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OPERATIONAL GUIDANCE NOTE

SRI LANKA

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1. Introduction

- 1.1** This document provides UKBA case owners with guidance on the nature and handling of the most common types of claims received from nationals/residents of Sri Lanka, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Case owners *must not* base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and case owners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

http://www.homeoffice.gov.uk/rds/country_reports.html

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

2. Country assessment

- 2.1** Case owners should refer to the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the population, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/>

- 2.2** An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

<http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/human-rights-report-2009>

- 2.3** **Actors of protection.** Case owners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
- 2.4** In Sri Lanka the security forces comprise the police; the Special Task Force (the paramilitary arm of the police); the army, navy and air force and other paramilitary forces. The Special Task Force (STF) is deployed for counter terrorist operations within the country and has recently been taken over by the Ministry of Defence. The police force functions under the Ministry of Home Affairs but is directly controlled by the President. Police are poorly paid and susceptible to corruption at lower levels while at higher levels senior police officials are often subject to political pressures. A lack of Tamil speaking police further compromises their ability to provide effective protection to Tamils.¹
- 2.5** Under the Emergency Regulations and the Prevention of Terrorism Act (see 3.7.4 below), the law does not define clearly what constitutes arbitrary arrest and such incidents do occur. International reports document torture and ill-treatment committed by State forces, police and military, including abductions, enforced disappearances and extra-judicial executions. The UN Special Rapporteur on Extra-Judicial Killings has noted that the majority of deaths as a result of torture at the hands of the police are by ordinary officers taking part in an established routine. Most torture is alleged to occur in police custody immediately after the initial arrest.² Torture disproportionately affects the poor – when and how a prisoner can secure bail is especially important.³
- 2.6** There is no independent authority to investigate complaints. Impunity is a serious problem. A 2007 Asian Human Rights Commission assessment cited the government's tolerance of pervasive corruption as a major reason for the police force's incapacity to investigate and prosecute cases effectively. In February 2010, the EU voted to temporarily suspend Sri

¹ Country of Origin report Sri Lanka 11 November 2010 (8.01 – 8.76 and 12.01 – 12.20)

² Country of Origin report Sri Lanka 11 November 2010 (8.01 – 8.76 and 12.01 – 12.20)

³ International Crisis Group "Sri Lanka's Judiciary: Politicised courts, compromised rights", June 2009.

Lanka from the GSP+ scheme (an EU incentive scheme for vulnerable countries that adhere to human rights conventions).⁴

- 2.7** The law provides for an independent judiciary but in practice the judiciary at lower levels remains reliant on the executive and is subject to corruption. The Supreme Court has demonstrated significant independence from the government in several decisions with regard to detentions and other arbitrary actions. Prosecutors are theoretically independent of political pressure but in reality the prosecution process is highly politicised and the criminal justice system has been used increasingly to punish politicians when they are out of power. A shortage of court-appointed interpreters restricts the ability of Tamil-speaking defendants to receive a fair hearing in many locations.⁵
- 2.8** **Internal relocation.** Case owners must refer to the Asylum Policy Instructions on both internal relocation and gender issues in the asylum claim and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 2.9** Sri Lankan law grants every citizen freedom of movement but in practice has severely restricted this right on occasion, particularly for Tamils. Restrictions have eased as a consequence of improvements in the security situation although military/police checkpoints along the main roads and a highly visible military presence continue to be maintained throughout the country. In Colombo/Gampaha district, people unable to speak Sinhala who either lack ID or had ID cards from Jaffna or northern districts are likely to be detained briefly and released once checks on identity have been confirmed.⁶
- 2.10** All of the checkpoints within Jaffna and to the islands have been removed. Sri Lankans with a National Identity Card can travel freely to and from Jaffna and the islands. The A9 Jaffna-Kandy highway was reopened to general traffic in July 2009. In August 2010 the route from Jaffna to Vavuniya, revealed only three checkpoints. Government run bus services have recommenced after several decades from Jaffna to Kandy, Colombo and Batticaloa.⁷
- 2.11** Throughout the civil conflict, authorities required households to register all residents, the emphasis being on Tamils who took temporary lodgings. In May 2010, the government announced that certain regulations would be repealed including curfews and compulsory police registration of household members although this does not seem to have been universally enforced.⁸
- 2.12** The IGC reported in December 2010 that of the nearly 300,000 people displaced from their homes by the last two years of fighting, the large majority have left the camps but more than 20,000 people remain in the camps and another 70,000 live with host families, unable to return to their own land. A number of those who left the camps remain in a situation of displacement due to destruction of their homes and ongoing de-mining operations. According to the ICRC, IDPs, who are returning to their villages, are coming home to nothing. More than 300,000 people are in a desperate humanitarian situation.⁹ Similarly in January 2011 the IDMC reported that the 180,000 people who had returned to their homes

⁴ Country of Origin report Sri Lanka 11 November 2010 (8.01 – 8.76 and 12.01 – 12.20)

⁵ Country of Origin report Sri Lanka 11 November 2010 (11.01 – 11.11)

⁶ Country of Origin report Sri Lanka 11 November 2010 (28.01 – 28.34)

⁷ Country of Origin report Sri Lanka 11 November 2010 (28.01 – 28.34)

⁸ Country of Origin report Sri Lanka 11 November 2010 (28.01 – 28.34)

⁹ [International Federation of Red Cross and Red Crescent Societies \(IFRC\), 23/07/2010](#)

remained in need of protection and assistance there.¹⁰ More than a million people have been affected by the floods and need food items, water, blankets and hygiene kits immediately. The situation is especially bad for the displaced.¹¹

- 2.13** IDP return has in some cases been hindered by land disputes arising from a number of issues, such as secondary occupation; the occupation of land by the military and LTTE during the conflict, including the arbitrary seizure of land belonging to Muslims by the LTTE in the north and east; the establishment of High Security Zones (HSZ) and Special Economic Zones (SEZ); and the loss of documentation.¹²
- 2.14** When assessing the reasonableness of an IFA/IRA in the north and east of Sri Lanka, the following elements need to be taken into account: the lack of basic infrastructure and inadequacy of essential services, such as water, sanitation, health care and education; the presence of landmines and unexploded ordnance; as well as continued economic and security restrictions, such as the presence of Special Economic Zones and High Security Zones (HSZ), which prevent civilians from accessing locations used for agriculture, fishing and cattle grazing and other livelihood activities.
- 2.15** In the case of a prospective IFA/IRA in Colombo, it should be borne in mind that young Tamil men originating from the north and east of the country could encounter closer scrutiny during the police registration process and may, in some cases, be denied a residence permit.¹³
- 2.16** Careful consideration must therefore be given to any place of proposed internal relocation and how it will be accessed, taking account of the latest information about the security situation. A Country of Origin Information request should be submitted to the Country of Origin Information Service if more information is needed.

