapaksa government – which was formed after GJ & Others was heard and promulgated and the subsequent Sirisena led government– had both shown willingness for allegations of war crimes during the final phase of the conflict to be fully investigated, and had established its own truth, justice, and reconciliation commission to investigate potential war crimes. However, despite this publicly-stated willingness, in practice virtually no progress was made in investigating or prosecuting domestically the large number of allegations of war or associated crimes (see War crimes investigations).

2.4.41 Following elections in November 2019 former wartime defence chief Gotabaya Rajapaksa became the new president. Current evidence suggests that President Rajapaksa is looking to withdraw support for the UNHRC resolution on war crimes which had been co-sponsored by the previous government (see Rajapaksa government (November 2019-)).

2.4.42 Decision makers should take full account of the nature of the evidence given by the person, especially if the evidence is critical of the security forces actions during the conflict, as this may increase the likelihood that they would face retribution for their evidence. Each case must be considered on its facts, with the onus on the person to show that they have or will come to adverse attention.

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g) Office of High Commissioner for Human Rights Investigations on Sri Lanka (UN OISL) through International Centre for prevention and Prosecution of Genocide (ICPPG)

2.4.43 In the Court of Appeal case of KK (Sri Lanka) v SSHD [2019] EWCA Civ 59 (heard on 22 January 2019) [note this is a different case to the previously quoted KK] concerning claims made by Sri Lankan nationals that they would be at risk of return due to the evidence they had given to the UN OISL

inquiry through the ICPPG, the Court of Appeal found that: '[…] it is only when the identity of the witnesses is known to the Sri Lankan authorities that the relevant risk arises (paragraph 35).

2.4.44 The OISL noted that it would take appropriate steps to address witness and victim protection concerns and adopt procedures and methods of work aimed at protecting such persons during all stages of its work including by not disclosing the names of individuals in its public reports as appropriate. It also stated that at the end of its work, OISL would archive all its confidential material in accordance with standard UN procedures for strictly confidential material (see War crimes investigations).

2.4.45 It is therefore unlikely that anyone who has given evidence to the OISL inquiry will to come to the attention of the Sri Lanka authorities and it is up to a person to show how and why they would.

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h) Stop and watch lists

2.4.46 The airport maintains a list of persons-of-interest to law enforcement agencies that have violated Sri Lankan law, those on the 'stop list' are persons who have a warrant outstanding, or order to impound their Sri Lankan passport. This is monitored on exit and entry. Those on the 'watch list' are persons that are of interest to the authorities including for suspected separatist or criminal activity (see Stop and watch lists).

2.4.47 The Upper Tribunal in GJ & Others found amongst others that a person at risk of persecution include someone: '… whose name appears on a computerised "stop" list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a "stop" list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant (paragraph 356 (7d)).

2.4.48 The UT went on to find that:

'The authorities maintain a computerised intelligence-led "watch" list. A person whose name appears on a "watch" list is not reasonably likely to be detained at the airport but will be monitored by the security services after his or her return. If that monitoring does not indicate that such a person is a Tamil activist working to destabilise the unitary Sri Lankan state or revive the internal armed conflict, the individual in question is not, in general, reasonably likely to be detained by the security forces. That will be a question of fact in each case, dependent on any diaspora activities carried out by such an individual' (paragraph 356 (9)).

2.4.49 The UK Home Office Fact-Finding team were able to confirm that the use of stop lists, and watch lists still occurs. Where someone on either list has an outstanding criminal offence, they will be arrested on return to Sri Lanka and processed through the criminal system. Those on a watchlist may be stopped at the airport for questioning and are likely to face monitoring on return (see Exit and return).

2.4.50 For persons whose names appear on either the 'watch list' or 'stop list' the prosecution for the crime(s) for which the person is wanted is not in itself a

risk of persecution or serious harm, any possible risk would be during the arrest and detention by the authorities.

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i) Treatment in custody

2.4.51 'White van' abductions are no longer common and the very few instances that have been reported are likely to cases where the police have not followed protocol during arrest (see Abductions).

2.4.52 There is credible evidence that instances of abduction and torture occurred against Tamils suspected of LTTE links during the war and in its immediate aftermath. There have been a few unverified reports of torture having occurred post 2016 but country sources, including the independent Human Rights Commission, told the 2019 Fact-Finding Team that they were unable to verify these reports with their contacts in the north and east of the country but some judicial medical officer reports have indicated signs of torture (see Ill- treatment/ torture).

2.4.53 Police continue to resort to excessive force, particularly when extracting confessions. Such treatment is reported to be common in police detention, and not targeted against any specific group and occurs regardless of the offence committed (see Ill- treatment/ torture).

2.4.54 In GJ & Others, the Upper Tribunal found that if a person is detained by the Sri Lankan security services there remains a real risk of ill treatment or harm requiring international protection (paragraph 356 (4)).

2.4.55 The available information does not provide very strong grounds supported by cogent evidence which would warrant departing from that finding. However, decision makers must make an assessment of the likelihood of the person being detained on return based on the specific facts of the case and taking account of the factors outlined in the preceding sections and also consider that the Human Rights Council have been unable to substantiate claims that torture continues to place in detention. Each case should be considered on its individual merits.

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j) Scarring

2.4.56 The Tribunal in GJ & Others noted

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

2.4.57 In considering scarring and allegations of torture generally, decision makers should take full account of any medical evidence produced. Expert medical evidence which potentially corroborates an account of torture must be given considerable weight – but it must still be considered within the sum of evidence to be taken into account. A medical report in support of an account

of torture does not necessarily determine its credibility if other evidence provides good reason to reject the person's account of when and how scars (for example) were caused. Where other significant evidence outweighs the report of scarring there is no requirement to make findings or speculate as to other possible causes of the scarring. However, if the possibility of scarring caused by self-infliction by proxy is being considered, considerable weight should be given to the fact that injuries which are self-inflicted by proxy are likely to be extremely rare (in accordance with the Supreme Court's statements in KV (Sri Lanka) v SSHD [2019] UKSC 10 (paras 31-35) (see section 4.6 in the Asylum Instruction on Assessing Credibility and Refugee Status).

2.4.58 Scarring may show that a person was involved in the conflict which ended in 2009, but that alone will not be enough to indicate that they would be at risk on return as previous LTTE connections are not perceived by the authorities as a destabilising threat in post-conflict Sri Lanka.

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k) Women

2.4.59 The assessment above applies equally to males and females. Decision makers must however take full account of gender issues. There are a large number of female-headed households in the north and east of Sri Lanka, many of which are headed by women who were widowed during the conflict. Women in these situations face many challenges, including a lack of physical security for their family, a lack of permanent housing and economic opportunities and difficulties accessing health services. Women who are forced to seek employment outside the home may face societal discrimination due to cultural restrictions (see Women).

2.4.60 In the reported case of PP (female headed household; expert duties) Sri Lanka [2017] UKUT 00117 (IAC) (promulgated 6 February 2017 and heard on 17 and 24 January 2017), the Upper Tribunal found that:

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

dictate the force and weight of each of these factors, individually or cumulatively, in any given case. These too will be assessed on a case-by-case basis.' (Paragraph 39 (d)).

2.4.61 For further guidance on assessing risk generally, see the Asylum Instruction on Assessing Credibility and Refugee Status. See also the Asylum Instruction on Gender Issues in the Asylum Claim.

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2.5 Protection

2.5.1 As the person's fear is of persecution and/or serious harm by the state, they will not be able to avail themselves of the protection of the authorities.

2.5.2 For further guidance on assessing the availability of state protection, see the Asylum Instruction on Assessing Credibility and Refugee Status.

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2.6 Internal relocation

2.6.1 In GJ & Others, the Tribunal held that since the government now has control over its entire territory and Tamils are required to return to a named address after passing through the airport, internal relocation is not an option for a person at real risk from state actors (paragraph 356 (5)).

2.6.2 Where the person's fear is of persecution and/or serious harm at the hands of the state, they will not be able to relocate to escape that risk (see Freedom of movement).

2.6.3 For further guidance on internal relocation and the factors to be considered, see the Asylum Instruction on Assessing Credibility and Refugee Status.

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2.7 Certification

2.7.1 Where a claim is refused, it is unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.

2.7.2 For further guidance on certification, see Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 (clearly unfounded claims).

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Country information

Section 3 updated: 21 April 2020

3. Political context

3.1 Civil conflict (1983-2009)

3.1.1 The Australian Government's Department for Foreign Affairs and Trade's (DFAT) 'Country Report for 2019' (the 2019 DFAT Report), released November 2019, noted:

'Sri Lanka, formerly Ceylon, achieved independence from the United Kingdom (UK) in 1948. Historically, relations between Sri Lanka's majority Sinhalese and minority Tamil communities have been tense. Tamils received preferential treatment during British rule, including in education and civil service employment. To address this imbalance, in the period following independence successive Sinhalese-led governments introduced measures to promote the primacy of the Sinhalese community, including: making Sinhala Sri Lanka's sole official language; favouring Sinhalese students in higher education admission; granting special constitutional status to Buddhism; and denying citizenship to Tamil migrant plantation workers from India. Against a backdrop of growing Sinhalese nationalism, Tamils were also the target of large-scale countrywide riots, including in July 1983 ('Black July'). These developments created a sense of marginalisation within the Tamil community and encouraged calls for an independent Tamil state, Tamil Eelam, in the predominantly Tamil-populated north and east of the country.'[1]

3.1.2 DFAT also noted that:

'A number of militant groups emerged to advance the cause of Tamil statehood. The most prominent of these, the Liberation Tigers of Tamil Eelam (LTTE), was formed in 1976 and launched an armed insurgency against the Sri Lankan state in 1983. The LTTE – commonly known as the Tamil Tigers – established and maintained de facto control of Tamil-populated areas in the north and east. The LTTE gained notoriety for its recruitment of children and, in particular, use of suicide bombings. It was proscribed as a terrorist organisation by the United States (US), Canada, the European Union, Australia and India, among others. A ceasefire between the Sri Lankan Government and the LTTE, signed in 2002, reduced the intensity of fighting but failed to yield a political settlement. The ceasefire broke down in 2005 and internationally-mediated peace talks collapsed in 2006. Government forces re-took the eastern part of the country from the LTTE in July 2007 and, in January 2008, launched a major offensive to capture remaining LTTE-controlled areas in the north, culminating in the elimination of most of the LTTE's senior ranks, including its leader, Velupillai Prabhakaran. The LTTE surrendered in May 2009. The UN and human rights organisations have documented serious violations during the final stages of the war, during which up to 40,000 civilians may have been killed.

[1] DFAT, 'Country Report' (para 2.1), 4 November 2019, url.

In total, Sri Lanka's 26-year civil war is estimated to have claimed 100,000 lives and displaced over 900,000 people.'[2]

3.1.3 For a timeline of key events see the BBC Sri Lanka timeline[3], for background on the conflict see the Council on Foreign Relations backgrounder on the Sri Lankan conflict[4].

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3.2 Sirisena government (2015-2019)

3.2.1 Congressional Research Service (CRS) noted in a report dated 4 December 2019 that:

'After a violent end to the civil war in May 2009, […] attention turned to whether the government had the ability and intention to build a stable peace in Sri Lanka. Former President and current Prime Minister Mahinda Rajapaksa, elected in 2005, faced criticism for an allegedly insufficient response to reported war crimes by government forces, a nepotistic and ethnically biased government, increasing restrictions on media, and uneven economic development. In the January 2015 presidential election, Mahinda was defeated by Maithripala Sirisena. Parliamentary elections later in 2015 led to the formation of a unity government supportive of Sirisena's reform agenda, including efforts to reduce the authority of the executive presidency.

'Sirisena's governing coalition began to fracture after a poor performance in the February 2018 local elections, losing out to the newly-formed Sri Lanka Podujana Peramuna (SLPP) party, which capitalized on rising Sinhalese ethnic nationalism. In late 2018, Sirisena sparked a political crisis when he tried unsuccessfully to dismiss then-Prime Minister Wickremesinghe of the opposition United National Party (UNP) and replace him with Mahinda Rajapaksa.'[5]

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3.3 Rajapaksa government (November 2019-)

3.3.1 On 17 November 2019 former wartime defence chief Gotabaya Rajapaksa won the presidential election with 52.25% of the vote. Votes in the election were divided along ethnic and religious lines with Rajapaksa securing more votes in Sinhalese majority areas while his opponent Sajith Premadasa did better in the Tamil-dominated north[6].

3.3.2 On 21 November 2019 Gotabaya Rajapaksa swore in his brother, former president between 2005 and 2015, Mahinda Rajapaksa, as interim prime minister[7]. The BBC explained 'Mahinda was president from 2005-2015 but was barred from standing again by a two-term limit, while Gotabaya was his all-powerful defence secretary. [...] Earlier this year, Gotabaya Rajapaksa told the BBC that war crimes allegations against him were "baseless".' [8]

[2] DFAT, 'Country Report' (para 2.2), 4 November 2019, url
[3] BBC, 'Sri Lanka Profile- timeline', last updated 25 April 2019, url.
[4] CFR, 'The Sri Lankan Conflict', last updated 18 May 2009, url.
[5] CRS, 'In Focus- Sri Lanka', 4 December 2019, url.
[6] BBC News, 'Sri Lanka election: Wartime defence chief Rajapaksa wins…', 17 November 2019, url.
[7] BBC News, 'Sri Lanka Rajapaksas: Return to power for wartime leader …', 21 November 2019, url
[8] BBC News, 'Sri Lanka Rajapaksas: Return to power for wartime leader …', 21 November 2019, url

3.3.3 On 21 November 2019 BBC news reported that minority groups were worried about the return of the Rajapaksa brothers, with the report further adding that 'Gotabaya Rajapaksa wasted little time in releasing a statement saying he would be a leader for all those who voted for him as well as those who did not. But at his own swearing-in he made clear he was disappointed he hadn't got the "support he expected" from the minorities.

3.3.4 The report further added that:

'There are also renewed fears about the robustness of Sri Lanka's democracy. It now looks likely the government will push to revoke the 19th amendment to the constitution. It places a two-term limit on the presidency - and bolstered independent commissions that could investigate the police, judiciary and the civil service, as well as human rights, although little progress was made on the last front.

'Parliamentary elections are due next year [2020] - or could be called earlier - and the Rajapaksa's hope to secure the two-thirds majority they would need to change the constitution.

'Separately, corruption charges against Gotabaya Rajapaksa have also been dropped as a result of the immunity from prosecution he acquires as president. He'd been indicted by a special High Court set up by the former government, charged with siphoning off state funds.'[9]

3.3.5 On 29 November 2019 The New York Times reported that:

'Fears of a potential crackdown on critics of the newly returned Rajapaksa political dynasty in Sri Lanka are rising just days after the election, as officials and journalists who investigated the Rajapaksa's for human rights abuses and corruption began trying to flee the country, officials said

'In a case that raised particular alarm, a Sri Lankan employee of the Swiss Embassy in Colombo was abducted on Monday by unidentified men and forced to hand over sensitive embassy information, Switzerland's foreign ministry said. Officials in Colombo said the men forced her to unlock her cellphone data, which contained information about Sri Lankans who have recently sought asylum in Switzerland, and the names of Sri Lankans who aided them as they fled the country because they feared for their safety after Gotabaya Rajapaksa won the presidency in elections this month.

'On the same day, Mr. Rajapaksa imposed a blanket travel ban on more than 700 members of the Sri Lankan police unit that had been investigating the family. And other police officers raided a news outlet critical of the Rajapaksa's and forced several journalists to hand their computers over for analysis, in what the police said was an investigation into accusations of hate speech.

'In the abduction case, the diplomatic officials, who spoke on condition of anonymity because of security concerns, said the men held the embassy employee for several hours and then, before releasing her, threatened to kill her if she told anyone. The officials said the men appeared to be focused on

[9] BBC News, 'Sri Lanka Rajapaksas: Return to power for wartime leader …', 21 November 2019, url

finding information about a Sri Lankan detective who had been investigating Mr. Rajapaksa.

'The infrastructure that had been built to support the investigations into the Rajapaksas and their allies has swiftly been unravelled over the last week. The Criminal Investigations Department, or C.I.D., which has been spearheading the inquiries, has been gutted, and its powers limited'[10]

3.3.6 The Congressional Research Service reported that:

'Many observers fear that Gotabaya's election could lead to a return to nepotistic and authoritarian style government and an end to the limited democratic reforms and limited reconciliation measures with the ethnic Tamil community that occurred under former President Sirisena. Gotabaya is reportedly seeking to repeal the 19th Amendment, a key reform of the previous government that curtails some of the powers of the president and makes the office more accountable to parliament.'[11]

3.3.7 In January 2020 the International Crisis Group noted that:

'The results of Sri Lanka's presidential election in November 2019 reflect a deeply polarised country. Gotabaya Rajapaksa campaigned on a Sinhala nationalist platform and won thanks to unprecedented levels of support from ethnic majority Sinhalese voters, while Tamil and Muslim voters overwhelmingly rejected him. Among Rajapaksa's 54 ministers are only two Tamils, and, for the first time since the nation became independent in 1948, no Muslim minister at all; there is only one female minister. Citing opposition among the Sinhala majority, Rajapaksa has repeatedly rejected any further devolution of power to the provinces, including what is mandated in the current constitution, thereby neutralising a mechanism intended to give ethnic minorities greater self-governance. Past statements by Gotabaya calling the large Tamil majority in the north "unnatural" heighten fears of military- and state-supported population transfer designed to change the demographic picture.

'Following a post-election statement by Mahinda Rajapaksa that indicated a desire to weaken religious and ethnic-based parties, Rajapaksa's allies proposed a constitutional amendment that would dilute minority representation in parliament by increasing the threshold of votes needed for parties to be represented from 5 to 12 per cent.

'The Rajapaksas have also taken dramatic steps to consolidate their family's control of the government. A 10 December presidential decree assigned responsibility for one third of all government departments to ministries headed by one of three Rajapaksa brothers, including, aside from Gotabaya and Mahinda, Chamal Rajapaksa, Minister of Mahaweli Development, Agriculture and Trade and State Minister of Defence. Gotabaya and other officials have announced their desire to reverse prior reforms that had reined in the presidency's power. A proposed constitutional amendment would allow the president once again to hold multiple ministerial portfolios, and

[10] The New York Times, 'Sri Lankan Critics Fear a Crackdown Is…', 29 November 2019, url.
[11] CRS, 'In Focus- Sri Lanka', 4 December 2019, url.

unilaterally to appoint judges, the attorney general, the police chief and other senior officials, without involvement of the constitutional council.'[12]

3.3.8 In February 2020 several news agencies reported that the new government had dropped the singing of the national anthem in Tamil during the Sri Lankan Independence Day celebrations. This was a move away from the previous government who sang the national anthem in both Tamil and Sinhalese to promote ethnic harmony[13] [14] [15].

3.3.9 In March 2020 Al Jazeera reported that President Gotabaya Rajapaksa 'made use of his constitutional powers to dissolve parliament and called for elections on April 25 [2020]'.[16] The elections have been indefinitely postponed due to the Coronavirus.[17]

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Section 4 updated: 21 April 2020

4. Political and human rights reforms post 2015

4.1 Constitutional reform

4.1.1 Freedom House's 'Freedom in the World 2019' report on Sri Lanka, dated 4 February 2019, covering events in 2018, stated:

'[…] the government has been slow to implement transitional justice mechanisms needed to address the aftermath of a 26-year civil war between government forces and Tamil rebels, which ended in 2009. Sirisena's reputation as a democratic reformer was further tarnished by a constitutional crisis in 2018, in which he attempted to unilaterally replace the prime minister, dissolve Parliament, and hold snap elections. The moves were blocked by the parliamentary majority and the courts.'[18]

4.1.2 The 2019 DFAT report, stated:

'In line with a Sirisena election commitment, in April 2015 parliament amended the constitution to devolve some executive powers from the president to the prime minister, cabinet and parliament. The 19th Amendment reduced presidential and parliamentary terms from six years to five; re-introduced a two-term limit for the president (removed in 2010); created independent commissions to oversee the judiciary, police, elections, human rights and the office of the Attorney-General; and re-established a Constitutional Council to make appointments to these commissions. The 10-member Constitutional Council includes the prime minister, speaker of parliament and the leader of the opposition.

