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

**United Nations High Commissioner for Refugees (UNHCR)
21 December 2012
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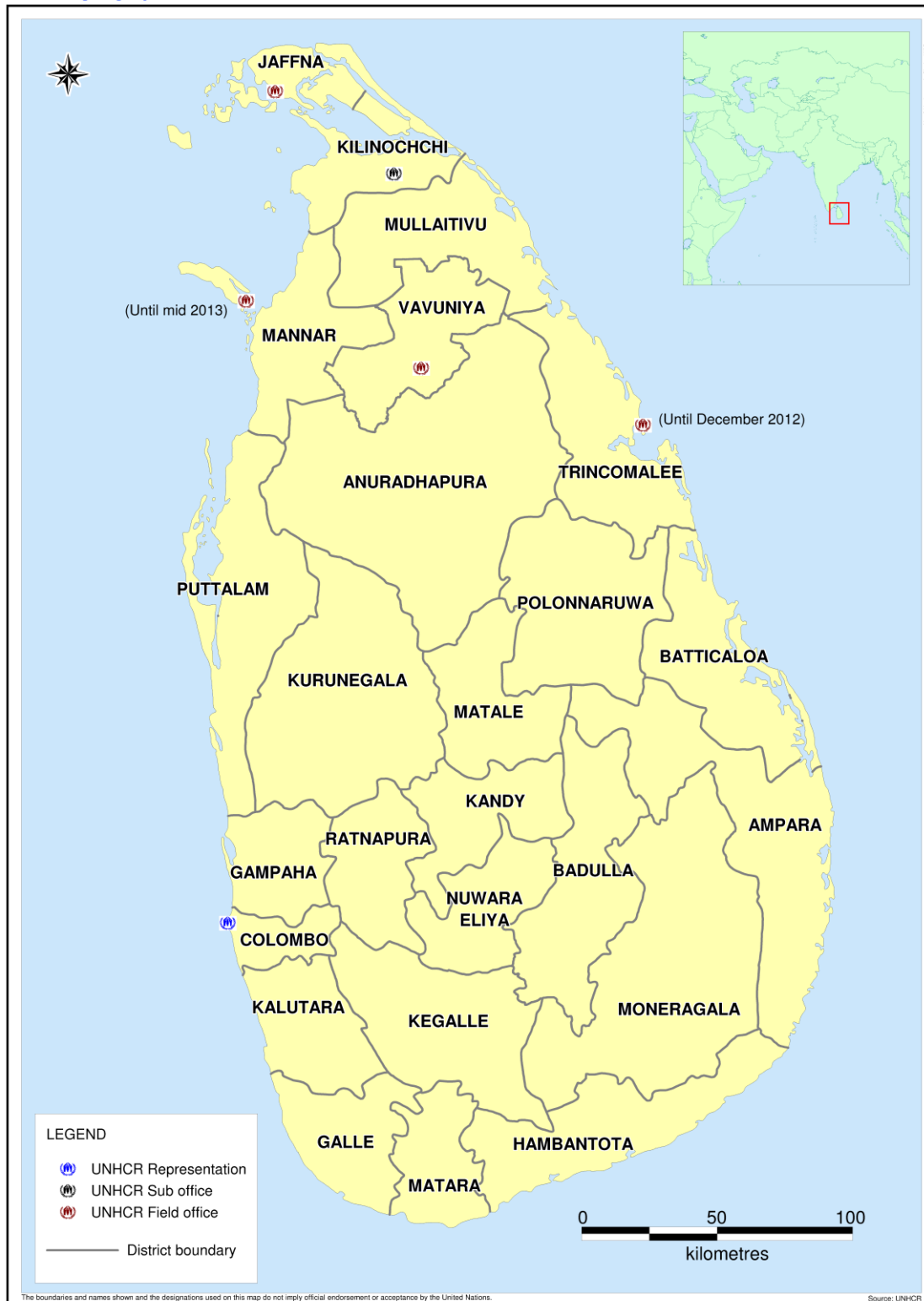
NOTE

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

UNHCR issues *Eligibility Guidelines* to promote the accurate application of the above-mentioned refugee criteria in line with its supervisory responsibility, as contained in paragraph 8 of its Statute in conjunction with Article 35 of the 1951 Convention and Article II of the 1967 Protocol, and based on the expertise it has developed over the years in matters related to eligibility and refugee status determination. It is hoped that the guidance and information contained in the *Guidelines* will be considered carefully by the authorities and the judiciary in reaching decisions on asylum applications. The *Guidelines* are based on in-depth research, information provided by UNHCR's global network of field offices and material from independent country specialists, researchers and other sources, rigorously reviewed for reliability. The *Guidelines* are posted on UNHCR's Refworld website at <http://www.refworld.org>.

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I. Introduction

These Guidelines replace the July 2010 *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*¹ (the July 2010 Guidelines). They are issued against the backdrop of the current situation in The Democratic Socialist Republic of Sri Lanka (hereafter Sri Lanka), where ongoing human rights concerns are reported, including in particular with regard to reports of post-conflict justice, torture and mistreatment, disappearances, arbitrary detention and freedom of expression.

UNHCR's recommendations, as set out in these Guidelines, are summarized below.

All claims lodged by Sri Lankan asylum-seekers, whether on the basis of the refugee criteria contained in the 1951 Convention, or complementary forms of protection based on human rights obligations, need to be considered on their own merits according to fair and efficient status determination procedures and up-to-date and relevant country of origin information.

More specifically, the possible risks facing individuals with the profiles outlined below require particularly careful examination. UNHCR considers that individuals with these profiles – though this list is not exhaustive – may be, and in some cases are likely to be in need of international refugee protection,² depending on the individual circumstances of their case.

- (i) persons suspected of certain links with the Liberation Tigers of Tamil Eelam (LTTE);
- (ii) certain opposition politicians and political activists;
- (iii) certain journalists and other media professionals;
- (iv) certain human rights activists;
- (v) certain witnesses of human rights violations and victims of human rights violations seeking justice;
- (vi) women in certain circumstances;
- (vii) children in certain circumstances; and
- (viii) lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals in certain circumstances.

UNHCR considers that an internal flight or relocation alternative is not available in Sri Lanka in cases where the feared persecution emanates from the state itself or elements associated with it. Given the small size of the country, coupled with the broad reach of the security apparatus, the effective territorial control maintained by the Sri Lankan Army (SLA) since the end of the armed conflict, the “relevance” criterion of the internal flight or relocation alternative test would not be met in such cases. An internal flight or relocation alternative may be available in cases where the feared persecution emanates from non-state agents. In instances where an internal relocation option would be relevant, it may nevertheless not be reasonable, depending on the circumstances of the individual case. Serious social and economic challenges remain in areas previously affected by armed conflict, where livelihood opportunities are extremely limited.

In light of documented human rights violations and transgressions of international humanitarian law by all parties during the three-decade long armed conflict, in addition to alleged serious human rights abuses post-conflict, exclusion considerations under Article 1F of the 1951 Convention may arise in

¹ UN High Commissioner for Refugees, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, 5 July 2010, HRC/EG/SLK/10/03, <http://www.unhcr.org/refworld/docid/4c31a5b82.html>.

² See Convention relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, <http://www.unhcr.org/refworld/docid/3be01b964.html> and Protocol relating to the Status of Refugees, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, <http://www.unhcr.org/refworld/docid/3ae6b3ae4.html>.

individual claims by asylum-seekers from Sri Lanka. Careful consideration needs to be given in particular to the following profiles:

- (i) Certain (former) Government officials, including in functions with responsibilities relating to the conduct of war during the final phases of the conflict, and those posted in the conflict-affected areas during the final phase of the conflict;
- (ii) Certain (former) members of the Sri Lankan Army and other security forces;
- (iii) Certain (former) members of the Sri Lanka Police Service (SLPS), including the Criminal Investigation Division (CID), the Terrorist Investigation Department (TID), and the Special Task Force (STF);
- (iv) Certain former members of the LTTE, in particular former combatants;
- (v) Certain (former) members of the 'Tamil Makkal Viduthali Pulikal' (TMVP), including the Karuna faction and the Inya Barathi Group;
- (vi) Certain (former) members of the Eelam People's Democratic Party (EPDP);
- (vii) Certain (former) members of the People's Liberation Organisation of Tamil Eelam (PLOTE); and
- (viii) Certain (former) members of other pro- and anti-government militias and paramilitary groups.

UNHCR has included in these Guidelines the most up-to-date information available at the time of writing, from a wide variety of sources.³ In addition to publicly available sources such as UN reports and news articles, the analysis contained in these Guidelines is informed by material made available to UNHCR by its operations, including consistent testimonies received from asylum-seekers and refugees from Sri Lanka, as well as by other UN agencies and partners.

II. Main developments in Sri Lanka (since July 2010)

A. Asylum, displacement and return

A.1 Asylum

UNHCR's Global Statistics from 2011 indicate that, at the end of 2011, there were 136,605 refugees from Sri Lanka in some 65 countries, with the majority in India, followed by France, Canada, Germany, the United Kingdom, Switzerland, Australia, Malaysia, the United States and Italy.⁴ In India alone, according to Government records, some 69,000 Sri Lankan refugees are living in 112 camps and a further 32,000 persons are residing outside camps in the southern state of Tamil Nadu, India.

Despite the end of the hostilities in May 2009, Sri Lankans who seek asylum abroad continue to outnumber the Sri Lankan refugees who opt for voluntary repatriation. In 2011, Sri Lanka ranked as the 12th highest source country of asylum-seekers who claimed asylum in 44 industrialized countries, with 8,521 applications.⁵ This number is only slightly lower than in 2010, when Sri Lankans represented the tenth largest source country of asylum-seekers in those same 44 industrialized countries, with 8,874 new applications.

The number of Sri Lankans attempting to leave Sri Lanka in an irregular manner on boats is reported to have increased significantly since the start of 2012. It is difficult to ascertain the exact reasons for

³ These Guidelines are based on information available to UNHCR as of 22 November 2012, unless otherwise stated.

⁴ UN High Commissioner for Refugees, *UNHCR Global Trends 2011: A Year of Crises*, 18 June 2012, <http://www.unhcr.org/refworld/docid/4fdecbe2.html>, table 2, page 45.

⁵ See UNHCR, *Asylum Levels and Trends in Industrialized Countries. Statistical overview of asylum applications lodged in Europe and selected non-European countries. 2011*, 27 March 2012, <http://www.unhcr.org/4e9beaa19.html>, table 10, page 30.

these attempts to depart; the motives are speculated to be mixed in nature.⁶ Irregular departures from the country by sea are a common occurrence in Sri Lanka. Previously, such departures primarily took place from Negombo, located 40 kilometres from Colombo along the north western coastal belt. Since early 2012, attempted departures from other locations have been reported.⁷ The Sri Lankan authorities, including the navy and the police, have increased their vigilance in the relevant locations and have strengthened surveillance in Sri Lanka's territorial waters. This has resulted in an increase in the number of boat interceptions. After interception, the persons on board are reportedly regularly detained. According to a news source, in July 2012 the Sri Lankan authorities claimed to have prevented some 700 irregular departures since the beginning of the year. That same month, some 250 Sri Lankans were reportedly detained in Sri Lanka for reason of attempted irregular departure.⁸ As of September 2012, over 3,600 Sri Lankans have reportedly departed their country in an irregular manner since the beginning of the year, with a view to seeking asylum in Australia.⁹ In November 2012, it was reported that the Sri Lankan authorities have arrested more than 1,200 people trying to leave the island in an irregular manner this year.¹⁰ The majority of the boat arrivals in Australia are reported to be Tamils.¹¹

A.2 Return of Refugees and Failed Asylum-seekers

In 2011, a total of 1,728 refugees returned to Sri Lanka through the facilitated voluntary repatriation programme from India, which is supported by the Governments of India and Sri Lanka and facilitated by UNHCR. This was a decline compared to the previous year, when some 2,054 individuals returned.¹² A commercial ferry service from Tamil Nadu to Colombo raised additional interest in voluntary repatriation in late 2011, but the ferry was later discontinued due to commercial disputes.¹³ Also in 2011, a handful of refugees returned voluntarily with UNHCR assistance from other countries of asylum, specifically Malaysia, Georgia and St. Lucia. In addition, some 634 refugees, who returned on their own, registered with UNHCR field offices in 2011.

The interest of Sri Lankan refugees in voluntarily repatriating continued to decline in 2012, with fewer than 1300 individuals returning to the country through UNHCR's facilitated return program from January to mid December 2012. As in prior years, most refugee returnees came from India, but a small number returned from Malaysia, Hong Kong and Cambodia. In addition, the number of spontaneous refugee returnees who approached UNHCR in field locations has reduced by half compared to 2011.

Vavuniya is the district with the highest number of refugee returns, followed by Trincomalee. In April 2012, four refugee returnees were amongst Tamils arrested in the context of a security operation in Trincomalee, but they were released after a few days.¹⁴

All returnees under the UNHCR facilitated voluntary repatriation programme undergo a questioning session by Immigration Officials for one to two hours upon arrival, followed by security interviews by the State Intelligence Service (SIS), which can take from 30 minutes to five hours. UNHCR is not

⁶ See e.g. The Sydney Morning Herald, *Policy by numbers ignores complex motivations*, 29 September 2012, <http://www.smh.com.au/world/policy-by-numbers-ignores-complex-motivations-20120928-26qos.html>. And ABC News /Australia Network News, *Sri Lankans heading to Australia 'economic migrants', not refugees: IOM*, 7 November 2012, <http://www.abc.net.au/news/2012-11-06/an-sri-lankans-27economic-migrants272c-not-refugees/4355860>.

⁷ In an analysis published by Groundviews, Udappu (Puttalam), Vettalaikkerni (Jaffna) and Salli (Trincomalee) are explicitly mentioned, with most boats passing through Trincomalee Harbor. See Groundviews, *Troubled waters: corruption and human trafficking in post-war Sri Lanka*, 19 July 2012, <http://groundviews.org/2012/07/19/troubled-waters-corruption-and-human-trafficking-in-post-war-sri-lanka/>.

⁸ See Jakarta Globe, *Sri Lanka arrests more 'boatpeople' heading to Australia*, 16 July 2012, <http://www.thejakartaglobe.com/news/sri-lanka-arrests-more-boatpeople-heading-to-australia/530749>.

⁹ The Sydney Morning Herald, *Policy by numbers ignores complex motivations*, 29 September 2012, <http://www.smh.com.au/world/policy-by-numbers-ignores-complex-motivations-20120928-26qos.html>.

¹⁰ Jakarta Globe, *Australia Returns 100 Sri Lankan Asylum-Seekers*, 21 November 2012, <http://www.thejakartaglobe.com/international/australia-returns-100-sri-lankan-asylum-seekers/557393>.

¹¹ ColomboPage, *Over 1,300 asylum seekers from Sri Lanka attempted to enter Australia during this year*, 16 July 2012, http://www.colombopage.com/archive_12A/Jul16_1342417295CH.php.

¹² Statistics and other information in this paragraph available to UNHCR.

¹³ UNHCR, Press Release, *Sri Lankan refugee return figure falls in 2011, amidst suspension of ferry service*, 6 January 2012, <http://www.unhcr.lk/upgrade-pdf/Overallstatsrefugeereturns06012012.pdf>.

¹⁴ Information available to UNHCR.

permitted to remain in the interview room during this process, but waits for the returnees outside the room. Individuals have been allowed to proceed from the security interviews to their destinations.¹⁵ UNHCR provides return and reintegration assistance, including support with onward transportation from the airport to home areas, a reintegration grant, and on-going protection monitoring post-return.

UNHCR post-return monitoring data indicate that in 2011, upon arrival in the village of destination, 75% of the refugee returnees were contacted at their homes by either a military (38%) or police (43%) officer for further “registration”. 26% of these returnees were again visited at home for subsequent interviews, with a handful receiving a number of additional visits by the police or military.¹⁶

In addition, IOM runs in a number of countries an “assisted voluntary return” (AVR) programme primarily intended for stranded migrants, which has been accessed by some Sri Lankan former asylum-seekers whose cases had been rejected in last instance, as well as by some who had abandoned their asylum claims. In 2011, 179 Sri Lankans reportedly returned under the AVR programme, substantially less than the 389 Sri Lankans returning with IOM support in 2010.¹⁷

Some sources have reported recent cases of former Sri Lankan (in particular Tamil) asylum-seekers who were allegedly detained and ill-treated or tortured after having been forcibly returned to Sri Lanka upon rejection of their asylum claims or who voluntarily returned to Sri Lanka.¹⁸ There is no systematic monitoring after arrival in Sri Lanka of the treatment of Sri Lankans who were forcibly returned.