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Sri Lanka. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility).

¹⁰ [Internal Displacement Monitoring Centre \(Norwegian Refugee Council\), Sri Lanka: IDPs and returnees remain in need of protection and assistance, 14/01/2011](#)

¹¹ [Oxfam, Massive challenges ahead even as heavy rains subside in Sri Lanka, 14/01/2011](#)

¹² International Crisis Group "Sri Lanka after the war", December 2010; COI report Sri Lanka 11 November 2010 (27.01 – 27.04 and 29.01 – 29.17); UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-seekers from Sri Lanka, 5 July 2010

¹³ [United Nations High Commissioner for Refugees \(UNHCR\), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka, 05/07/2010, Section B. Internal Flight or Relocation Alternative](#)

3.3 If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

3.4 All Asylum Instructions can be accessed via the on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>

3.5 Credibility

3.5.1 This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. Case owners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matched to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

3.6 Fear of persecution by the LTTE.

3.6.1 Some applicants may claim asylum based on fear of ill-treatment at the hands of the LTTE due to their past involvement with, and/or opposition to the mainstream LTTE; in particular, those perceived as defectors, disloyal to the LTTE or associated with groups aligned with the State: the Tamil Makkal Viduthalai Pullika (TMVP) - Karuna or Pillayan factions, Eelam People's Democratic Party (EPDP) or People's Liberation Organisation of Tamil Eelam (PLOTE). Such claims are likely to be linked to events prior to the end of the civil war in May 2009.

3.6.2 During the course of the 25 year civil war, there were numerous reports of LTTE abuses of Sinhalese, Muslim and Tamil civilians, political assassinations, suicide bombings, suppression of dissent and forcible recruitment of Tamils, many of them children. The evidence suggests that the LTTE targeted those suspected of supporting or working for the Sri Lankan government or allied paramilitaries, or for promoting political views other than those of the LTTE. As security forces continued to advance into the Vanni towards the end of the war, the LTTE stepped up controls on the Tamil population in the areas it held and engaged in torture, arbitrary arrest and detention, and other human rights abuses.¹⁴

Current/future LTTE activity

3.6.3 Many of the LTTE leaders and its chief, Velupillai Prabhakaran, were killed during the last weeks of the war. The UNHCR reported in July 2010 that in the wake of the conflict, almost 11,000 people suspected of having ties to the LTTE were arrested and detained in high-security camps. The International Crisis Group (ICG) reported in December 2010 that of the estimated 12,000 people who surrendered or were detained, many have now been released.¹⁵

3.6.4 Figures provided by the Sri Lankan government are reportedly inconsistent but according to Human Right Watch, latest numbers suggest that 5,400 remain in detention, with 600-700 identified for legal prosecution. The rest are undergoing rehabilitation programmes. The

¹⁴ Country of Origin report Sri Lanka 11 November 2010 (10.02 – 10.07)

¹⁵ Country of Origin report Sri Lanka 11 November 2010 (4.31), ICG: "Human Rights in Sri Lanka in the Post-Conflict Period" Alan Keenan, 6 Dec 2010

British High Commission regularly monitors the treatment of ex-LTTE cadres in Sri Lanka and rehabilitation/reintegration programmes and continues to provide updated information.¹⁶ (see 3.7.7 – 3.7.10 below).

- 3.6.5** A January 2010 ICG report considered that the LTTE was no longer a threat, claiming that following their military defeat and the deaths of virtually the entire political and military leadership, combined with the arrest of the LTTE's international leader, there had been no sign of renewed LTTE militancy in Sri Lanka. A February 2010 IGC report on the Sri Lankan Tamil diaspora considered that there was little chance of the LTTE regrouping in the diaspora, with new organisations forming in more transparent and democratic ways. There have been some media reports in 2010 of the LTTE regrouping in India to target Indian leaders, which has been denied by LTTE representatives.¹⁷
- 3.6.6** The UNHCR reported in its Guidelines that military/police checkpoints along the main roads and a highly visible military presence continue to be maintained throughout the country, to prevent the re-establishment of the LTTE by cadres still at large. The ICG reports a high level of militarisation in the north and the east. In the Jaffna peninsula there are reported to be 40,000 army officers, a ratio of approximately 1:11. On nearly every major road there are military checkpoints or the presence of soldiers. In the Vanni, the ratio of military personnel to civilians is believed to be 1:3 or 4.¹⁸

See also: [Actors of Protection](#)
[Internal Relocation](#)

3.6.7 Caselaw

PS (LTTE, Internal Flight, Sufficiency of protection) Sri Lanka CG [2004] UKIAT 00297 (28 October 2004) The Tribunal:

- restated that Tamils from the north and east of Sri Lanka, under the direct control of the LTTE, and from those areas where the degree of control has fluctuated, can in general terms safely relocate to Colombo to avoid localised fear of the LTTE. Travel restrictions have been greatly and progressively eased since the ceasefire, with a reduction in the numbers of checkpoints.
- accepted that it is physically possible for LTTE members to travel to Colombo although, in times when they have provoked public concern by their actions there, they would face heightened security measures, albeit not on the scale of the former cordon and search operations regularly carried out prior to the ceasefire. Nevertheless, it is clear that they do not choose to do so on an indiscriminate basis in order to find all those against whom they may harbour some suspicion.
- concluded that 'As we have already observed, those who the LTTE has on the objective evidence targeted in Colombo since the ceasefire have all been high profile opposition activists, or those whom they would see are renegades or traitors to the LTTE' (p71) and for those who are not high profile 'there is no arguable basis for saying that the Sri Lankan state does not provide a sufficiency of protection to the generality of Tamils having a localised fear of the LTTE in their home area.' (p72).