'The pace of constitutional reform has since slowed. A parliamentary steering committee, established in April 2016 to prepare a new constitution and chaired by Prime Minister Wickremesinghe, submitted an interim report to parliament in September 2017, including in relation to the devolution of

[12] ICG, Watch List 2020; A Dangerous Sea Change in Sri Lanka, 29 January 2020, url
[13] Aljazeera, 'Sri Lanka scraps Tamil national anthem at Independence Day', 4 February 2020, url.
[14] France 24, 'Tamil-language anthem dropped from Sri Lanka …', 4 February 2020, url.
[15] Colombo Gazette, 'Concerns over failure by Government to sing…', 4 February 2020, url.
[16] AlJazeera, Sri Lankan parliament dissolved; elections set for April, 2 March 2020, url
[17] Asia Times, Sri Lanka election postponed, 20 March 2020, url
[18] FH, 'Freedom in the World 2019' report on Sri Lanka, 4 February 2019, url

power to the provinces, electoral reform and powers of the presidency. Parliament debated the interim report in October and November 2017. In January 2019, Wickremesinghe tabled a report prepared by a Panel of Experts for the Steering Committee to parliament. The work of the steering committee, including preparation of draft text, is ongoing. On 26 June 2019, Sirisena, speaking to the media, attributed Sri Lanka's recent political instability to the 19th Amendment and suggested it be scrapped.'[19]

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4.2 Reconciliation process

4.2.1 The February 2019 Office of the UN High Commissioner for Human Rights report noted that in 2015, by co-sponsoring Human Rights Council resolution 30/1, the Government of Sri Lanka recognized the 'need to address the past in order to build a brighter future, grounded in accountability, respect for human rights and the rule of law'. However, it went on to state:

'The lack of decisive steps to that end, and of appropriate communication, has generated widespread frustration. The lack of accountability for past actions likely contributed to the return of violence against minorities in March 2018 and played a role in undermining the principles of democracy and the rule of law in October and November 2018.

'…The Government has made progress in human rights issues and its engagement with civil society in some areas. Progress in its commitments to transitional justice has, however, been inconsistent and subject to considerable delay, partly because of the lack of a time-bound comprehensive strategy. Such important achievements as the establishment of the Office on Missing Persons and the Office for Reparations, and the national consultations have been neither adequately supported by the political leadership nor sufficiently linked to the accountability and truth-seeking components that should be at the core of the reconciliation and accountability agenda. The High Commissioner nonetheless praises the commitment of, and efforts made by some officials, particularly in several ministries, the Secretariat for Coordinating Reconciliation Mechanisms, the Office on Missing Persons, the Office for National Unity and Reconciliation and the Human Rights Commission, who have relentlessly endeavoured to push the human rights and reconciliation agenda forward.

'The High Commissioner stresses that the risk of new violations increases when impunity for serious crimes continues unchecked' [20]

4.2.2 The South Asian Terrorism Portal (SATP) Assessment of 2018 noted:

'… on December 20, 2017, the Cabinet approved the establishing of a "Channel of Reconciliation", a television studio complex in the Northern Province. It was decided to obtain a land plot of 100 perches (3,025 square yards) for this purpose from the Meesalei Weerasingham Central College premises in Jaffna. Sri Lanka Rupavahini Corporation has been entrusted

[19] DFAT, 'Country Report' (para 2.40 & 2.41), 4 November 2019, url
[20] UN HRC, 'Annual report', (Paras 51 and 61-62), 8 February 2019, url

with this project according to a Cabinet paper submitted by Finance and Mass Media Minister Mangala Samaraweera.'[21]

4.2.3 In January 2020 the International Crisis Group reported that:

'Since his election on 16 November 2019, Sri Lankan President Gotabaya Rajapaksa and his brother, Prime Minister Mahinda Rajapaksa, have initiated fundamental changes to policies on ethnic relations, the legacy of a 26-year civil war, and the rule of law. Mahinda had previously served as Sri Lanka's president and Gotabaya as defence minister during the brutal final phase of the country's civil war, when troops under their command, as well as the separatist Tamil Tigers they fought, are credibly alleged to have committed grave violations of the laws of war. The new Rajapaksa government has reversed or announced its intention to abandon many key legislative achievements and policy commitments of the preceding United National Party (UNP) government, including promises on post-war reconciliation, accountability and inclusive governance made to the UN Human Rights Council and to the EU. The shift in policy, rooted in part in the ethno-nationalism of many among Sri Lanka's Sinhala and Buddhist majority, threatens to increase ethnic and religious tensions and dangerously weaken checks on executive and state power.'[22]

4.2.4 For further information see also Constitutional reform

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4.3 War crimes investigations

4.3.1 In its resolution A/HRC/25/1 adopted in March 2014 on 'Promoting reconciliation, accountability and human rights in Sri Lanka', the United Nations Human Rights Council requested the UN High Commissioner for Human Rights to 'undertake a comprehensive investigation into alleged serious violations and abuses of human rights and related crimes by both parties in Sri Lanka during the period covered by the Lessons Learnt and Reconciliation Commission (LLRC), and to establish the facts and circumstances of such alleged violations and of the crimes perpetrated with a view to avoiding impunity and ensuring accountability, with assistance from relevant experts and special procedures mandate holders'[23].

4.3.2 In accordance with this mandate, the UN High Commissioner for Human Rights established the OHCHR Investigation on Sri Lanka (OISL), based in Geneva for the period from 21 February 2002 until 15 November 2011[24].

4.3.3 The OISL noted in its terms of reference with regard to witness protection and confidentiality:

'The OISL will take appropriate steps to address witness and victim protection concerns and shall adopt procedures and methods of work aimed at protecting such persons during all stages of its work.

'The Government of Sri Lanka also has an obligation to protect victims and witnesses and others in Sri Lanka who make contact with the OISL, and it

[21] SATP, 'Sri Lanka Assessment 2018', undated, url
[22] ICG, Watch List 2020; A Dangerous Sea Change in Sri Lanka, 29 January 2020, url
[23] UNHCR, 'Promoting reconciliation, accountability and human rights in…', 26 March 2014, url.
[24] UNHCR, OHCHR Investigation on Sri Lanka, Mandate, undated, url

will be requested to make an undertaking that no such person shall, as a result of such contact, suffer harassment, threats, acts of intimidation, ill-treatment or reprisals…

'The OISL will take all necessary measures and precautions to protect the confidentiality of information, including by not disclosing the names of individuals in its public reports as appropriate. At the end of its work, the OISL will archive all its confidential material in accordance with standard UN procedures for strictly confidential material.'[25]

4.3.4 In 2015 the Sri Lankan government co-sponsored the UN Human Rights Council (UNHRC) resolution 30/1 on 'Promoting reconciliation, accountability and human rights in Sri Lanka'[26]

4.3.5 In resolution 30/1 the Human Rights Council requested OHCHR to continue to assess the progress on the implementation of its recommendations and other relevant processes related to reconciliation, accountability and human rights in Sri Lanka and to present a comprehensive report on the implementation of that resolution at its 34th session[27]. The 34th session was held from 7 February–24 March 2017. Documents from that session can be viewed at 34th session of the Human Rights Council: Reports.

4.3.6 The OHCHR report of February 2019, stated however:

'Since 2015, virtually no progress has been made in investigating or prosecuting domestically the large number of allegations of war crimes or crimes against humanity collected by OHCHR in its investigation, and particularly those relating to military operations at the end of the war.

'In 2015, the High Commissioner stated that, for accountability to be achieved in Sri Lanka, more than a domestic mechanism would be required […]. The lack of substantial progress in establishing criminal accountability for serious crimes in the past three years underscores the relevance of that assessment. Moreover, claims that a domestic specialized process could suffice have not been accompanied by any serious attempt to establish one. No effort has been made to build the capacity required to conduct investigations, including forensic ones, or prosecutorial strategies, despite the repeated recommendations of the Special Rapporteur on truth, justice, reparations and guarantees of non-recurrence.

'The criminal justice system has yet to demonstrate its capacity or willingness to address complex emblematic cases. This in turn raises questions about the capacity and will of the State to address impunity for serious violations of international humanitarian law and for gross violations and abuses of international human rights law and has a negative impact on peoples' trust in the justice system.

'Concerns therefore remain regarding the State's capacity and willingness to prosecute and punish perpetrators of serious crimes when they are linked to security forces or other positions of power. The advances that were made – in the form of arrests or new investigations – were possible thanks to the

[25] UNHCR, OHCHR Investigation on Sri Lanka, Terms of Reference, undated, url
[26] AI, 21 March 2019, url
[27] UN HRC, 'Thirty-fourth session 27 February-24 March 2017, (paragraph 27), 18 January 2017, url

persistence and commitment of individual investigators despite political interference, patronage networks and a generally dysfunctional criminal justice system. The advances made were, however, often stymied or reversed by political interventions, as demonstrated by the above-mentioned case of the Chief of Defence Staff and the attempted transfer of Inspector Silva.'[28]

4.3.7 In March 2019, Amnesty International, noted:

'In 2017 Sri Lanka received a two-year extension to implement its own commitments. At its fortieth session, the UNHRC adopted a new resolution on 21 March 2019 co- sponsored by the government of Sri Lanka, giving it a further two years to implement outstanding promises in full. UNHRC resolution 30/1 commits Sri Lanka to "establish a judicial mechanism with a special counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law, as applicable; affirms that a credible justice process should include independent judicial and prosecutorial institutions led by individuals known for their integrity and impartiality; and also affirms in this regard the importance of participation in a Sri Lankan judicial mechanism, including the special counsel's office, of Commonwealth and other foreign judges, defence lawyers and authorized prosecutors and investigators." [...] Amnesty International's South Asia Director, Biraj Patnaik, said [...] "It is disappointing, however, that the final text of the resolution failed to address Sri Lanka's failure to meet its commitments to date. Despite the pledges made in Resolution 30/1, there continues to be impunity for violations of international human rights and humanitarian law. The absence of accountability and the slow progress on other fronts has disillusioned many victims' groups and eroded hopes for the transitional justice process"'[29]

4.3.8 On 1 August 2019 Human Rights Watch reported:

'While the government of President Maithripala Sirisena has addressed some important human rights problems in the country, the key commitments made to the Human Rights Council in its October 2015 resolution remain unfulfilled. The government has made no discernible progress on its commitment to a judicial mechanism for investigating war crimes and other serious rights abuses by both government forces and the LTTE. The October 2015 resolution specifically calls for the participation of foreign judges, prosecutors, investigators, and defense lawyers, which is crucial to ensure that legal proceedings are protected from local pressures and have the independence that a purely domestic process would lack. Sri Lankan political leaders have instead repeatedly said that there will be no foreign judges, and that "war heroes" will be protected from prosecution. Notably, the report issued by the government-appointed Consultation Task Force, which carried out nationwide consultations on the transitional justice mechanisms, has not been given the attention it deserves. The Task Force report contains detailed recommendations, drawn from all affected communities including the

[28] UN HRC Annual report (paras 23, 27-29, 38 and 49) 8 February 2019, url
[29] AI, 21 March 2019, url

security services, and provides an important blueprint for the way forward in addressing abuses by both the LTTE and government forces.'[30]

4.3.9 In August 2019 a group of UN experts expressed serious concern at the appointment of Lieutenant General Shavendra Silva as Sri Lanka's army chief due to 'his alleged involvement in serious human rights violations during the 25-year long civil war. [...] UN reports have implicated him and his troops in alleged war crimes and crimes against humanity. "The appointment of Lieutenant General Silva to the highest ranks in Sri Lankan's Army, while facing allegations of this nature, is an affront to the victims and a harrowing sign of the perpetuation of impunity in the country, which risks undermining the trust of Sri Lankan society on state institutions and fuelling further destabilization," said the experts.'[31]

4.3.10 In January 2020 the International Crisis Group reported that:

'The new government also quickly rolled back police investigations into a series of high-profile political killings and disappearances during the Mahinda Rajapaksa administration – many, according to detailed evidence submitted to courts, allegedly committed by military intelligence units at a time when Gotabaya was defence secretary. Courts have released suspects in virtually all of the so-called "emblematic cases" of serious human rights violations and political crimes. Within days of Gotabaya's election, the new government removed the lead police investigators' security details, transferred them to menial jobs, and denounced them as traitors. The most prominent investigator, Nishantha Silva, fled the country fearing for his safety. The government has launched a review of all prosecutions of Mahinda-era abuses, which the Rajapaksas and supporters have long called politically motivated and announced a presidential commission to investigate police and other officials responsible for the alleged "witch hunt".'[32]

4.3.11 In February 2020, the organisation Sri Lanka Brief reported on the decision by the new government to withdraw from co-sponsorship of UNHRC resolution on war crimes. The new government has decided that the decision taken by the last government to co-sponsor the UN Human Rights Council (UNHRC) resolution No: 30/1 was gravely flawed. The report went on to note that:

'Asked if, after withdrawal from co-sponsorship in the coming (March 2020) session of the UNHRC, the Lankan government will make an effort to get 30/1 cleared by the due democratic process, the source said that the idea is not to rework it but to reject the resolution. "Our policy to seek a closure of the resolution," he [A top official in President Gotabaya Rajapaksa's office] said.

'Although the previous Wickremesinghe government had co-sponsored the resolution, it nevertheless argued at the UNHRC that no war crimes were committed by the Lankan forces, and that any killings that might have taken place, had been inadvertent collateral damage.'[33]

[30] Human Rights Watch, 'No Progress in Prosecuting Aid Worker Massacre', 1 August 2019, url
[31] OHCHR, 'Sri Lanka: UN experts say army chief appointment is "affront to…' 27 August 2019, url
[32] ICG, Watch List 2020; A Dangerous Sea Change in Sri Lanka, 29 January 2020, url
[33] Sri Lanka Brief, 'Sri Lanka to withdraw from co-sponsorship of UNHRC…', 18 February 2020, url.

4.3.12 In response to the withdrawal Amnesty International reported that:

'Instead of implementing the commitments they have made through UN Human Rights Council resolutions, the Sri Lankan government has said it will pursue a national effort to achieve "sustainable peace" through an "inclusive, domestically designed and executed reconciliation and accountability process."

"Sri Lanka has a long history of failed domestic accountability mechanisms. Their successive failures have bitterly disappointed victims of human rights abuses and violations, many of whom have waited years for an outcome that has failed to materialize. They need an international mechanism that is both trusted and can be effective," said Thyagi Ruwanpathirana [South Asia Researcher at Amnesty International].

"The limited but significant gains made in recent years are at risk of being rolled back, even as we see space shrinking for civil society in Sri Lanka over recent months."'[34]

4.3.13 For a list of the main Tamil paramilitary groups and parties which were allegedly involved in security operations with the Sri Lanka security forces, including information on the Karuna Group and Eelam People's Democratic Party (EPDP), see the UN Human Rights Council, Report of the OHCHR Investigation on Sri Lanka (OISL), published on 16 September 2015.

4.3.14 For further information see also Reconciliation

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4.4 Human Rights Commission of Sri Lanka (HRCSL)

4.4.1 The Human Rights Commission of Sri Lanka is an independent Commission, set up to promote and monitor protection of human rights in the country. It has a headquarters based in Colombo and has 10 field offices across the country. The HRC is divided into 4 Divisions:

- Education and Special Programmes,
- Administration and Finance,
- Research and Monitoring, and
- Inquiries and Investigations [35].

4.4.2 The report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment - Mission to Sri Lanka, 22 December 2016, stated:

'The National Human Rights Commission Act No. 21 of 1996 provides safeguards against arbitrary detention and torture or ill-treatment of detainees under the Prevention of Terrorism Act. Under section 28 of the Act, detention authorities must inform the Commission within 48 hours of any arrest made under the Prevention of Terrorism Act and the location of the detainee, as well as of any transfer or change of the prisoner's location. It

[34] AI, 'Sri Lanka: Withdrawal from UN commitments requires robust response by Human Rights Council, 27 February 2020, url
[35] HRC of Sri Lanka, undated, url

further provides that all officials authorized by the Commission should have access to all places of detention at any time and be able to make inquiries of detainees.

'While most arrests and detentions under the Prevention of Terrorism Act are communicated to the National Human Rights Commission once they are registered, the Special Rapporteur concludes from testimonies and reports that this is not the case with respect to transfers and changes of location.'[36]

4.4.3 The US State Department's Country Reports on Human Rights Practices for 2019 (the USSD report for 2019), published 11 March 2020, stated:

'The HRCSL has jurisdiction to investigate human rights violations. The HRCSL is composed of five commissioners and has divisions for investigations, education, monitoring and review, and administration and finance. There are 10 regional offices across the country. The HRCSL accepts complaints from the public and may also self-initiate investigations. After an allegation is proven to the satisfaction of the commission, the HRCSL may recommend financial compensation for victims, refer the case for administrative disciplinary action or to the attorney general for prosecution, or both. If the government does not follow an HRCSL request for evidence, the HRCSL may summon witnesses from the government to explain its action. If the HRCSL finds the government has not complied with its request, the HRCSL may refer the case to the High Court for prosecution for contempt by the Attorney General's Department, an offense punishable by imprisonment or fine. By statute the HRCSL has wide powers and resources and may not be called as a witness in any court of law or be sued for matters relating to its official duties. The HRCSL generally operated independent of and with lack of interference from the government.

'The HRCSL was also responsible for vetting Sri Lankan peacekeepers, although the memorandum of understanding between the United Nations, HRCSL, Ministry of Defense, and Ministry of Law and Order for the vetting of all Sri Lankan military and police participants in peacekeeping operations was finalized in December 2018. As of August 2019, the vetting process was carried out by the HRCSL'.[37]

4.4.4 For further information see also Arrests, detention and treatment of actual or suspected LTTE supporters and Other issues for actual or suspected LTTE supporters)

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4.5 Missing persons and the Office for Missing Persons (OMP)

4.5.1 The Act to establish an Office for Reparations (No 34 of 2018) was passed in Parliament on the 10th of October 2018[38].

4.5.2 The International Commission on Missing Persons note on their undated page on Sri Lanka that:

[36] OHCHR, 'Report of the Special Rapporteur', (para 73, p13), 22 December 2016, url
[37] USSD, 'Country Report for 2018' (section 5), 11 March 2020, url
[38] SCRM, Office for Reparations, Undated, url

'After the outbreak of fighting in 1983 between the Sinhalese-led government in Colombo and a variety of armed Tamil separatist movements that were eventually absorbed into the Liberation Tigers of Tamil Eelam (LTTE), the population of Sri Lanka were subject to systematic human rights abuses. The period immediately before and after the LTTE defeat by government forces in 2009 was characterised by systematic abuses. According to international human rights agencies, both the government and the rebels were responsible for tens of thousands of citizens going missing during the war.'[39]

4.5.3 The Office on Missing Persons, Interim Report, August 2018, stated:

'The establishment of the Office on Missing Persons (OMP) marks a significant milestone in the efforts of the Government of Sri Lanka to address the issues of the missing and the disappeared. Established under the Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act No. 14 of 2016 as an independent commission, the OMP's objectives are to trace and search for the missing, make recommendations towards nonrecurrence, ensure the protection of the rights of the missing, the disappeared and their relatives, and to identify proper avenues of redress.