A.3 Internal Displacement

Since the end of the armed conflict, many internally displaced persons (IDPs) have been able to return home. Between April 2009 and the end of November 2012, the total number of returns to the Northern Province, which experienced the highest level of displacement as a result of the conflict, stood at an estimated 482,000 people (145,000 families).¹⁹ Most IDP-returnees went to the districts of Killinochchi and Mullaitivu. The Internal Displacement Monitoring Centre (IDMC) notes that “among those having registered as having returned, many have not been able to achieve a durable solution but continue to face difficulties in accessing basic necessities such as shelter, food, water and sanitation, in rebuilding their livelihoods, and in exercising their civil rights.”²⁰

¹⁵ With the exception of one individual who was detained by the CID on suspicion of having used fraudulent travel documents. Information available to UNHCR.

¹⁶ UNHCR Sri Lanka protection monitoring data.

¹⁷ 2011 data obtained through UNHCR Sri Lanka. In 2009, 291 Sri Lankans returned with IOM support, in 2008 the number was 598. l’Office français de protection des réfugiés et apatrides (OFPRA), *Rapport de mission en République démocratique et socialiste de Sri Lanka, 13-27 Mars 2011*, September 2011, http://www.ofpra.gouv.fr/documents/misSLK_2011.pdf.

¹⁸ Human Rights Watch has reported thirteen cases of arbitrary arrest and torture of failed Tamil asylum-seekers, upon their return to Sri Lanka, most recently in February 2012. See: Human Rights Watch, “UK: Halt Deportations of Tamils to Sri Lanka. Credible Allegations of Arrest and Torture upon Return”, 25 February 2012, <http://www.hrw.org/news/2012/02/24/uk-halt-deportations-tamils-sri-lanka>, and Human Rights Watch, “UK: Suspend Deportations of Tamils to Sri Lanka. Further Reports of Torture of Returnees Highlight Extent of Problem”, 29 May 2012, <http://www.hrw.org/news/2012/05/29/uk-suspend-deportations-tamils-sri-lanka>. Freedom from Torture has documented 54 cases of Sri Lankans (predominantly Tamils), who experienced torture in detention in the post-conflict period (i.e. after May 2009), including cases of individuals who were tortured after having voluntarily or forcibly returned from the United Kingdom to Sri Lanka. See: Freedom from Torture (formerly the Medical Foundation for the Care of Victims of Torture), *Sri Lankan Tamils tortured on return from the UK*, 13 September 2012, <http://www.unhcr.org/refworld/docid/505321402.html>. The total of 54 cases includes 35 cases of post-conflict torture in Sri Lanka documented earlier, including of 14 individuals who returned to Sri Lanka after a period abroad (in three cases the person was forcibly returned from a European State, upon rejection of the asylum claim). See: Freedom from Torture, *Freedom from Torture submission to the Committee against Torture for its examination of Sri Lanka in November 2011*, undated, last accessed November 2012, http://www2.ohchr.org/english/bodies/cat/docs/ngos/FFT_SriLanka47.pdf. See also Amnesty International, *Sri Lanka: Briefing to Committee Against Torture*, October 2011, http://www2.ohchr.org/english/bodies/cat/docs/ngos/AI_SriLanka47.pdf, detailing the case of two brothers who were arrested, imprisoned for 8 months and reportedly tortured in 2009 after having been deported to Sri Lanka from Australia. They were reported to be re-arrested in August 2010. The same case has been reported in more detail in the Asian Human Rights Commission’s report, *Police torture Cases, 1998 – 2011, Sri Lanka*, case 299, page 379, <http://www.humanrights.asia/resources/special-reports/AHRC-SPR-001-2011-SriLanka.pdf>.

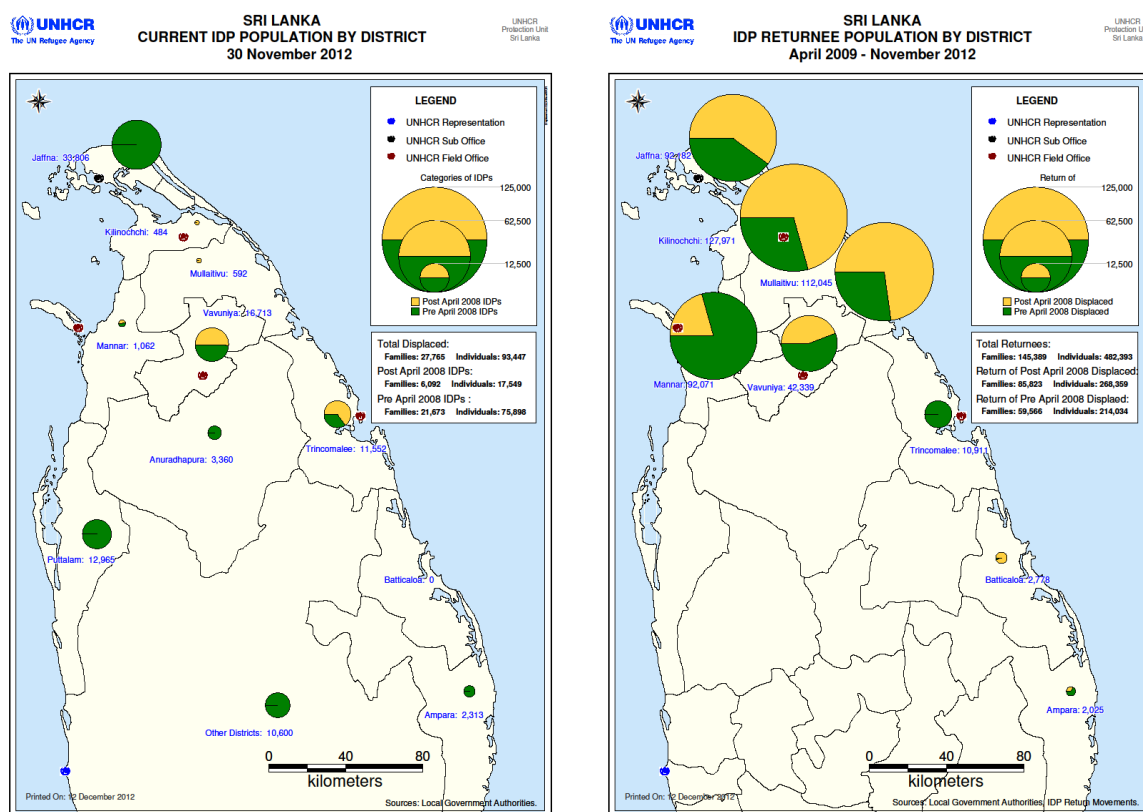
¹⁹ Throughout these Guidelines, UNHCR IDP statistics are UNHCR’s compilation of Government data. Some Government statistics are relatively old and may no longer reflect the current reality.

²⁰ Internal Displacement Monitoring Centre (IDMC), *Sri Lanka: A hidden displacement crisis*, 31 October 2012, <http://www.unhcr.org/refworld/docid/5097ba702.html>.

At the end of November 2012, an estimated 93,400 persons (27,700 families) remained internally displaced according to local and District Government data regularly compiled by UNHCR. More than 6,100 IDPs (1,700 families), including both persons displaced after April 2008 and from the long-term caseload, remained in camps or so-called “welfare centres” at the end of November 2012, awaiting return to their areas of origin or access to another durable solution. An estimated 82,500 IDPs (24,600 families) continue to live with host communities, and a total of approximately 4,700 IDPs (1,450 families) are estimated to remain stranded in transit situations in four of the five northern Districts and in Trincomalee District, pending safe return to their villages of origin (or habitual residence).

Map 2: Sri Lanka – Current IDP Population by District, 30 November 2012;

Map 3: Sri Lanka – IDP Returnee Population by District, April 2009 – November 2012



A.4 IDP Return and Relocation

Despite progress in some areas, as reported above, many IDPs are still awaiting a durable solution, whether this is access to their areas of origin, a relocation alternative or local integration in their current place of displacement. Sri Lanka did make a considerable step towards ending displacement in the country with the closure of Menik Farm²¹ on 25 September 2012 after having postponed the deadline a number of times²² though the closure was not without controversy.²³ The United Nations

²¹ After the end of the conflict, 280,000 to 300,000 IDPs from the Northern Province were confined in Menik Farm, Vavuniya District, an initially closed camp with difficult living conditions. In addition, hundreds of IDPs, including children, were held in the closed camps Kalimodda and Sirukandal in Mannar District. These camps were declared “open” in March and July 2008 respectively. The “Menik Farm” camp was declared open in December 2009, with the implementation of a pass system to allow limited movement outside the camps. Thereafter, many IDPs returned home, often to find the infrastructure destroyed in their villages and surrounding livelihood areas not yet demined. Others departed Menik Farm to remain IDPs but residing instead with extended families in host communities.

²² See e.g. Ministry of Defence and Urban Development Sri Lanka, *Government to shut down Menik Farm, remaining IDPs to be resettled in Kambavil - PTK*, 20 September 2011, http://www.defence.lk/new.asp?fname=20110920_01; BBC Sinhala, *All refugees to be resettled before end of June*, 18 April 2012, http://www.bbc.co.uk/sinhala/news/story/2012/04/120418_manikfarm.shtml.

²³ As regards the departure of the last IDPs from Menik Farm, see e.g. Integrated Regional Information Networks (IRIN), *Sri Lanka: Final batch of Menik Farm IDPs relocated*, 28 September 2012, <http://www.unhcr.org/refworld/docid/506ac6432.html>.

acknowledged this significant development, but expressed concerns that the last group of 110 families (346 persons) who left Menik Farm to return to Kepapilavu was unable to return to their homes, as the land remained occupied by the military. Instead, they moved to state land in Sooriyapuram where they awaited information on the future of their land and on plans for compensation if their return would not be possible. The United Nations observed that displaced people should be able to make an informed and voluntary decision about their future and should participate in the planning for and implementation of a durable solution.²⁴

The United Nations also called on the Sri Lankan authorities to fully implement the recommendations of the Lessons Learnt and Reconciliation Commission (LLRC) concerning the rights of people displaced by the conflict, emphasizing that solving housing, land and property issues is a key element of the reconciliation process. In addition, the need to find solutions for IDPs still residing with host communities, particularly in Jaffna and Vavuniya, was raised by the United Nations.²⁵ The United States Embassy also expressed concern that “many of the most vulnerable families of the war-affected population in the North have been placed on land hastily cleared without adequate shelter, water and sanitation, or provisions to continue their livelihoods.”²⁶

B. Legislative, Electoral, Security and other Relevant Developments

With Parliament’s approval of the 18th amendment to the Constitution²⁷ in September 2010, the executive powers of the President were strengthened. The amendment allows the President to serve any number of terms, replacing the previous maximum of two six-year terms, and gives the President control over appointments to key positions (including Chief Justice, Attorney General and Inspector General of Police as well as the Commissioners of all the formerly independent Commissions, including the Human Rights Commission, the National Police Commission and the Public Service Commission).²⁸ Civil society actors have expressed serious concerns that the 18th amendment does not represent democratic values.²⁹

On 25 August 2011, President Rajapakse announced to Parliament that the government would not seek an extension to the state of emergency upon its expiry in September 2011.³⁰ The state of emergency had been in place for successive periods over the last four decades. This announcement was welcomed by Sri Lankan civil society.³¹ However, the President’s subsequent announcement less than one week later that a number of widely used Emergency Regulations were to remain in force, in the form of regulations under the Prevention of Terrorism Act (PTA), was met with concern.³² These new PTA

²⁴ UN Resident Coordinator/Humanitarian Coordinator, Sri Lanka, *The United Nations welcomes the closure of Menik Farm in Sri Lanka but is concerned for the last remaining displaced people*, 25 September 2012, <http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%20Press%20Release%20-%20Sri%20Lanka%20-%20Closure%20of%20Menik%20Farm%20-%2025%20September%202012.pdf>.

²⁵ See e.g.: LLRC Recommendation 9.142 regarding release of land held by military or compensation, in LLRC, *Report of the Commission of Inquiry on Lessons Learnt and Reconciliation*, November 2011 http://www.priu.gov.lk/news_update/Current_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf.; regarding UN reaction, see also previous footnote.

²⁶ Embassy of the United States Sri Lanka and Maldives, Press Release, *U.S. Embassy Provides Further Support to Internally Displaced Persons*, 12 October 2012, <http://srilanka.usembassy.gov/pr-18oct12.html>.

²⁷ The Constitution of the Democratic Socialist Republic of Sri Lanka, 1978 (as Amended in 2010; i.e. 18th Amendment, Schedule II) <http://www.lawnet.lk/downloads/18thAmendmenAct-E.pdf>.

²⁸ The Constitution of the Democratic Socialist Republic of Sri Lanka, 1978 (as Amended in 2010; i.e. 18th Amendment, Schedule II) <http://www.lawnet.lk/downloads/18thAmendmenAct-E.pdf>.

²⁹ Transparency International Sri Lanka, *Adverse Impact of the 18th Amendment on Governance*, 4 November 2010, <http://www.tisrilanka.org/?p=6430>. See also Centre for Policy Alternatives, *Statement on Eighteenth Amendment Bill*, 3 September 2010, <http://www.tisrilanka.org/?p=6007>.

³⁰ The state of emergency had to be extended every month by the Parliament. After the President’s announcement, the state of emergency was allowed to lapse by not extending it the following month.

³¹ See e.g. the Centre for Policy Alternatives’ (CPA), *Statement on the Termination of the State of Emergency*, 27 August 2011, <http://cpalanka.org/cpa-statement-on-the-termination-of-the-state-of-emergency/>, National Peace Council’s Statement, *Lifting of Emergency will Strengthen Democratic Processes*, 29 August 2011, http://peace-srilanka.org/index.php?option=com_content&view=article&id=402%3ALifting-of-emergency-will-strengthen-democratic-processes&catid=17%3Amedia&Itemid=110.

³² See e.g. Centre for Policy Alternatives, *Statement on the New Regulations under the Prevention of Terrorism Act (PTA)*, 24 September 2011, http://lankanewsweb.rsf.org/english/indexa262.html?option=com_content&view=article&id=233:cpa-statement-on-the-new-

measures entered into force before the state of emergency expired. Civil society expressed particular concern over the continuation of measures relating to detention, including the continued possibility to detain certain persons, ‘surrendees’,³³ for up to 18 months without charge. The PTA also shields government officials, who may have committed wrongful acts such as torture, from prosecution.³⁴

Elections for local government were held on 17 March 2011, 23 July 2011 and 8 October 2011, to elect 4,327 members for 322 out of the 335 local authorities in the country. Elections to two other local authorities in Mullaitivu District were repeatedly postponed due to difficulties in organizing voting for persons who remained internally displaced.³⁵ When reviewing the combined outcomes,³⁶ the President’s party – the United People’s Freedom Alliance (UNPFA)³⁷ – gained control of 270 out of 322 local authorities, with the Tamil National Alliance (TNA) winning control in 32 local authorities.³⁸ The elections are reported to have been accompanied by inter- and intra-party violence and violations of electoral law.³⁹

Since the end of the armed conflict in April 2009, former LTTE combatants and LTTE members and many others suspected of having links with the LTTE have been demobilized and have gone through a “rehabilitation” programme. This has been implemented by the Rehabilitation and Prison Reform Ministry, under the overall guidance and control of the Ministry of Defence. In addition to security and intelligence screening, the rehabilitation programmes reportedly include counselling and vocational and language training. A total of over 11,000 individuals with alleged links to the LTTE – mostly former combatants, but also drivers, cooks and other aides – have undergone this process. Although the rehabilitation was supposed to be completed by 31 December 2011, at the end of January 2012 a total of 1,007 rehabilitees reportedly remained at four rehabilitation centres. Four out of the previous total of 24 rehabilitation centres which were announced to remain open in January 2012 are, according to media reports, specifically used for the rehabilitation of former LTTE cadres being referred for rehabilitation by the courts.⁴⁰ In June 2012, the Ministry of Defence and Urban Development published on its website that out of 11,600 persons, 698 “ex-LTTE cadre” were still undergoing rehabilitation.⁴¹ The Commissioner General of Rehabilitation, Brigadier Darshana Hettiarachchi, was quoted as stating that these 698 persons were sent to rehabilitation on court orders,