AN & SS (Tamils-Colombo-risk?) Sri Lanka CG [2008] UKAIT 00063. The AIT found that since the breakdown of the ceasefire, heightened security in Colombo has restricted the operations of the LTTE who are focusing on high profile targets. Background evidence does not show that Tamils in

¹⁶ Human Rights Watch World Report 2011; British High Commission letter 19 January 2011

¹⁷ ICG report "Sri Lanka: A Bitter Peace" 11 January 2010; ICG report "The Sri Lankan Diaspora after the LTTE" 23 February 2010; The Statesman "LTTE remains a threat to India: Tribunal, 12 November 2010. ThaIndian "LTTE tells India it is not trying to regroup", 12 November 2010

¹⁸ UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-seekers from Sri Lanka, 5 July 2010; Minority Rights Group International "No war, no peace: the denial of minority rights and justice in Sri Lanka", January 2011 (P12); International Commission of Jurists: ICJ Briefing Note; "Beyond lawful constraints: Sri Lanka's mass detention of LTTE suspects" Sept 2010 (P10).

Colombo who have stopped supporting the Tigers, or who support parties opposed to them, are at real risk of reprisals, absent some features bringing them to prominence and the conclusion to this effect in PS Sri Lanka CG [2004] is updated and superseded by this determination. And:

- Since the breakdown of the ceasefire the operating capacity of the LTTE has been restricted and they are concentrating their attacks on individuals with a high political or military profile as well as members of the security forces generally and upon military installations.
- There is scarcely any evidence that low level supporters/ opponents of the LTTE who have left their ranks have been targeted in Colombo since 2004
- There is no solid evidence that the LTTE maintain a computerised database of opponents and defectors against which a check may be run when a person comes to their notice.
- For a person at risk in their home area in the North or the East but who is not risk in Colombo, relocation to Colombo will not in general be unduly harsh. Young Tamil men are likely to be stopped at checkpoints or rounded up in cordon and search operations or in raids upon lodges but most detainees are released in a fairly short time and those arriving without a national ID card should be able to get a replacement without too much difficulty. Abductions and kidnappings have tended to focus on businessmen and those about to leave the country although there is recent evidence that LTTE supporters are being abducted by paramilitaries.

3.6.8 Conclusion The LTTE has been comprehensively defeated militarily and its leadership destroyed. There is currently no reported LTTE activity in Sri Lanka. The high military presence in former LTTE strongholds reduces the potential risk of them regrouping and the government is committed to criminally prosecute 'hardcore' LTTE members. It is therefore unlikely that claimants in this category are at continuing risk from the LTTE as an organisation.

3.6.9 If an individual applicant expresses a fear of particular individuals as a result of past animosities, their claims should be carefully considered on their individual merits. In such cases, case owners should carefully consider the individual circumstances to determine whether there is a continued real risk of harm and, if so, whether state protection would be available and/or internal relocation a viable option.

3.6.10 Case owners should note that members of the LTTE and paramilitary groups have been responsible for serious human rights abuses. If it is accepted that an applicant was actively involved in such actions, case owners should consider whether any of the exclusion clauses are applicable.

3.7 Fear of persecution by the Sri Lankan authorities

3.7.1 Applicants may claim asylum based on fear of persecution by the Sri Lankan authorities/police/security services/army/paramilitaries due to their perceived support for or past LTTE involvement or Tamil ethnicity generally.

3.7.2 During the conflict, there were numerous accounts that the Sri Lankan security forces, police, government-aligned paramilitary groups and others believed to be working with the awareness and assistance of the government were involved in arbitrary arrests and detention, disappearances, and the use of torture and unlawful killings of Tamils suspected of being LTTE operatives and sympathisers. Although such abuses predominantly affected Tamils, state agents have also allegedly been involved in similar mistreatment of Sinhalese and people from other ethnic groups perceived to be sympathetic to the Tamils' cause. Since the end of the war, the human rights situation has improved significantly but some concerns remain.¹⁹

¹⁹ Country of Origin report Sri Lanka 11 November 2010 (Section 7); FCO Country Profile: Sri Lanka, May 2010

Tamil ethnicity

- 3.7.3** Tamils maintain that they suffer longstanding systematic discrimination by the government. Minority Rights Group International (MRGI) reported in January 2011 that, following the end of the war, grievances remain. Both Tamil and Muslim groups living in the north and east describe harsh material conditions, economic and political marginalisation and militarism. Many are displaced and have inadequate housing, land issues and limited livelihood opportunities. There are concerns about ‘Sinhalisation’ and the resulting erosion of the right to express their cultural, religious and linguistic identity. Some members of minority communities living in army-controlled areas interviewed for the MRGI report spoke of intimidation and harassment at the hands of the military, including sexual harassment and rape. The report notes that perpetrators were able to act with impunity and victims are denied access to justice.²⁰

Emergency regulations/Prevention of Terrorism Act

- 3.7.4** The UNHCR reported in its ‘Eligibility Guidelines’, July 2010 that the Prevention of Terrorism Act (PTA) and the Emergency Regulations have generated considerable controversy relating to the arrest and detention of persons suspected of having LTTE links. Human rights observers have also expressed concerns regarding the broadly defined offences which allow, inter alia, detention without charge for up to 18 months and use of informal places of detention. A February 2011 Amnesty International Report notes that the emergency laws grant state authorities sweeping powers of detention and permit holding people in secret locations, a practice considered to facilitate human rights abuses like enforced disappearances, torture and deaths in custody.²¹ Several sources indicate that many emergency regulations are still in place and that the Prevention of Terrorism Act enables security forces to circumvent basic due process.²²
- 3.7.5** The UNHCR Guidelines state that “According to some reports young Tamil men, particularly those originating from the north and east of the country, may be disproportionately affected by the implementation of security and anti-terrorism measures on account of their suspected affiliation with the LTTE.”²³