'The challenges faced by the OMP are many and need to be balanced with the urgency of the needs of families of victims enduring years of physical and mental suffering. The failure of successive state institutions to provide families with truth, justice and reparations has created a deep distrust of the State and by extension the OMP. The OMP recognises the multiple needs and positions of various families and the importance of securing their trust.'[40]

4.5.4 According to the BBC in September 2018: 'The conflict is estimated to have killed more than 100,000 people. It divided Sri Lanka along ethnic lines - pitting the majority Buddhist Sinhalese-dominated government against the rebels, who fought for a state for minority Tamils. About 20,000 people, mostly Tamils, are thought to be missing. Many people still hope their relatives are alive, languishing in detention centres or in secret prisons, a view rejected by the government.'[41]

4.5.5 On 21 October 2018 South Asia Director of Amnesty International stated in an article on the Office of Missing Persons that:

'[…] there are widespread complaints about the composition of the Office [the OMP]: there aren't enough victims represented, and there are few Tamil-speaking members. […] There are also concerns about the inclusion of an individual closely linked to the army. […] On the question of mass graves, the OMP has highlighted its role in acting as an observer when it comes to the excavation and exhumation work at one mass grave discovered in Mannar. But, the OMP is unusually silent about other mass grave sites. Since the 1990s, grave sites have been identified in many parts of Sri Lanka- in the Central, Northern and Eastern Provinces. Since 2012, over two hundred bodies have been exhumed from grave sites in Matale and

[39] ICMP, Sri Lanka, undated, url
[40] OMP, 'Interim Report', August 2018, url
[41] BBC, 'Sri Lanka conflict: 'Why can't you find our sons?'', 10 September 2018, url

Mannar. Information about another site in Kaluwanchikudy surfaced in 2014- allegedly containing around one hundred bodies, but has not yet been exhumed. These grave sites could potentially hold key answers linked to the OMP's mandate. Cognizant of the criticisms relating to OMPs set up, that which includes the discretion to report information it uncovers to relevant law enforcement or prosecuting authority, the OMP should have publicly clarified that it will submit all information and evidence of crimes under international law for criminal investigations and prosecutions to ensure that victims have access to justice. Such reluctance has led some to conclude that the OMP is acting more like a commission of inquiry, merely offering a series of observations in successive reports, rather than an investigative body that is tasked to uncover fresh evidence and deliver answers to the families of disappeared who have spent years yearning for them.' [42]

4.5.6 The 2019 DFAT report stated:

'The majority of the missing or disappeared are from the north and east and are likely to have been members or supporters of the LTTE. In July 2017, the UN Working Group on Enforced or Involuntary Disappearances attributed a number of child disappearances to the LTTE's recruitment of child soldiers during the war. A small number of disappearances relate to people who have emigrated. For example, Kathiravel Thayapararaja, a former LTTE member who was reported to have been tortured and killed by Sri Lankan security forces in 2009, emerged alive in Tamil Nadu in 2014. Most of those considered missing or disappeared are highly likely dead.

'Protests led by Tamil families demanding information on the disappeared began in the north and east in January 2017 and are ongoing. President Sirisena met protest leaders in Kilinochchi in June 2017 and reportedly agreed to release a list of individuals who disappeared during the war but, at the time of publication, a list had not been provided. The military has resisted previous requests for such information.'[43]

4.5.7 The 2019 DFAT Report stated: 'In May 2016, Sri Lanka ratified the International Convention for the Protection of All Persons from Enforced Disappearance. Parliament passed domestic legislation (the Enforced Disappearances Act) to implement the Convention and criminalise enforced disappearances in March 2018. In September 2017, the government issued a gazette to establish the OMP and appointed commissioners in February 2018.' [44]

4.5.8 The Human Rights Watch (HRW) World Report for 2020 covering the events of 2019 noted that 'The Office on Missing Persons (OMP) began work in 2018, recording over 14,000 cases, but made little progress in discovering their whereabouts.'[45]

4.5.9 In January 2020 President Rajapaksa acknowledged, at a meeting with a UN envoy in Colombo, that more than 20,000 people who had disappeared during the country's civil war are dead. This is the first time that such an

[42] Amnesty International, ' The government cannot afford to fail', 21 October 2018, url
[43] DFAT, 'Country Report' (para 4.6 & 4.7), 4 November 2019, url
[44] DFAT, 'Country Report' (para 4.5), 4 November 2019, url
[45] HRW, 'World Report 2020', 13 January 2020, url.

acknowledgment had been made and it angered some families of the missing who had held out hope that their missing relatives were being held at the hands of security forces. The president stated that steps would be taken to insure that the families of those missing could obtain death certificates to enable them to access properties[46] [47].

4.5.10 The Human Rights Commission told the UK FFT that when families meet to discuss the disappeared, or when human rights defenders meet, intelligence officers appear at these meetings.[48]

4.5.11 The Secretariat for Coordinating Reconciliation Mechanisms (SCRM) stated that 'Unexplained graves have been found which raise questions.'[49] The February 2019 Office of the UN High Commissioner for Human Rights report noted that 'On 29 May 2018, human skeletal remains were discovered at a construction site in Mannar (Northern Province). Excavations, conducted with the support of the Office on Missing Persons, revealed a mass grave from which more than 300 skeletons were recovered. It was the second mass grave found in Mannar following the discovery of a site in 2014.' [50]

4.5.12 The USSD report 2019 noted that 'Disappearances during the war and its aftermath remained unresolved. The Office on Missing Persons (OMP) opened three regional offices in Mannar, Matara, and Jaffna and continued outreach to families of the missing and disappeared. Based on the recommendation of the OMP, the cabinet approved interim financial relief of approximately 5,700 rupees (Rs) ($33) per month in recognition of the dire economic situation of the families of the missing.'[51]

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4.6 Prevention of Terrorism Act (PTA)

4.6.1 The 2019 DFAT Report, stated:

'The PTA was enacted as a temporary measure in 1979 to counter separatist insurgencies. It was made permanent in 1982. The PTA is not part of regular criminal law, and contains special provisions on detention and the admissibility of confessions. The PTA allows arrests for unspecified "unlawful activities", permits detention for up to 18 months without charge and provides that confessions are legally admissible. The PTA was used mainly to target those suspected of involvement with the LTTE. During the war, authorities detained more Tamils under the PTA than any other ethnic group. Since 2015, the government has reviewed some cases of persons still detained under the PTA and released some detainees, mostly Tamils.[52]

4.6.2 The report of the Special Rapporteur on minority issues on her mission to Sri Lanka - Note by the Secretariat, 31 January 2017, stated:

[46] BBC News, 'Rajapaksa says thousands missing are dead', 20 January 2020, url.
[47] Asia News, 'Rajapaksa admits that 20,000 missing people are dead', 21 January 2020, url.
[48] Home Office, 'HO FFM report', Annex D-FFM, 20 January 2020, url.
[49] Home Office, 'HO FFM report', Annex D-SCRM, 20 January 2020, url.
[50] UN HRC, 'Annual report', (Para 23), 8 February 2019, url
[51] USSD, 'Country Report for 2019' (section 5), 11 March 2020, url
[52] DFAT, 'Country Report' (para 3.16), 4 November 2019, url.

'Reinforcing the stigmatization of the Tamil identity is the continued application of the Prevention of Terrorism Act, which affects the Tamil population disproportionately. Despite the heavy criticism it has received nationally and internationally for allowing prolonged detention without due process, the Government has reportedly continued to rely on the Act to make new arrests, including exiled Tamils returning to Sri Lanka.'[53]

4.6.3 The December 2018 report of the Special Rapporteur to Sri Lanka on the promotion and protection of human rights and fundamental freedoms while countering terrorism stated that:

'The definition of terrorist acts contained in the Prevention of Terrorism Act (sect. 2) is overly broad and vague. It includes acts that would hardly qualify as "terrorist" even by the most generous definition such as: causing "mischief to the property of the Government, any department, statutory board, public corporation, bank, cooperative union or cooperative society"; causing, "by words either spoken or intended to be read or by signs or by visible representations… commission of acts of violence or religious, racial or communal disharmony or feelings of ill will or hostility between different communities or racial or religious groups"; and erasing, mutilating, defacing or otherwise interfering with any words, inscriptions, or lettering appearing on any board or other fixture on, upon or adjacent to, any highway, street, road or any other public place. The definition also casts the net widely over potential offenders by including the offence of harbouring, concealing or in any other manner preventing, hindering or interfering with the apprehension of a proclaimed person or any other person, knowing or having reason to believe that such a person has committed an offence under the Act. Therefore, under the Act, the authorities have been able to stigmatize, brand and prosecute entire communities and members of civil society as "terrorists", and associate any form of peaceful criticism or dissent with terrorism. Because the definition is also the trigger for the use of extraordinary procedural powers, it has allowed the authorities to subject any person suspected of association, even indirect association, with the Liberation Tigers of Tamil Eelam, to arrest, detention, interrogation and lower standards of due process and fair trial guarantees.'[54]

4.6.4 The OHCHR report, 'Promoting reconciliation, accountability and human rights in Sri Lanka', with a focus on events between January 2018 and January 2019, stated

'A key commitment of the Government in 2015 was to review and repeal the Prevention of Terrorism Act. Draft legislation in the form of a counter-terrorism law, with serious shortcomings, was approved by the Cabinet on 25 April 2017 and later withdrawn for revisions. An improved revised version was presented to the parliament on 9 October 2018. In a determination issued in November 2018 on the constitutionality of the revised bill, the Supreme Court ruled that the death penalty had to be included as punishment to prevent inconsistencies with the Penal Code. It also found that a reference in the bill relating to its compliance with the law, including international human rights instruments to which Sri Lanka is a party, was

[53] OHCHR, 'Report of the Special Rapporteur', (p13), 31 January 2019, url
[54] OHCHR, 'Report of the Special Rapporteur on the promotion…', 14 December 2018, url.

incompatible with the Constitution, which does not regard "international instruments" as law. […] The High Commissioner is concerned that, despite its lengthy preparation and the consultation of expert advice, the final bill might not comply fully with international human rights norms and standards. Even in its present form, the bill contains problematic features, such as an overly broad definition of terrorism. The High Commissioner urges Sri Lanka to continue to uphold the moratorium on the death penalty and to work towards prohibiting the practice altogether, recalling the fact that the United Nations opposes the use of capital punishment in all circumstances. The adjudication of security detainees held under the Prevention of Terrorism Act remains a matter of concern among the Tamil community, which has identified it as a matter of confidence-building. According to information provided by the Government, as at 25 January 2019, 58 individuals detained under the Act were facing trial and three suspects were awaiting indictment.'[55]

4.6.5 The UK Home Office undertook a Fact-Finding Mission (FFM) conducted between 28 September and 5 October 2019 by 3 officials from the Country Policy and Information Team (CPIT), with support from the British Embassy in Colombo. The Fact-Finding Team (FFT) met representatives from the Human Rights Commission (HRC) and the Criminal Investigation Department, who stated that when someone is arrested under the PTA it is a mandatory requirement that the HRC are informed but that there may be a delay in this reporting [56].

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4.7 Arrest and detention process

4.7.1 Article 12(1) of the Constitution (as amended up to 15th May 2015) Revised Edition – 2015, states: 'All persons are equal before the law and are entitled to the equal protection of the law.'[57]

4.7.2 The UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment - Mission to Sri Lanka, 22 December 2016, stated:

'The Code of Criminal Procedure Act contains procedural safeguards to protect the integrity of a person arrested or detained, including the right to be informed of the nature of the charge or allegation upon which he or she is arrested (art. 23) and to be presented to a magistrate without undue delay and within 24 hours (arts. 36 and 37 and art. 65 of Police Ordinance No. 16 of 1865). Officers in charge of police stations are further required to report to the relevant magistrates all cases of persons arrested without a warrant (art. 38). If an investigation cannot be completed within 24 hours, only the magistrate may decide to detain a suspect in custody pending investigation and for a maximum of 15 days (art. 115 (1) and (2)).'[58]

[55] UN HRC, 'Annual report', (Para.32-34), 8 February 2019, url
[56] Home Office, 'HO FFM report', Annex D- HRC, 20 January 2020, url.
[57] The Parliament of Sri Lanka, The Constitution, Revised Edition – 2015, url
[58] OHCHR, 'Report of the Special Rapporteur', (p12), 22 December 2016, url

4.7.3 The same report added however, that 'The Special Rapporteur notes with concern, however, that neither the Penal Code nor the Code of Criminal Procedure Act specifies that an arrest warrant must be authorized by a judge, giving the police extraordinary powers of arrest and increasing the risk of arbitrary detention and of torture and ill-treatment.'[59]

4.7.4 The HO FFM report of January 2020, based on interviews with a number of sources in September 2019, noted 'Representatives from the Criminal Investigation Department informed the UK FFT that according to the law the police have the power of arrest. Under the Public Security Ordinance 1947 the President is able to bring in a state of emergency and in that instance the armed forces also have the power of arrest.'[60]

4.7.5 The HO FFM report of January 2020 noted

'The Attorney General's Department told the UK FFT that arrest warrants are not issued to the wanted person or their family[61]. Several sources told the UK FFT that when someone is taken into custody the arrestee and their family are issued with a receipt[62] although one source noted this does not always happen although in recent years receipts have been issued more regularly[63]. The receipts show why they were arrested, the name of the arresting officer and the police station[64].

4.7.6 The HO FFM report also noted

'The Attorney General's Department told the UK FFT that a summons to appear in court might be given to family members if the wanted person was not there. Where the family refuse to accept the summons, the court would be informed. The same source went on to note that if there was no response to the summons to appear in court an arrest warrant would be issued although these are only issued after consideration has been given to all the evidence. If the authorities believe that the wanted person poses a flight risk then a travel ban may be issued, these can only be issued by the court or a higher police officer.'[65]

4.7.7 For further information see also Torture/ill treatment.

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4.8 De-proscription of separatist groups

4.8.1 On 21 March 2014 the previous Rajapaksa government designated (proscribed) a number of Tamil groups active around the world as terrorist organisations who were not allowed to engage in Sri Lanka[66]. A letter from the British High Commission in Colombo dated 18 May 2017, confirmed that the Sirisena government de-proscribed 8 Tamil groups/organisations in 2015 which were: The Global Tamil Forum, British Tamil Forum, National Council

[59] OHCHR, 'Report of the Special Rapporteur', (p15), 22 December 2016, url
[60] Home Office, 'HO FFM report', Annex D- CID, 20 January 2020, url.
[61] Home Office, 'HO FFM report', Annex D- Attorney General Department (AG), 20 January 2020, url.
[62] Home Office, 'HO FFM report', Annex D- AG, CID, Human Rights Activist, 20 January 2020, url.
[63] Home Office, 'HO FFM report', Annex D- Human Rights Activist (HRA), 20 January 2020, url.
[64] Home Office, 'HO FFM report' (p22), Annex D- HRA, 20 January 2020, url.
[65] Home Office, 'HO FFM report', Annex D- AG, 20 January 2020, url.
[66] The Gazette of the Democratic Socialist Republic of Sri Lanka , 21 March 2014, url.

of Canadian Tamils, Tamil Youth Organisation, World Tamil Coordinating Committee, Canadian Tamil Congress, Australian Tamil Congress and Tamil National Council[67].

4.8.2 The BHC letter stated: 'Membership or affiliation to the…[de-proscribed] groups is no longer regarded by the government of Sri Lanka as terrorism or terrorist activity. The members of these groups whether active or lay, have no reason to fear persecution as a consequence of their affiliation to them from the government of Sri Lanka.'[68]

4.8.3 Eight organizations, however, remain proscribed:

- Liberation Tigers of Tamil Eelam (LTTE / Tamil Tigers)
- Tamil Rehabilitation Organization (TRO)
- Tamil Coordinating Committee (TCC)
- World Tamil Movement (WTM)
- Transnational Government of Tamil Eelam (TGTE)
- Tamil Eelam Peoples Assembly (TEPA)
- World Tamil Relief Fund (WTRF)
- Headquarters Group (HQ Group) remain proscribed

These are listed on the amended Gazette, No. 1992/25 – 9 November 2016[69].

4.8.4 On 23 May 2019, following the Easter 2019 bombings[70] which were reportedly carried out by Islamist extremist suicide bombers an additional 3 organisations were added to the list of proscribed groups on Gazette, No. 2124/32. These were- National Thowheed Jama'ath (NTJ), Jama'athe Milla'athe Ibrahim (JMI) and Willayath As Seylani[71].

4.8.5 At the time of writing there were 185 individuals listed as designated people under paragraph 4(7) of the United Nations Regulations No. 1 of 2012 which states that 'where there is a need to include or remove any name or names from the List, it shall be done by way of an amendment to the List which has been published in the Gazette, every such amendment shall be published in the Gazette'[72] The full list of individuals can be accessed on the competent authority website[73].

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[67] BHC, Colombo, letter dated 18 May 2017, Annex A
[68] BHC, Colombo, letter dated 18 May 2017, Annex A
[69] The Gazette of the Democratic Socialist Republic of Sri Lanka, 9 November 2016, url
[70] BBC News, 'Sri Lanka attacks: What we know about the Easter bombings', 28 April 2019, url.
[71] The Gazette of the Democratic Socialist Republic of Sri Lanka, 23 May 2019, url.
[72] The Gazette of the Democratic Socialist Republic of Sri Lanka, 15 May 2012, url.
[73] Competent Authority, url.

5. Treatment of Tamils

5.1 Overview

5.1.1 The December 2018 report from the UN Special Rapporteur, on his visit to Sri Lanka from 10 to 14 July 2017, observed that:

'…[he] observed a pervasive and insidious form of stigmatization of the Tamil community. Tamils are severely underrepresented in all institutions, particularly in the security sector and the judiciary, despite the importance allegedly attributed to ensuring that all institutions adequately reflect the ethnic, linguistic and religious make-up of the State. The authorities explained that despite the various governmental programmes to reach out to Tamils, it was the Tamils that did not want to integrate into governmental institutions, notably because of the language barrier or their lack of trust in the Government. The Special Rapporteur is particularly concerned about the very large and imposing military presence in the north, which he witnessed himself in Vavuniya.'[74]

5.1.2 Human Rights Watch observed in its report covering events in 2019: 'Tamils, particularly in the Northern Province, continued to face harassment and intrusive surveillance.'[75]

5.1.3 The 2019 Freedom House report noted: 'Tamils report systematic discrimination in areas including government employment, university education, and access to justice.' [76] However, DFAT assessed 'there is no official discrimination on the basis of ethnicity in public sector employment. Rather, Tamil's under-representation is largely the result of language constraints and disrupted education because of the war.'[77]

5.1.4 The 2019 DFAT report stated:

'Tamils are the second largest ethnic group in Sri Lanka (15.3 per cent of the population). According to the most recent census, the Tamil population was 3.1 million in 2012, compared to 2.7 million in 1981. Tamils live throughout Sri Lanka but are concentrated in the Northern and Eastern provinces; according to the 2012 census, Tamils comprise 93.8 per cent of the population in the Northern Province and 39.2 per cent of the population in the Eastern Province. Tamils account for 6.8 per cent of the population in the Western Province. Tamils of Indian origin have a large presence in the Central, Sabaragamuwa and Uva provinces.'[78]

5.1.5 The DFAT report added: 'Some members of the Tamil community report discrimination in employment, particularly in relation to government jobs. Even the Tamil-dominated north and east have relatively few Tamil public servants. Despite government incentives, the number of Tamil-speaking police officers and military personnel in the north and east remains small,

[74] OHCHR, 'Report of the Special Rapporteur', (para 54), 14 December 2018 url
[75] HRW, World Report 2020 (Sri Lanka), January 2020, url
[76] FH, 'Freedom in the World 2019' report on Sri Lanka, 4 February 2019, url
[77] DFAT, 'Country Report' (para 3.8), 4 November 2019, url.
[78] DFAT, 'Country Report' (para 3.5), 4 November 2019, url

and monolingual Tamil speakers can have difficulty communicating with authorities.'[79]

5.1.6 The same source explained that:

'The military maintains a significant presence in the north, including approximately 30,000 personnel in the Jaffna Peninsula (some NGOs cite higher numbers). [...] . As they are elsewhere in Sri Lanka, security forces are in a heightened state of alert in the north and east in the aftermath of the 2019 Easter Sunday terrorist attacks.'[80]

5.1.7 Several sources told the UK Home Office Fact-Finding Mission that Tamils are not specifically targeted and do not suffer persecution just for being a Tamil[81] but they do suffer discrimination along with other minorities[82]. According to one source there is more freedom and opportunities in the north compared to the situation pre-2015[83]. A representative from the northern province community said that prior to the forthcoming November presidential elections, Tamils have more freedom of speech than previously but were fearful of the return of former president Rajapaksa[84].