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- [regulations-under-the-prevention-of-terrorism-act&catid=1:general&Itemid=29](http://www.peace-srilanka.org/index.php?option=com_content&view=article&id=404:awaiting-benefits-of-lifting-emergency&catid=1:latest&Itemid=121), The National Peace Council of Sri Lanka, Jehan Perera, *Awaiting Benefits of Lifting Emergency*, 5 September 2011, http://www.peace-srilanka.org/index.php?option=com_content&view=article&id=404:awaiting-benefits-of-lifting-emergency&catid=1:latest&Itemid=121.
- ³³ A “surrendee” is defined under Emergency Regulation (ER) 2005 regulation 22, as amended by Regulation No. 1462/8, 12 September 2006) as any person who surrenders to the authorities in connection with a wide range of offences, including firearms and explosives offences, offences under the PTA, certain offences under the Penal Code, or “under any emergency regulation”. Note that the Emergency Regulations lapsed on 31 August 2011.
- ³⁴ Human Rights Watch reported: “Legal proceedings are prohibited if an official acted “in good faith,” or in “pursuance of any order made or direction given under this Act.” ” Human Rights Watch, *Sri Lanka: ‘Bait and Switch’ on Emergency Law*, 7 September 2011, <http://www.hrw.org/news/2011/09/07/sri-lanka-bait-and-switch-emergency-law>. See also Integrated Regional Information Networks (IRIN), *Sri Lanka: Lifting of emergency cautiously welcomed, activists say*, 25 August 2011, <http://www.unhcr.org/refworld/docid/4e575cdd2.html>.
- ³⁵ The Island, *Polls to two Vanni LG bodies put off*, 23 February 2011, http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=19126.
- ³⁶ For detailed results, see Department of Elections website, http://www.slelections.gov.lk/3local_authorities2011_3/province.html (for October elections) and <http://www.slelections.gov.lk/pastElection1.html> (for March and July elections).
- ³⁷ Note that in two locations where the UNPFA won it was contesting under the name National Congress [NC].
- ³⁸ See e.g. for outcome July elections: BBC, *Tamil party wins elections in Sri Lanka’s ex-war zone*, 24 July 2011, <http://www.bbc.co.uk/news/world-south-asia-14267668>. Note that in two locations where the TNA won it was contesting under the name Tamil United Liberation Front [TULF].
- ³⁹ See e.g. BBC, *Sri Lanka ruling coalition sweeps council polls*, <http://www.bbc.co.uk/news/world-south-asia-15236218>, The Sunday Times, *Voter apathy, polls’ law violations, violence highlight LG polls*, 9 October 2011, http://www.sundaytimes.lk/111009/News/nws_014.html, The Campaign for Free and Fair Elections (CaFFE) reported 86 violations of elections law and 5 reported cases of intimidation and assault, Daily Mirror, *Elections not free and fair, CaFFE*, <http://www.dailymirror.lk/news/14002-elections-not-free-and-fair-caffe.html>, The Nation, *Election-related violence reaches a new high*, 13 March 2011, <http://www.nation.lk/2011/03/13/politics.htm>. See also Centre for Policy Alternatives, *CPA Statement on Local Government Elections 23 July 2011*, 23 July 2011, <https://cmev.wordpress.com/2011/07/23/cpa-statement-on-local-government-elections-23-july-2011/>.
- ⁴⁰ Daily Mirror, *Four rehab centres will not be closed*, 16 January 2012, www.dailymirror.lk.
- ⁴¹ Ministry of Defence and Urban Development, *Sri Lanka’s success story on rehabilitation*, 4 June 2012, http://www.defence.lk/new.asp?fname=Sri_Lanka's_success_story_on_rehabilitation_20120604_03. This article was originally published by the Sunday Observer, <http://www.sundayobserver.lk/2012/06/03/fea01.asp>.

and would each have to undergo one year of rehabilitation from the date of their arrival in the rehabilitation centre.⁴²

Some observers have questioned elements of the rehabilitation process, including i) the detention, ii) the involuntariness of participation and iii) the absence of a clear and transparent legal framework with judicial or administrative review and related due process safeguards.⁴³ This last point relates to persons who, depending on the context, are referred to as *surrendees*,⁴⁴ *separatees*⁴⁵ and *rehabilitees*,⁴⁶ although these terms are often used interchangeably. Post-release monitoring and surveillance by the police or the army continue to be a challenge reported by former *rehabilitees*.⁴⁷

According to the Defence Ministry, the Sri Lankan Army has tripled in size since President Rajapakse took office, with many observers attributing the Army's eventual military victory over the LTTE to this increase.⁴⁸ Most observers had expected significant demobilization during the three years after the conflict ended. However, no action has reportedly been taken towards a phased demobilisation of SLA soldiers and no such plans have been put forward.⁴⁹ Instead, SLA soldiers are reported to be increasingly involved in civilian life, including in trade, construction and tourism.⁵⁰ This reported militarization of civilian matters, together with a perceived failure to adequately separate military and civilian roles particularly in governance in the North and East, has been the subject of concern for Sri Lankan civil society and international observers.⁵¹ Furthermore, the Department of Immigration and

⁴² Ministry of Defence and Urban Development, *Sri Lanka's success story on rehabilitation*, 4 June 2012, http://www.defence.lk/new.asp?fname=Sri_Lanka's_success_story_on_rehabilitation_20120604_03. This article was originally published by the Sunday Observer, <http://www.sundayobserver.lk/2012/06/03/fea01.asp>.

⁴³ International Commission of Jurists, ICJ Briefing Note, *Beyond Lawful Constraints: Sri Lanka's mass detention of LTTE Suspects*, September 2010, <http://www.unhcr.org/refworld/pdfid/4ca0ae592.pdf>. See also Human Rights Watch, "Over 1,000 people who renounced support for the LTTE remain detained in so-called 'rehabilitation' centers. And several thousand suspected LTTE members are being held under the lapsed emergency regulations. They have not been tried, despite being held for more than two years," *Testimony of Elaine Pearson before the House of Commons of Canada regarding Human Rights in Sri Lanka*, 1 November 2011, <http://www.hrw.org/news/2011/11/01/testimony-elaine-pearson-house-commons-canada-regarding-human-rights-sri-lanka>.

⁴⁴ See above, footnote 33.

⁴⁵ A "separatee" is a person identified by the Sri Lanka security forces as formerly associated with LTTE but not formally charged.

⁴⁶ A "rehabilitee" is a person undergoing rehabilitation in a rehabilitation centre (for a period of maximum 24 months).

⁴⁷ For further detail, see Profiles, III.A.1, "Persons Suspected of Having (or Having Had) Certain Links with the Liberation Tigers of Tamil Eelam (LTTE)".

⁴⁸ The Economist, *One country, two nations: The Rajapaksa clan is justifiably triumphant. But Sri Lanka remains dangerously divided*, 25 November 2010, <http://www.economist.com/node/17574969>. Note that the 2012 Sri Lanka defence budget represents 20% of total national expenditure, see Jane's, *Defence budget (Sri Lanka)*, 29 November 2011, <http://articles.janes.com/articles/Janes-Sentinel-Security-Assessment-South-Asia/Defence-budget-Sri-Lanka.html>.

⁴⁹ See e.g. chapter on militarization in: Internal Displacement Monitoring Centre (IDMC), *Sri Lanka: A hidden displacement crisis*, 31 October 2012, <http://www.unhcr.org/refworld/docid/5097ba702.html>. This report indicates that as of September 2012 the ratio of military personnel to civilians is estimated to be 1:5 in Mullaitivu and 1:10 in Kilinochchi.

⁵⁰ On the military's engagement in farming and other economic activities in the north, see International Crisis Group (ICG), *Sri Lanka's North II: Rebuilding under the Military*, 16 March 2012, <http://www.unhcr.org/refworld/docid/4f6453832.html>, page 22-23. See also the Economist, *Sri Lanka's Army: In bigger barracks. A victorious army keeps busy despite lack of an enemy*, 2 June 2011, <http://www.economist.com/node/18775481>.

⁵¹ The National Peace Council of Sri Lanka, Jehan Perera, *Economic and Political Costs of Over-Extending Military Role*, 9 November 2011, http://www.peace-srilanka.org/index.php?option=com_content&view=article&id=414:economic-and-political-costs-of-over-extending-military-role&catid=1:latest&Itemid=121. See also Centre for Policy Alternatives, *The Sri Lankan Case: Rhetoric, Reality and Next Steps?*, March 2012, accessible through CPA's facebook page, on <http://www.scribd.com/doc/85006799/The-Sri-Lankan-Case-Rhetoric-Reality-and-Next-Steps>, page 2: "The role of the military in civilian administration continues, including in assuming a dominant role in day-to-day tasks at the village-level such as the registration and photographing of civilians, approving the holding of functions at the community-level, approving beneficiary lists and coordinating NGO activities in the area." The extent of militarisation is also evident with the presence of retired military officials in governance structures such as the two Governors for the North and East respectively, and the Government Agent for Trincomalee district (in the Eastern Province) - all of whom are key officials in the administration of these areas." Note however, that more recently, the following was published on the website of the National Peace Council of Sri Lanka: "While in Vanni region of the north last week, I was told that the army had mostly withdrawn from the daily life of the people. They no longer go from house to house to check up on what the people are doing. The direct dealings of the people are now with the police rather than with the army. There has been a regulation that people in the north need to inform the nearest military camp about any big activity they may be doing that involves a number of participants. People believe that they continue to need to keep the local army commander aware of any big social event they may be having. But now they feel more confident that informing the local civil authority will be sufficient and that they will be the go-between with the army". National Peace Council of Sri Lanka, Jehan Perera, *Dispelling perceptions of uncaring Government in the north*, 26 July 2012, http://www.peace-srilanka.org/index.php?option=com_content&view=article&id=518:dispelling-perceptions-of-uncaring-government-in-the-north&catid=1:latest&Itemid=121. The Centre for Policy Alternatives (CPA) in its recent commentary on the National Action Plan to Implement the Recommendations of the LLRC, continues to warn for a significant role of the Ministry of Defence in the civilian administration, see Centre for Policy Alternatives, Bhavani Fonseka, Luwie Ganeshathasan, Mirak Raheem, *Commentary on the National Plan of Action to implement the recommendations of the Lessons Learnt and Reconciliation Committee*, August 2012, <http://www.scribd.com/doc/103800519/CPA-Commentary-on-LLRC-Action-Plan>.

the civilian Police Service are now under the supervision of the Ministry of Defence, and the NGO Secretariat responsible for regulating the registration of NGOs is within that Ministry. This in turn has raised considerable concerns over restrictions on the ability of these organizations to carry out their tasks.⁵² The Ministry's tasks were further expanded in 2011, when its name was changed to the Ministry of Defence and Urban Development, coherent with an expanded non-security based role in city planning and commercial property development. Fears have been expressed by some segments of the population in the North that, *inter alia*, the persistent and widespread military presence there represents a government policy of "Sinhalization".⁵³

Up to 11,000 SLA deserters, out of a total of up to 60,000, were reportedly arrested between November 2010 and mid-August 2011. At the time it was thought that they would undergo rehabilitation resulting in the clearance of their records, without which they would continue to be at risk of arrest by the military police and would, in all likelihood, encounter difficulties in finding employment.⁵⁴ In November 2011, however, it was reported that the government intended to "de-list" up to 55,000 deserters. Those "de-listed" would not need to undergo rehabilitation. Of the remaining number some 4,500 deserters reportedly had to undergo rehabilitation, 450 deserters were wanted for minor offences and 25 for grave offences.⁵⁵ Concern has been expressed about the fact that the "de-listed" deserters are not put through a formal demobilization process, thus not allowing for the identification of those guilty of crimes or human rights abuses or those in need of psycho-social support.⁵⁶

C. Human Rights Situation

C.1 Access to justice, accountability and post-conflict reconciliation

Since the publication of UNHCR's 2010 Eligibility Guidelines,⁵⁷ when only limited information was available on the final phases of the conflict and its impact on post-conflict reconciliation, much has been published and relevant further developments have taken place. A "Lessons Learnt and Reconciliation Commission" (LLRC) was appointed in May 2010 by President Rajapakse to report on the lessons to be learnt from the events taking place between February 2002 and May 2009. From the time of its appointment, allegations of conflict of interest on the part of its members were made,⁵⁸ and the absence of any powers of enforcement or implementation was deemed problematic by observers.⁵⁹ The March 2011 Report of the UN Secretary General's Panel of Experts on Accountability in Sri Lanka concluded that the mandate and the functioning of the LLRC were not in accordance with international standards. The Panel's findings included that independence and impartiality were

⁵² Rohan Edrisinha of the University of Colombo Law Faculty has analysed the operating environment for NGOs in Sri Lanka in 2010, ahead of the introduction of legislation that facilitates greater governmental control of NGOs: see *Sri Lanka*, published in the International Journal of Not-for-Profit Law, volume 12, issue 3, May 2010, http://www.icnl.org/research/journal/vol12iss3/special_1.htm.

⁵³ International Crisis Group (ICG), *Sri Lanka's North I: The Denial of Minority Rights*, 16 March 2012, <http://www.unhcr.org/refworld/docid/4f6452cb2.html>. Regarding expansion of Ministry of Defence into Urban Development, see Daily FT (Sri Lanka), *Defence Ministry adds UD to its name*, 17 October 2011, <http://www.ft.lk/2011/10/17/defence-ministry-adds-ud-to-its-name>.

⁵⁴ Daily Mirror, *11,000 Deserters arrested: Army*, 20 September 2011, <http://www.dailymirror.lk/news/13669-11000-deserters-arrested-army.html>.

⁵⁵ Daily Mirror, *Army to de-list deserters in four stages*, 10 November 2011, <http://www.dailymirror.lk/news/14686-army-to-de-list-deserters-in-four-stages.html>.

⁵⁶ International Crisis Group, *Sri Lanka: Women's Insecurity in the North and East*, 20 December 2011, <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/217%20Sri%20Lanka%20-%20Womens%20Insecurity%20in%20the%20North%20and%20East%20KO.pdf>.

⁵⁷ See footnote 1.

⁵⁸ See e.g. Integrated Regional Information Networks (IRIN), *Sri Lanka: Pressure mounts on accountability process*, 14 September 2011, <http://www.unhcr.org/refworld/docid/4e76d8132.html>, Amnesty International, *When will they get justice? Failures of Sri Lanka's Lessons Learnt and Reconciliation Commission*, 7 September 2011, ASA 37/008/2011, <http://www.unhcr.org/refworld/docid/4e69a9969.html>.

⁵⁹ International Crisis Group (ICG), *Reconciliation in Sri Lanka: Harder than Ever*, 18 July 2011, Asia Report N°209, <http://www.unhcr.org/refworld/docid/4e2529372.html>.

lacking, the process was not victim-centred, measures for protection of victims and witnesses were insufficient and transparency was lacking.⁶⁰

The LLRC's mandate⁶¹ was extended twice. On 20 November 2011 the LLRC handed over its report to the President,⁶² who passed it on to the Parliament. The report was published on the government website on 16 December 2011.⁶³

The LLRC reportedly received some 1,000 oral testimonies and 5,000 written testimonies, held 52 public hearings and visited 40 villages affected by the armed conflict. Reactions to the Commission's final report have been mixed. International observers and Sri Lankan civil society⁶⁴ have welcomed the public release of the report, its confirmation of considerable numbers of civilian casualties, and its affirmation of principles of good governance and the need for a political solution to address Tamil grievances. On the other hand, these same observers found the LLRC's findings on issues of accountability for violations of human rights and humanitarian law during the last stage of the armed conflict to be inadequate. Representatives of a number of international and national civil society and human rights organizations have repeated their calls for an international investigation into the possible commission of war crimes, crimes against humanity and other violations of international humanitarian law and human rights by all parties to the armed conflict, to allow for reconciliation and to address the perceived culture of impunity.⁶⁵ In its 19th Session, the Human Rights Council adopted a resolution on promoting reconciliation and accountability in Sri Lanka, noting with concern that the LLRC report did not adequately address serious allegations of violations of international law. It called on the Sri Lanka Government to "take all necessary steps to implement the recommendations" of the LLRC report and "to take all necessary additional steps to fulfil its relevant legal obligations and commitment to initiate credible and independent actions to ensure justice, equity, accountability and reconciliation for all Sri Lankans".⁶⁶ No official Tamil or Sinhala translations of the LLRC report appear to have been made available, which limits the accessibility of the LLRC's findings for large segments of the population of Sri Lanka.⁶⁷

⁶⁰ UN Secretary-General (UNSG), *Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka*, 31 March 2011, <http://www.unhcr.org/refworld/docid/4db7b23e2.html>, see in particular paragraphs 434 – 437.

⁶¹ For the LLRC Mandate, see www.llrc.lk.

⁶² BBC Sinhala, *War panel report handed over*, 20 November 2011, http://www.bbc.co.uk/sinhala/news/story/2011/11/111120_llrc_report.shtml.

⁶³ LLRC, *Report of the Commission of Inquiry on Lessons Learnt and Reconciliation*, November 2011, http://www.priu.gov.lk/news_update/Current_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf.

⁶⁴ See e.g. Amnesty International, *Sri Lanka report falls short*, 16 December 2011, <http://www.amnesty.org/en/for-media/press-releases/sri-lanka-report-falls-short-2011-12-16>, Human Rights Watch, *Sri Lanka: report Fails to Advance Accountability*, 16 December 2011, <http://www.hrw.org/news/2011/12/16/sri-lanka-report-fails-advance-accountability>, International Crisis Group, *statement on the Report of Sri Lanka's Lessons Learnt and Reconciliation Commission*, 22 December 2011, <http://www.crisisgroup.org/en/publication-type/media-releases/2011/asia/statement-on-the-report-of-sri-lanka-s-lessons-learnt-and-reconciliation-commission.aspx>, Centre for Policy Alternatives, *Release of Lessons Learnt and Reconciliation (LLRC) Report*, 3 January 2012, <https://cmev.wordpress.com/2011/07/23/cpa-statement-on-local-government-elections-23-july-2011/h>, The National Peace Council of Sri Lanka, Jehan Perera, *LLRC Report reflects enlightened Sri Lankan thinking*, 19 December 2011, http://www.peace-srilanka.org/~peace/index.php?option=com_content&view=article&id=422:llrc-report-reflects-enlightened-sri-lankan-thinking&catid=1:latest&Itemid=121, *Implementing LLRC Report in New Year will be the Challenge*, 29 December 2011, http://www.peace-srilanka.org/~peace/index.php?option=com_content&view=article&id=423:implementing-llrc-report-in-new-year-will-be-the-challenge&catid=1:latest&Itemid=121.