Passing of the 18th amendment – increase in presidential power

- 3.7.6** Following consolidation of the President’s position in 2 elections during 2010, the Sri Lankan parliament passed a constitutional amendment in September that removed the presidential two-year term limit and overturned an earlier amendment designed to de-politicise appointments to the police, judiciary, public service and electoral commissions. Concerns have been raised about the effect on the democratic process.²⁴

²⁰ Country of Origin report Sri Lanka 11 November 2010 (Paragraph 20.01 – 20.12); Minority Rights Group International “No war, no peace; the denial of minority rights and justice in Sri Lanka, January 2011.

²¹ [Amnesty International, Forgotten prisoners: Sri Lanka uses anti-terrorism laws to detain thousands, 01/02/2011](#)

²² [Human Rights Watch, World Report 2011: Sri Lanka, 24/01/2011. See also Amnesty International, Forgotten prisoners: Sri Lanka uses anti-terrorism laws to detain thousands, 01/02/2011 and Asian Human Rights Commission, Death sentences carried out by the police in Sri Lanka, 22/10/2010](#)

²³ [United Nations High Commissioner for Refugees \(UNHCR\), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka, 05/07/2010](#), 1. Persons Suspected of Having Links with the Liberation Tigers of Tamil Eelam (LTTE)

²⁴ Country of Origin report Sri Lanka 11 November 2010

Treatment of ex-combatants

- 3.7.7** It is reported that the majority of detainees who surrendered after the war and were detained in the rehabilitation camps were forcibly recruited by the LTTE particularly during the last stages of the war with many having spent only a few hours as combatants. Others were not combatants but were employed by the LTTE in their non-military structures. Any alleged association with the LTTE appears to have been grounds for arrest. Many detainees with minimal involvement with the LTTE surrendered themselves to the Sri Lankan authorities.²⁵
- 3.7.8** The British High Commission (BHC) in Colombo reported in January 2011 that in 2009 the Ministry of Disaster Management & Human Rights began compiling the “National Framework Proposal for Reintegration of Ex-Combatants into Civilian Life in Sri Lanka” and approached IOM to look at an operational programme for rehabilitation and reintegration of ex-combatants in the north of the country. The Sri Lankan Ministry of Defence was given direct responsibility for Disarmament, Demobilisation and Reintegration (DDR). The detained cadres were split into 3 groups: active LTTE members who were served with detention orders and would be charged with offences, believed to number around 1,400; former LTTE cadres who may be held in Protective Accommodation and Rehabilitation Centres (PARCs) for between six months and one year; those with low level LTTE involvement, believed to number between 3,000 – 4,000. These would be released and receive community integration.²⁶
- 3.7.9** IOM was allowed access to three PARCs and noted that ex-combatants were receiving vocational training in a variety of trades, living accommodation was adequate and there was no evidence of mistreatment. In February 2010, the National Child Protection Chairman stated that the government would release all of the detained ex-LTTE child combatants by the end of May 2010. Groups with low level LTTE involvement were released in batches throughout 2010. Their release has been criticised as poorly planned with no reintegration assistance - it is generally acknowledged that the situation could have been managed better and the government could have done more to improve how it is perceived.²⁷
- 3.7.10** Human rights groups are concerned that the lack of transparent framework for rehabilitation and reintegration creates a situation in which detainees are vulnerable to serious violations. According to a September 2010 International Commission of Jurists (ICJ) report, those concerns are justified when set against a history of arbitrary detention, torture and other ill-treatment, extra-judicial killings and enforced disappearances in Sri Lanka. There are also concerns about the continued detention of several thousand individuals in a dozen or so rehabilitation centres without charge, trial, access to lawyers or independent monitoring which fails to meet international law and standards.²⁸

Commission on Lessons Learnt & Reconciliation (LLRC)

- 3.7.11** In May 2010 the President set up the Commission to examine the “lessons to be learnt from events” between February 2002 and May 2009. Human rights groups are sceptical and say the commission is aimed at deflecting calls for an international inquiry into alleged war crimes. Some have refused to cooperate with the Commission. On 22 June 2010, the UN Secretary-General also appointed a Panel of Experts to advise on violations of international human rights and humanitarian law during the final stages of the conflict.²⁹ Human Rights

²⁵ Ilankai Tamil Sangam “Reconciliation through ‘Rehabilitation’ ‘Reintegration’ of Ex-LTTE Members, 19 October 2010; International Commission of Jurists: ICJ Briefing Note; “Beyond lawful constraints: Sri Lanka’s mass detention of LTTE suspects” Sept 2010

²⁶ British High Commission letter 19 January 2011

²⁷ British High Commission letter 19 January 2011

²⁸ Country of Origin report Sri Lanka 11 November 2010 (Paragraph 3.6.4 and Section 4); ICG report “Sri Lanka: A Bitter Peace” 11 January 2010; International Commission of Jurists: ICJ Briefing Note; “Beyond lawful constraints: Sri Lanka’s mass detention of LTTE suspects” Sept 2010

²⁹ Country of Origin report Sri Lanka 11 November 2010 (4.43); UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-seekers from Sri Lanka, 5 July 2010

Watch notes that “Senior government officials have repeatedly stated that no civilians were killed by Sri Lankan armed forces during the final months of the fighting, despite overwhelming evidence reported by Human Rights Watch and others that government forces frequently fired artillery into civilian areas, including the government-declared “no fire zone” and hospitals.”³⁰ Amnesty International also reports that “Investigations into human rights violations by the military and police stalled. Court cases did not proceed as witnesses refused to come forward for fear of reprisals”.³¹