5.1.8 A diplomatic source told the UK FFT that the Tamil community have a subjective fear and mistrust of the authorities[85].

5.1.9 A Human rights activist told the UK FFT that Tamils returning from abroad are generally monitored but that certain Tamils may be subject to closer scrutiny: for example, political activists and journalists and those returning from abroad may be monitored, although this was not the case for all Tamils[86].

5.1.10 A journalist told the UK FFT that they had heard stories of returning Tamils who had faced harassment and intimidation for various reasons, including being wealthy[87].

5.1.11 UNHCR told the UK FFT that there had been some recent tensions between Sinhalese Buddhists and other minorities including Tamils[88], with several sources telling the UK FFT of a recent case where a Buddhist monk had laid claim to land belonging to a Hindu temple. After his death his body was cremated on land belonging to the temple, which was in violation of a court order preventing the land from being used as such. There were protests in the Tamil community, but the police were accused of doing nothing to prevent the cremation taking place[89].

5.1.12 A representative from the northern province community and a journalist told the UK FFT that they believed that there was some Buddhist colonisation of

[79] DFAT, 'Country Report' (para 3.7), 4 November 2019, url.
[80] DFAT, 'Country Report' (para 2.65), 4 November 2019, url.
[81] Home Office, 'HO FFM report', Annex D- TNA, Journalist 1, AG, 20 January 2020, url.
[82] Home Office, 'HO FFM report', Annex D- TNA, UNHCR, 20 January 2020, url.
[83] Home Office, 'HO FFM report', Annex D- UNHCR, 20 January 2020, url.
[84] Home Office, 'HO FFM report', Annex D- Northern province representative , 20 January 2020, url.
[85] Home Office, 'HO FFM report', Annex D- Diplomatic source, 20 January 2020, url.
[86] Home Office, 'HO FFM report', Annex D- HRA, January 2020, url.
[87] Home Office, 'HO FFM report', Annex D- Journalist 1, 20 January 2020, url.
[88] Home Office, 'HO FFM report', Annex D- UNHCR, 20 January 2020, url.
[89] Home Office, 'HO FFM report', Annex D- NGO, AG, Journalist 1, 20 January 2020, url.

Tamil areas, possibly to attempt to change the demography of the north, although this was not to the same extent as occurred under the previous government[90].

5.1.13 The UK FFT spoke to an NGO who stated that whilst there are increased opportunities in the north, job opportunities remain limited with the war having destroyed factories and other livelihoods and the promised economic development not happening[91].

5.1.14 The USSD report 2019, stated 'Both local and Indian-origin Tamils maintained that they suffered longstanding, systematic discrimination in university education, government employment, housing, health services, language laws, and procedures for naturalization of noncitizens.'[92] The same source further noted that 'A shortage of court-appointed interpreters limited the right of Tamil-speaking defendants to free interpretation as necessary. In several instances, courts tried criminal cases originating in the Tamil-speaking north and east in Sinhala-speaking areas, which exacerbated the language difference and increased the difficulty in presenting witnesses who needed to travel.'[93]

5.1.15 The European Union Election Observation Mission of the November 2019 Presidential Election found that 'In the immediate post-election period several physical attacks and hateful commentary on social media against Tamils and Muslims were reported, while journalists at three online outlets were questioned for lengthy periods by police, raising concerns for media freedom.'[94]

5.1.16 ACLED reported that 'Post-election violence included several clashes between supporters of rival political parties, as well as mob violence targeting members of the Tamil community in Sabaragamuwa province. The victims had been accused of failing to vote for Gotabaya Rajapaksa.'[95]

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5.2 Land repatriation

5.2.1 An article by the International Crisis Group, dated 17 May 2019, stated: 'During and after the war, the military seized large swathes of land from villagers to build camps, a policy it said was intended to keep the peace. While the state has now returned most of the land, a number of locations, including Keppapulavu, remain sites of public protest and continued grievance for Tamils in the heavily militarised northern province.'[96]

5.2.2 In a letter dated 19 June 2018 the British High Commission in Colombo were able to confirm that the Government of Sri Lanka had 'Released 56,447.81

[90] Home Office, 'HO FFM report', Annex D- Northern province rep, Journalist 2, 20 January 2020, url.
[91] Home Office, 'HO FFM report', Annex D- NGO, 20 January 2020, url.
[92] USSD, 'Annual report on HR' (section 6), 11 March 2020, url
[93] USSD, 'Annual report on HR' (section 1e), 11 March 2020, url
[94] EU Election Observation Mission, Sri Lanka, Presidential Election... (p.7), January 2020, url
[95] ACLED, Regional Overview: South Asia 17 – 23 November 2019, 26 November 2019, url
[96] ICG, 'Picturing Sri Lanka's Undead War', 17 May 2019, url.

acres of land in former conflict areas, including that of 120.89 acres released on 18 June 2018'.[97]

5.2.3 Government officials estimated that nearly 30,000 acres (12,140 hectares) of private land was still being held by the military as of 31 March 2019[98].

5.2.4 Human Rights Watch noted in their report '"Why can't we go home?"- Military occupation of land in Sri Lanka' dated 9 October 2018:

'While the government has released land in a number of sites across the north and east, in other sites the process has been delayed. In at least one location, the Sirisena government has actually moved backward, allowing the military to acquire land in a conflict-affected area, a practice under the Rajapaksa government that many observers hoped had ended.

'Nearly a decade after the war, the Sri Lankan army, navy, and air force, as well as the police, continue to occupy private land that is owned and was used by civilians, and state land intended for non-military purposes. These occupations range from large areas that cut across multiple administrative divisions, to smaller areas encompassing several properties and even, in some cases, an individual house or farm. Private land includes homes, business establishments, cultivable areas, and other properties. Security forces also continue to occupy or control access to religious buildings, schools, communal wells, beaches, and arable lands that have long been used by communities, sometimes over generations, but where ownership lies with the state.

'Military occupation of land is among the primary contributors to continuing displacement: according to the government, as of 2017, nearly 40,000 people remained internally displaced in the country, a majority from Jaffna.'[99]

5.2.5 The Sri Lankan Government's response of 22 February 2019 to previous recommendations made by the UNHRC in respect of the International Convenant of Civil and Political Rights, contained in the Sixth periodic report, submitted on 22 February 2019, and published on 25 April 2019 noted that:

'[…] At the end of the armed conflict in May 2009, the Security Forces occupied 123,765 acres of land in the Northern and the Eastern Provinces, out of which 93,136 and 30,628 acres were State and private land respectively.

'As at 31 December 2018, Government figures indicated that 46,321.5 acres (40,488.86 acres of State land and 5832.64 acres of private land) of land had been released between January 2015 and December 2018, including 5,797.01 acres of which 4,783 acres of State land and 1058.99 acres of private land in 2018 alone. On 21 January 2019, Government released a further 1203.77 acres of land, including 69.77 acres of private land and 1091.79 acres of agricultural land that was managed by Sri Lanka Army. This was due to the constant requests made by the public for military forces to refrain from engaging in civilian/agricultural activities. In addition, 39.25

[97] BHC, 'Letter', 19 June 2018, Annex B.
[98] Reuters, 'Ten years after war ended…', 17 May 2019, url
[99] HRW, '"Why Can't We Go Home?"- Military Occupation of Land in Sri Lanka', 9 October 2018, url.

acres of forest land in Addalachchena, Ampara has been released on 18 January 2019. However, Government plans in January 2019 indicated the need for the Security Forces to retain 28,284.41 acres, including 3,168.19 acres of private land.'[100]

5.2.6 Amnesty International noted in their article 'Impunity fuels recurrence of violence' that 'Sri Lanka's President pledged to return to rightful civilian owners all remaining land in the North and the East of Sri Lanka by the end of 2018, however the military, civil defence forces and other state agencies continue their occupation, ten years since the end of armed conflict.'[101]

5.2.7 The 2019 DFAT report noted that:

'The military appropriated substantial amounts of private- and state-held land in the Northern and Eastern provinces during and after the civil war in order to establish bases and associated buffer zones (known as 'High Security Zones'). As part of the government's transitional justice efforts, President Sirisena pledged to return all land appropriated by the military in the north and east by the end of 2018. While there has been significant progress on land return, Sirisena's pledge had not been met at the time of publication. According to the Sri Lankan Government, as of 2 April 2019, 89,263 acres (or more than 75 per cent) of land held by the military had been released, including 5,797 acres in 2018.

'Incremental land returns continue, although there have been issues with how some land has been released. For example, in some cases farmers have been returned their land but not their houses, and fishermen have been returned their land but denied access to the ocean. The government has committed to pay compensation where land is not returned for national security reasons. DFAT understands the military retains sole decision-making authority on which land to return and how people should be compensated. Sources told DFAT that the military continued to hold land considered economically valuable, including for fishing and farming purposes. According to the OHCHR, as at 30 September 2018, the military retained 17,793 acres in the Northern Province (4,162 acres of which was private land) and 12,520 acres in the Eastern Province (of which 131 acres was private land). According to military sources, only 1.37 per cent of the land in the Jaffna Peninsula is occupied by the military today. Official sources attributed delays in releasing remaining land to the complexity and financial cost associated with closing existing bases and relocating military personnel elsewhere. The government and the military say they remain committed to land return.'[102]

5.2.8 Representatives from the Ministry of National Policies, Economic Affairs Resettlement and Rehabilitation (MNPEA) told the UK FFT that 90% of land which was under the custody of the military has been returned[103].

[100] UN, 'Sixth periodic report submitted by Sri Lanka', (paras 61 and 62), 25 April 2019, url.
[101] AI, 'Sri Lanka: Impunity fuels recurrence of violence'', 18 May 2019, url.
[102] DFAT, 'Country Report' (para 2.66 & 2.67), 4 November 2019, url.
[103] Home Office, 'HO FFM report', Annex D- MNPEA, 20 January 2020, url.

5.2.9 Two journalists told the UK FFT that lands have not been fully returned and a sizeable portion remains with the military[104].

5.2.10 The USSD report 2019, stated:

'The military seized significant amounts of land during the war to create security buffer zones around military bases and other high-value targets, known as high security zones (HSZs)... Although HSZs had no legal framework following the lapse of emergency regulations in 2011, they still existed and remained off limits to civilians. During the year the government returned 1,308 acres of land. Since 2009 the government reported that it had released more than 89,273 acres of land, representing more than 85 percent of all land occupied during the war.' [105]

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5.3 Women

5.3.1 Sri Lanka became a signatory to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 17 July 1980 and ratified it on 5 October 1981[106].

5.3.2 According to the Household Income and Expenditure Survey, carried out in 2016 and published 17 January 2018, there were an estimated 1.4 million female headed households in Sri Lanka. Women were the head of roughly 24% (64,000) of households in the northern province[107].

5.3.3 The UN Human Rights Council, Report of the Special Rapporteur on minority issues on her mission to Sri Lanka - Note by the Secretariat, 31 January 2017, stated:

'Women in the North and East continue to suffer from the scars of the conflict, as well as the insecurity that resulted from the subsequent militarization. In the last stages of the war and its aftermath, human rights abuses against the civilian population by both sides to the conflict were rife, including sexual and gender-based violence. The climate of impunity and the additional insecurity created by the militarization have meant that women are living with multiple challenges that threaten their freedom, dignity and security on a daily basis. While the incidence of sexual assaults by military personnel is said to have decreased with the downsizing of the army in the North and East, a climate of fear remains among the Tamil women in an area where the military presence has continued.'[108]

5.3.4 The same source noted that being a female head of household is:

'…accompanied by particular vulnerabilities and social stigma that make basic survival difficult and exposes the women to further exploitation. The lack of income-generation and employment opportunities combined with high levels of debt make them vulnerable to sexual exploitation by community leaders, family members as well as the military. Women who are displaced

[104] Home Office, 'HO FFM report', Annex D- Journalist 1 and 2, 20 January 2020, url.
[105] USSD, 'Human Rights Report' (Section 1. E), 11 March 2020, url
[106] OHCHR, CEDAW, url
[107] Department of census and statistics, Household Income and Expenditure Survey – 2016, url
[108] UNHRC, 'Report of the Special Rapporteur on minority issues', 31 January 2017, url

also face particular challenges, such as claiming land belonging to their disappeared husbands, as deeds are normally in the name of the male head of household.'[109]

5.3.5 International Crisis Group's report 'Sri Lanka's Conflict-Affected Women: Dealing with the Legacy of War', published in July 2017, noted that:

'Tamil speaking women in the north and east have arguably been more affected by the conflict and its aftermath than any other group in Sri Lanka. Tens of thousands of war widows and wives of the missing have been forced to become heads of household and primary income earners, leaving behind traditional domestic roles and entering the public realm to engage politically, economically and socially. They do this in a highly patriarchal context regulated by rigid cultural and social practices and made insecure by the continued presence of the Sinhalese military. They suffered gender-based violence and abuse throughout the conflict and continue to do so amid a breakdown in social and family structures. Most have urgent unmet socio-economic needs, and many suffer crippling trauma.

'While exact figures are unavailable, there are an estimated 40,000 "war widows" in the Northern Province and 50,000 in the east. These figures do not appear to include wives of those missing and disappeared. According to one estimate, 58,000 households in the north, accounting for a quarter of the population, are headed by women.'[110]

5.3.6 The Social Institutions and Gender Index in its Sri Lanka datasheet noted that:

'The civil war has left many women as widows and heads of households. Currently, one in four households are female-headed [...] Yet the lack of a legal definition of 'head of household' creates legal ambiguities that may exclude female-headed households from welfare services, resettlement and other government policies and programs […], for instance, by excluding women whose partner is missing or in detention. Female heads of households may also face excessive burdens in accessing and controlling property, due to the difficulty in providing collateral to obtain credit. In Tamil culture for instance, married women require the written consent of their husband to deal with or dispose of any immovable property […].

'Women in the Northern and Eastern provinces, especially Tamil women, female heads of households, war widows, former combatants, human rights defenders and women seeking truth and accountability after the civil war, are especially vulnerable to acts of violence (e.g. rape, abductions, torture, sexual bribery, sexual slavery) and home invasions perpetrated by the military and the police.'[111]

5.3.7 The UN report of the Secretary General on conflict related sexual violence dated 23 March 2018 noted that:

'With the support of the United Nations, the Government launched a national action plan to address sexual and gender-based violence, in 2016, and a

[109] UNHRC, 'Report of the Special Rapporteur on minority issues', 31 January 2017, url
[110] ICG, 'Sri Lanka's Conflict-Affected Women: Dealing with the Legacy of War', 28 July 2017, url
[111] OECD, SIGI, 2019, url

plan on the promotion of human rights, in 2017, which includes specific measures to expedite the handling of cases of sexual violence. The Cabinet approved a series of proposals to support women heads of household, including those in the heavily militarized provinces of the north and east. Strategic interventions are also needed to tackle the stigma experienced by survivors of sexual violence, which is often compounded by the cultural stigma attached to widowhood, and the plight of children conceived through rape in wartime. Survivors of conflict related sexual violence come from all of the three largest population groups, with Tamil women in the northeast the most affected […]. Reports continue to surface of rape, gang rape and sexual torture perpetrated by police and military intelligence operatives, in the absence of rigorous accountability and oversight.'[112]

5.3.8 The USSD report 2018, stated: 'There were… reports of sexual abuse committed by government and security sector officials against wives who came forward seeking information about their missing husbands or against war widows who attempted to claim government benefits based on their deceased husbands' military service.'[113]

5.3.9 According to the DFAT 2019 report:

'Female-headed households are vulnerable to poverty, gender-based violence and sexual exploitation, and face obstacles to accessing services and employment opportunities. Anecdotal evidence suggests female-headed households are at greater risk of mental illness. Government agencies and domestic and international NGOs provide some livelihood, housing and psychosocial support to female-headed households, but local sources claim that on-the-ground support is minimal and under-resourced. […] Sources told DFAT that indebtedness was a growing problem among female-headed households: having lost the main breadwinner in the family, female-headed households were preyed upon by loan providers and entered into loans they could not repay. According to local sources, indebted female-headed households are at greater risk of mental illness and suicide.

'[…] Sources in the north claimed that military widows received more state support than LTTE war widows.

'Women reported difficulties in gaining access to government services targeting female-headed households, due to a lack of awareness and to experiences of harassment and exploitation when seeking services. The social stigma of widowhood also reportedly impedes access to government and nongovernment services.

5.3.10 The 2019 DFAT report further noted that:

'The 2011 UN Secretary-general's Panel of Experts and the 2015 OHCHR investigation report outlined allegations of war-time sexual violence against Tamil women that would constitute war crimes. DFAT considers allegations of sexual violence against female former LTTE members held in detention camps in 2009 and 2010, and in military-run rehabilitation centres, to be credible. In 2017, the UN Special Rapporteur on minority issues reported a decrease in the incidence of sexual assault by the military as it drew down in

[112] UN, 'Report of the Secretary-General on conflict-related sexual violence', 23 March 2018, url
[113] USSD, 'Human Rights Report' (Section 1. c. Disappearance), 13 March 2019, url

the north and east, but Tamil women continue to fear sexual assault in locations where the military presence remains. DFAT is aware of reports of women living near military bases, particularly single women, reporting sexual harassment by military personnel. DFAT is unable to verify these claims. One local source told DFAT that sexual harassment in these circumstances was not prevalent.'[114]

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Section 6 updated: 21 April 2020

6. Treatment of Tamil separatist groups in Sri Lanka

6.1 Tamil groups within Sri Lanka

6.1.1 In August 2018 the daily Mirror reported on the emergence of a criminal gang in the north with reported links to the LTTE. The article noted that:

'Ava is a criminal gang that operates with a novel modus operandi to drive fear into the people and rob them of their valuables. In this instance, some youngsters, flaunting sword-like knives, ply on the roads in motorbikes and indulge in criminal acts such as house burglaries.

'[…] Ava is still a criminally motivated group. There is no political motivation behind it at the moment according to police sources.

'It seems that the northern society, in general, is averse to the resurgence of the LTTE at any cost because they still have horrible wartime memories in their minds. According to police sources, one cannot totally rule out the attempts by some elements on the fringe to form politically motivated violent groups, though.

'Northern Provincial Council member M.K. Sivajilingam, who is notorious for his inflammatory language, ruled out the possibility of the revival of the LTTE as a fully-fledged organisation. However, he said that a situation could develop where normalcy could be disturbed through sporadic incidents of violence in the future unless the Government addresses their grievances.'[115]

6.1.2 The Sunday Morning reported in October 2018 that

'Sword gangs virtually hijacked Jaffna and are engaged in criminal activity despite claims made by the Police stating that they are in control of the situation. Activists and local politicians said that young boys took to the streets and formed gangs and are attempting to spread fear among the public.

[…] Northern Provincial Council (NPC) Minister Anandi Saseetharan told The Sunday Morning that some of the sword gangs operating in the North seem to be receiving support from the authorities. She said that the Police and the Army can control the situation but seem to be taking a very lethargic approach.

'Saseetharan said that young boys who are unemployed tend to spend most of their time on the streets and thereby resort to street crime. She said that some of these boys have got together and formed what is known as the

[114] DFAT, 'Country Report' (para 3.131), 4 November 2019, url.
[115] Daily Mirror, 'Ava group a social phenomenon in Jaffna', 24 August 2018, url.