⁶⁵ The Tamil National Alliance, the third-largest political party in the Sri Lankan Parliament and the largest Tamil party, stated that the LLRC Report "categorically fails to effectively and meaningfully deal with issues of accountability". Tamil National Alliance (TNA), *Initial Response to the LLRC Report*, 19 December 2011, <http://tnamediaoffice.blogspot.com/2011/12/statement-by-tna-on-llrc-report.html>.

⁶⁶ The Resolution was adopted by a vote of 24 in favour, 15 against and 8 abstentions. The Human Rights Council further requested the Government to present a comprehensive action plan detailing the steps it has taken and will take to implementing the LLRC recommendations and to address alleged violations of international law. See for details: Human Rights Council, *Resolution adopted by the Human Rights Council 19/2, Promoting reconciliation and accountability in Sri Lanka*, 3 April 2012, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G12/126/71/PDF/G1212671.pdf?OpenElement>.

⁶⁷ See Colombo Telegraph, Jehan Perera, *LLRC action plan And taking LLRC report seriously*, 30 July 2012, <http://www.colombotelegraph.com/index.php/llrc-action-plan-and-taking-llrc-report-seriously/>; see also Groundviews, Geethika Dharmasinghe, *Public Perceptions of the LLRC in Trincomalee*, 27 August 2012, <http://groundviews.org/2012/08/27/public-perceptions-of-the-llrc-in-trincomalee/>.

While the LLRC was implementing its mandate, a number of publications provided new accounts of what allegedly happened during the final stages of the armed conflict.⁶⁸ Some provide overall analyses, while others focus on specific events. The Sri Lankan Ministry of Defence published its own analysis of the armed conflict,⁶⁹ which acknowledged civilian deaths in the final phase of the conflict.⁷⁰ Observers have cautioned, however, that the report is biased and incomplete.⁷¹ In June 2011, a television documentary⁷² by British Channel 4 News showed video material of what appeared to be summary executions, rape and murder, allegedly committed by the SLA in the final phase of the armed conflict.⁷³

A number of committees were established⁷⁴ to follow up on implementation of the LLRC's recommendations. Furthermore, a court of inquiry was established on 2 January 2012 by the Sri Lankan Army to 'inquire into observations made by the LLRC in its report on alleged civilian casualties during the final phase of the humanitarian operation and probe as regards Channel 4 video footage...'.⁷⁵ No public information appears to be available on the terms of reference or the legal framework to be applied by the court of inquiry. In the press, it was reported in June 2012 that the court of inquiry had started its proceedings and that it was not bound by any specific timeframe.⁷⁶ Civil society organizations have expressed concern over a perceived lack of independence, since the court was appointed by the present army commander who was directly involved in military activities in 2009.⁷⁷ On 26 July 2012, the Sri Lankan Government released a National Action Plan on the implementation of the LLRC recommendations, which contains 91 detailed recommendations.⁷⁸ Although the Plan is generally considered as a constructive element in the process of post conflict reconciliation, many local observers continue to have significant reservations.⁷⁹ These observers,

⁶⁸ See e.g. UN Secretary-General (UNSG), *Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka*, 31 March 2011, <http://www.unhcr.org/refworld/docid/4db7b23e2.html>. Also, the former UN spokesman in Sri Lanka published a book with his account of the final stage of the conflict, emphasizing the large numbers of civilian deaths. Gordon Weiss, *The Cage. The fight for Sri Lanka and the last days of the Tamil Tigers*, 2011, The Bodley House, London. See also the Ministry of Defence, *Humanitarian Operation. Factual Analysis 2006 – 2009*, July 2011, http://www.defence.lk/news/20110801_Conf.pdf.

⁶⁹ Ministry of Defence, *Humanitarian Operation. Factual Analysis 2006 – 2009*, July 2011, http://www.defence.lk/news/20110801_Conf.pdf.

⁷⁰ Integrated Regional Information Networks (IRIN), *Sri Lanka: War report a step forward, say activists*, 3 August 2011, <http://www.unhcr.org/refworld/docid/4e3f79fb2.html>.

⁷¹ Human Rights Watch, *Sri Lanka: Official Report Whitewashes Military Abuses*, 1 August 2011, <http://www.unhcr.org/refworld/docid/4e390fd22.html>.

⁷² Channel Four, *Sri Lanka's Killing Fields*, 14 June 2011, TV Broadcast, <http://www.channel4.com/programmes/sri-lankas-killing-fields>.

⁷³ This footage (which included both new and previously-aired material) was denounced by the Sri Lankan government as fake, but authenticated by UN experts. See Channel 4 News, *Sri Lanka execution video 'appears authentic'*, 7 January 2010, <http://www.channel4.com/news/sri-lanka-execution-video-appears-authentic> and *Sri Lanka execution footage: UN calls for investigation*, 31 May 2011, <http://www.channel4.com/news/sri-lanka-execution-footage-un-calls-for-investigation>. See also Human Rights Council, 17th session, 27 May 2011, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns; A/HRC/17/28-Add.1, Addendum. Summary of information, including individual cases, transmitted to Governments and replies received, Appendix. 1. Investigations into a video footage which allegedly documents members of the Sri Lankan Army committing extrajudicial executions, page 423 – 482, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-28-Add1.pdf>. The LLRC report quotes, in addition to Special Rapporteurs Alston and Heyns, other experts with conflicting views on the authenticity of the footage and therefore recommends a further independent investigation, page 147 – 152, LLRC, *Report of the Commission of Inquiry on Lessons Learnt and Reconciliation*, November 2011, http://www.priu.gov.lk/news_update/Current_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf.

⁷⁴ "The former Attorney General, a member of the Sri Lankan delegation for the UN Human Rights Council said LLRC recommendations are being systematically implemented under two high level committees appointed by President Mahinda Rajapaksa, one an Inter-Ministerial Committee and the other a Cabinet Sub Committee". Daily Financial Times, *SL attends UNHRC sessions with impressive post-conflict records: Former AG*, 23 February 2012, <http://www.ft.lk/2012/02/23/sl-attends-unhrc-sessions-with-impressive-post-conflict-records-former-ag/>.

⁷⁵ See e.g. Daily News, *Army Chief Appoints Court of Inquiry*, 16 February 2012, <http://www.dailynews.lk/2012/02/16/sec01.asp>.

⁷⁶ Lakkima News, *Army Court of Inquiry begins -- though detractors baulk*, 3 June 2012, http://www.lakbimanews.lk/index.php?option=com_content&view=article&id=4644%3AArmy-court-of-inquiry-begins&Itemid=56.

⁷⁷ See e.g. Centre for Policy Alternatives, *The Sri Lankan Case: Rhetoric, Reality and Next Steps?*, March 2012, accessible through CPA's facebook page, on <http://www.scribd.com/doc/85006799/The-Sri-Lankan-Case-Rhetoric-Reality-and-Next-Steps>.

⁷⁸ Government of Sri Lanka, *National Action Plan to implement the recommendations of the LLRC*, 26 July 2012, http://www.priu.gov.lk/news_update/Current_Affairs/ca201207/20120726national_plan_action.htm.

⁷⁹ See e.g.: Centre for Policy Alternatives, Bhavani Fonseka, Luwie Ganesathasan, Mirak Raheem, *Commentary on the National Plan of Action to implement the recommendations of the Lessons Learnt and Reconciliation Committee*, August 2012, <http://www.scribd.com/doc/103800519/CPA-Commentary-on-LLRC-Action-Plan>; National Peace Council of Sri Lanka, Jehan Perera, *LLRC Action Plan and taking LLRC seriously*, 30 July 2012, http://www.peace-srilanka.org/index.php?option=com_content&view=article&id=519:llrc-action-plan-and-taking-llrc-report-seriously&catid=1:latest&Itemid=121; D.B.S. Jeyaraj, *Action plan to implement LLRC Recommendations must be developed further in consultation with Civil Society*, 30 July 2012, <http://dbsjeyaraj.com/dbsj/archives/8913>.

however, raised concern that not all LLRC recommendations are (comprehensively) addressed in the Action Plan, and have emphasized the need to involve civil society and local communities in its implementation.⁸⁰ The largest Tamil party, the Tamil National Alliance (TNA), has criticized the absence of parliamentary consultations in the formulation of the Action Plan.⁸¹

C.2 Relevant other developments

Disappearances and abductions

The UN Working Group on Enforced and Involuntary Disappearances has identified Sri Lanka as being among the countries with the largest numbers of disappearance cases in the world, with 5,671 outstanding cases reported in its 2011 annual report.⁸² Civil society organizations have kept a record of disappearances and (attempted) abductions in the period October 2011 until 9 July 2012, and have recorded, on average, one attempted abduction or disappearance every five days.⁸³ During and after the conflict period, UNHCR recorded incidents of disappearances, which were either reported by family members or encountered by UNHCR in the course of field monitoring. Some family members indicated they have also reported these cases to the local police, who are apparently reluctant to lodge official complaints or record such disappearances.⁸⁴

A Family Tracing and Reunification Unit was established in December 2009 by the Vavuniya Government Agent and the Probation and Child Care Commissioner (Northern Province), with UNICEF support. According to an April 2012 report, 736 tracing applications concerning children have been registered since 2009. Their disappearances were recorded in a database, using records from children's homes and information gathered at IDP camps.⁸⁵ The majority of the missing children were recruited by the LTTE⁸⁶ and covered all age groups ranging from babies, young boys and girls to teenagers.⁸⁷ Of these, 139 cases have been matched and referred to the Unit for tracing and verification, and 42 children have been reunited with their families.⁸⁸

On 15 February 2012 the Sri Lankan Government's Department of Census and Statistics released its "Enumeration of Vital Events" for the Northern Province. In this document, the authorities indicate, on the basis of a local verification exercise through "field enumerators" that over 6,800 persons have died in the Northern Province between January and May 2009, as a result of causes other than old age, sickness, natural disaster, homicide and suicide.⁸⁹ This figure is disputed,⁹⁰ as other sources have

Note that the Government of the United States of America (USA) also welcomed the Action Plan. Sri Lanka Government website, *US welcomes National Action Plan on LLRC*, 2 August 2012, http://www.priu.gov.lk/news_update/Current_Affairs/ca201208/20120802us_welcomes_national_action_plan_on_llrc.htm.

⁸⁰ See in particular the detailed commentary by the Centre for Policy Alternatives, previous footnote.

⁸¹ ColomboPage, *Tamil party criticizes Sri Lankan government for formulating LLRC Action Plan without parliamentary consultations*, 23 August 2012, http://www.colombopage.com/archive_12A/Aug23_1345692673JR.php.

⁸² United Nations General Assembly, *Report of the Working Group on Enforced and Involuntary Disappearances*, A/HRC/19/58/Rev.1, 2 March 2012, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-58-Rev1_en.pdf. See also: Integrated Regional Information Networks (IRIN), *Sri Lanka: Thousands missing three years after war ends*, 18 May 2012, <http://www.unhcr.org/refworld/docid/4fbb857d2.html>, and BBC Sinhala, 'Secret detention centres' in Sri Lanka, 8 November 2011, http://www.bbc.co.uk/sinhala/news/story/2011/11/printable/111108_torture.shtml.

⁸³ Groundviews, *A disappearance every five days in post-war Sri Lanka*, 30 August 2012, <http://groundviews.org/2012/08/30/a-disappearance-every-five-days-in-post-war-sri-lanka/>. The lists with recorded (attempted) abductions and disappearances are available at <http://www.scribd.com/doc/88059136/Disappearances-in-Sri-Lanka-from-Oct-2011-%E2%80%93-March-2012-based-on-media-reports>, covering the period October 2012 – March 2012, and <http://groundviews.org/wp-content/uploads/2012/08/Disappearances-in-Sri-Lanka-reported-between-01April-09July2012-watchdog-30August2012.pdf>, for the period 1 April 2012 – 9 July 2012.

⁸⁴ Detailed reports available to UNHCR.

⁸⁵ Sarah Crowe, *UNICEF supports efforts to reunite families in post-conflict Sri Lanka*, 20 October 2011, http://www.unicef.org/infobycountry/sri_lanka_60183.html.

⁸⁶ UN General Assembly, *Children and armed conflict : report of the Secretary-General*, 26 April 2012, A/66/782-S/2012/261, <http://www.unhcr.org/refworld/docid/4fd706472.html>, paragraph 156.

⁸⁷ Sarah Crowe, *UNICEF supports efforts to reunite families in post-conflict Sri Lanka*, 20 October 2011, http://www.unicef.org/infobycountry/sri_lanka_60183.html.

⁸⁸ UN General Assembly, *Children and armed conflict : report of the Secretary-General*, 26 April 2012, A/66/782-S/2012/261, <http://www.unhcr.org/refworld/docid/4fd706472.html>, paragraph 156.

⁸⁹ Excluding the listed causes suggests these deaths might be due to the results of the conflict. See Department of Census and Statistics, Ministry of Finance and Planning, Sri Lanka, *Enumeration of Vital Events 2011, Northern Province, Sri Lanka*, February 2011, http://www.statistics.gov.lk/PopHouSat/VitalStatistics/EVE2011_FinalReport.pdf, p. 48.

found indications suggesting that there were substantively higher numbers of casualties during this period. The report of the Secretary-General's Panel of Experts refers to "a number of credible sources" that have estimated up to 40,000 civilian deaths.⁹¹ In addition to those reported to have died, the Department of Census report indicates that, in the whole of 2009, over 2,600 persons have disappeared or "become untraceable" in the Northern Province.⁹²

According to human rights defenders, 32 unexplained abductions were reported between October 2011 and February 2012, mostly in Colombo or northern Sri Lanka. Further incidents have been reported since.⁹³ The victims are a mix of Sinhalese, Tamils and Muslims.⁹⁴ Paramilitary groups appear to engage in abductions for extortion and ransom,⁹⁵ but it is also speculated that in other cases political motives may play a role. Among the victims are two political activists who were abducted in the country's north in December 2011. Reportedly, their cases have been referred to relevant United Nations bodies.⁹⁶

Arbitrary detention and treatment of detainees

Arbitrary detention is widely reported in post-conflict Sri Lanka.⁹⁷ This includes the deprivation of freedom of movement of "rehabilitees/surrendeers" in rehabilitation camps, described above, which observers qualify as detention.⁹⁸ There are also reports of persons having been imprisoned for prolonged periods of time, without having been charged.⁹⁹

Cases of police mistreatment of detainees and deaths in custody¹⁰⁰ continued to be reported in 2010, 2011, and 2012 and are reportedly linked to systemic shortcomings in the administration of justice.¹⁰¹

⁹⁰ International Crisis Group, *Sri Lanka's dead and missing: the need for an accounting*, 27 February 2012, <http://www.crisisgroupblogs.org/srilanka-lastingpeace/2012/02/27/sri-lanka%E2%80%99s-dead-and-missing-the-need-for-an-accounting/>.

⁹¹ UN Secretary-General (UNSG), *Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka*, 31 March 2011, <http://www.unhcr.org/refworld/docid/4db7b23e2.html>, see in particular paragraph 137.

⁹² Department of Census and Statistics, Ministry of Finance and Planning, Sri Lanka, Enumeration of Vital Events 2011, Northern Province, Sri Lanka, February 2011, http://www.statistics.gov.lk/PopHouSat/VitalStatistics/EVE2011_FinalReport.pdf, p. 20 and p. 51.

⁹³ For example, a female politician was reportedly abducted in April 2012. See the account of Dimuthu Attygalle, abducted on 6 April 2012. She is a leader of the Frontline Socialist Party (FSP), a small Sri Lankan opposition group. The article also refers to the abduction of Premakumar Gunaratnam, another FSP leader. The Economist online, *Sri Lanka, The disappeared*, 12 April 2012, <http://www.economist.com/blogs/banyan/2012/04/sri-lanka>.

⁹⁴ BBC News, *Sri Lanka's sinister white van abductions*, 14 March 2012, <http://www.bbc.co.uk/news/world-asia-17356575>.

⁹⁵ See also I.L.C.2, "The role of paramilitary groups / rival political factions".

⁹⁶ "(...) two political activists—Lalith Kumar Weeraratne and Kugan Murugananthan—who went missing in Sri Lanka's north on December 9th (2011)" "(...) Mr Weeraratne and Mr Murugananthan spent much of the past few months campaigning on behalf of hundreds of missing Tamils, many of whom were last seen in the custody of the security forces. The two were intercepted in the northern city of Jaffna by men on motorcycles, bundled into a white van and taken away." The Economist, *Disappearances in Sri Lanka. Murky business*, 14 January 2012, <http://www.economist.com/node/21542827>. See also E.g. ColomboPage News Desk Sri Lanka, Demonstrations organized in Jaffna against two missing activists of Sri Lanka's dissident Marxist Group, 16 January 2012, http://www.colombopage.com/archive_12/Jan16_1326693364JR.php, and BBC News, *Appeal to UN over missing Sri Lanka activists*, 6 January 2012, <http://www.bbc.co.uk/news/world-asia-16443096>.