Paramilitary groups/rival political factions

- 3.7.12** The main Tamil groups with paramilitary elements are the Tamil Makkal Viduthalai Pullika (TMVP) - Karuna or Pillayan factions, Eelam People’s Democratic Party (EPDP) or People’s Liberation Organisation of Tamil Eelam (PLOTE). Some groups are formally allied to the Government. Both Karuna and the leader of the EPDP, Douglas Devananda, are members of the national parliament and have ministerial responsibilities. Pillayan is Chief Minister of the Eastern Provincial Council. Paramilitary activity has been linked to incidents of enforced disappearances and hostage-taking for ransom, criminal activities, unlawful killings, torture, recruitment of child soldiers and accusations that such groups act with impunity. In March 2010, TMVP were reported to be active in the east; PLOTE in IDP camps in Vavuniya; and the EPDP in Jaffna.³²
- 3.7.13** Humanitarian agencies agree the security situation with regard to paramilitaries has improved and incidents of violence have declined since the end of the war although some are still reported.³³ The UNHCR noted in its Guidelines that the security situation in Sri Lanka had significantly stabilised. However, the Minority Rights Group reported in 2011 that former members of the EPDP “have been responsible for a spate of recent extra-judicial killings, disappearances and abductions. Some are still armed, even if they do not carry weapons publicly. They also work closely with the military as informants.” According to MRG, “Several hundred cases of intimidation and harassment by paramilitary groups, and an increase in detentions, were recorded in the run-up to the elections. In the aftermath, critics of successful candidates were also attacked or detained.”³⁴

Treatment of failed asylum seekers

- 3.7.14** The end of the armed conflict and the significantly improved security conditions throughout the country have resulted in a reduction in the number of Sri Lankans seeking international protection in industrialised countries - a decrease of 35%.³⁵ Information about the treatment of failed asylum seekers can be found in the COI report.³⁶ Case owners should also refer to the latest UK position on returns below (Section 5)

See also: [Actors of Protection](#)
[Internal Relocation](#)

37.15 Case law

LP (LTTE area – Tamils – Colombo – risk? Sri Lanka CG) [2007] UKIAT 00076.

The Tribunal found that;

³⁰ [Human Rights Watch, Word Report 2011: Sri Lanka, 24/01/2011](#)

³¹ [Amnesty International, Amnesty International Report 2010: Sri Lanka, 27/05/2010](#)

³² Country of Origin report Sri Lanka 11 November 2010 (Section 10)

³³ Country of Origin report Sri Lanka 11 November 2010 (Section 10)

³⁴ [Minority Rights Group International \(UK\), No war, no peace: the denial of minority rights and justice in Sri Lanka, 19/01/2011](#) Justice, accountability and reconciliation; Danish Immigration Service, *Human Rights and Security Issues concerning Tamils in Sri Lanka* (fact-finding mission to Colombo, Sri Lanka), 15 October 2010

³⁵ UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-seekers from Sri Lanka, 5 July 2010

³⁶ Country of Origin report Sri Lanka 11 November 2010 (33.11 – 33.21 and 33.22 – 33.23)

(1) Tamils are not per se at risk of serious harm from the Sri Lankan authorities in Colombo. A number of factors might increase the risk, including but not limited to:

- Tamil ethnicity
- Previous record as a suspected or actual LTTE member or supporter
- Previous criminal record and/or outstanding arrest warrant
- Bail jumping and/or escaping from custody
- Having signed a confession or similar document
- Having been asked by the security forces to become an informer
- The presence of scarring
- Returned from London or other centre of LTTE activity or fund raising
- Illegal departure from Sri Lanka
- Lack of ID card or other documentation
- Having made an asylum claim abroad
- Having relatives in the LTTE

The Tribunal found that in every case, those factors and the weight to be ascribed to them, individually and cumulatively, must be considered in the light of the facts of each case but they are not intended to be a checklist.

(2) If a person is actively wanted by the police and/or named on a Watched or Wanted list held at Colombo airport they may be at risk of detention at the airport.

(3) Otherwise, the majority of returning failed asylum seekers are processed relatively quickly and with no difficulty beyond some possible harassment.

(4) Tamils in Colombo are at increased risk of being stopped at checkpoints, in a cordon and search operation, or of being the subject of a raid on a lodge where they are staying. In general, the risk again is no more than harassment and should not cause any lasting difficulty, but Tamils who have recently returned to Sri Lanka and have not yet renewed their Sri Lankan identity documents will be subject to more investigation and the factors listed above may then come into play.

(5) Returning Tamils should be able to establish the fact of their recent return during the short period necessary for new identity documents to be procured.

(6) A person who cannot establish that he is at real risk of persecution in his home area is not a refugee; but his appeal may succeed under Article 3 of the ECHR, or he may be entitled to humanitarian protection if he can establish he would be at risk in the part of the country to which he will be returned.

(7) The weight to be given to expert evidence (individual or country) and country background evidence is dependent upon the quality of the raw data from which it is drawn and the quality of the filtering process to which that data has been subjected. Sources should be given whenever possible.

(8) The determinations about Sri Lanka listed in paragraph 226 are replaced as country guidance by this determination. They continue to be reported cases.

AN & SS (Tamils-Colombo-risk?) Sri Lanka CG [2008] UKAIT 00063.