'Aava group' who go around with swords, threatening people. Saseetharan said that while most 'Aava group' members were arrested, there are more sword gangs on the streets.[116]

6.1.3 The 2019 DFAT report notes that:

'According to local sources, the Aava gang is active in Jaffna and other parts of the Northern Province. The Aava gang mostly comprises young Tamil men. Its size is unknown. Police attributed a spike in criminal activity in Jaffna in recent years, including sword attacks and robberies, to the group and arrested many of its members, including its purported leader, Kumareshwaran Vinodan. The Aava gang's origins are disputed. In November 2016, then-Health Minister and Cabinet Spokesperson Dr Rajitha Senaratne claimed the Aava gang was a war-time creation of the military as a counter-insurgency tool against the LTTE and was being used to justify a large ongoing security presence in Tamil areas in the post-war period. DFAT is unable to verify these claims. Multiple local sources told DFAT that members of the Aava gang were influenced by characters in Tamil gangster movies, who they tried to imitate, and dismissed purported links to the military.

'A senior police officer told the Sri Lankan media in October 2018 that gang violence was occurring in only four of 53 police areas in the Northern Province, and that most of these incidents were between rival gangs. According to local media reporting, the police launched special operations to eliminate the Aava gang in October 2018. Local sources told DFAT that the police regularly stopped cars in Jaffna to check for swords and that crime levels in the north had fallen with the increase in security since the 2019 Easter Sunday terrorist attacks.

'DFAT assesses that gangs, including the Aava gang, are active in the Northern Province but pose a low threat of violence to the local community.'[117]

6.1.4 A journalist told the UK HO FFT that 'There have been reports of Tamil youth taking up swords in the North, known as Aava. There are reports of attacks on police and the community. They may follow LTTE ideology'.[118]

6.1.5 In relation to other Tamil groups within Sri Lanka the 2019 DFAT report noted that:

'Former Tamil paramilitary groups who were aligned with the previous government during the war, like the Tamil Makkal Viduthalai Pulikal (TMVP, formerly the Karuna Group) and the Eelam People's Democratic Party (EPDP), remain active, but have disarmed and are now engaged in politics. The TMVP, which operates in the east, registered as a political party in 2007. It won a majority in provincial council elections in the Eastern Province in 2008 and some seats in the February 2018 local government elections. The TMVP's founder, Vinayagamoorthy Muralitharan (nom de guerre Karuna Amman), the LTTE's senior commander in the Eastern Province before his defection to the government in March 2004, served as a member of

[116] Sunday Morning, 'Sword gangs pose a threat to Jaffna', 14 October 2018, url.
[117] DFAT, 'Country Report' (paras 2.68- 2.70), 4 November 2019, url.
[118] Home Office, 'HO FFM report', Annex D- Journalist 2, 20 January 2020, url.

parliament for the UPFA/SLFP from 2008 to 2015 and as Deputy Minister of National Integration under former President Rajapaksa (Muralitharan launched a new political party, the Tamil United Freedom Party, in February 2017).

'The EPDP, which operates largely in the north, was formed in 1990 and entered politics as early as 1994. Its founder, Douglas Devananda, has served in parliament for the Jaffna District since then (Devananda held several ministerial positions under former presidents Chandrika Bandaranaike Kumaratunga and Rajapaksa). The Karuna Group/TMVP and the EPDP have been accused of committing serious human rights violations both during and after the war. The OISL found that both groups committed – with the alleged collusion of the authorities – unlawful killings and enforced disappearances of suspected LTTE members, attacked and kidnapped civilians, and recruited children during the war. Post-war, the TMVP has been accused of harassing and intimidating suspected former members of the LTTE and supporters of the TNA and UNP, its political rivals.

'DFAT understands the influence of the TMVP and the EPDP has waned considerably since the current government took office in 2015, and they no longer maintain armed wings. Local sources told DFAT that the TMVP 're-emerged' and was visible in the east following the appointment of Rajapaksa, to whom it is aligned, as prime minister on 26 October 2018, although there were no reports of violence attributed to it. According to local sources, while some Tamils, particularly those with past links to the LTTE, continue to fear the TMVP and the EPDP, these groups no longer pose a major concern. Sources told DFAT that the TMVP had no formal presence in the north. DFAT assesses that, under the current government, the TMVP and the EPDP present a low threat of violence and intimidation to members of the Tamil community.'[119]

6.1.6 A representative from the northern province community told the UK HO FFT that most LTTE rehabilitees are engaged with politics as part of the political group the Crusaders of Democracy and work with the TNA[120].

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6.2 Liberation Tigers of Tamil Eelam (LTTE)

6.2.1 In its project on mapping militant organisations, in 2015, the Stanford University, observed:

'The Liberation Tigers of Tamil Eelam (LTTE) were a militant separatist group fighting for an independent homeland for Hindu Tamils in Northeastern Sri Lanka. The LTTE was founded in the early 1970s by Velupillai Prabhakaran, who led the group until his death by Sri Lankan armed forces in May 2009. During the 1980s, the LTTE defeated a number of different Tamil militant groups, emerging as the dominant group by the end of the decade. The LTTE successfully carried out a number of high-profile attacks, including the assassination of two heads of state. The LTTE were also notorious for their use of suicide terrorism, perpetrated by their elite suicide bombing unit known as the Black Tigers. Starting in 1985, the LTTE began

[119] DFAT, 'Country Report' (paras 2.70- 2.73), 4 November 2019, url.
[120] Home Office, 'HO FFM report', Annex D- Rep from northern province, 20 January 2020, url.

negotiations with the Sri Lankan government; however, multiple rounds of negotiations failed and were interrupted by bouts of violence and clashes between both sides. In March 2004, a large faction of the LTTE led by Colonel Karuna defected, significantly weakening the organization. In 2006, after another failed round of negotiations, the Sri Lankan government declared all-out war on the LTTE and the group was militarily defeated in May 2009.'[121]

6.2.2 The South Asia Terrorism Portal's (SATP) undated profile of the LTTE, stated:

'The Liberation Tigers of Tamil Eelam (LTTE) is the only terrorist group which once possessed its own "Military" – Tigers (infantry), Sea Tigers (sea wing) and Air Tigers (Air Wing), in the world, began its armed campaign in Sri Lanka for a separate Tamil homeland in 1983.

'The LTTE leadership was organized along a two-tier structure: a military wing and a subordinate political wing. Overseeing both was a central governing committee, headed by the LTTE chief, Velupillai Prabhakaran. This body had the responsibility for directing and controlling several specific subdivisions, including, an amphibious group (the Sea Tigers headed by Soosai), an airborne group (the Air Tigers led by Prabhakaran's Son Charles Anthony), an elite fighting wing (known as the Charles Anthony Regiment, named after Anthony, a close associate of Prabhakaran and was earlier headed by Balraj who died of illness on May 20, 2008), a suicide commando unit (known as the Black Tigers) & a highly secretive intelligence group both headed by Pottu Amman and a political office headed by B. Nadesan. The central governing committee also had an International Secretariat (headed by Veerakathy Manivannam a.k.a. Castro), which was in charge of the outfit's global network. Most of these leaders, however, were killed during the Eelam War IV.

'The LTTE is still believed to have a wide network of publicity and propaganda activities with offices and cells located in at least 54 countries. The largest and most important centres were located in leading western states with large Tamil expatriate communities, most notably the UK, France, Germany, Switzerland, Canada and Australia. In addition to these States, the LTTE is also known to be represented in countries as far-flung as Cambodia, Burma, South Africa and Botswana. It's publicity networks covering Europe, Australia and North America also included radio and TV satellites.

'Colombo is now pursuing several Governments to dismantle three broad groups that are now assumed to be controlling the remaining pro-LTTE international factions: the US group is said to be headed by V. Rudrakumaran, the UK group by Aruththanthai Emmanuel of the World Tamil Forum (WTF) and the Norway group by Nediyavan.'[122]

6.2.3 DFAT noted in November 2019:

'At its peak in 2004, the LTTE had an armed force of approximately 18,000 combatants. The LTTE had an intelligence wing, a political wing and an

[121] Stanford University, 'Liberation Tigers of Tamil Elam' updated 2015, url
[122] SATP, Liberation Tigers of Tamil Eelam (LTTE), undated, url

extensive administrative structure based in its de-facto capital of Kilinochchi (Northern Province). The majority-Tamil civilian populations of the areas controlled by the LTTE were required to interact with the LTTE as a matter of course. The LTTE was supported by foreign funding, primarily from the Tamil diaspora, and both voluntary and forced recruitment of Tamils. Funding from the Tamil diaspora was sometimes attained through means of intimidation and coercion, including threats against local family members and kidnapping for ransom. The LTTE also targeted middle- and upper-class Tamils within Sri Lanka for extortion. The LTTE was known not to tolerate dissent within areas under its control.

'Towards the end of the war, government security forces arrested and detained a large number of LTTE members. Most were sent to government-run rehabilitation centres. A smaller number were prosecuted through Sri Lanka's court system. Security forces also questioned or monitored many civilians for possible LTTE activity, and for civil resistance or anti-government sentiment. Although not officially mandated, in many areas the military took a visible and active role in civilian life. The government has publicly committed to reducing military involvement in civilian activities.

'While the LTTE was comprehensively defeated, Sri Lankan authorities remain sensitive to its potential re-emergence.

'Former LTTE members face no legal barriers to participating in public life, including politics. In the August 2015 parliamentary elections, the TNA did not allow ex-LTTE members to run on their ticket, but ex-combatants established the Crusaders for Democracy party and ran for election. While they did not win any seats, their participation demonstrated the openness of the electoral process.

'The LTTE has not carried out any attacks since 2009. DFAT assesses that the LTTE no longer exists as an organised force inside Sri Lanka, and any former LTTE members within Sri Lanka would have only minimal capacity to exert influence on Sri Lankans, including those returning from abroad.[…] Local sources told DFAT that the Tamil community had abandoned militancy and was committed to addressing its grievances through political means.[123]

6.2.4 For information on recruitment of LTTE cadres see the South Asia Terrorism Portal's(SATP) undated article 'Liberation Tiger of Tamil Eelam (LTTE),

6.2.5 For information on the recruitment and training of child soldiers see the SATP article 'Child Soldiers of The Liberation Tiger of Tamil Eelam (LTTE)'. Information on life as an LTTE child soldier can be found in the 2004 Human Rights Watch report 'Living in Fear Child Soldiers and the Tamil Tigers in Sri Lanka'.

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6.3 Rehabilitation of former LTTE combatants

6.3.1 The Security Forces (SF) Commander for Jaffna, informed the UK Home Office's FFM Team in 2016 that: 'If a person returned from the UK, and was suspected of previous LTTE activity they would be offered rehabilitation on return. The certificate which proves the person has been rehabilitated would

[123] DFAT, 'Country Report' (paras 3.55-3.59), 4 November 2019, url.

be like another visa for them, something they could show if stopped by the police.'[124]

6.3.2 On 16 January 2018 The Committee on the Rights of the Child concluded its consideration of the combined fifth to sixth periodic report of Sri Lanka under the Convention on the Rights of the Child. The report was presented to the delegation of Sri Lanka who were asked what the exact number of former child soldiers still awaiting rehabilitation and reintegration was. The delegation stated that:

'[…] in December 2009, a family tracing and reunification unit had been established with the assistance of UNICEF in northern Sri Lanka, due to the fact that a large number of children had gotten separated from their families during the last phase of the conflict. Many children remained untraced because of the lack of information. Some 560 former child soldiers who had surrendered had been rehabilitated and handed over to their parents or relatives. As for information on some former child soldiers who had not been returned to their parents, those still had not been identified.'[125]

6.3.3 DFAT noted in their 2019 report:

'The Bureau of the Commissioner General of Rehabilitation used a "three-pronged approach" to manage arrested LTTE members: (1) those to be investigated and prosecuted under normal court of law; (2) those to be rehabilitated; and (3) those to be released upon confirmation by intelligence agencies of their peripheral involvement in the war. Sources told DFAT that those targeted for rehabilitation included not just former combatants, but also those who performed non-combat functions for the LTTE as part of its civilian administration in Tamil-populated area.

'[…] Rehabilitation is typically a one-year program, extended to up to two years for those assessed as highly radical. The first six months of the rehabilitation program usually focus on "rehabilitation of the mental and physical state", including education, spiritual, religious and cultural training and sports; the last six months are dedicated to vocational training. The rehabilitation process includes field trips.

'Although the activities undertaken in the rehabilitation centres vary, vocational training for men includes welding, masonry, plumbing, driving, tailoring, wiring, Sinhala language, computer skills and vegetable cultivation. Women are accommodated separately from men and receive training in cookery, beauty therapy, tailoring, Sinhala language and computer skills. DFAT understands that no women are currently undergoing rehabilitation. Former child soldiers undergo a separate rehabilitation program, with a focus on education.

'Local sources estimate that between 4,000 and 6,000 former LTTE members are undisclosed and non-rehabilitated, some of whom would now be living overseas. Military sources believe the number of undisclosed and non-rehabilitated former LTTE numbers within Sri Lanka is low, including approximately 280 individuals in Jaffna (Northern Province). Former LTTE members are reluctant to identify for fear of rehabilitation or prosecution.

[124] UK HO, FFM Report, 13 July 2016, Section 26- Security Forces (SF) Commander for Jaffna, url
[125] OHCHR, 'Committee on the Rights of the Child reviews report of Sri Lanka', 16 January 2018, url.

One source claimed the authorities were not actively looking for no rehabilitated former LTTE members. At the time of publication, DFAT was not aware of rehabilitation being imposed on any former LTTE members who have returned from Australia. DFAT assesses that a non-rehabilitated returnee with links to the LTTE, particularly high-level links, could be subjected to a rehabilitation process should they return to Sri Lanka.

'The government has used the rehabilitation process to screen and profile LTTE members through interviews, informants and other relevant information to assess individuals' depth of involvement with the LTTE, period of involvement and activities. Security forces can use such information to categorise individuals and potentially to determine whom to prosecute for terrorism or other offences. DFAT is not aware of specific cases where this has occurred.'[126]

6.3.4 The same source went on to note that:

'"High-profile" former LTTE members are individuals who held senior positions in the LTTE's military wing and civilian administration. The LTTE's former leadership face the highest risk of monitoring, arrest, detention or prosecution, regardless of whether they performed a combat or civilian role during the war. Although most of the LTTE's leadership died during the war, a number surrendered or were captured and sent to rehabilitation centres or prosecuted/detained. Some former leaders may have left Sri Lanka before, during or after the war. Others considered 'high-profile' include individuals suspected of terrorist or serious criminal offences during the war, or of providing weapons or explosives to the LTTE.

'DFAT assesses that the number of high-profile former LTTE members living in Sri Lanka is small and that the vast majority would already have come to the attention of the authorities. DFAT further assesses that any remaining high-profile former LTTE members who came to the attention of the authorities would likely be arrested, detained and prosecuted through Sri Lanka's criminal courts and, once they had completed their prison sentences, be subjected to rehabilitation. The average judicial process in Sri Lanka, including appeal, is protracted.

'"Low-profile" former LTTE members include former combatants, those employed in administrative or other roles, and those who may have provided a high level of non-military support to the LTTE during the war. DFAT assesses that, although the great majority of low-profile former LTTE members have been released following their rehabilitation, any low-profile former LTTE members who came to the attention of the Sri Lankan authorities, particularly if suspected of having a combat function during the war, would likely be detained and may be sent to the remaining rehabilitation centre. Following their release from rehabilitation, a low-profile former LTTE member might be monitored but would generally not be prosecuted.'[127]

6.3.5 The UK FFT met with a representative from the Bureau of the Commissioner General of Rehabilitation who stated that the rehabilitation process involved psychological treatment, education and therapies which included treatment

[126] DFAT, 'Country Report' (para 3.61- 3.70), 4 November 2019, url.
[127] DFAT, 'Country Report' (para 3.74), 4 November 2019, url

for Post-Traumatic Stress Disorder (PTSD). When the rehabilitation process is complete rehabilitees were supported to get employment, with the government offering to pay 50% of the salary of ex-cadres employed in the private sector. Support was also offered to help rehabilitees acquire the means to make livelihoods such as help to buy fishing equipment, boats, farm animals and machinery[128].

6.3.6 The same source stated that the last rehabilitee was reintegrated into society 2 months ago. Some former LTTE cadres remain in detention and may be rehabilitated. The Bureau is now mainly responsible for rehabilitating drug addicts[129].

6.3.7 The UK FFT spoke to several sources who were unable to state whether the rehabilitation process had been as success[130]. Representatives from UNHCR told the FFT that due to how the rehabilitation process was run it is difficult to assess its success[131]. Two sources told the UK FFT that whilst they believed some rehabilitation may have occurred, they did not believe there had been a regular programme of rehabilitation[132].

6.3.8 IOM and the Bureau of the Commissioner of Rehabilitation told the UK FFT that former LTTE cadres returning to Sri Lanka would be able to undergo rehabilitation if they requested it[133].

6.3.9 The representative from the Bureau of the Commissioner General of Rehabilitation also stated that those who had missed education (including those conscripted by force) have been given the opportunity to resume their education, to take O and A levels and some went on to university[134].

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6.4 Discrimination/harassment

6.4.1 DFAT noted in their 2019 that:

'Local sources told DFAT that female former LTTE combatants faced particular hardships, including in relation to finding employment and marriage partners. Anecdotal evidence suggests female former LTTE combatants are viewed with suspicion within their communities, and there is a societal perception that they were the subject of sexual violence during the war.

'DFAT assesses that female-headed households are vulnerable to societal discrimination and official harassment and exploitation. Authorities continue to monitor those believed to have family links to the LTTE.[135]

'While many of those who have completed rehabilitation have reported difficulty finding regular employment upon their release, others have said the

[128] Home Office, 'HO FFM report', Annex D- Bureau of Rehabilitation, 20 January 2020, url.
[129] Home Office, 'HO FFM report', Annex D- Bureau of Rehabilitation, 20 January 2020, url.
[130] Home Office, 'HO FFM report', Annex D- UNHCR, TNA, Journalist 1, 20 January 2020, url.
[131] Home Office, 'HO FFM report', Annex D- UNHCR, 20 January 2020, url.
[132] Home Office, 'HO FFM report', Annex D- TNA, Journalist 1, 20 January 2020, url.
[133] Home Office, 'HO FFM report', Annex D- Bureau of Rehabilitation, IOM, 20 January 2020, url.
[134] Home Office, 'HO FFM report', Bureau of Rehabilitation, 20 January 2020, url.
[135] DFAT, 'Country Report' (para 3.136- 3.142), 4 November 2019, url

vocational skills gained during rehabilitation made them more employable. The unemployment rate among rehabilitated former LTTE members, particularly women, is reportedly higher than the national average but this may reflect factors such as the weaker economic conditions in the north and east, war-related disabilities and a reluctance by employers to hire known former LTTE members, for fear of inviting monitoring by the authorities.[136]

6.4.2 IOM and the Bureau of the Commissioner General of Rehabilitation told the UK FFT that rehabilitees face a lack of access to job opportunities[137]. Representatives from the Ministry of National Policies, Economic Affairs, Resettlement and Rehabilitation, Northern Province Development and Youth Affairs (MNPEA) and an NGO told the UK FFT that some employers are unwilling to employ them despite being offered government incentives[138]. The UK FFT were told by a representative from the northern province community that employers feared they would face visits from the State Intelligence Service (SIS) who would be monitoring the rehabilitees[139].

6.4.3 However, the representative from the northern province community said that some former cadres have been employed by the security forces or civil defence force with some given government employment as bus drivers and conductors[140]and a journalist noted that some former cadres have gone into politics[141].