⁹⁷ E.g. Asian Human Rights Commission, *SRI LANKA: A woman is arbitrarily detained for more than forty months without access to fair trial*, 14 December 2011, <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-247-2011>, Asian Human Rights Commission, *SRI LANKA: Disabled man illegally and arbitrarily detained for over two years*, 16 August 2011, <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-143-2011>. In 2011 the Working Group on Arbitrary Detention has submitted one urgent appeal relating to arbitrary detention to the Sri Lankan Government; General Assembly, *2010 Report of the Working Group on Arbitrary Detention*, A/HRC/16/47, 19 January 2011, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/102/76/PDF/G1110276.pdf?OpenElement>. Amnesty International, *Annual Report 2011, Sri Lanka*, <http://www.amnesty.org/en/region/sri-lanka/report-2011> (accessed 16 January 2012).

⁹⁸ International Commission of Jurists, ICJ Briefing Note, *Beyond Lawful Constraints: Sri Lanka's mass detention of LTTE Suspects*, September 2010, <http://www.unhcr.org/refworld/pdfid/4ca0ae592.pdf>.

⁹⁹ See, e.g. Asian Human Rights Commission, *SRI LANKA: An innocent man has been in custody without being charged for three years*, 17 August 2012, <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-145-2012>, and Asian Human Rights Commission, *SRI LANKA: An innocent man has been detained for almost three years on false charges of terrorism*, 15 August 2012, <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-143-2012>.

¹⁰⁰ "Among these arbitrary or unlawful killings, there were increased reports of suspects detained by police or other security forces who died under questionable circumstances. For example, on July 3, Neluwa Priyantha died in the custody of members of the Special Task Force (STF) while he was showing them a house where he hid weapons. There were several instances in which police were held accountable for unlawful killings. On September 29, trishaw driver G.A. Gayan Rasanga was arrested in Dompe on theft charges and reportedly tortured to death by the police. A Criminal Investigations Department (CID) investigation into the incident resulted in the arrest of five police officers. The police were prosecuted, and the case continued in a magistrate's court at year's end. According to official accounts, security forces took some suspects to the scenes of their alleged crimes and then shot and killed them while they allegedly were trying to escape. On October 3, Lalith Susantha, a suspect in the killing of a police officer, allegedly drowned in the Bolgoda Lake while showing the police where the murder weapon was hidden." United States Department of State, *2011 Country*

The Asian Human Rights Commission reports that “[T]orture is endemic in Sri Lanka and is practised at every police station and detention centre including those kept under the Terrorism Investigating Division.” (TID).¹⁰² In addition, military intelligence and other security personnel were reportedly subjecting documented and undocumented detainees in the north and east to interrogation, frequently including torture. These detainees were reportedly civilians suspected of LTTE connections.¹⁰³ In its November 2011 session, the UN Committee against Torture expressed concern over allegations of widespread use of torture and ill-treatment, including in police custody.¹⁰⁴ There are numerous reports of confessions obtained by coercive means.¹⁰⁵

In any dealings with the police, the Tamil-speaking population (made up of ‘Sri Lankan Tamils’, ‘up-country’ or ‘Indian Tamils’ and ‘Muslims’) appears to be at a disadvantage: despite ongoing efforts to increase the number of Tamil-speaking police staff, particularly in Tamil majority areas, their number remains comparatively small.¹⁰⁶

Reports on Human Rights Practices - Sri Lanka, 24 May 2012, <http://www.unhcr.org/refworld/docid/4fc75a5eb4.html>; see also Amnesty International, *Amnesty International Annual Report 2012 - Sri Lanka*, 24 May 2012, <http://www.unhcr.org/refworld/docid/4fbc390d46.html>.

¹⁰¹ In 2012, the Asian Human Rights Commission has continued to publish urgent appeals in cases of alleged police torture or mistreatment. See for example: Asian Human Rights Commission, *Sri Lanka: Giritulla Police tortured an innocent man after illegal detention*, 20 November 2012, <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-195-2012>; Asian Human Rights Commission, *Sri Lanka: A man is tortured by a senior police officer and the Attorney General is taking over a private plaint filed by the victim in order to protect the officer*, 16 February 2012, <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-026-2012/?searchterm=sri%20lanka%20police%20torture>; Asian Human Rights Commission, *Sri Lanka: An innocent man was illegally arrested, tortured and laid with a fabricated charge*, 3 February 2012, <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-016-2012/?searchterm=sri%20lanka%20police%20torture>.

For reports of 2010 and 2011 police torture and mistreatment cases, see: Asian Human Rights Commission, *Police torture Cases, 1998 – 2011, Sri Lanka*, 24 June 2011, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-085-2011>. This report provides details for 20 such alleged cases for 2010 and 22 for the first half of 2011. The cases described are selected from a larger number of cases reported to local civil society organisations. The introduction to the report emphasizes the reported use of fabricated charges by the police.

¹⁰² “Former TID detainees at Boosa Prison in Galle confirmed reports of torture methods used there. These included beatings, often with cricket bats, iron bars, or rubber hoses filled with sand; electric shock; suspending individuals by the wrists or feet in contorted positions; abrading knees across rough cement; burning with metal objects and cigarettes; genital abuse; blows to the ears; asphyxiation with plastic bags containing chili pepper mixed with gasoline; and near-drowning. Detainees reported broken bones and other serious injuries as a result of mistreatment”, United States Department of State, *2011 Country Reports on Human Rights Practices - Sri Lanka*, 24 May 2012, <http://www.unhcr.org/refworld/docid/4fc75a5eb4.html>. “Torture is the mode by which crimes are investigated and this implies even investigations into many offences. Torture is often used to implicate innocent people particularly from low income backgrounds in cases where the police have failed to find the actual culprits in these cases. Torture is often accompanied with the filing of fabrication of charges.” Asian Human Rights Commission, <http://www.humanrights.asia/countries/sri-lanka/torture-in-sri-lanka>.

¹⁰³ “There were reports that detainees were released with a warning not to reveal information about their arrest or detention, under the threat of rearrest or death”, United States Department of State, *2011 Country Reports on Human Rights Practices - Sri Lanka*, 24 May 2012, <http://www.unhcr.org/refworld/docid/4fc75a5eb4.html>.

¹⁰⁴ Committee against Torture, 47th session, 31 October – 25 November 2011, *Consideration of reports submitted by States parties under article 19 of the Convention. Concluding observations of the Committee against Torture*, http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.LKA.CO.3-4_en.pdf.

¹⁰⁵ E.g.: See a number of the reports submitted to the Committee against Torture, e.g. Amnesty International, *Sri Lanka: Briefing to Committee Against Torture*, October 2011, http://www2.ohchr.org/english/bodies/cat/docs/ngos/AI_SriLanka47.pdf, p.7: “Confessions are routinely extracted under torture by the police in order to ‘solve’ cases. The police often extract confessions and then use prolonged administrative detention to investigate individuals for whom they lack sufficient evidence to charge” See also, Sri Lanka NGO Collective, *Joint Alternative Report from the Sri Lankan NGO Collective to the Committee Against torture*, 14 October 2011, http://www2.ohchr.org/english/bodies/cat/docs/ngos/NGOCollective_SriLanka47.pdf, see p. 28, “Confessions under torture”. See also United States Department of State, *2011 Country Reports on Human Rights Practices - Sri Lanka*, 24 May 2012, <http://www.unhcr.org/refworld/docid/4fc75a5eb4.html>; “Confessions obtained by coercive means, including torture, are inadmissible in criminal courts, except in PTA cases. Defendants bear the burden of proof, however, to show that their confessions were obtained by coercion.” Finally, see: US Department of State, *2010 Human Rights Report: Sri Lanka*, 8 April 2011, <http://www.state.gov/documents/organization/160476.pdf>; “The case of journalist J.S. Tissainayagam was one such example, as he had testified in court that his alleged confession was the result of torture by members of the TID (...). The alleged confession nonetheless was allowed as evidence in his trial in 2009.”

¹⁰⁶ See E.g. United States Department of State, *2011 Country Reports on Human Rights Practices - Sri Lanka*, 24 May 2012, <http://www.unhcr.org/refworld/docid/4fc75a5eb4.html>; “Few police officers serving in Tamil-majority areas were Tamil, and most did not speak Tamil or English, although the government began hiring and training ethnic Tamils in an effort to improve this situation. In January 320 Tamil men and 16 Tamil women were inducted into the police. In December government officials stated that there were more than 600 Tamils in the police force. The LLRC report acknowledged the recruiting of Tamil-speaking police officers, but noted with regret that its 2010 interim recommendation – that public offices have interpreters to facilitate communication until long term programs are put in place – had not been implemented. In its final report, the LLRC stated that government officers should possess language skills to serve in any part of the country and recommended that police stations have bi-lingual officers on duty on a 24-hour basis”. See also: Integrated Regional Information Networks (IRIN), *Bridging the language divide in Sri Lanka*, 23 July 2012, <http://www.unhcr.org/refworld/docid/501005892.html>. This document states that “Most of the 15,000-strong police force in the north cannot speak Tamil”. For further background on the role of language in Sri Lanka see also Centre for Policy Alternatives, Dr. Devanesan Nesiiah, *Tamil language rights in Sri Lanka*, April 2012, http://www.sangam.org/2012/05/Language_Rights.pdf.

The role of paramilitary groups / rival political factions

According to reports, corroborated by records of interviews with people affected, pro-government paramilitary groups (in particular EPDP and TMVP)¹⁰⁷ continue to operate in Sri Lanka.¹⁰⁸ These groups are reported to perpetrate serious human rights violations and engage in criminal activities such as extortion, attacks, kidnappings and ransom collection.¹⁰⁹ The EPDP is reported to be primarily active in Jaffna in the north and the TMVP in the east, although these and other paramilitary groups have also been said to be active in Mannar,¹¹⁰ Vavuniya¹¹¹ and Colombo.¹¹² There is limited information from publicly available sources on the current strength, size and reach of the TMVP and EPDP, but several sources indicate that they have not completely disarmed.¹¹³ Their activities appear to stem from both political and criminal motives.¹¹⁴ Both the TMVP and EPDP have established political parties and are represented by elected members in regional and national government structures.¹¹⁵ It is reported that, throughout 2011, “these groups increasingly took on the characteristics of criminal gangs as they sought to solidify their territory and revenue sources in the post-conflict environment.”¹¹⁶ Several reports indicated that there are still close links between these groups and government security forces.¹¹⁷

*Freedom of expression*¹¹⁸

Recent reports document harassment, detention, threats and physical intimidation of human rights defenders, journalists, editors and other media professionals,¹¹⁹ in particular those reporting on issues

¹⁰⁷ It is difficult to find information regarding the current activities of other groups. In 2010, the Danish Immigration Service reported in a fact-finding mission report on the basis of an interview with a local NGO that “PLOTE is no longer as powerful in the North as they used to be”. Danish Immigration Service, *Human Rights and Security Issues concerning Tamils in Sri Lanka. Report from Danish Immigration Service’s fact-finding mission to Colombo, Sri Lanka. 19 June to 3 July 2010*, October 2010, <http://www.nyidanmark.dk/NR/rdonlyres/899724D8-BEEB-4D9E-B3B2-F2B28A505CCD/0/FactfindingreportSriLanka2010FINALNY.pdf>.

¹⁰⁸ Office Français de Protection des Réfugiés et Apatrides (OFPRA), *Rapport de mission en République démocratique et socialiste de Sri Lanka, 13 au 27 mars 2011*, September 2011, http://www.ofpra.gouv.fr/documents/misSLK_2011.pdf.

¹⁰⁹ Organisation Suisse d’Aide aux Réfugiés (OSAR), Rainer Mattern, *Sri Lanka: situation des Tamouls originaires du Nord et de l’Est du pays vivant à Colombo et situation des personnes de retour*, 22 September 2011, http://www.fluechtlingshilfe.ch/pays-d-origine/asia/sri-lanka?set_language=fr.

¹¹⁰ United States Department of State, *2011 Country Reports on Human Rights Practices - Sri Lanka*, 24 May 2012, <http://www.unhcr.org/refworld/docid/4fc75a5eb4.html>.

¹¹¹ United States Department of State, *2011 Country Reports on Human Rights Practices - Sri Lanka*, 24 May 2012, <http://www.unhcr.org/refworld/docid/4fc75a5eb4.html>.

¹¹² Organisation Suisse d’Aide aux Réfugiés (OSAR), Rainer Mattern, *Sri Lanka: situation des Tamouls originaires du Nord et de l’Est du pays vivant à Colombo et situation des personnes de retour*, 22 September 2011, http://www.fluechtlingshilfe.ch/pays-d-origine/asia/sri-lanka?set_language=fr.

¹¹³ These sources are referenced in two recent reports: Immigration and Refugee Board of Canada, *Sri Lanka: The Tamil Makkal Viduthalai Pulikal (TMVP) and Karuna factions; their relationship with each other; reports concerning their treatment of Sinhalese and Tamil citizens; whether they are still active as paramilitary groups*, 17 February 2012, LKA103950.E, <http://www.unhcr.org/refworld/docid/4f4f35d22.html>, and Immigration and Refugee Board of Canada, *Sri Lanka: The Eelam People’s Democratic Party (EPDP), including whether they mistreat Tamil populations in the north or in Colombo; if so, whether they extort Tamils; relationship between the EPDP and the Sri Lankan army (October 2010-December 2011)*, 8 February 2012, LKA103961.E, <http://www.unhcr.org/refworld/docid/4f4f37202.html>.

¹¹⁴ See e.g. International Crisis Group (ICG), *Sri Lanka’s North I: The Denial of Minority Rights*, 16 March 2012, Asia Report N°219, <http://www.unhcr.org/refworld/docid/4f6452cb2.html>, page 12-13: “EPDP’s current function seems to be to weaken the TNA and prevent the emergence of any serious political resistance to government rule. Even as Devananda and EPDP candidates were seen ostentatiously distributing government patronage in the run-up to the July 2011 local government elections, EPDP thugs were also accused of involvement in a series of physical attacks on TNA candidates during the campaign. As it was during the years of war and counter-insurgency, the party is also still regularly accused of physical attacks on other critical voices in Jaffna, including murders and disappearances; its members are widely believed to work in close coordination with the Sri Lankan military. The EPDP is also reportedly involved in a range of for-profit criminal activities, including illegal sand-mining. Its officials deny all such charges.”

¹¹⁵ See IRB reports, footnote 113.

¹¹⁶ United States Department of State, *2011 Country Reports on Human Rights Practices - Sri Lanka*, 24 May 2012, <http://www.unhcr.org/refworld/docid/4fc75a5eb4.html>.

¹¹⁷ See e.g.: International Crisis Group (ICG), *Sri Lanka’s North I: The Denial of Minority Rights*, 16 March 2012, Asia Report N°219, <http://www.unhcr.org/refworld/docid/4f6452cb2.html>, page 12-13, on the EPDP: “its members are widely believed to work in close coordination with the Sri Lankan military.” See also: United States Department of State, *2011 Country Reports on Human Rights Practices - Sri Lanka*, 24 May 2012, <http://www.unhcr.org/refworld/docid/4fc75a5eb4.html>; “(...) there were persistent reports of close, ground-level ties between paramilitary groups and government security forces”. See also Organisation Suisse d’Aide aux Réfugiés (OSAR), Rainer Mattern, *Sri Lanka: situation des Tamouls originaires du Nord et de l’Est du pays vivant à Colombo et situation des personnes de retour*, 22 September 2011, http://www.fluechtlingshilfe.ch/pays-d-origine/asia/sri-lanka?set_language=fr, p. 18.

¹¹⁸ See also III.A.3, “Journalists and Other Media Professionals”.