The AIT said that the country guidance in LP [2007] remained valid and endorsed the suggestion made by Collins J that the 12 risk factors listed in LP could usefully be divided into background factors. These background factors in themselves did not present a real risk to failed asylum seekers in Colombo but may exacerbate the situation when they combine with the 12 risk factors identified in LP. The AIT also found that:

- The National Intelligence Bureau in Sri Lanka maintains a computerized database of persons who pose a threat, while immigration officers at Bandarananaike International Airport use a computer system which can flag up whether a newly arrived passenger is on the wanted or stop list. However there is no firm evidence that everyone who has ever been detained by the police or army is likely to be on the database.
- Failed asylum seekers in Colombo who arrive without a National Identity Card are usually able to obtain one on production of a birth certificate which is also usually easy to obtain

- Roadside checkpoints and raids upon lodges do not in general create a real risk of persecution or serious ill treatment. Most of those held are released within a reasonably short period of time and the Supreme Court has intervened to curb the excesses of the security forces.
- Abductions and kidnappings have been carried out by a wide variety of groups, mostly pro government militias and criminal gangs but the scale of these disappearances does not affect failed asylum seekers arriving in Colombo. Abductions and killings have tended to focus on businessmen and those about to leave the country, although there is recent evidence of LTTE supporters being abducted by pro government paramilitaries.
- For person at risk in their home area but who is not at risk in Colombo, relocation to the capital will in general not be unduly harsh

NA v United Kingdom ECHR (2008) – risk on return to Sri Lanka for Tamils.

The Court endorsed existing country guidance (LP and PS) on risk to Tamils in Sri Lanka. Having examined closely developments in Sri Lanka since the AIT determination in LP, the Court considered that there was no general risk of mistreatment to Tamils in Sri Lanka and that nothing in the objective information submitted to the Court would require a different conclusion than that reached in the case of LP. The Court did not consider it necessary to identify any additional risk factors than those identified in LP though it agreed with the AIT that the list was not exhaustive. The Court emphasised that any individual asylum decision should be based on a fair assessment of the cumulative weight of the risk factors identified in LP, the general situation in Sri Lanka and the individual circumstances of the case. In particular the Court found that:

- there was a greater risk of detention and interrogation at Colombo airport than in Colombo city since the authorities at the airport would have greater control over the passage of persons there than the population at large;
- the majority of risk factors in LP would be more likely to bring a returnee to the attention of the Sri Lankan authorities at the airport than Colombo city
- the assessment of whether somebody is at real risk on return may depend on the likelihood of their being detained and interrogated at Colombo airport;
- the Sri Lankan authorities have the technological means and procedures in place to identify failed asylum seekers at the airport and those who are wanted by the authorities, however, the rigour of checks will vary from time to time depending on the security concerns of the authorities; and,
- in respect of risk of ill treatment of Tamils from the LTTE in a government controlled area such as Colombo, consistent with the determination in AIT determination of PS, only Tamils with a high profile as opposition activists or those seen by the LTTE as renegades or traitors may be able to demonstrate a real of mistreatment.

TK (Tamils – LP updated) Sri Lanka CG [2009] UKAI 00049

- a) The risk categories identified in LP (LTTE area – Tamils - Colombo – risk?) Sri Lanka CG [2007] UKAIT 00076 and approved by the European Court of Human Rights (ECtHR) in NA v UK, App.no. 25904/07, remain valid.
- b) Events since the military defeat of the LTTE in May 2009 have not aggravated the likely approach of the Sri Lankan authorities to returned failed asylum seekers who are Tamils; if anything the level of interest in them has decreased. The principal focus of the authorities continues to be, not Tamils from the north (or east) as such, but persons considered to be either LTTE members, fighters or operatives or persons who have played an active role in the international procurement network responsible for financing the LTTE and ensuring it was supplied with arms.
- c) The records the Sri Lanka authorities keep on persons with some history of arrest and detention have become increasingly sophisticated; their greater accuracy is likely to reduce substantially the risk that a person of no real interest to the authorities would be arrested or detained.
- d) The practice of immigration judges and others of referring to “objective country evidence”, when all they mean is background country evidence, should cease, since it obscures the need for the decision-maker to subject such evidence to scrutiny to see if it conforms to legal standards for assessing the quality of Country of Origin Information (COI) as identified by the ECtHR in NA and as set out in the Refugee Qualification Directive (2004/83/EC), Article 4(1), 4(3)(a), 4(5),4(5)(a) and 4(5)(c) and the Procedures Directive (2005)85/EC, Article 8(2)(a)and (b) and 8(3).

- 3.7.16 Conclusion.** The latest IAC country guidance case, *TK*, confirms the risk categories identified in *LP* which were also endorsed by the ECtHR in *NA* and finds that the military defeat of the LTTE in 2009 has not aggravated the likely approach of the Sri Lankan authorities to returned failed asylum seekers who are Tamils; if anything, the level of interest in them has decreased. The principal focus of the authorities continues to be, not Tamils from the north (or east) as such, but persons considered to be either LTTE members, fighters or operatives or persons who have played an active role in the international procurement network responsible for financing the LTTE and ensuring it was supplied with arms.
- 3.7.17** UNHCR Guidelines affirm that, owing to reports of torture of persons suspected of LTTE links in detention; deaths of LTTE suspects whilst in custody; as well as poor prison conditions (see section 3.9 below), persons suspected of having links with the LTTE may be at risk of persecution in Sri Lanka. UNHCR also notes that, according to some reports, young Tamil men, particularly those originating from the north and east of the country may be disproportionately affected by the implementation of security and anti-terrorism measures on account of their suspected affiliation with the LTTE.
- 3.7.18** The IAC found in *TK* that the records the Sri Lanka authorities keep on persons with some history of arrest and detention have become increasingly sophisticated; their greater accuracy is likely to reduce substantially the risk that a person of no real interest to the authorities would be arrested or detained.
- 3.7.19** As noted above (3.7.7 – 3.7.10), several thousand people were detained or “surrendered” when the conflict came to an end, including some with minimal involvement in the LTTE. Reports vary as to actual numbers, but several thousand with low level involvement have since been released in tranches which suggests that in general they are not of continuing interest to the authorities. The key question, in light of improvements in the overall security situation, is whether any past involvement in the LTTE is currently likely to bring returnees to the adverse attention of the Sri Lankan authorities.
- 3.7.20** If credibility is accepted, case owners should assess the applicant’s individual circumstances taking into account the *LP* risk factors together with the added guidance given in *TK*, particularly with regard to the international procurement network and arms supply. The evidence suggests that many Tamils were forcibly recruited by the LTTE and many others had only minor involvement. Such persons are less likely to be either known or of current interest to the authorities than those with a significantly higher profile. However, each case should be considered carefully on its own facts.
- 3.7.21** Where fear is of ill-treatment/persecution by the state authorities or agents acting on behalf of the state, claimants cannot usually apply to these authorities for protection. In the case of paramilitaries, case owners should assess availability of protection on a case by case basis taking into account: whether the groups are authorised or directed by the state to engage in actions which may amount to persecution; whether such actions are not directed by the state but are either tolerated or not controlled by the state; the area of operation of the particular group; whether evidence suggests the group are causing ongoing harm in the location(s) identified by the applicant; whether the applicant is individually likely to remain of serious adverse interest; evidence of State intervention against any criminal activity of the group.
- 3.7.22** As this category of applicants’ fear is of ill-treatment/persecution by the state authorities, and the government administers tight control of the entire state, then in general internal relocation to escape that persecution will not be an option. However, where applicants fear members of paramilitary groups, internal relocation from the areas of activity of the relevant group may be viable. Each case should be considered carefully on its individual circumstances.