6.4.4 With regards to family members of LTTE DFAT reported in November 2019 noted that 'The Sri Lankan Government acknowledges that former LTTE members and their families may continue to face discrimination both within their communities and from government officials. DFAT cannot verify claims that people have been arrested and detained because of their family connections with former LTTE members but understands that close relatives of high-profile former LTTE members who are wanted by Sri Lankan authorities may be subject to monitoring.'[142]

6.4.5 Human Rights Watch noted in its annual report covering 2019 that 'Some families of people forcibly disappeared during the war reported intimidation by soldiers.'[143]

6.4.6 The Secretariat for Coordinating Reconciliation Mechanisms (SCRM) stated that 'Rehabilitees struggle to reintegrate and go back to their homes (some left as young as 13) as they are ostracised for being LTTE'.[144] Similarly the Human Rights Activist noted that 'Ex-cadres have said they are ostracised by their communities, a) due to close monitoring they might be under, and b) because of their activities in the LTTE.'[145]

[136] DFAT, 'Country Report' (para 3.64), 4 November 2019, url
[137] Home Office, 'HO FFM report', Annex D- IOM, Bureau of Rehabilitation, 20 January 2020, url.
[138] Home Office, 'HO FFM report', Annex D- MNPEA, NGO, 20 January 2020, url.
[139] Home Office, 'HO FFM report', Annex D- Northern province representative, 20 January 2020, url.
[140] Home Office, 'HO FFM report', Annex D- Northern province representative, 20 January 2020, url.
[141] Home Office, 'HO FFM report', Annex D Journalist 2, IOM, 20 January 2020, url.
[142] DFAT, 'Country Report' (para 3.83), 4 November 2019, url
[143] HRW, 'World Report 2020', 13 January 2020, url.
[144] Home Office, 'HO FFM report', Annex D-SCRM, 20 January 2020, url.
[145] Home Office, 'HO FFM report', Annex D-HRA, 20 January 2020, url.

6.4.7 UNHCR stated that 'Ex-cadres who have been rehabilitated are also sometimes viewed with hostility as people think they may be informants as they are often required to check in with the army base nearby regularly as a part of their release from rehabilitation, but this is not something we monitor.'[146]

6.4.8 According to the Diplomatic source, 'in the north those who might be targeted are activists working with families of the missing, journalists or those working with ex-cadres.'[147]

6.4.9 The Representative from the Northern province community also considered that 'Since February 2018, when the SLPP won the local elections, there has been increasing intimidation. The military and security forces felt that Rajapaksa had returned, and this empowered them.' [148] The same source also reported that following the Easter bombings, 'There has been an increase in the intimidation of civil society and several political activists in the north and east are complaining about increased intimidation.'[149]

6.4.10 DFAT reported in November 2019 with regards to former LTTE members that:

'Many have encountered difficulty finding employment, including because some employers are reluctant to hire former LTTE members out of fear it would invite increased police and military attention. Societal discrimination against former LTTE members is also related to caste, as the majority of former LTTE members are lower caste. Former LTTE members can readily access government services.

'Local sources in the north characterised former LTTE members as the most vulnerable and neglected segment of the Tamil population. Former LTTE members face ongoing challenges reintegrating fully into society. Sources told DFAT that unemployment among this cohort is high. Many, including those that received vocational education as part of the post-war rehabilitation process, lack the skills to find and hold meaningful employment, and some have reportedly resorted to criminal activities. Anecdotal evidence indicates that mental illness linked to the war is prevalent among former LTTE members. Those with disabilities sustained during the war receive minimal state support, if at all.

'Local sources report that female former LTTE members face additional hardships, including the risk of sexual harassment and difficulties finding marriage partners owing to their LTTE past. Women who were forcibly recruited by the LTTE are more likely to be accepted back into their communities than those who joined voluntarily.'[150]

6.4.11 In January 2020 Reporters Without Borders stated that it 'holds the Sri Lankan government responsible for anything that happens to seven journalists in the eastern city of Batticaloa who were refused police protection after being the targets of a death threat. The dismissive manner

[146] Home Office, 'HO FFM report', Annex D-UNHCR, 20 January 2020, url.
[147] Home Office, 'HO FFM report', Annex D Journalist 2, Diplomatic source, 20 January 2020, url.
[148] Home Office, 'HO FFM report', Annex D Journalist 2, Northern province rep, 20 January 2020, url.
[149] Home Office, 'HO FFM report', Annex D Journalist 2, Northern province rep, 20 January 2020, url.
[150] DFAT, 'Country Report' (para 3.88-3.90), 4 November 2019, url

with which the police treated their request for protection is appalling. [...] The threat was made in the form of leaflets found outside the Batticaloa press club and scattered in the city on 23 January. They showed a photo of the seven journalists with their heads circled and the chilling words: "Beware! These are the reporters who received money from the [Tamil] Tigers abroad to undermine the government. We will execute them." [...] In view of the gravity of the leaflet's message, the seven journalists tried to file a complaint with the Batticaloa police and request police protection. The response from a police officer was a flat refusal.'[151]

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6.5 Arrest and detention

6.5.1 On 5 February 2018 President Sirisena gave a statement about the persons who are still missing, years after the end of the civil war. 'I have several times met the relatives of the disappeared persons. I am concerned about their problem of the missing relatives. They have told me that the missing people are being held by the government in secret detention camps. I made inquiries and I tell them on behalf of the government that there are no such camps run by the government.'[152]

6.5.2 DFAT reported in November 2019 that 'Under the PTA, police can detain suspects without charge for extendable three-month periods, not exceeding a total of 18 months. In practice, some persons have been held for more than 10 years. In addition to those arrested under the PTA, some former LTTE members have faced other criminal charges. Modest numbers of former LTTE members continue to be detained and prosecuted within Sri Lanka's criminal justice system. According to local sources, more than 100 former LTTE members are currently being held in detention, including one who is undergoing rehabilitation. [...] Some high-profile detainees have received prison sentences following their release from rehabilitation.'[153]

6.5.3 The Human Rights Commission told the UK FFT that places of detention must be published and there are no longer secret places of detention in Sri Lanka[154].

6.5.4 The USSD report 2019 stated that 'Pretrial detainees composed approximately one-half of the detainee population. The average length of time in pretrial detention was 24 hours, but inability to post bail, lengthy legal procedures, judicial inefficiency, and corruption often caused trial delays. Legal advocacy groups asserted that for those cases in which pretrial detention exceeded 24 hours, it was common for the length of pretrial detention to equal or exceed the sentence for the alleged crime.'[155]

6.5.5 The USSD report further added: 'In July [2019] Tamil prisoners across the country, including former Liberation Tigers of Tamil Elam (LTTE) fighters, and civil society groups undertook hunger strikes, demanding immediate

[151] RWB, Sri Lankan police refuse protection to journalists threatened with death, 28 January 2020, url
[152] NDTV, 'No Secret Detention, Torture Camps In Sri Lanka…', 5 February 2018, url
[153] DFAT, 'Country Report' (para 3.84), 4 November 2019, url
[154] Home Office, 'HO FFM report', Annex D- HRC, 20 January 2020, url.
[155] USSD, 'Human Rights Report' (Section 1d), 11 March 2020, url

resolution to the prisoners' protracted detention. Many of the prisoners were held under the PTA without charge. They asked the government either to indict them or provide a pathway for their eventual release.'[156]

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6.6 Ill-treatment/torture

6.6.1 Article 11 of the Constitution (as amended up to 15th May 2015) Revised Edition – 2015, states: 'No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.'[157]

6.6.2 The December 2018 report of the Special Rapporteur to Sri Lanka on the promotion and protection of human rights and fundamental freedoms while countering terrorism stated that:

'The evidence collected by the Special Rapporteur points to the conclusion that the use of torture has been, and remains today, endemic and systematic for those arrested and detained on national security grounds under the Prevention of Terrorism Act. Following his visit to Sri Lanka in 2016, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment had concluded that the use of torture and ill-treatment to obtain a confession from detainees under the Prevention of Terrorism Act was routine practice. He observed that, in those cases, a causal link seemed to exist between the level of real or perceived threat to national security and the severity of the physical suffering inflicted (A/HRC/34/54/Add.2, paras. 22 and 31). A representative of the newly appointed and highly credible National Human Rights Commission emphasized that torture in custody was widespread, systemic and institutionalized, and its eradication formed a major priority in its work.

'Despite the shocking prevalence of the practice of torture in Sri Lanka, the Special Rapporteur notes the lack of effective investigations into such allegations. Indeed, he was informed that only 71 police officers had been sanctioned for torturing persons since available records began.

'[...] the Special Rapporteur is very concerned at the lack of a clear and effective procedure to complain about torture in custody. He notes that there is no formal procedure available to detainees in the prison system, and that there is no single clear channel for dealing with allegations of ill-treatment committed by the police.'[158]

6.6.3 Freedom From Torture, in their February 2019 brief, 'Too Little Change, Ongoing Torture in Security Operations in Sri Lanka', documented 16 cases of Sri Lankan nationals who were detained and tortured between 2015 and 2017. The brief stated:

'Drawn from expert medico-legal reports undertaken by our doctors, our research found that:

- All 16 people were tortured by state officials during interrogation to extract information about alleged ongoing links to the Liberation Tigers

[156] USSD, 'Human Rights Report' (Section 1d), 11 March 2020, url
[157] The Parliament of Sri Lanka, The Constitution, Revised Edition – 2015, url
[158] OHCHR, 'Report of the Special Rapporteur on the promotion…', 14 December 2018, url.

of Tamil Eelam (LTTE) or anti-government activity. None were charged under anti-terror, or any other, legislation.

- All experienced physical and psychological forms of torture including beating with instruments, burning and asphyxiation.
- Over half of the people were raped and most experienced sexual torture.'[159]

6.6.4 The FfT brief added:

'Torture has continued in Sri Lanka security operations under supposedly "human rights friendly" Sri Lankan government elected in 2015.

'Sri Lanka has made some progress on a broader human rights reform agenda, yet the steps taken have fallen short […]. The evidence in our briefing, combined with the slow progress made by the government on commitments undertaken four years ago, suggests that the imperative for ongoing international monitoring and oversight is strong. Sri Lankan torture survivors receiving Freedom from Torture's services have identified the Human Rights Council process as an important mechanism for delivering justice.

'With new Presidential elections scheduled to take place on 16th November 2019, the prospect of former President Mahinda Rajapaksa returning to power casts a dark shadow on the country's chances of making meaningful progress on delivering accountability for recent human rights abuses.

The dangers cannot be overstated. During Rajapaksa's first presidential mandate (2005-2015), torture in Sri Lanka was routine.' [160]

6.6.5 The February 2019 report by the UN Human Rights Council on 'Promoting reconciliation, accountability and human rights in Sri Lanka' noted that:

'OHCHR has continued to receive credible information about cases of abduction, unlawful detention, torture and sexual violence by Sri Lanka security forces, which allegedly took place in 2016 to 2018. A preliminary assessment of the information received indicates that there are reasonable grounds to believe that accounts of unlawful abductions and detention and of torture, including incidents of sexual violence against men and women, are credible, and that such practices might be continuing in northern Sri Lanka. Such allegations should be the subject of prompt, effective, transparent, independent and impartial investigations. In the past, the Government has condemned any act of torture, and indicated that any allegation of torture would be properly investigated and prosecuted. OHCHR is not aware of any investigations undertaken to date into the above-mentioned allegations.'[161]

6.6.6 A June 2019 Amnesty International urgent action described that:

'…. The National Human Rights Commission of Sri Lanka noted, on the basis of, the complaints it received that "torture is routinely used in all parts of the country regardless of the nature of the suspected offence for which the person is arrested. For instance, those arrested on suspicion of robbery,

[159] FfT, 'Too Little Change, Ongoing Torture in Security Operations in Sri Lanka', February 2019, url
[160] FfT, 'Too Little Change, Ongoing Torture in Security Operations in Sri Lanka', February 2019, url
[161] UN HRC, 'Promoting reconciliation, accountability and human rights…', 8 February 2019, url.

possession of drugs, assault, treasure hunting, dispute with family/spouse, have been subjected to torture. The prevailing culture of impunity where those accused of torture is concerned is also a contributing factor to the routine use of torture as a means of interrogation and investigation." The widespread use of torture, and possible reliance on "confessions" extracted under torture to convict, directly violates the right to a fair trial and not to be subjected to torture or other cruel, inhuman and degrading treatment or punishment of every individual.'[162]

6.6.7 A September 2019 ITJP report found that:

'This report identifies 58 (fifty-eight) alleged torturers in the Terrorism Investigation Division (TID) of the Sri Lankan police based on investigation and research, including those who bear command responsibility. It is based on the testimony of 73 (seventy-three) survivors of torture, both Tamil and Sinhalese, interviewed in five different [*sic*] countries. These survivors have experienced the most brutal torture imaginable – including in many cases rape and other forms of sexual violence. [...]

'The torture by the Terrorism Investigation Division (TID) of the Sri Lankan police documented here, occurred between 2008 and 2017.'[163]

6.6.8 The 2019 DFAT report stated:

'Several local and international organisations have alleged torture by Sri Lankan military, intelligence and police forces, mostly from the period immediately following the war and involving people with imputed links to the LTTE. The 2015 OISL report [OHCHR Investigation on Sri Lanka] found that 'victims of war-related torture perpetrated by Government forces… were generally Tamil, often arrested and detained in Government controlled areas… under the PTA and the Emergency Regulations'. The OISL documented 'particularly brutal use of torture by the Sri Lankan security forces' in the immediate post-war period, following the LTTE's surrender.

'In October 2016, the HRCSL submitted a report to the UN Committee against Torture that claimed 'torture to be of routine nature… practiced all over the country, mainly in relation to police detentions' and that police use torture during interrogation and arrest regardless of the nature of the suspected offence. The UN Special Rapporteur on human rights and counter-terrorism concluded in July 2017 that 'all of the evidence points to the conclusion that the use of torture has been, and remains today, endemic and routine, for those arrested and detained on national security grounds. Since the authorities use this legislation [the PTA] disproportionately against members of the Tamil community, it is this community that has borne the brunt of the State's well-oiled torture apparatus'. The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism found that 80 per cent of individuals arrested under the PTA in late 2016 had complained of torture and other mistreatment.'[164]

[162] AI, 'Grave Fears for Prisoners on Death Row', 25 June 2019, url
[163] ITJP, 'Terrorism Investigation Division: Sri Lankan Police' (p.4 and 7), September 2019, url
[164] DFAT, 'Country Report' (para 4.20- 4.21), 4 November 2019, url

6.6.9 The DFAT report further added:

'The International Truth and Justice Project (ITJP) cited 76 alleged cases of torture between 2015 and 2017 involving individuals suspected of LTTE involvement, the majority of which followed "white van" abductions. An Associated Press investigation, published in November 2017, claimed 52 incidents of torture, including some of the cases reported by the ITJP...

'Several local sources in Sri Lanka, including from the north, were not aware of the specific alleged incidents of torture documented above and were unable to verify their claims. DFAT notes that verification of torture claims is complex as many allegations are made anonymously, often to third parties. They often involve individuals who are outside Sri Lanka and, in some cases, individuals who are in the process of seeking asylum. DFAT assesses that reports of torture carried out by Sri Lankan military and intelligence forces during the war and in its immediate aftermath are credible; however, DFAT is unable to verify allegations of torture since 2016. Local sources told DFAT they were not aware of recent cases of former LTTE members being subjected to torture.

'Evidence obtained through torture is generally inadmissible in courts in Sri Lanka. However, for suspects held under the PTA, all confessions obtained by officers at or above the rank of Assistant Superintendent of Police are admissible in court. According to media reporting, only confessions made before a magistrate would be admissible in court under proposed new counterterrorism legislation (the CTA). This legislation was in draft form at the time of publication and may be subject to amendments…

'Local sources, including Tamils, say mistreatment and torture by police continues to occur, but is primarily due to outdated policing methods and is not ethnically-based. Senior police do not endorse mistreatment or torture, but reform messages have been slow to filter down. Where police mistreat or torture an individual, such practices reflect low capacity, lack of training, poor arrest and detention procedures, and poor policing methods that focus on extracting confessions rather than undertaking thorough investigations. Sources told DFAT that, with improvements in police training and greater monitoring of prisons by the HRCSL, the incidence of mistreatment and torture had contracted in absolute terms but was still common….'

'DFAT assesses that the risk of torture perpetrated by either military, intelligence or police forces has decreased since the end of the war and is no longer state-sponsored. Because few reports of torture are verified, it is difficult to determine the exact prevalence of torture.

'Sri Lankans face a low risk of mistreatment on a day-to-day basis. In the case of individuals detained by the authorities, DFAT assesses the risk of mistreatment to be moderate. Where it occurs, some mistreatment may amount to torture. DFAT assesses that Sri Lankans face a low risk of torture overall.'[165]

6.6.10 An NGO told the UK FFT that there is torture in police custody and there is a belief that the police have secret places where torture may occur within the

[165] DFAT, 'Country Report' (para 4.22, 4.23 & 4.25), 4 November 2019, url

police station. They went on to state that torture is used to extract information particularly in sensitive cases where there is pressure to make an arrest. The same source also noted that situation is better than the past and torture is not targeted against any specific group adding that 'it's random, widespread and across the board', and that there is a saying 'without assault you won't get the truth'[166].

6.6.11 A journalist told the UK FFT that Tamil groups and journalists obtain information from Tamils who claim torture was not occurring at the time of the interview (October 2019) but that it could occur under the rule of Rajapaksa [167]. The Human Rights Activist considered that 'Most people who are arrested, regardless of the reason and irrespective of their ethnic group, are beaten by the police and that 'There are regular reports of individual incidents of torture; in August 2019, a woman accused the police of beating her in Colombo'.[168]

6.6.12 The representative from the northern province community told the UK FFT that the International Truth and Justice Project (ITJP) had produced a report which cited claims of severe torture in 2017 and 2018. The representative, however said he wasn't aware of any such incidents and had not received information on this from his contacts in the north and east of the country[169].

6.6.13 The Human Rights Commission (HRC) told the UK FFT that a UK NGO had published pictures of people who had claimed to have been tortured using branding but they (HRC) had not seen any evidence of this and no such cases had been brought to their attention in Sri Lanka[170]. However, they also reported that 'some judicial medical officer reports have indicated signs of torture. There is evidence of beatings but not the same brutality that was seen in the past, e.g. broken limbs, extracted fingernails.'[171]

6.6.14 The HRC also told the UK FFT that 'whilst beatings and mistreatment is alleged to occur in police detention contacts felt that this is not to the same brutality as the past'. Where evidence of torture is found the HRC are able to intervene immediately by making representations to the police on behalf of detainees. The HRC are able to provide protection and raise concerns about these allegations to the Terrorism Investigation Department (TID). The HRC stated that whilst not all allegations of ill treatment resulted in prosecutions against the police the HRC were able to provide a degree of relief to people[172].

6.6.15 According to the HRC there is routine police action against findings of torture with some officers being prosecuted and punished with sentences up to 10 years. The same source noted however that implementation of the national

[166] Home Office, 'HO FFM report', Annex D- NGO, 20 January 2020, url.
[167] Home Office, 'HO FFM report', Annex D- Journalist 2, 20 January 2020, url.
[168] Home Office, 'HO FFM report', Annex D-HRA, 20 January 2020, url.
[169] Home Office, 'HO FFM report', Annex D- Northern province representative, 20 January 2020, url.
[170] Home Office, 'HO FFM report', Annex D- HRC, 20 January 2020, url.
[171] Home Office, 'HO FFM report', Annex D- HRC, 20 January 2020, url.
[172] Home Office, 'HO FFM report', Annex D- HRC, 20 January 2020, url.

law is lax with no statistics on the number of convictions although they understood that the conviction rate was not high[173].

6.6.16 The Attorney General's Department told the UK FFT that there had been 'quite a few' prosecutions of security personnel who were convicted on the basis of ill treatment although they did not expand further on how many 'quite a few' referred to[174]. The same source further noted that 'There have been allegations of torture in police custody and these officers have been prosecuted and punished – can be sentenced for 10 years.'[175]

6.6.17 The USSD report for 2019, published 11 March 2020, stated:

'The constitution and law prohibit such practices, but authorities reportedly employed them. [...]