¹¹⁹ For recent examples, see e.g.: The Sunday Leader, Frederika Jansz, *Gota goes berserk*, 13 July 2012, <http://www.thesundayleader.lk/2012/07/08/gota-goes-berserk/>; Reporters Without Borders, *Eight online journalists and an office assistant freed but investigation continues*, 4 July 2012, <http://www.unhcr.org/refworld/docid/4ffeaef92.html>; Human Rights Watch, *Sri Lanka: Halt Harassment of Media*, 3 July 2012, <http://www.unhcr.org/refworld/docid/4ffeded52.html>; Committee to Protect Journalists,

relating to accountability, protection and the rule of law. Most journalists are said to practise self-censorship.¹²⁰ Attacks or threats are often alleged to be perpetrated or condoned by officials or pro-Government forces.¹²¹ In addition, new limitations on freedom of press have recently been introduced¹²² which may create further risks for journalists and media professionals. In the context of the Human Rights Council in March 2012, the Office of the High Commissioner for Human Rights expressed concerns over “attacks on Sri Lankan human rights defenders” in state media and through government websites.¹²³ A recently published national values survey indicates that while most Sri Lankans feel free to express religious opinions in public, a notable minority of Muslims and Hindus feel restricted in this regard.¹²⁴

Women¹²⁵

Reports have been published which document high levels of sexual violence against women and girls in the final phases of the armed conflict.¹²⁶ Sexual and gender-based violence against women has also been reported since the end of the conflict, particularly in the north and east, but also in the south.¹²⁷

In its February 2011 *Concluding Observations on Sri Lanka*, the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) expressed concern over three key issues: the absence of a prohibition of discrimination against women in law, the persistence of discriminatory provisions in the law and gender role stereotyping perpetuating discrimination against women. In relation to trafficking, the CEDAW expressed concern about the low number of convictions, the lack of punishment for those who are convicted and the absence of protective measures and safe houses for

Sri Lankan police raid offices of two news websites, 29 June 2012, <http://www.unhcr.org/refworld/docid/4ff59dbb28.html>. For a list of incidents and events representing interference with the freedom of the media in January and February 2012, see Reporters Without Borders, *No sign of progress. With media gagged or threatened, no progress for freedom of information*, 28 February 2012, <http://en.rsf.org/sri-lanka-with-media-gagged-or-threatened-no-28-02-2012.41946.html>. See also, The Island, ‘I threw Poddala out of the country,’ Mervyn boasts, 23 March 2012, quoting the Public Relations Minister as threatening to break the limbs of those who had campaigned or reported against Sri Lanka at the March HRC session, http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=48179.

¹²⁰ United States Department of State, *2011 Country Reports on Human Rights Practices - Sri Lanka*, 24 May 2012, <http://www.unhcr.org/refworld/docid/4fc75a5eb4.html>.

¹²¹ E.g. Human Rights Watch, *World Report 2012 - Sri Lanka*, January 2012, http://www.hrw.org/sites/default/files/related_material/srilanka_2012.pdf, page 3- 4, Reporters Without Borders, *President personally phones newspaper’s chairman to threaten him*, 2 August 2011, <http://www.unhcr.org/refworld/docid/4e3f85e62.html>, Freedom House, *Freedom of the Press 2011 - Sri Lanka*, 17 October 2011, <http://www.unhcr.org/refworld/docid/4e9bec282.html>. See also Amnesty International, “Journalists were physically assaulted, abducted, intimidated and harassed by both government personnel and members of government-allied armed groups. Little effort was made to investigate attacks or bring perpetrators to justice”, *Annual Report 2011, The state of the world’s human rights, Sri Lanka*, accessed 28 November 2011, <http://www.amnesty.org/en/region/sri-lanka/report-2011>. See also list of incidents involving Journalists, Human Rights Watch, *Testimony of Elaine Pearson before the House of Commons of Canada regarding Human Rights in Sri Lanka*, 1 November 2011, <http://www.hrw.org/news/2011/11/01/testimony-elaine-pearson-house-commons-canada-regarding-human-rights-sri-lanka>.

¹²² See e.g. Committee to Protect Journalists, *Sri Lankan government to impose guidelines on media*, 10 November 2011, <http://www.unhcr.org/refworld/docid/4ec0efdb28.html>. See also Centre for Policy Alternatives, *Freedom of Expression on the Internet in Sri Lanka*, November 2011, <http://cpalanka.org/wp-content/uploads/2011/11/FOE-REPORT-NOV-2011-FINAL-CPA.pdf>.

¹²³ Office of the High Commissioner for Human Rights, *Briefing note on Sri Lanka / human rights defenders*, 23 March 2012, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12008&LangID=E>.

¹²⁴ The Asia Foundation, *National Values Survey, Sri Lanka 2011*, June 2012, <http://www.asiafoundation.org/publications/pdf/1118>.

¹²⁵ See also III.A.6, “Women with Certain Profiles or in Specific Circumstances”.

¹²⁶ UN Secretary-General (UNSG), *Report of the Secretary General’s Panel of Experts on Accountability in Sri Lanka*, 31 March 2011, <http://www.unhcr.org/refworld/docid/4db7b23e2.html>, see in particular paragraphs 152, 153, 176(d), 214 and 220. See also, Amnesty International, *Sri Lanka: Briefing to Committee Against Torture*, October 2011, http://www2.ohchr.org/english/bodies/cat/docs/ngos/AI_SriLanka47.pdf, Case Study 3, Rape and Gender Based Violence, page 11.

¹²⁷ International Crisis Group, *Sri Lanka: Women’s Insecurity in the North and East*, 20 December 2011, <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/217%20Sri%20Lanka%20-%20Womens%20Insecurity%20in%20the%20North%20and%20East%20KO.pdf>. UN Secretary-General (UNSG), *Report of the Secretary General’s Panel of Experts on Accountability in Sri Lanka*, 31 March 2011, <http://www.unhcr.org/refworld/docid/4db7b23e2.html>, see in particular paragraphs 152, 161 and 228. See also Amnesty International, *Sri Lanka: Briefing to Committee Against Torture*, October 2011, http://www2.ohchr.org/english/bodies/cat/docs/ngos/AI_SriLanka47.pdf, page 5. See also Asian Human Rights Commission, *The State of Human Rights in Sri Lanka in 2011*, chapter 2.1, 9 December 2011, <http://www.humanrights.asia/resources/hrreport/2011/AHRC-SPR-011-2011/view>. In its February 2011 *Concluding Observations on Sri Lanka* the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) expresses deep concern “about reports of gross violations of the human rights of women on both sides, particularly the Tamil minority group, the internally displaced women and the female ex-combatants”. CEDAW, 48th session, 17 January – 4 February 2011, *Concluding Observations, Sri Lanka*, 4 February 2011, <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-LKA-CO-7.pdf>, paragraph 40.

victims of trafficking.¹²⁸ The Committee also expressed concern that marital rape is only recognized in cases of former spouses whose separation has been acknowledged in a court procedure. In addition, the Committee noted that most cases of domestic violence against women appear to be dealt with through police mediation, with family relations prevailing over the protection of women and the suppression of violence against women.¹²⁹

*Children*¹³⁰

Surveillance measures are reportedly still used to monitor children who were formerly associated with armed groups in the country's north and east. In some cases, the child needs authorisation in order to leave his or her place of origin, which has the potential to result in missed educational or employment opportunities.¹³¹ It was reported in April 2012 that a number of children formerly associated with armed groups, particularly girls, have not accessed reintegration programmes.¹³² It appears that responsibility for keeping track of children who have completed reintegration programmes has now officially been handed over from military and intelligence bodies to designated child probation officers. However, the absence of efforts to prosecute persons allegedly responsible for child recruitment remains an issue of concern, including for the Special Representative of the Secretary General for Children and Armed Conflict.¹³³

In the Vanni,¹³⁴ the long-term recovery of children affected by the armed conflict is said to depend on economic and social recovery in the region. At present, few jobs are available and children are required to drop out of school in order to support household incomes.¹³⁵ Furthermore, as of April 2012, one school in Kilinochchi District remained occupied by the military, while 14 schools in areas in Mullaitivu, Kilinochchi and Jaffna were not yet open as they reportedly continued to be used by the Sri Lankan Army.¹³⁶

In 2010, 359 cases of sexual violence against children were recorded in the Vanni.¹³⁷ According to the authorities, this number is comparable with figures elsewhere in the country, where incidents of sexual violence against children have also more recently been reported.¹³⁸ It should be kept in mind, however, that many such cases are believed to remain unreported,¹³⁹ especially in the Vanni where the number of Tamil-speaking female officers, in particular in the desks dealing with women and children,

¹²⁸ For more detail on human trafficking, see UNODC, *Response to human trafficking in Bangladesh, India, Nepal and Sri Lanka*, 2011, http://www.unodc.org/documents/human-trafficking/2011/Responses_to_Human_Trafficking_in_Bangladesh_India_Nepal_and_Sri_Lanka.pdf.

¹²⁹ CEDAW, 48th session, 17 January – 4 February 2011, *Concluding Observations, Sri Lanka*, 4 February 2011, <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-LKA-CO-7.pdf>, paragraphs 14, 16, 22, 24 and 26.

¹³⁰ See also III.A.7, “Children with Certain Profiles or in Specific Circumstances”.

¹³¹ Security Council, *Report of the Secretary-general on children and armed conflict in Sri Lanka*, 21 December 2011, <http://www.un.org/Docs/sc/sgrep11.htm>.

¹³² UN General Assembly, *Children and armed conflict : report of the Secretary-General*, 26 April 2012, A/66/782-S/2012/261, <http://www.unhcr.org/refworld/docid/4fd706472.html>, paragraph 155.

¹³³ UN General Assembly, *Children and armed conflict : report of the Secretary-General*, 26 April 2012, A/66/782-S/2012/261, <http://www.unhcr.org/refworld/docid/4fd706472.html>.

¹³⁴ The area in the Northern Province of Sri Lanka, encompassing Mullaitivu and Kilinochchi districts and northern portions of Mannar and Vavuniya districts.

¹³⁵ Security Council, *Report of the Secretary-general on children and armed conflict in Sri Lanka*, S/2011/793, 21 December 2011, <http://www.un.org/Docs/sc/sgrep11.htm>.

¹³⁶ UN General Assembly, *Children and armed conflict : report of the Secretary-General*, 26 April 2012, A/66/782-S/2012/261, see paragraph 157, <http://www.unhcr.org/refworld/docid/4fd706472.html>.

¹³⁷ No comprehensive, more recent figures are available. Security Council, *Report of the Secretary-general on children and armed conflict in Sri Lanka*, S/2011/793, 21 December 2011, <http://www.un.org/Docs/sc/sgrep11.htm>.

¹³⁸ E.g.: Asian Human Rights Commission, *Sri Lanka: A former air force officer rapes a ten-year-old girl*, 6 September 2011, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-116-2011>.

¹³⁹ E.g. the Committee on the Rights of the Child emphasizes that in the absence of temporary shelters for women and children victims of domestic violence, cases of domestic violence remain unreported, CRC, 55th session, 1 September – 13 October 2010, CRC/C/LKA/CO/3-4, *Considerations of reports submitted by states parties under article 44 of the convention*, 1 October 2010, <http://www2.ohchr.org/english/bodies/crc/crcs55.htm>.

remains limited.¹⁴⁰ The prosecution of child abuse cases reportedly often takes an excessively long time.¹⁴¹

In addition to reportedly high rates of incest, some 40,000 children are said to be exploited as commercial sex workers,¹⁴² leaving them vulnerable to punishment under existing legislative provisions and further marginalizing them, especially in areas with heavy military presence. Child sex tourism, primarily in the coastal regions, continues to result in the sexual abuse of large numbers of mostly boys, including by foreign tourists,¹⁴³ as well as in the context of domestic sex tourism in other regions.¹⁴⁴

At present, the practice of underage marriages appears limited to Sri Lanka's Muslim community, since Muslim personal laws allow girls to be married below the age of 12. Although the underage marriage rate in Sri Lanka is comparatively low within the region,¹⁴⁵ cases have been reported.¹⁴⁶ When the LTTE was in control in the north and east, the number of underage marriages in the Vanni was reportedly high. The reason for these marriages was to avoid forced (re-)recruitment by the LTTE.¹⁴⁷ Many of these marriages, which were not registered, have fallen apart since the end of the conflict. As a result, increasing numbers of young women have found themselves in a vulnerable position with limited or no support, as evidenced by increased numbers of financial maintenance claims.¹⁴⁸

In Sri Lanka, child labour is less prevalent than in other countries in the region.¹⁴⁹ In 2011, the Sri Lankan authorities adopted a list of 51 hazardous occupations and/or working conditions which are prohibited for children.¹⁵⁰ While domestic service is not included in this list, the minimum age for employment of children in all sectors is 14 years.¹⁵¹ No information is yet available on the implementation of the listed prohibitions. Some children in Sri Lanka are involved in child labour, including in dangerous forms of agriculture, manufacturing, domestic service and as street vendors,¹⁵² with reports of children being kept in bonded labour situations in dry-zone farming areas on plantations, and in the fireworks and fish-drying industries.¹⁵³ There were also reports of rural children

¹⁴⁰ Also among probation officers, social services officers, public health staff, UN agencies' staff and NGO staff in the Vanni, the number of female Tamil-speakers is very low. Security Council, *Report of the Secretary-general on children and armed conflict in Sri Lanka*, 21 December 2011, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/586/90/PDF/N1158690.pdf?OpenElement>.

¹⁴¹ See: Integrated Regional Information Networks (IRIN), *Sri Lanka: Child abuse cases stalled*, 24 September 2012, <http://www.unhcr.org/refworld/docid/5062c3422.html>. UNICEF is quoted as stating that as many as 4,000 child abuse cases are pending before 34 high courts, with the average waiting period for a ruling being six years.

¹⁴² CRC, 55th session, 1 September – 13 October 2010, CRC/C/LKA/CO/3-4, *Considerations of reports submitted by states parties under article 44 of the convention*, 1 October 2010, <http://www2.ohchr.org/english/bodies/crc/crcs55.htm>, para 69.

¹⁴³ CRC, 55th session, 1 September – 13 October 2010, CRC/C/LKA/CO/3-4, *Considerations of reports submitted by states parties under article 44 of the convention*, 1 October 2010, <http://www2.ohchr.org/english/bodies/crc/crcs55.htm>, para. 71 and 72.

¹⁴⁴ United States Department of State, 2012 *Trafficking in Persons Report - Sri Lanka*, 19 June 2012, <http://www.unhcr.org/refworld/docid/4fe30c9432>.

¹⁴⁵ UNICEF, *The State of the World's Children 2011, Adolescence, an Age of Opportunity*, February 2011, table 9, page 122, http://www.unicef.org/sowc2011/pdfs/SOWC-2011-Main-Report_EN_02092011.pdf.

¹⁴⁶ See e.g. Daily Mirror, *Underage marriages annulled*, 11 October 2010, <http://www.dailymirror.lk/index.php/news/7077-underage-marriages-annulled.html>.

¹⁴⁷ See e.g. Human Rights Watch “ (...) Many young returning cadres have married, believing that marriage will provide some protection against re-recruitment. There is a general perception that the LTTE does not recruit from among persons who are married (and for many years the LTTE had strict rules prohibiting marriage between its cadres)”, *Living in Fear, Child Soldiers and the Tamil Tigers in Sri Lanka*, November 2004, <http://www.hrw.org/sites/default/files/reports/srilanka1104.pdf>, p. 44.

¹⁴⁸ Information available to UNHCR.

¹⁴⁹ UNICEF, *The State of the World's Children 2011, Adolescence, an Age of Opportunity*, February 2011, table 9, page 122, http://www.unicef.org/sowc2011/pdfs/SOWC-2011-Main-Report_EN_02092011.pdf.

¹⁵⁰ Government of Sri Lanka, *Final Government Notification of Employment of Women, Young Persons and Children Act No. 47 of 1956*, 4 March 2011 (no weblink available). See also, Ministry of Labour Relations and Productivity Promotion, Government of Sri Lanka, *Sri Lanka's Roadmap 2016 on the Worst Forms of Child Labour. From Commitment to Action*, June 2010, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_149650.pdf.

¹⁵¹ International Labour Organisation ILO), International Programme on Elimination of Child Labour (IPAC), Subregional Information System on Child Labour, *National Legislation and Policies against Child Labour in Sri Lanka*, updated September 2009, <http://www.ilo.org/legacy/english/regions/asro/newdelhi/ipac/responses/srilanka/national.htm>.

¹⁵² See: United States Department of Labor, 2011 *Findings on the Worst Forms of Child Labor - Sri Lanka*, 26 September 2012, <http://www.unhcr.org/refworld/docid/506594241a.html>, and: United States Department of Labor, 2010 *Findings on the Worst Forms of Child Labor - Sri Lanka*, 3 October 2011, <http://www.unhcr.org/refworld/pdfid/4e8c398fc.pdf>.

¹⁵³ United States Department of State, 2012 *Trafficking in Persons Report - Sri Lanka*, 19 June 2012, <http://www.unhcr.org/refworld/docid/4fe30c9432.html>.

in debt bondage in urban households.¹⁵⁴ Cases of domestic trafficking of children from the Northern Province to other parts of the country have been reported.¹⁵⁵

Mines and unexploded ordnance

More than 554 square kilometres have been cleared of mines and unexploded ordnance (UXO) in the north and east of Sri Lanka since 1 January 2009. Despite this progress, some 130 square kilometres in the north of Sri Lanka remained to be cleared as of early 2012.¹⁵⁶ The districts most affected are Mannar, Mullaitivu, Kilinochchi, Vavuniya and Jaffna.