3.7.23 With regard to paramilitaries, case owners should consider in individual cases the location of perceived harm; whether the claimed threat is ongoing; the status of the group concerned and the likelihood of such group acting with impunity.

3.8 Journalists, civil society, human rights activists, opposition supporters

3.8.1 Some applicants may claim fear of ill-treatment amounting to persecution at the hands of the Sri Lankan authorities due to perceived criticism of the government in their roles as journalists, lawyers, human rights activists or supporters of the political opposition.

3.8.2 The UNHCR reports that, notwithstanding the end of the conflict, restrictions on media independence and freedom are reported to persist, including restricted access to certain regions of the country. Concerns have been raised about incidents of harassment, death threats, physical attacks and abductions directed against certain members of civil society, including human rights activists and lawyers or witnesses involved in corruption cases or representing alleged victims of human rights abuses.³⁷ The 2010 UNHCR Guidelines further note that media professionals, activists and civil society members “who express, or are perceived to hold, critical views on sensitive issues, may be at risk on the ground of (imputed) political opinion”³⁸. The World Organisation Against Torture (OMCT)/International Federation for Human Rights³⁹ and the Asian Human Rights Commission⁴⁰ report on the harassment, threats, intimidation, arrest, forced disappearances and death of individuals perceived to be opposing the Sri Lankan government and state security forces. Minority Rights Group International noted in 2011 that “There have been attacks on opposition politicians and the media, a clampdown on civil society organizations, and growing intolerance of any form of opposition and dissent”⁴¹.

3.8.3 For example, the Committee to Protect Journalists reported on 31 January 2011 an arson attack on the offices of the independent Sri Lankan website Lanka eNews in Colombo and called for the UN to intervene to protect Sri Lanka’s media. Lanka eNews has been critical of the government and had sided with former presidential candidate, Sareth Fonseka, who is now in jail.⁴²

3.8.4 General Sarath Fonseka led the Sri Lankan army against the LTTE during the war but developed differences with President Rajapakse and resigned from the Army after the war to compete against him in the Presidential elections. He was arrested on 8 February 2010, 2 weeks after his defeat in the presidential elections and has remained in military custody since. His supporters say the cases against him are politically motivated. Despite protests by hundreds of Democratic National Alliance (DNA) members in Colombo demanding his release, court martial proceedings began in mid-March 2010. He was elected an MP for the opposition DNA in the April parliamentary elections. In September 2010, a military court convicted Fonseka of corruption in breaching arms procurement guidelines. He was stripped of his rank and pension after being convicted of engaging in politics while in uniform. He also faces charges in the civilian courts. In February 2011, opposition supporters took part in a demonstration to mark a year since Fonseka’s detention. Human

³⁷ Country of Origin report Sri Lanka 11 November 2010 (16.01 – 17.07)

³⁸ United Nations High Commissioner for Refugees (UNHCR), [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka](#), 05/07/2010, sections III, A, 2 and 3.

³⁹ See for example World Organisation Against Torture (OMCT) / International Federation for Human Rights (FIDH), [Arrest and release of Messrs. Aruna Roshantha and Marcus Anthony Fernando](#), 09/12/2010.

⁴⁰ See for example Asian Human Rights Commission, [Sri Lanka: Without Witness and Victim Protection Legislation, No Hope for Restoration of Justice in Sri Lanka](#), 21/01/2011; Asian Human Rights Commission, [Sri Lanka: A whistle-blower who exposed the leakage of a question paper at Sri Lanka Law College forced into hiding](#), 29/12/2010; Asian Human Rights Commission, [Sri Lanka: The murder of a witness by police must be independently investigated](#), 26/04/2010.

⁴¹ Minority Rights Group International (UK), [No war, no peace: the denial of minority rights and justice in Sri Lanka](#), 19/01/2011, Introduction.

⁴² Committee to Protect Journalist “United Nations must intervene to protect Sri Lanka’s media, January 2011

Rights Watch in its 2011 report noted arrests of Fonseka staff and supporters. Other reports allege attacks on and arrest of opposition activists.⁴³

See also: [Actors of Protection](#)
[Internal Relocation](#)

3.8.5 Conclusion. Applicants perceived to be active or influential in opposition to the Sri Lankan Government may be at risk of persecution by the state. Given the tight control the government has over its entire territory, internal relocation is unlikely to avoid such risk.

3.8.6 Case owners must be satisfied that individuals claiming persecution on this basis are able to provide sufficient detail to demonstrate that they will be known to the authorities as having been, or perceived to have been, engaged in such activities.

3.9 Prison conditions

3.9.1 Applicants may claim that they cannot return to Sri Lanka due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Sri Lanka are so poor as to amount to torture or inhuman treatment or punishment.

3.9.2 The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason, or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.