Interviews by human rights organizations found that torture and excessive use of force by police, particularly to extract confessions, remained endemic. The Human Rights Commission of Sri Lanka (HRCSL), for example, noted that many reports of torture referred to police officers allegedly "roughing up" suspects to extract a confession or otherwise elicit evidence to use against the accused. As in previous years, arrestees reported torture and mistreatment, forced confessions, and denial of basic rights such as access to lawyers or family members.'[176]

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6.7 Abductions

6.7.1 The 2019 DFAT report, stated:

'Systematic abductions using white vans, often leading to enforced disappearances, occurred during the war and in the period after. The term

"white van abductions" describes instances where individuals were abducted by unknown perpetrators in unmarked vehicles and were mostly never seen again. DFAT assesses that reports of a small number of abductions involving white vans in 2016 and 2017 likely referred to incidents where police did not follow protocol during arrest. DFAT understands that such disappearances are no longer common.'[177]

6.7.2 The UK FFT met with several sources who all confirmed that there had been no recent reports of white van abductions[178].

6.7.3 Two sources spoken to during the UK FFM stated they were aware of instances of abductions between 2015-2018 which had been cited in reports[179]. A representative from the northern province community told the UK FFT that an ITJP report cited claims of severe torture and abductions in

[173] Home Office, 'HO FFM report', Annex D- HRC, 20 January 2020, url.
[174] Home Office, 'HO FFM report', Annex D- AG, 20 January 2020, url.
[175] Home Office, 'HO FFM report', Annex D- AG, 20 January 2020, url.
[176] USSD, 'Country Report for 2019' (section 1c), 11 March 2020, url
[177] DFAT, 'Country Report' (para 4.8), 4 November 2019, url
[178] Home Office, 'HO FFM report', Annex D- SCRM, HRA, NPR, HRC, TNA, 20 January 2020, url.
[179] Home Office, 'HO FFM report', Annex D- HRA, NPR, 20 January 2020, url.

2017 & 2018, but that they weren't aware of such incident and hadn't heard from their contacts in the north and east that such incidents had occurred[180].

6.7.4 The Human Rights Commission told the UK FFT that in 2016 representations were made regarding a cycle of abductions of Tamil youth. The HRC noted that most of these allegations stemmed from asylum seekers abroad who had reported the incidents to an NGO. The representations included allegations of abductions and sexual torture but following investigations within Sri Lanka the HRC were unable to detect any such instances occurring[181].

6.7.5 For further information see also Missing persons.

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6.8 Monitoring and surveillance

6.8.1 A report from the Special Rapporteur, on his visit to Sri Lanka from 10 to 14 July 2017, observed that during his visit:

'…he heard that current and former detainees were afraid of being arrested again under the Prevention of Terrorism Act, that it was impossible for them to find employment, and that their families were, or were perceived to be, under surveillance. He was told that Father Elil Rajendram, who had led efforts to create a memorial for families who had lost loved ones during the armed conflict in the north, had been interrogated by the Terrorism Investigation Division, which was evidence that the Act was used as a continuous threat against the Tamils. Former detainees, and individuals who had undergone rehabilitation, allegedly still faced regular security checks and questioning. In Vavuniya, the Special Rapporteur was made aware of the threats made to a woman upon leaving a meeting with him. He was told about the surveillance of Tamil civil society, including women's groups, and about the fear of reporting alleged human rights violations and sexual violence to the authorities.'[182]

6.8.2 In their 2019 report, 'Too Little Change: Ongoing Torture in Security Operations in Sri Lanka', Freedom From Torture noted when interviewing, in exile, 16 people claiming to have been detained and tortured:

'Several people – all of whom lived in the Northern Province – described a situation of ongoing surveillance of the Tamil population by the Sri Lankan authorities through spot checks at people's homes, or at checkpoints, where they were asked for proof of formal processing at the end of the war. Failure to produce the required documentation raised the authorities' suspicion. Others described a context in which legitimate political activities or human rights activism, in particular campaigning for justice for the missing, led to targeting by the authorities.'[183]

6.8.3 DFAT noted in their 2019 report that:

'Members of the Tamil community claim that authorities continue to monitor public gatherings and protests in the north and east, and practise targeted

[180] Home Office, 'HO FFM report', Annex D- NPR, 20 January 2020, url.
[181] Home Office, 'HO FFM report', Annex D- HRC, 20 January 2020, url.
[182] OHCHR, 'Report of the Special Rapporteur', (p15), 14 December 2018 url
[183] FfT, 'Too Little Change, Ongoing Torture in Security Operations in Sri Lanka', February 2019, url

surveillance and questioning of individuals and groups. Security forces are most likely to monitor people associated with politically-sensitive issues related to the war, including missing persons, land release and memorial events. [...] Local sources told DFAT that the method of monitoring today was more subtle [...]. Communities in the north and east report that monitoring is undertaken by military intelligence and the Police Criminal Investigation Department, though in many cases officers dress in plain clothes and do not identify themselves. According to local sources, those participating in public gatherings and protests are often photographed. In the east, local informants within the community (including neighbours and business owners) reportedly undertake monitoring on behalf of the authorities. Intelligence agencies also monitor links to foreign groups, including some in the Tamil diaspora.

'High-profile former LTTE members would likely continue to be monitored by the Sri Lankan authorities following their release from prison and completion of any rehabilitation process.

'Although no formal parole arrangements apply, former LTTE members are required to register with the Civil Affairs Office of their local military unit and may be subject to monitoring, the level of which would depend on the degree of their assessed LTTE involvement. Military sources said the military had no system to monitor rehabilitated former LTTE cadres, unless police reported suspicious activities. Most individuals released from rehabilitation centres have returned to their places of origin and, like all other citizens, are required to register with a local grama niladhari (village officer) to receive financial and other support for repatriation and access to public services. Some international and domestic NGOs also provide post-release support. DFAT understands that no travel restrictions apply to rehabilitated former LTTE members, who may obtain a passport. Those who complete rehabilitation are issued a certificate of completion as evidence they have been rehabilitated.'[184]

6.8.4 The same report went on to note that:

'Some Tamils with imputed LTTE links (including those who fought for the LTTE or were part of its civilian administration) continue to report police monitoring and harassment. Multiple sources in the north told DFAT that former LTTE members, including those considered low-profile, are monitored to guard against the LTTE's re-emergence, although monitoring today is less extensive and takes a more subtle form. A source that DFAT considers credible claimed the extent of monitoring depends on one's former seniority within the LTTE; ongoing involvement with politically-sensitive issues, including protests relating to disappeared persons; and links to the Tamil diaspora, particularly elements of the diaspora considered radical by the Sri Lankan Government. Former LTTE members that fit this profile are more likely to be monitored by the authorities. In contrast, those who maintain a low-profile are considered less vulnerable to monitoring.

'Where monitoring did occur, local sources claimed the authorities – usually undercover police officers or intelligence agents – used more subtle

[184] DFAT, 'Country Report' (para 3.72 & 3.68), 4 November 2019, url

methods, for example inviting individuals to tea in public places and asking questions about their activities. The questioning did not involve violence. Telephone calls were also common. Some sources claimed questioning was sometimes indirect and involved questioning the neighbours of suspected former LTTE members. DFAT is unable to verify these claims. Sources told DFAT that monitoring of former LTTE members was less extensive in the Eastern Province, insofar as many there had defected during the latter years of the war and aligned with the government as part of the Karuna Group/TMVP. Formal complaints of harassment and monitoring by former LTTE members to the HRCSL have decreased significantly; few such complaints were received in 2018.

'DFAT assesses that under the current government, while they may be monitored, Tamils with links to the LTTE are generally able to lead their lives without concern for their security as a result of their past association with the LTTE.'[185]

6.8.5 An NGO told the UK FFT that family members of former LTTE cadres may be under some surveillance and that rehabilitees have to routinely report to the military. The same source also noted that former LTTE cadres are often discriminated against (particularly females) due to their past and as people fear they are under military surveillance[186]. Similarly, the Human Rights Commission thought that monitoring of former LTTE members continued.[187] A journalist stated that ex-cadres are used to monitor communities.[188]

6.8.6 The Secretariat for Coordinating Reconciliation Mechanisms (SCRM) reported that many former LTTE cadres could be under surveillance. 'Certain individuals are more likely to be monitored such as those with connections with the criminal underworld, e.g. selling weapons. If they are watched, it is for good reason. '[189]

6.8.7 The Human Rights Activist considered that 'There is interest from the security forces to look for former LTTE members. Some with an activist profile, but not all. In the last year an activist from the East attended a human rights conference in the North and was arrested and beaten. Some random Tamils are subject to intimidation. '[190] The source had also heard anecdotally that following the coup and Easter bombings, monitoring had increased, and this was more prevalent in the North and East.[191] Similarly the Diplomatic source stated that when the emergency regulations were brought in following the bombings, there might have been some local misuse to increase surveillance against the Tamils, despite the focus being on the Muslim community.[192]

[185] DFAT, 'Country Report' (para 3.75- 3.77), 4 November 2019, url
[186] Home Office, 'HO FFM report', Annex D- NGO, 20 January 2020, url.
[187] Home Office, 'HO FFM report', Annex D- HRC, 20 January 2020, url.
[188] Home Office, 'HO FFM report', Annex D- Journalist 2, 20 January 2020, url.
[189] Home Office, 'HO FFM report', Annex D- SCRM, 20 January 2020, url.
[190] Home Office, 'HO FFM report', Annex D- HRA, 20 January 2020, url.
[191] Home Office, 'HO FFM report', Annex D- HRA, 20 January 2020, url.
[192] Home Office, 'HO FFM report', Annex D- Diplomatic source, 20 January 2020, url.

6.8.8 The Human Rights Commission considered that 'LTTE sympathisers may be monitored if they have some prominence, actively supported or raised funds for the LTTE – then they may be questioned. The level of interest might depend on their degree of involvement in the past and on their current connections, e.g. with diaspora groups.' [193]

6.8.9 A representative from the northern province community told the UK FFT that rehabilitees may be targeted by Security Intelligence Service (SIS) who visit their home, find out their activities and restrict movement. Prominent people are still under scrutiny and are called into the Terrorism Investigation Department (TID) occasionally even after 2015. The same source also noted that the ordinary man does not want to be seen to be affiliated with former cadres as there is ongoing scrutiny towards them. They also stated that employers are not willing to employ them as they feel they will face visits by the SIS[194].

6.8.10 The USSD Report 2019 noted that 'Throughout the country, but especially in the north and east, Tamils reported security forces regularly monitored and harassed members of their community, especially activists and former or suspected former LTTE members.'[195]

6.8.11 See also Returns and monitoring

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Section 7 updated: 4 March 2020

7. Treatment of Tamil separatist groups outside of Sri Lanka

7.1 Tamil diaspora in the UK

7.1.1 According to the UK 2011 census there were over 100,000 people in the United Kingdom who recorded Tamil as their main speaking language[196]

7.1.2 There are various Tamil diaspora groups in the UK namely, British Tamils Forum (BTF) (which includes UK political party support groups British Tamil Conservatives (BTC), Tamils for Labour and Tamil Friends of the Liberal Democrats), Global Tamil Forum (GTF), Tamils Coordinating Committee (TCC-UK), Tamil Information Centre (TIC), Transnational Government of Tamil Eelam (TGTE), International Centre for the Prevention and Prosecution of Genocide (ICPPG) which was initiated by the TGTE and Tamil Solidarity (TS). Of these groups only the TGTE are a proscribed group in Sri Lanka.

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7.2 Monitoring of diaspora

7.2.1 In March 2019 the Tamil Guardian reported on a private prosecution of a Sri Lankan soldier, who was attending an event at the Sri Lankan High Commission to mark 'Independence Day' and was filmed motioning a death

[193] Home Office, 'HO FFM report', Annex D- HRC, 20 January 2020, url.
[194] Home Office, 'HO FFM report', Annex D- Rep from northern province, 20 January 2020, url.
[195] USSD, 'Country Report for 2018' (section 6), 11 March 2020, url
[196] The University of Manchester, CoDE, 'What languages are spoken…', October 2013, url.

threat to Tamils who were demonstrating outside the High Commission. The report noted that:

'The judge at Westminster Magistrates Court today concluded the Sri Lankan Brigadier, accused of making a death threat to Tamil protesters in London last year, was not covered by diplomatic immunity whilst making the gesture.

'Stating the Brigadier Priyanka Fernando's threats were not part of his job description as Sri Lanka's then defence attaché, and therefore not covered by diplomatic immunity, the judge adjourned the case until March 15.

'During the court case the job description of a Sri Lankan defence attaché was read out in court, as the defence argued that the gesture was indeed part of the Brigadiers job description.

'The job entails "monitoring any anti-Sri Lanka activities in the UK" and reporting to the ministry of defence, intelligence agencies, amongst others, as well as "monitoring any LTTE activities in the UK and devising appropriate plan with the coordination of intelligence agencies in Sri Lanka to counter it" the defence explained.

'The judge rejected the idea that the death threat could be part of a defence attaché's job description.'[197]

7.2.2 The Guardian reported on 6 December 2019 that Brigadier Priyanka Fernando was found guilty of public order offences in London and ordered him to pay more than £4,000 in fines, costs and compensation[198].

7.2.3 The Tamil Guardian also reported in March 2019 that:

'Two Tamil activists were arrested by counter-terrorism police at Heathrow airport yesterday morning as they were about to travel to Geneva to participate in a demonstration at the UN Human Rights Council, calling for Sri Lanka to be referred to the International Criminal Court. […] Both men were released on bail later that evening. […] The latest incident comes just days after it was revealed at a court case involving Sri Lanka's former defence attaché that the country officials in the UK were expected to be "monitoring any anti-Sri Lanka activities in the UK" and reporting to the ministry of defence, intelligence agencies, amongst others, as well as "monitoring any LTTE activities in the UK and devising appropriate plan with the coordination of intelligence agencies in Sri Lanka to counter it".'[199]

7.2.4 The 2019 DFAT report, stated:

'Some Tamil diaspora groups continue to hold public demonstrations in their countries of residence for an independent Tamil state. High-profile leaders of pro-LTTE diaspora groups, particularly diaspora groups banned under Sri Lankan law, may come to the attention of Sri Lankan authorities because of their participation in such demonstrations. The Sri Lankan Government continues to assess that elements of the Tamil diaspora remain committed to a separate Tamil state.

[197] The Tamil Guardian, 'Judge says Brigadier death threats not covered…', 1 March 2019, url.
[198] The Guardian, Sri Lankan official fined over throat-slitting gestures…', 6 December 2019, url.
[199] The Tamil Guardian, '2 Tamil activists arrested by counter-terrorism…', 5 March 2019, url.

'DFAT assesses Sri Lankan authorities may monitor members of the Tamil diaspora returning to Sri Lanka, depending on their risk profile. Those who hold leadership positions in Tamil diaspora groups, particularly groups deemed by the Sri Lankan Government to hold radical views; those who were formerly part of the LTTE, particularly in – but not necessarily limited to – high-profile roles; those who are suspected of raising funds for the LTTE during the war; and those who actively advocate for Tamil statehood would likely be of particular interest to the authorities. Those Tamils living abroad with links to the LTTE are unlikely to return to Sri Lanka voluntarily.'[200]

7.2.5 The UK Home Office FFT were told by several sources that they were aware or believed that there was some monitoring of the diaspora by the Sri Lankan authorities[201]. A journalist told the UK FFT that monitoring was common practice and officers are placed among protestors in the UK as the government and military fear revenge. They also noted that monitoring of social media occurs. The same source also stated that monitoring of returnees is possible if you are deemed to have done something against the government[202]. Another journalist said that he was aware of protesters having their photos taken by those inside the Sri Lankan High Commission[203].

7.2.6 A representative from the northern province community told the UK FFT that activists were probably monitored, and he had heard reports of members of the diaspora facing intimidation when they return to Sri Lanka although he went on to note that this was not the case for everyone and was more likely to be prominent activists. He also stated that members of UK/US Tamil groups and Global Tamil Forum (GTF) members have been able to come and go within Sri Lanka and travel to the north to cover the war heroes' event and have faced no problems. He stated that there may be a degree of self-censorship amongst active diaspora groups and some may not feel comfortable returning, although he noted that some diaspora groups do what they do to raise their asylum profile[204].

7.2.7 The UK Home Office FFT met with representatives from IOM who stated that persons involved in protests abroad are of no interest, as demonstrating abroad is not an offence although if links can be found to banned organisations then it may increase the risk on return[205].

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7.3 Transnational Government of Tamil Eelam (TGTE)

7.3.1 The Transnational Government of Tamil (TGTE) is a proscribed group in Sri Lanka (see Proscribed/de-proscribed groups).

7.3.2 According to the TGTE website:

'The Tamil Diaspora, an integral part of the nation of Tamil Eelam, utilizing democratic means in their respective countries, establishes the

[200] DFAT, 'Country Report' (para 3.79- 3.82), 4 November 2019, url
[201] Home Office, 'HO FFM report', Annex D- Journalist 1 & 2, HRA, NPR, 20 January 2020, url
[202] Home Office, 'HO FFM report', Annex D- Journalist 1, 20 January 2020, url
[203] Home Office, 'HO FFM report', Annex D- Journalist 2, 20 January 2020, url
[204] Home Office, 'HO FFM report', Annex D- Northern province representative, 20 January 2020, url
[205] Home Office, 'HO FFM report', Annex D- IOM, 20 January 2020, url

Transnational Government of Tamil Eelam (TGTE) as the highest political entity to campaign for the realization of the Tamils' right to self-determination. Since it is impractical for political leaders and people in Tamil Eelam to participate in the TGTE, only those Tamils in the Diaspora are elected to the TGTE through democratic elections. The TGTE will work hand-in-hand with anyone working for the well-being of the Tamil people in the island of Sri Lanka, including the political and social leaders of the people in Eelam.'[206]

7.3.3 The Terrorism Research and Analysis Consortium noted on their website that 'The TGTE is a government in exile among the Sri Lankan Tamil diaspora which aims to keep alive the idea of Tamil Eelam, a state which TGTE aspires to create in the north and east provinces of Sri Lanka. TGTE aims to create a separate Tamil homeland called Tamil Eelam in the island of Sri Lanka.'[207]

7.3.4 The Tamil Guardian reported in January 2018 that

'A member of the Transnational Government of Tamil Eelam (TGTE) was refused entry into Sri Lanka on January 11 [2018] after landing at Bandaranaike International Airport (BIA) with his family, Ceylon Today reports. Suresnath Ratnabalam, who formerly held the title of "TGTE MP" was stopped by immigration officials at passport control as he is reportedly on a blacklist. Mr Ratnabalam and his family were deported. They were placed on a Bangkok bound flight, the paper reported. His family was given permission to enter the country however chose to leave with him.'[208]

7.3.5 The UK Home Office FFT met with various sources who were aware of the TGTE. Most of these sources told the UK FFT that there was very little interest or support for this group within Sri Lanka[209]. A journalist told the UK FFT that the TGTE are not covered by the Sri Lankan media and their opinions are given no space[210]. However, they considered that 'A high profile TGTE member returning to Sri Lanka would face arrest and be accused of LTTE links.' [211]

7.3.6 Another journalist told the UK FFT that the TGTE were formed after the defeat of the LTTE. Sources explained that the TGTE advocate for a separate Tamil state and whilst this was initially seen as an important issue for Tamils now the TGTE are seen as an extreme organisation and their views are not taken seriously[212].