From January to 12 March 2012, 5 mine-related incidents were reported, with 11 casualties.¹⁵⁷ In 2011, 17 mine-related incidents were reported, with 24 casualties, compared to 27 incidents with 47 casualties in 2010.¹⁵⁸ Many incidents involve children: in 2010, 21 children were affected in 27 reported mine/UXO incidents (5 children killed, 16 children injured). In the period January – June 2011, 11 incidents were reported, with 4 child casualties.¹⁵⁹

Housing, land and property rights

A multitude of complex housing, land and property issues prevent IDPs from returning to their villages in northern and eastern Sri Lanka, and also affect the livelihoods prospects of certain groups of returnees. Tamil returnees are affected, as are members of the Muslim community who were displaced, mostly to Puttalam, as a result of mass expulsion by the LTTE in October 1990.¹⁶⁰

The primary housing, land and property issues relate to displacement, secondary occupation of land and homes and loss of documentation. The fact that both the past government administration and the dual LTTE administration each issued land documentation in areas previously under LTTE control, sometimes for the same pieces of land, further complicates the situation.¹⁶¹ Military occupation of land also continues, including in the High Security Zones (HSZ) which are off-limits for civilians. The status of areas demarcated as HSZ, which extend in an approximately 2.5-mile radius from the fences of most military camps,¹⁶² became unclear after the Emergency Regulations lapsed. Civil society organizations claim that restrictions on freedom of movement in and use of these areas are now without legal basis.¹⁶³

Some observers have suggested that the HSZ unfairly affected Tamil agricultural lands, particularly in the Northern Province.¹⁶⁴ The government has released some areas previously held as HSZ, most notably in Tellipallai, Jaffna, which enabled the return of close to 20,000 persons. The authorities have indicated that other areas will soon also be released. Land under HSZ has also been released in

¹⁵⁴ United States Department of State, 2011 Country Reports on Human Rights Practices - Sri Lanka, 24 May 2012, <http://www.unhcr.org/refworld/docid/4fc75a5eb4.html>.

¹⁵⁵ Information available to UNHCR.

¹⁵⁶ E-mine, Electronic Mine Information Network, Sri Lanka, <http://www.mineaction.org/country.asp?c=24>, accessed 19 June 2012.

¹⁵⁷ Information provided by UNICEF Sri Lanka. For an example of more recent UXO incident, see e.g. Tamilnet, *Paduvaankarai people live with UXO threat*, 7 May 2012, <http://www.tamilnet.com/art.html?catid=13&artid=35155>.

¹⁵⁸ Integrated Regional Information Networks (IRIN), *Sri Lanka: Mine clearance could take 10 years or more*, 6 February 2012, <http://www.unhcr.org/refworld/docid/4f337ced2.html>.

¹⁵⁹ Security Council, *Report of the Secretary-general on children and armed conflict in Sri Lanka*, S/2011/793, 21 December 2011, <http://www.un.org/Docs/sc/sgrep11.htm>.

¹⁶⁰ International Crisis Group (ICG), *Sri Lanka's North I: The Denial of Minority Rights*, 16 March 2012, <http://www.unhcr.org/refworld/docid/4f6452cb2.html>, page 26 – 28.

¹⁶¹ For details on housing, land and property issues in areas formerly under LTTE control, see: Centre for Policy Alternatives, Bhavani Fonseka and Mirak Raheem, *Land in the Northern Province. Post-war Politics, Policy and Practices*, December 2011, <http://cpalanka.org/wp-content/uploads/2011/12/Land-Issues-in-the-Northern-Province-Post-War-Politics-Policy-and-Practices.pdf>.

¹⁶² United States Department of State, 2011 Country Reports on Human Rights Practices - Sri Lanka, 24 May 2012, <http://www.unhcr.org/refworld/docid/4fc75a5eb4.html>.

¹⁶³ Centre for Policy Alternatives, *CPA Statement on the new Regulations under the Prevention of Terrorism Act*, 23 September 2011, <http://cpalanka.org/wp-content/uploads/2011/09/CPA-Statement-on-the-new-Regulations-under-the-Prevention-of-Terrorism-Act.pdf>.

¹⁶⁴ United States Department of State, 2011 Country Reports on Human Rights Practices - Sri Lanka, 24 May 2012, <http://www.unhcr.org/refworld/docid/4fc75a5eb4.html>.

the Chavakachcheri, Nallur and Thanankilappu DS Divisions in Jaffna.¹⁶⁵ However, some observers consider the pace of such releases very slow.¹⁶⁶

There were also allegations after the end of the conflict that the authorities were allowing non-Tamil businesses to be located inside HSZ, taking over valuable land before local citizens were allowed to return.¹⁶⁷ In September 2011, the Jaffna authorities made public the fact that 42,505 people (11,648 families) had not been able to return to their former homes in Jaffna High Security Zones.¹⁶⁸ IDPs displaced by the Special Economic Zone in Sampoor, Muthur DS Division in Trincomalee District, have been similarly affected.

The authorities have taken measures to address some of the land issues in the north and east. These efforts have been termed “piecemeal” by some observers,¹⁶⁹ in part because there has been no comprehensive policy, with *ad hoc* circulars being issued intermittently. A recent circular ‘*Regulating the Activities Regarding Management of Lands in the Northern and Eastern Provinces*’ (Circular No: 2011/04)¹⁷⁰ was challenged in court on a number of grounds, including the short timelines for submission of claims and the participation of military personnel in the committees established under the circular to decide on the claims submitted. In January 2012, the state withdrew this land circular and indicated its intention to issue a new one.¹⁷¹

Former IDPs who have returned or relocated elsewhere often report continued difficulties in accessing their lands or accessing fishing waters along the coast, within lagoons or in inland lakes (or “tanks”). In many areas of the north, including parts of Jaffna, Mullaitivu, and Mannar districts, a special permit must be obtained from the naval authorities to access coastal waters, and fishermen must submit their civil documentation on a daily basis when going out on the water.¹⁷² Such constraints affect livelihood opportunities for returnees. People who were landless before displacement, or have become landless during or after the armed conflict, report being in a particularly vulnerable position. Women, including many war widows, say they face obstacles in owning, controlling and accessing their lands. Post-conflict development initiatives, including infrastructure projects, have been linked to allegations of

¹⁶⁵ Information available to UNHCR.

¹⁶⁶ See e.g. United States Department of State, 2011 Country Reports on Human Rights Practices - Sri Lanka, 24 May 2012, <http://www.unhcr.org/refworld/docid/4fc75a5eb4.html>: “A degree of progress was made in reducing the size of the HSZs during the year, with some lands being demilitarized. Many of those affected by the HSZs continued to complain, however, that the pace of these returns was too slow and that the government was holding back on the return of lands it might see as economically valuable. The government cited the need to conduct careful demining prior to the handover of these lands, but questions persisted about whether land cleared of mines was always returned immediately to its original owners. Although there was no legal framework for HSZs following the lapse of Emergency Regulations on August 31, they still existed and remained off-limits to civilians.”

¹⁶⁷ US Department of State, 2010 Human Rights Report: Sri Lanka, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56d87c.html>.

¹⁶⁸ BBC Sinhala, Over 40,000 yet to be resettled in HSZ, 9 September 2011, http://www.bbc.co.uk/sinhala/news/story/2011/09/110909_hsz_resettlement.shtml.

¹⁶⁹ See e.g. Centre for Policy Alternatives, Bhavani Fonseka and Mirak Raheem, *Land in the Northern Province. Post-war Politics, Policy and Practices*, December 2011, <http://cpalanka.org/wp-content/uploads/2011/12/Land-Issues-in-the-Northern-Province-Post-War-Politics-Policy-and-Practices-.pdf>. International Crisis Group, *Sri Lanka's North I: The Denial of Minority Rights*, 16 March 2012, <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/219-sri-lankas-north-i-the-denial-of-minority-rights.pdf>, see page 30-32, Land Policy and the Legal and Political Sources of Conflict.

A recent circular ‘Regulating the Activities Regarding Management of Lands in the Northern and Eastern Provinces’ (Circular No: 2011/04) was challenged in court on a number of grounds, including the short timelines for submission of claims and the participation of military personnel in the committees established under the circular to decide on the claims submitted. In January 2012, the State withdrew the land circular and indicated its intention to issue a new circular.

See: Land-Commissioner General, Circular No: 2011/04, *Regulating the Activities Regarding Management of Lands in the Northern and Eastern Provinces*, 22 July 2011, http://www.unhcr.lk/pdf/land_circular_2011-04_english.pdf. See also Center for Policy Alternatives, A short guide to ‘Regulating the Activities Regarding Management of Lands in the Northern and Eastern Provinces’ Circular, 21 September 2011, <http://cpalanka.org/a-short-guide-to-%E2%80%98regulating-the-activities-regarding-management-of-lands-in-the-northern-and-eastern-provinces%E2%80%99-circular-issues-implications/>. transCurrents, Govt to withdraw controversial land circular and present new circular, 19 January 2012, <http://transcurrents.com/news-views/archives/7365>.

¹⁷⁰ Land-Commissioner General, Circular No: 2011/04, *Regulating the Activities Regarding Management of Lands in the Northern and Eastern Provinces*, 22 July 2011, http://www.unhcr.lk/pdf/land_circular_2011-04_english.pdf. See also Center for Policy Alternatives, A short guide to ‘Regulating the Activities Regarding Management of Lands in the Northern and Eastern Provinces’ Circular, 21 September 2011, <http://cpalanka.org/a-short-guide-to-%E2%80%98regulating-the-activities-regarding-management-of-lands-in-the-northern-and-eastern-provinces%E2%80%99-circular-issues-implications/>. transCurrents, Govt to withdraw controversial land circular and present new circular, 19 January 2012, <http://transcurrents.com/news-views/archives/7365>.

¹⁷¹ transCurrents, Govt to withdraw controversial land circular and present new circular, 19 January 2012, <http://transcurrents.com/news-views/archives/7365>.

¹⁷² Information available to UNHCR.

land grabs.¹⁷³ In some instances, the authorities and the military have allegedly assisted Sinhala families from the south to resettle in traditionally Tamil areas.¹⁷⁴

Independence of the Judiciary

There are continuous challenges in maintaining a fair and impartial judiciary. In November 2012, the Parliament initiated impeachment proceedings against the Chief Justice of the Supreme Court. In early December 2012, the Parliamentary Select Committee found the Chief Justice guilty of several of the charges against her, and recommended her dismissal. The issue has provoked popular demonstrations in support of the Chief Justice, as well as in support of the impeachment proceedings. The membership of the Bar Association of Sri Lanka has objected to the proceedings and has organized strikes. The result of the proceedings and the fallout thereof, are yet unclear as they continue to evolve at the time of this report.¹⁷⁵

II. Eligibility for International Protection

UNHCR has carefully analysed¹⁷⁶ the relevant developments in Sri Lanka since the publication of the 2010 Guidelines, as well as newly available information on the conflict period. All claims lodged by asylum-seekers need to be considered on their merits, according to fair and efficient status determination procedures and up-to-date and relevant country of origin information. UNHCR considers that the risks facing individuals with the profiles outlined below require particularly careful examination, and that they are likely to be in need of international refugee protection, depending on the individual circumstances of the case. This listing is not necessarily exhaustive and is based on information available to UNHCR at the time of writing. Therefore, a claim should not automatically be considered as without merit simply because it does not fall within any of the profiles identified below. Certain claims by asylum-seekers from Sri Lanka may require examination for possible exclusion from refugee status.

Recent reports have been published detailing exposure to serious violence directed against people from several of the risk profiles listed below, including in some cases mistreatment amounting to torture.¹⁷⁷

¹⁷³ Centre for Policy Alternatives, Bhavani Fonseka and Mirak Raheem, *Land in the Northern Province. Post-war Politics, Policy and Practices*, December 2011, <http://cpalanka.org/wp-content/uploads/2011/12/Land-Issues-in-the-Northern-Province-Post-War-Politics-Policy-and-Practices.pdf>. “Residents of an area of Sampur Special Economic Zone, which partly overlapped with an HSZ, were denied access to 2,795 acres of land demarcated for a coal power project. On October 21, Economic Development Minister Basil Rajapaksa declared in parliament that residents would be allowed to resettle into the area once land acquisition for the project was complete. He added that the government would pay compensation for the lands to be acquired, although residents had not received compensation at year’s end”, United States Department of State, *2011 Country Reports on Human Rights Practices - Sri Lanka*, 24 May 2012, <http://www.unhcr.org/refworld/docid/4fc75a5eb4.html>.

¹⁷⁴ “There were reports of government-aided resettlement of Sinhala families from the south into traditionally Tamil areas. For example, the military helped move 165 Sinhala families into the village of Kokkachchaankulam in Vavuniya, and these families were issued land permits. There also were reports that the government had taken measures to resettle Sinhala families on Tamil lands in Batticaloa District, including 170 families in Kevuilyamadu and 230 families in Kachchakkodi Chuvaamimalai. Tamil members of parliament raised concerns about such resettlements in parliament, alleging a process of “Sinhalization” had begun in the north and east”, United States Department of State, *2011 Country Reports on Human Rights Practices - Sri Lanka*, 24 May 2012, <http://www.unhcr.org/refworld/docid/4fc75a5eb4.html>.

¹⁷⁵ See e.g.: BBC, *Shirani Bandaranayake: Sri Lanka judge impeachment hearing begins*, 23 November 2012, <http://www.bbc.co.uk/news/world-asia-20458156>; Lanka Business Online, *Legal Protest*, 5 November 2012, <http://www.lankabusinessonline.com/fullstory.php?nid=1009140144>; Colombo Page, *Sri Lankan lawyers to launch island-wide protests over issues faced by the judiciary*, 9 December 2012, http://www.colombopage.com/archive_12B/Dec09_1355075543CH.php; Sunday Observer, *PSC finds Chief Justice Guilty*, 9 December 2012, <http://www.sundayobserver.lk/2012/12/09/pol101.asp>.

¹⁷⁶ Based on information available to UNHCR through its field presence and material from independent country specialists, researchers and other sources, rigorously reviewed for reliability.

¹⁷⁷ Asian Human Rights Commission, *Police Torture Cases, 1998 – 2011, Sri Lanka*, case 299, page 379, <http://www.humanrights.asia/resources/special-reports/AHRC-SPR-001-2011-SriLanka.pdf>. Human Rights Watch has reported thirteen cases of arbitrary arrest and torture of failed Tamil asylum-seekers, upon their return to Sri Lanka, most recently in February 2012. See: Human Rights Watch, “UK: Halt Deportations of Tamils to Sri Lanka. Credible Allegations of Arrest and Torture upon Return”, 25 February 2012, <http://www.hrw.org/news/2012/02/24/uk-halt-deportations-tamils-sri-lanka>, and Human Rights Watch, “UK: Suspend Deportations of Tamils to Sri Lanka. Further Reports of Torture of Returnees Highlight Extent of Problem”, 29 May 2012, <http://www.hrw.org/news/2012/05/29/uk-suspend-deportations-tamils-sri-lanka>.

Freedom from Torture has documented 54 cases of Sri Lankans (predominantly Tamils), who experienced torture in detention in the post-conflict period (i.e. after May 2009), including cases of individuals who were tortured after having voluntarily or forcibly returned

The psychological and physical consequences of past exposure to such experiences in an environment of past prolonged armed conflict, serious human rights violations and military occupation, needs to be appropriately taken into account in the assessment of a claim.¹⁷⁸

Within each of the risk profiles described, there is an ethnic dimension to their vulnerability. Whereas persons belonging to the Sinhalese majority may fall within the risk profiles, generally members of the minority Tamil and, to a lesser extent, Muslim communities are reportedly more often subjected to arbitrary detention, abductions or enforced disappearances.¹⁷⁹ Other human rights issues, such as sexual and gender-based violence and violations of housing, land and property rights, also disproportionately affect members of ethnic minorities. In addition to a person's ethnicity, the place of origin may also be a relevant factor in the assessment of risk.