3.9.3 The USSD reported in March 2010 that prison conditions did not meet international standards due to acute overcrowding and lack of sanitary facilities. Prisons designed for 10,000 held 26,000. The combination of overcrowding and poor infrastructure of certain prison facilities, such as the Colombo Remand Prison, amounted to degrading treatment. The government permitted visits to regular and remand prisons and police stations by independent human rights observers and the International Committee of the Red Cross (ICRC) but ended ICRC access to detention camps for former LTTE combatants and certain other facilities.⁴⁴

3.9.4 Many of the protections against torture contained in domestic laws do not apply in cases of detention under the emergency legislation. Amnesty International notes that “in practice, legal safeguards are ignored and many of those arrested and detained are tortured in custody”⁴⁵. Other international reports also indicate continual and well-documented allegations of widespread torture and ill-treatment committed by State forces (police and military) particularly in situations of detention, particularly in and near conflict zones. For example, former detainees of the Terrorist Investigation Division at Boosa Prison in Galle confirmed reports of torture. A significant number of detainees, both LTTE suspects and ordinary criminal suspects are reported to have died in custody.⁴⁶

3.9.5 Human rights groups have raised concerns about lack of protection mechanisms in the Rehabilitation Centres for LTTE ex-combatants set up after the conflict ended. They consider that the danger of serious human rights violations increases substantially when

⁴³ Country of Origin report Sri Lanka 11 November 2010 (15.07 – 15.14); Human Rights Watch World Report 2011: Sri Lanka; BBC News South Asia “Sri Lanka: thousands attend Sarath Fonseka rally” 8 February 2011; Committee to Protect Journalists “Attacks on the Press 2010 – Sri Lanka, 15 February 2011

⁴⁴ Country of Origin report Sri Lanka 11 November 2010 (4.13 – 4.42, 8.38 – 8.44, 13.01 – 13.15)

⁴⁵ Amnesty International, [Forgotten prisoners: Sri Lanka uses anti-terrorism laws to detain thousands](#), 01/02/2011.

⁴⁶ Country of Origin report Sri Lanka 11 November 2010 (8.38, 8.39 and 8.42)

detainees are held in informal locations which lack proper legal procedures and safeguards.⁴⁷ The UN High Commissioner for Human Rights confirmed the existence of unofficial detention centres and enforced disappearances⁴⁸ and the International Commission of Jurists raised concerns over allegations of torture and, enforced disappearance in these camps.⁴⁹ Allegations of enforced disappearances, torture and deaths of persons suspected of LTTE links has also been noted in the July 2010 UNHCR Guidelines, including rape and sexual assault of former LTTE female cadres in detention centres.⁵⁰

- 3.9.6 Conclusion.** Overcrowding and unsanitary conditions which amount to degrading treatment for 'ordinary' detainees have been recorded in some prison facilities and case owners should therefore consider carefully whether the threshold is likely to be breached in individual cases, taking into account any objective material available on potential places of detention. Those perceived to be connected to the LTTE, both men and women, and held in rehabilitation camps, prisons or detention centres may be at heightened risk of ill-treatment and torture.

4. Discretionary Leave

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.

- 4.2** With particular reference to Sri Lanka the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and on Article 8 ECHR.

4.3 Minors claiming in their own right

- 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to; or (b) there are adequate reception and care arrangements. Those who cannot be returned should, if they do not qualify for leave on any more favourable grounds, be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

4.4 Medical treatment

- 4.4.1** Applicants may claim they cannot return to Sri Lanka due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

- 4.4.2** The government health sector takes care of the healthcare needs of the vast majority of the population. There is a countrywide comprehensive network of health centres, hospitals and

⁴⁷ Country of Origin report Sri Lanka 11 November 2010 (4.16, 4.20, 4.21, 4.23 and 4.25)

⁴⁸ Office of the United Nations High Commissioner for Human Rights (OHCHR), [Joint study on global practices in relation to secret detention in the context of countering terrorism \(Sri Lanka excerpt\)](#), 20/05/2010, section 7.

⁴⁹ International Commission of Jurists, [Beyond Lawful Constraints: Sri Lanka's Mass Detention of LTTE Suspects](#), 17/09/2010, section I.

⁵⁰ United Nations High Commissioner for Refugees (UNHCR), [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka](#), 05/07/2010, section III, A, 1 and 4.

other medical institutions. The World Health Organisation notes that nearly 400,000 Sri Lankans suffer from serious mental illness. Sri Lanka's progress in the mental health sector has been described as commendable with a significant improvement in human resources and resources. Further details are provided in the COI report.⁵¹

- 4.4.3** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

- 5.1** There is no policy which precludes the enforced return to Sri Lanka of failed asylum seekers who have no legal basis of stay in the United Kingdom.
- 5.2** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.3** UK enforced returns were 'paused' from 18 May 2009 pending a review of the country situation following the end of the conflict, although Assisted Voluntary Returns continued throughout. Enforced returns have since resumed. BHC reported in July 2010 that in general, the situation regarding all returnees appeared to be more relaxed than was reported following the UKBA/FCO Fact Finding Mission in August 2009. No UK returnees had been held for more than 6-7 hours on arrival, none had been arrested and detained and none had complained about their treatment on arrival by the authorities.⁵² Nevertheless, the safety of any individual return should be assessed by reviewing the risk factors outlined in 3.7.16.
- 5.4** Sri Lankan nationals may return voluntarily to any region of Sri Lanka at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Border Agency, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes. The AVR scheme is implemented on behalf of the UK Border Agency by the International Organization for Migration (IOM) [see 5.5 below] and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Sri Lanka. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Sri Lankan nationals wishing to avail themselves of this opportunity for assisted return to Sri Lanka should be put in contact with the IOM offices in London 0800 783 2332 or www.iomlondon.org.
- 5.5** As of 1 April 2011 the service provider for the delivery of AVR programmes will be changing from IOM to Refugee Action. The AVR Programmes remain the same. Details can be found on Refugee Action's web site at: www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx

⁵¹ COI report Sri Lanka, 11 November 2010 (26.01 – 26.25)

⁵² COI report Sri Lanka, 11 November 2010 (33.11 – 33.23)

6. **List of source documents**

A full list of source documents cited in footnotes in this guidance is set out below:

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