7.3.7 A human rights activist told the UK FFT that a separate Tamil state has little interest support within the Tamil community with Tamils having more pressing concerns such as livelihoods, the return of their land and locating those who have disappeared. The same source told the UK FFT that political

[206] TGTE, 'Mission statement', undated, url.
[207] TRAC, Transnational Government of Tamil Eelam (TGTE), undated, url.
[208] The Tamil Guardian, 'TGTE member refused entry into Sri Lanka', 15 January 2018, url.
[209] Home Office, 'HO FFM report', Annex D- HRA, NGO, Journalist 1 & 2, 20 January 2020, url
[210] Home Office, 'HO FFM report', Annex D- Journalist 2, 20 January 2020, url
[211] Home Office, 'HO FFM report', Annex D- Journalist 2, 20 January 2020, url
[212] Home Office, 'HO FFM report', Annex D- HRA, 20 January 2020, url

groups based in Sri Lanka with a similar agenda to the TGTE have little support[213].

7.3.8 An NGO told the UK FFT that in order to effect change political parties need to be based in Sri Lanka therefore groups like the TGTE would have little support from Tamil youth[214].

7.3.9 The UK Home Office FFT met with the Attorney General's department who, although initially unsure, were able to confirm that the TGTE is a proscribed group within Sri Lanka due to their links to the LTTE[215]. One other source met during the FFM stated that the TGTE are proscribed as they are viewed as an organisation attempting to instigate violence and disrupt the post war situation[216].

7.3.10 According to another journalist and a human rights activist who spoke to the UK FFM the TGTE claim that there is genocide taking place against Tamils in Sri Lanka although the journalist did not believe this was the case as no factual information had been provided for these claims[217].

7.3.11 The UK FFT met with representatives from the Criminal Investigation Department (CID) who were unable to comment on the TGTE specifically as they had little knowledge of the group. They were able to confirm that people connected to proscribed groups would only be of interest if "you're active in a proscribed group or you fund them then action would be taken". The FFT went on to ask about supporters of proscribed groups and were told by CID that "If a person is just a member no action would be taken"[218].

7.3.12 A journalist and a human rights activist told the UK FFT that genuine members and supporters of the TGTE may face problems on return such as arrests and other reprisals as the groups is proscribed[219] Another journalist stated that high profile members of the TGTE could be questioned and may face arrest on return for having links to the LTTE[220].

7.3.13 The Attorney General's department told the UK FFT that if TGTE supporters arrive in the country peacefully they would not face any problems on return, they would only be able to take action against someone if they had committed an offence within Sri Lanka. They also stated they were not aware of any cases where returnees had faced problems on return[221].

7.3.14 Further information about the TGTE can be found on their website[222]

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[213] Home Office, 'HO FFM report', Annex D- HRA, 20 January 2020, url
[214] Home Office, 'HO FFM report', Annex D- NGO, 20 January 2020, url
[215] Home Office, 'HO FFM report', Annex D- AG, 20 January 2020, url
[216] Home Office, 'HO FFM report', Annex D- Journalist 2, 20 January 2020, url
[217] Home Office, 'HO FFM report', Annex D- Journalist 2 & HRA, 20 January 2020, url
[218] Home Office, 'HO FFM report', Annex D- CID, 20 January 2020, url
[219] Home Office, 'HO FFM report', Annex D- Journalist 1 & HRA, 20 January 2020, url
[220] Home Office, 'HO FFM report', Annex D- Journalist 2, 20 January 2020, url
[221] Home Office, 'HO FFM report', Annex D- AG, 20 January 2020, url
[222] TGTE, url.

7.4 Government attitude

7.4.1 The 2019 DFAT report, stated:

'At least one million Sri Lankan Tamils live outside Sri Lanka, mostly in Canada, Europe (with large communities in the UK and France), Australia and India. Members of the Sri Lankan Tamil diaspora may be citizens or legal residents of those countries, or dual nationals. Some members of the Tamil diaspora return to Sri Lanka to visit family members, for holidays and for business. Remittances from the Tamil diaspora provide an important source of income for family and community members in Sri Lanka.

'The Sri Lankan Government has encouraged all Sri Lankans living overseas to return or invest in the Sri Lankan economy'.[223]

7.4.2 The UK Home Office FFT were told by the Secretariat for Coordinating Reconciliation Mechanisms (SCRM) that the government encourages the diaspora to invest in post-conflict areas in the north and east[224]. A representative from the northern province community told the UK FFT that the diaspora groups have influence over day to day living but only in relation to the money they send back to their families in Sri Lanka. The same source went on to note that diaspora groups have no political platform in Sri Lanka[225].

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Section 8 updated: 21 April 2020

8. Exit and return

8.1 Exit/returns (of FAS)

8.1.1 The 2019 DFAT report observed:

'For returnees travelling on temporary travel documents, police undertake an investigative process to confirm identity. This would identify someone trying to conceal a criminal or terrorist background or trying to avoid court orders or arrest warrants. This often involves interviewing the returning passenger, contacting police in their claimed hometown, contacting claimed neighbours and family, and checking criminal and court records. All returnees are subject to these standard procedures, regardless of ethnicity and religion. DFAT understands detainees are not subject to mistreatment during processing at the airport.

'DFAT understands that some returnees, including returnees in the north and east with suspected LTTE links, have been the subject of monitoring by the authorities, involving visits to returnees' homes and telephone calls by the Criminal Investigation Department. DFAT understands that most returnees, including failed asylum seekers, are not actively monitored on an ongoing basis. DFAT is unable to verify whether monitoring, where it occurs, is specific to former LTTE cadres. DFAT is not aware of returnees, including failed asylum seekers, being treated in such a way that endangers their safety and security. Tamils who had failed to secure asylum in Australia and

[223] DFAT, 'Country Report' (para 3.79- 3.82), 4 November 2019, url.
[224] Home Office, 'HO FFM report', Annex D- SCRM, 20 January 2020, url
[225] Home Office, 'HO FFM report', Annex D- Northern province representative, 20 January 2020, url

since returned to the Northern Province told DFAT they had no protection concerns and had not experienced harassment by the authorities, nor received monitoring visits.

'DFAT understands that returnees may face financial difficulties reintegrating into their communities, including due to sale of their belongings to fund irregular ventures overseas, but do not experience societal discrimination for seeking asylum elsewhere.

'Some refugees and failed asylum seekers reported social stigma upon return to their communities, including for being beneficiaries of financial reintegration assistance. Overall, DFAT understands that societal discrimination is not a major concern for returnees, including failed asylum seekers. Some Tamils who had failed to secure asylum in Australia and since returned to the Northern Province told DFAT they had not experienced societal discrimination following their return.

'DFAT assesses that returnees face a low risk of societal discrimination upon return to their communities. DFAT further assesses that, where it occurs, surveillance of returnees can contribute to a sense of mistrust of returnees within communities.'[226]

8.1.2 The UK FFT were told by several sources that returning failed asylum seekers would likely be questioned at the airport by immigration officials[227] and may be passed to the Criminal Investigation Department (CID) based at the airport [228]. Regarding persons previously detained who re-entered the country, representatives from CID stated that that they may be questioned by immigration CID or SIS (intelligence service) at the airport.[229]

8.1.3 According to the Representative from the Northern province community, Some of them have been arrested and released on bail and the court case follows but the representative was not aware of any torture claims.[230] Representatives from CID and a diplomatic source told the UK FFT that CID would make additional checks of such persons and of returned failed asylum seekers with the local police in the area where the person claimed to be from[231]. A diplomatic source told the UK FFT that entry clearance checks can take a long time to conduct as there is no central police database and that once released it is not unusual for a person to experience a further check at home[232]. Although representatives from the department of Immigration and Emigration told the UK FFT that failed asylum seekers will be monitored once released and that the period of monitoring by local police can vary[233].

8.1.4 Representatives from the International Organization for Migration (IOM) explained that it is an offence to leave Sri Lanka irregularly (e.g. using a

[226] DFAT, 'Country Report' (para 5.33, 5.46-50), 4 November 2019, url.
[227] Home Office, 'HO FFM report', Annex D- Immigration, CID, Diplomatic…, 20 January 2020, url
[228] Home Office, 'HO FFM report', Annex D Journalist 2, IOM, 20 January 2020, url.
[229] Home Office, 'HO FFM report', Annex D Rep from CID, IOM, 20 January 2020, url.
[230] Home Office, 'HO FFM report', Annex D CID, Northern province rep, 20 January 2020, url.
[231] Home Office, 'HO FFM report', Annex D- CID, Diplomatic sources, 20 January 2020, url.
[232] Home Office, 'HO FFM report', Annex D- Diplomatic source, 20 January 2020, url.
[233] Home Office, 'HO FFM report', Annex D-Rep from Immigration & Emigration, 20 January 2020, url.

forged document) and thus would be dealt with under the law upon return. They also told the UK FFT that when people return on an emergency travel document the Sri Lankan authorities are provided with the details of the person, by the relevant issuing authority, prior to their arrival. Once they return and have passed through immigration control, they would be referred to the police based at the airport to check criminal records, and if there are no criminal warrants then they would be released. Where there are outstanding criminal warrants then criminal procedures will apply[234].

8.1.5 IOM also told the UK FFT that claiming asylum aboard is not an offence and as such when someone returns to Sri Lanka who has been absent for a number of years or has an expired visa, they would not be questioned on this and there were no media reports of returnees being interrogated on such grounds. IOM have some presence at the airport and are based before immigration control to receive passengers returning on IOM programmes and they stated that in the last couple of years they have not witnessed the intense questioning of the past where returnees may have been asked what they had been doing in the UK. The police would only be interested in an individual if there were outstanding criminal offences[235].

8.1.6 A journalist and a human rights activist informed the UK FFT that they were not aware of ordinary Tamils being targeted on return[236], with the human rights activist further noting that he could not recall any cases of ordinary Tamils being stopped at the airport[237]. IOM told the UK FFT that they did not believe there was a distinction between Tamil and Sinhalese returnees and whilst there may be isolated cases there was no systematic policy of discrimination[238]. Several sources told the UK FFT that they were aware of family members or members of the Tamil diaspora who have returned to Sri Lanka and not encountered any difficulty[239].

8.1.7 The UK FFT were told by a journalist that if returning failed asylum seekers were found to have links to the LTTE they would likely face further questioning by CID[240] although an NGO who spoke to the UK FFT stated that this would depend on the case[241].

8.1.8 Representative from United Nations Human Commissioner for Refugees (UNHCR) told the UK FFT that the level of security screening at the airport has decreased since 2015 and that if you are a high profile LTTE cadre you would be subjected to additional questioning, but this would not necessarily mean you would be detained. The same source further considered that 'However, lying about your profile or involvement can sometimes result in detention as name lists of returnees are shared with government prior to

[234] Home Office, 'HO FFM report', Annex D- IOM, 20 January 2020, url.
[235] Home Office, 'HO FFM report', Annex D- IOM, 20 January 2020, url.
[236] Home Office, 'HO FFM report', Annex D- Journalist 2, HRA, 20 January 2020, url.
[237] Home Office, 'HO FFM report', Annex D- HRA, 20 January 2020, url.
[238] Home Office, 'HO FFM report', Annex D- IOM, 20 January 2020, url.
[239] Home Office, 'HO FFM report', Annex D- Journalist 2, HRA, NPR, 20 January 2020, url.
[240] Home Office, 'HO FFM report', Annex D- Journalist 2, 20 January 2020, url.
[241] Home Office, 'HO FFM report', Annex D- NGO, 20 January 2020, url.

their return and therefore the intelligence services are aware of the people who are returning. '[242]

8.1.9 The Attorney General's Department and the Criminal Investigation Department told the UK FFT that returned former LTTE cadres would only be of interest and face arrest if there was a pending criminal case against them and that mere membership of the LTTE would not make someone of interest[243], this was also confirmed by an NGO[244].

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8.2 Stop and watch lists

8.2.1 The 2019 DFAT report, stated:

'[…] Sri Lankan authorities collect and maintain sophisticated intelligence on former LTTE members and supporters, including "stop" and "watch" electronic databases. DFAT understands these databases remain active. "Stop" lists include names of those individuals that have an extant court order, arrest warrant or order to impound their Sri Lankan passport. 'Watch' lists include names of those individuals that the Sri Lankan security services consider to be of interest, including for suspected separatist or criminal activities.'[245]

8.2.2 The UK FFT met with representatives from the Criminal Investigation Department who stated that a watch list exists and is maintained by the police. Where someone returns to Sri Lanka and is on a watchlist they would be arrested if there were outstanding criminal offences against them[246]. Representatives from IOM told the UK FFT that SIS have their own watchlist and will screen returning passengers against this list, where a person is of interest they would be interviewed and handed to CID if further action was needed[247]. A human rights activist told the UK FFT that he was not aware of anyone on the watchlist being stopped when they returned but had heard anecdotally that this does happen[248].

8.2.3 Representatives from CID told the UK FFT that a travel ban to prevent someone leaving the country can be obtained by a court order and the person's name will then be added to a 'stop list'. This stop list is not maintained by the police (but the watch list is)[249]. According to Representatives from the Immigration and Emigration department this list is confidential and consists mostly of foreign passport holders although it can also include criminals who have been banned from travelling abroad[250]. The same source also told the UK FFT that where someone is the subject of a travel ban and attempts to leave the country it will be flagged up by

[242] Home Office, 'HO FFM report', Annex D- UNHCR, 20 January 2020, url.
[243] Home Office, 'HO FFM report', Annex D- AG, CID 20 January 2020, url.
[244] Home Office, 'HO FFM report', Annex D- NGO, 20 January 2020, url.
[245] DFAT, 'Country Report' (para 3.57), 4 November 2019, url
[246] Home Office, 'HO FFM report', Annex D- CID, 20 January 2020, url.
[247] Home Office, 'HO FFM report', Annex D- IOM, 20 January 2020, url.
[248] Home Office, 'HO FFM report', Annex D- HRA, 20 January 2020, url.
[249] Home Office, 'HO FFM report', Annex D- CID, 20 January 2020, url.
[250] Home Office, 'HO FFM report', Annex D-Rep from Immigration & Emigration, 20 January 2020, url.

immigration pre-departure checks and the person will be passed to CID for further investigation[251].

8.2.4 Representatives from CID told the UK FFT that a list of wanted persons is published in 'Police Gazette 3' and contains a list of anyone wanted by the police[252]. Representatives from the Immigration and Emigration department stated that Border checks at the airport are linked to Interpol to help identify internationally wanted persons[253].

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[251] Home Office, 'HO FFM report', Annex D-Rep from Immigration & Emigration, 20 January 2020, url.
[252] Home Office, 'HO FFM report', Annex D- CID, 20 January 2020, url.
[253] Home Office, 'HO FFM report', Annex D- Rep from Immigration & Emigration, 20 January 2020, url

Terms of Reference

A 'Terms of Reference' (ToR) is a broad outline of what the CPIN seeks to cover. They form the basis for the country information section. The Home Office's Country Policy and Information Team uses some standardised ToRs, depending on the subject, and these are then adapted depending on the country concerned.

For this particular CPIN, the following topics were identified prior to drafting as relevant and on which research was undertaken:

- Background information
    - Geography and demography
- Political context
    - Conflict of 1983-2009
    - Main Tamil paramilitary groups and parties
- Sirisena-led Government: 2015–
- Election win and progress
- De-proscription of Tamil groups
- Proscribed organisations
- Constitutional reform
- Reconciliation
- Accountability for war crimes
- Human Rights Commission of Sri Lanka
- Missing persons
- Office of missing persons (OMP)
- Liberation Tigers of Tamil Eelam (LTTE)
    - LTTE training
- General situation for Tamils
- Arrests, detention and treatment of actual or suspected LTTE supporters
    - Prevention of Terrorism Act
    - Arrest procedures
    - Numbers and types of arrests and detainees
    - Secret detention centres
    - Torture/ill treatment
- Other issues for actual or suspected LTTE supporters
    - Rehabilitation of former LTTE combatants
    - Monitoring and surveillance

    - “White van” abductions
- Societal situation
    - Land repatriation
    - Education and Employment
- Women
    - General situation
    - Female-headed households (FHH)
    - Allegations of sexual violence by security forces
- Returns
    - Stop and watch lists
    - Treatment on arrival
- Sur place activities
    - Diaspora
- Freedom of movement

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Annex A

Letter from the British High Commission Colombo dated 18 May 2017

Home Office

British
High Commission
Colombo

Migration Section
389, Bauddhaloka Mawatha
Colombo 7
Sri Lanka

[redacted]

Home Office Country Policy and Information Team (CPIT)

[redacted]

18 May 2017

Dear Colleague,

Updated Letter: De-proscription of Tamil groups/ organizations and release of detainees under PTA

This letter was originally issued by the Migration team of the British High Commission Colombo on the date of 30th November 2015. It has been updated on 18th May 2017.

The first section of the letter " **1.De-Proscription of Tamil Groups**" remains the same since there have been no material changes to date. Section two "**2.Release of detainees under PTA**" has been updated

1. **De-proscription of Tamil groups**

The previous government of Sri Lanka proscribed a number of Tamil groups active around the world and they were not allowed to engage in Sri Lanka. The new government established with the fullest support of Tamil speaking community in Sri Lanka has de-proscribed the following Tamil groups/ organizations:

1. The Global Tamil Forum
2. British Tamil Forum
3. National Council of Canadian Tamils
4. Tamil Youth Organisation
5. World Tamil Coordinating Committee
6. Canadian Tamil Congress
7. Australian Tamil Congress
8. Tamil National Council

Membership or affiliation to the above groups is no longer regarded by the government of Sri Lanka as terrorism or terrorist activity. The members of these groups whether active or lay,

have no reason to fear persecution as a consequence of their affiliation to them from the government of Sri Lanka.

2. Release of detainees under PTA[1]

One of the election manifestos of the coalition government was to release PTA detainees in a step by step process.

As of November 2015 a total of 39 detainees were released on bail with 204 remaining in detention. 56 prisoners were convicted and will not be released until they have served their sentences.

The current status as of May 2017 is that there are 16 cases pending for 29 individuals. Out of which 16 are Tamils, 8 are Sinhalese and 5 are Muslims. 16 individuals had been charged for their offences and will not be released until they saved their sentences. Three of them have been discharged by court. The rest of the ten individuals' cases are remaining in processing.

The action taken with regard to these detainees is positive in that it shows that the government of Sri Lanka is progressing cases in the courts where they can and releasing detainees where this is not possible.

Yours sincerely,

[redacted]
British High Commission Colombo

[1] The source to the figures given under this topic is a higher officer attached to the Ministry of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs

Annex B

Letter from the British High Commission Colombo dated 19 June 2018

British
High Commission
Colombo

Migration
389, Bauddhaloka Mawatha
Colombo 7
Sri Lanka

[redacted]

19 June 2018

Country Policy and Information Team

[redacted]

Dear Colleagues,

Re: Government of Sri Lanka's progress in regards to the releasing of land to the public

In 2016, as part of an ongoing process of reconciliation, ethnic harmony and infrastructure development in the North and East, the Government of Sri Lanka (GOSL) began to release land/roads previously occupied by the military as part of their commitment to promote returns and reconciliations. The lack of land has been a major barrier for returning Tamils.

We are able to report that to date, the GOSL has:

- Released 56,447.81 acres of land in former conflict areas, including that of 120.89 acres released on 18 June 2018;
- Re-opened the public road connecting Vattappalai and Puthukudiyirippu that runs through the Security Force Headquarters in Mullaittivu. This road had been closed for the last eight years and compelled members of the public travelling between the two villages to make a significant detour;
- Released land in Keppapilavu, in the Mullaittivu Maritimepattu Divisional Secretariat area, which saw 28 new/completely renovated houses being built by the Sri Lankan Army;
- Re-opened, after 28 years, the main road running between Kankesanthurai and Point Pedro for public transport thus allowing for better connections to Thondamanaru and other villages and commercial activities.

We will continue to keep you informed of progress made. Should you have any questions please feel free to contact us.

Yours faithfully,

[redacted]

British High Commission Colombo

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Version control

Clearance

Below is information on when this note was cleared:

- version **6.0**
- valid from **12 May 2020**

Changes from last version of this note

Updated country information to include recent sources and country information gathered on the 2019 Fact-Finding Mission to Sri Lanka.

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