A. Risk Profiles

A.1 *Persons Suspected of Certain Links with the Liberation Tigers of Tamil Eelam (LTTE)*

At the height of its influence in Sri Lanka in 2000-2001, the LTTE controlled and administered 76% of what are now the northern and eastern provinces of Sri Lanka.¹⁸⁰ Therefore, all persons living in those areas, and at the outer fringes of the areas under LTTE control, necessarily had contact with the LTTE and its civilian administration in their daily lives. Originating from an area that was previously controlled by the LTTE does not in itself result in a need for international refugee protection in the sense of the 1951 Convention and its 1967 Protocol.

from the United Kingdom to Sri Lanka. See: Freedom from Torture (formerly the Medical Foundation for the Care of Victims of Torture), *Sri Lankan Tamils tortured on return from the UK*, 13 September 2012, <http://www.unhcr.org/refworld/docid/505321402.html>. The total of 54 cases includes 35 cases of post-conflict torture in Sri Lanka documented earlier, including of 14 individuals who returned to Sri Lanka after a period abroad (in three cases the person was forcibly returned from a European State, upon rejection of the asylum claim). See: Freedom from Torture, *Freedom from Torture submission to the Committee against Torture for its examination of Sri Lanka in November 2011*, undated, last accessed November 2012, http://www2.ohchr.org/english/bodies/cat/docs/ngos/FFT_SriLanka47.pdf. See also Amnesty International, *Sri Lanka: Briefing to Committee Against Torture*, October 2011, http://www2.ohchr.org/english/bodies/cat/docs/ngos/AI_SriLanka47.pdf, detailing the case of two brothers who were arrested, imprisoned for 8 months and reportedly tortured in 2009 after having been deported to Sri Lanka from Australia. They were reported to be re-arrested in August 2010. See also a number of the reports submitted to the Committee against Torture, e.g. Amnesty International, *Sri Lanka: Briefing to Committee Against Torture*, October 2011, http://www2.ohchr.org/english/bodies/cat/docs/ngos/AI_SriLanka47.pdf, p.7: "Confessions are routinely extracted under torture by the police in order to 'solve' cases." See also, Sri Lanka NGO Collective, *Joint Alternative Report from the Sri Lankan NGO Collective to the Committee Against torture*, 14 October 2011, http://www2.ohchr.org/english/bodies/cat/docs/ngos/NGOCollective_SriLanka47.pdf, see p. 28, "Confessions under torture". See also United States Department of State, *2011 Country Reports on Human Rights Practices - Sri Lanka*, 24 May 2012, <http://www.unhcr.org/refworld/docid/4fc75a5eb4.html>; "Confessions obtained by coercive means, including torture, are inadmissible in criminal courts, except in PTA cases. Defendants bear the burden of proof, however, to show that their confessions were obtained by coercion." Finally, see: US Department of State, *2010 Human Rights Report: Sri Lanka*, 8 April 2011, <http://www.state.gov/documents/organization/160476.pdf>; "The case of journalist J.S. Tissainayagam (...), he had testified in court that his alleged confession was the result of torture by members of the TID (...). The alleged confession nonetheless was allowed as evidence in his trial in 2009."

¹⁷⁸ See UNHCR, Guidelines on International Protection No. 4, "Internal Flight or Relocation alternative" within the context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, 23 July 2003, <http://www.unhcr.org/refworld/pdfid/3f2791a44.pdf>, paragraph 26: "Psychological trauma arising out of past persecution may be relevant in determining whether it is relevant to expect the claimant to relocate in the proposed area. The provision of psychological assessments attesting the likelihood of further psychological trauma upon return would mitigate against finding that relocation to the area is a reasonable alternative (...)". The reasoning in this paragraph can be applied in an analogous manner to the adjudication of asylum claims under the 1951 Convention article 1A.

¹⁷⁹ See Minority Rights Group International, *No war, no peace: the denial of minority rights and justice in Sri Lanka*, 19 January 2011, <http://www.unhcr.org/refworld/docid/4d3d5a892.html>. The Press Release issued with the report summarizes: "Human rights violations in Sri Lanka continue unabated against ethnic Tamils and Muslims who fear an increasingly nationalist government, a new report by Minority Rights Group International says. Nearly two years after the end of the war, minorities face daily repression and marginalisation in politics and development policies, particularly in the country's north and east, documents the report. (...) 'Despite the end of the war, many Tamil and Muslim minorities in Sri Lanka continue to live in fear,' says Mark Lattimer, Executive Director of MRG". See also: Minority Rights Group International, *State of the World's Minorities and Indigenous Peoples 2012 - Sri Lanka*, 28 June 2012, <http://www.unhcr.org/refworld/docid/4fedb3ee5a.html>.

¹⁸⁰ Sri Lanka Ministry of Defence and Urban Development, *Humanitarian Operation Timeline*, accessed 2 March 2012, <http://www.defence.lk/new.asp?fname=Humanitarian>.

However, previous (real or perceived) links that go beyond prior residency within an area controlled by the LTTE continue to expose individuals to treatment which may give rise to a need for international refugee protection, depending on the specifics of the individual case. The nature of these more elaborate links to the LTTE can vary, but may include people with the following profiles:

- 1) Persons who held senior positions with considerable authority in the LTTE civilian administration, when the LTTE was in control of large parts of what are now the northern and eastern provinces of Sri Lanka;
- 2) Former LTTE combatants or “cadres”;
- 3) Former LTTE combatants or “cadres” who, due to injury or other reason, were employed by the LTTE in functions within the administration, intelligence, “computer branch” or media (newspaper and radio);
- 4) Former LTTE supporters who may never have undergone military training, but were involved in sheltering or transporting LTTE personnel, or the supply and transport of goods for the LTTE;
- 5) LTTE fundraisers and propaganda activists and those with, or perceived as having had, links to the Sri Lankan diaspora that provided funding and other support to the LTTE;
- 6) Persons with family links or who are dependent on or otherwise closely related to persons with the above profiles.¹⁸¹

When assessing claims of persons with the profiles above, it may, depending on the individual circumstances of the claim, be important to examine the applicability of the exclusion clauses. See for more detail under C.

Information has been published documenting cases of mistreatment and torture of women and men in detention (police custody or other forms of detention), for reason of their or their family members’ alleged former links with the LTTE.¹⁸² Killings have been reported which appear to be politically motivated, targeting persons believed to be LTTE sympathizers.¹⁸³ Sexual violence, including but not limited to rape, against Tamil men¹⁸⁴ in detention has also been reported recently, including reports of cases perpetrated in the post-conflict period.¹⁸⁵ Sexual harassment of former LTTE combatants in rehabilitation centres has also been reported.¹⁸⁶

Former “rehabilitees” reportedly face problems reintegrating upon release.¹⁸⁷ Many are visited by military and intelligence agents, or are required to report regularly¹⁸⁸ to local military “Civil Affairs

¹⁸¹ Profiles based on information available to UNHCR, complemented by information from a range of public domain sources, including documented cases of torture or mistreatment after forced return (see footnote 18).

¹⁸² See e.g. Asian Human Rights Commission, *Police torture Cases, 1998 – 2011, Sri Lanka*, case 299, page 379, <http://www.humanrights.asia/resources/special-reports/AHRC-SPR-001-2011-SriLanka.pdf>. This report provides details for 20 such cases for 2010 and 22 for 2011. The cases described are selected from a larger number of cases reported to local civil society organisations. See also a number of the cases reported by Freedom from Torture (formerly the Medical Foundation for the Care of Victims of Torture), *Sri Lankan Tamils tortured on return from the UK*, 13 September 2012, <http://www.unhcr.org/refworld/docid/505321402.html>; and Freedom from Torture, *Freedom from Torture submission to the Committee against Torture for its examination of Sri Lanka in November 2011*, undated, accessed 3 November 2011, http://www2.ohchr.org/english/bodies/cat/docs/followup/FFT_SriLanka47.pdf.

¹⁸³ “For example, on June 26 [2011], Jaffna residents found former LTTE combatant Balachchandran Satkunara hanged from a soccer goal post.”, United States Department of State, *2011 Country Reports on Human Rights Practices - Sri Lanka*, 24 May 2012, <http://www.unhcr.org/refworld/docid/4fc75a5eb4.html>.

¹⁸⁴ Sexual and gender-based violence against women and children is discussed in chapters II.C.2, III.A.6 and III.A.7.

¹⁸⁵ See: Freedom from Torture (formerly the Medical Foundation for the Care of Victims of Torture), *Sri Lankan Tamils tortured on return from the UK*, 13 September 2012, <http://www.unhcr.org/refworld/docid/505321402.html>. This report refers to “sexual assault in all 6 cases and rape in 1 case” when describing six forensically documented cases of persons who had a real or perceived association with the LTTE in Sri Lanka. See also Freedom from Torture, *Freedom from Torture submission to the Committee against Torture for its examination of Sri Lanka in November 2011*, undated, accessed 3 November 2011, http://www2.ohchr.org/english/bodies/cat/docs/followup/FFT_SriLanka47.pdf, from page 18 onwards, 15 cases of male victims of different forms of sexual violence committed post-conflict are described.

¹⁸⁶ “Several former LTTE combatants released from rehabilitation centers reported torture or mistreatment, including sexual harassment, by government officials while in rehabilitation centers”, United States Department of State, *2011 Country Reports on Human Rights Practices - Sri Lanka*, 24 May 2012, <http://www.unhcr.org/refworld/docid/4fc75a5eb4.html>.

¹⁸⁷ For the definition of a rehabilitee, see supra note 49. See: transCurrents, Rev. Fr. Jeyabalan Croos, Deanne Uyangoda and Ruki Fernando, *Threats, harassments and restrictions on former detainees and their families in the Vanni*, 12 May 2011, <http://transcurrents.com/news-views/archives/424>. This article reports on threats, surveillance, limitations on freedom of movement, livelihood challenges, on the basis of interviews with 15 former detainees and 3 mothers of former detainees from villages in the Vanni. See also: “Reintegration of former combatants released from rehabilitation remained challenging due to intensive surveillance by the

Officers”, local police and military camps. Many are believed to have been put under pressure to act as informants.¹⁸⁹ Should the individual fail to report to the military authorities on a regular basis, family members are directly questioned by the military on their whereabouts. Additionally, relatives of former LTTE fighters who did not surrender continue to face interrogation by the authorities. The issuance of *ad hoc* “release certificates” by these authorities, including with expiration dates, reportedly creates confusion as to the status of those who are released. “*Rehabilitees*” report that they self-limit their movements within and outside their immediate community, which also has a negative impact on certain livelihood opportunities.¹⁹⁰

The Presidential Task Force for Resettlement, Development and Security in the Northern Province reportedly discourages the provision of humanitarian support to former “*rehabilitees*” and their family members. Reportedly, this is the case even if those concerned may have specific needs following release, based on humanitarian criteria, such as belonging to a single-headed household.¹⁹¹

Persons of the above profile are, depending on the individual circumstances of the case, likely to be in need of international refugee protection on account of their (perceived) political opinion, usually linked to their ethnicity. The same is likely to apply to family members and other dependants of individuals with the above profiles.¹⁹² Asylum claims by persons suspected of certain links with the LTTE, in particular former cadres, whether or not they have engaged in military operations, may, depending on the individual circumstances of the case, need to be examined for possible exclusion from refugee status.

A.2 Certain Opposition Politicians and Political Activists

A small number of persons have been detained and imprisoned allegedly for political reasons. The case of opposition presidential candidate and former army commander Sarath Fonseka has received the most attention. It was reported in November 2011 that Fonseka’s 30 month jail term was extended by the Colombo High Court for three additional years, for “implicating the government in war crimes” while two further court cases against him were still pending.¹⁹³ However, on 21 May 2012 General Fonseka was released based on a Presidential pardon.¹⁹⁴ Over twenty individuals involved in his political campaign were also detained but released by November 2010.¹⁹⁵

military, social stigma (some people were afraid to associate themselves with ex-combatants who regularly had to report to the army), employment difficulties, and psychological trauma”, United States Department of State, *2011 Country Reports on Human Rights Practices - Sri Lanka*, 24 May 2012, <http://www.unhcr.org/refworld/docid/4fc75a5eb4.html> and Integrated Regional Information Networks (IRIN), *Sri Lanka: Former Tiger fighters battle for a normal life*, 28 May 2012, <http://www.unhcr.org/refworld/docid/4fc5f4db2.html>.

¹⁸⁸ The Centre for Policy Alternatives reports on the security of released ex-combatants, on the basis of “information received from local working groups in the north in January 2012”, that “thousands continue to be under surveillance and need to report regularly to military and police”, see Centre for Policy Alternatives, *The Sri Lankan Case: Rhetoric, Reality and Next Steps?*, March 2012, accessible through CPA’s facebook page, on <http://www.scribd.com/doc/85006799/The-Sri-Lankan-Case-Rhetoric-Reality-and-Next-Steps>.

¹⁸⁹ International Crisis Group (ICG), *Sri Lanka’s North I: The Denial of Minority Rights*, 16 March 2012, <http://www.unhcr.org/refworld/docid/4f6452cb2.html>, page 10-12.

¹⁹⁰ Information available to UNHCR.

¹⁹¹ International Crisis Group, *Sri Lanka: Reconciliation harder than ever*, Asia Report No. 209, 18 July 2011, <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/209%20Reconciliation%20in%20Sri%20Lanka%20-%20Harder%20than%20Ever.pdf>.

¹⁹² See e.g. the profile of the Sri Lankan torture survivors in the Freedom from Torture study which includes people targeted for reason of family links to (perceived) LTTE supporters/members, Freedom from Torture, *Out of the Silence: New Evidence of Ongoing Torture in Sri Lanka 2009 -2011*, December 2011, <http://www.unhcr.org/refworld/pdfid/4f02c12b2.pdf>.

¹⁹³ The initial jail term was the result of the conviction by a court martial in 2010 over alleged irregularities in army procurements. See BBC News, *Sri Lanka’s jailed ex-army chief Fonseka given new term*, 18 November 2011, <http://www.bbc.co.uk/news/world-asia-15787672>.

¹⁹⁴ The New York Times, *Sri Lanka releases ex-army chief from prison*, 21 May 2012, <http://www.nytimes.com/2012/05/22/world/asia/general-fonseka-is-released-from-prison-in-sri-lanka.html>.

¹⁹⁵ United States Department of State, *2011 Country Reports on Human Rights Practices - Sri Lanka*, 24 May 2012, <http://www.unhcr.org/refworld/docid/4fc75a5eb4.html>.

Another case in which the victims' political affiliation has been reported to be the cause is the disappearance of two political activists, after having been abducted in the country's north in December 2011.¹⁹⁶ Furthermore, in April 2012, a female politician was reportedly abducted.¹⁹⁷ Certain opposition politicians and political activists are also reported to have been detained¹⁹⁸ and harassed.¹⁹⁹

In 2011, political party offices were allegedly attacked for different reasons, related for example to local elections or to internal turmoil within the party.²⁰⁰ It has also been reported that opposition parliamentarians have been assaulted in the parliament, following which a number of them had to be admitted to hospital.²⁰¹ A June 2011 meeting in Jaffna attended by parliamentarians of the main Tamil party, the Tamil National Alliance (TNA), was reportedly disturbed by "40-50 men wearing army uniforms carrying weapons."²⁰²

Persons of the above profile are, depending on the individual circumstances of the case, likely to be in need of international refugee protection on account of their political opinion. For Tamil politicians, ethnicity may play an exacerbating role, particularly if they are perceived as supporting an agenda of autonomy or separatism. Depending on the circumstances of the case, the same may apply to family members and other dependants of individuals with the above profile.

A.3 Certain Journalists and Other Media Professionals²⁰³

Recent reports document, amongst others, cases of harassment, arbitrary detention, threats and physical intimidation of journalists and other media professionals, allegedly perpetrated or condoned by officials or pro-government forces.²⁰⁴ Media professionals appear to be targeted owing to the topics they cover in their reports, such as government accountability and the rule of law. Limitations on press freedom in the form of guidelines, including registration requirements and a code of conduct,

¹⁹⁶ "(...) two political activists—Lalith Kumar Weeraraj and Kugan Murugananthan—who went missing in Sri Lanka's north on December 9th (2011)" "(...) Mr Weeraraj and Mr Murugananthan spent much of the past few months campaigning on behalf of hundreds of missing Tamils, many of whom were last seen in the custody of the security forces. The two were intercepted in the northern city of Jaffna by men on motorcycles, bundled into a white van and taken away." The Economist, *Disappearances in Sri Lanka. Murky business*, 14 January 2012, <http://www.economist.com/node/21542827>. See also E.g. ColomboPage News Desk Sri Lanka, *Demonstrations organized in Jaffna against two missing activists of Sri Lanka's dissident Marxist Group*, 16 January 2012, http://www.colombopage.com/archive_12/Jan16_1326693364JR.php, and BBC News, *Appeal to UN over missing Sri Lanka activists*, 6 January 2012, <http://www.bbc.co.uk/news/world-asia-16443096>. Their cases have been reported to relevant United Nations bodies.

¹⁹⁷ The Economist online, *Sri Lanka, The disappeared*, 12 April 2012, <http://www.economist.com/blogs/banyan/2012/04/sri-lanka>. See the account of Dimuthu Attygalle, abducted on 6 April 2012. She is a leader of the Frontline Socialist Party (FSP), a small Sri Lankan opposition group. The article also refers to the abduction of Premakumar Gunaratnam, another FSP leader.

¹⁹⁸ See above, on detention of opposition politician Sarath Fonseka.

¹⁹⁹ Human Rights Watch, *World Report 2012*, January 2012, <http://www.hrw.org/world-report-2012/world-report-2012-sri-lanka>, see report of harassment of TNA members in context of local elections in Jaffna.

²⁰⁰ BBC Sinhala, *UNP head office attacked by dissidents*, 19 December 2011, http://www.bbc.co.uk/sinhala/news/story/2011/12/111219_unp_election.shtml. Campaign for Free and Fair Elections (CaFFE), *JVP office attacked*, 4 October 2011, http://caffesrilanka.org/JVP_office_attacked_-5-2927.html, Sunday Times, *Three JVP offices attacked*, 28 February 2011, [no longer accessible in Sunday Times archives, but reprinted on www.infolanka.com], <http://www.infolanka.com/news/2011/feb/index41.html>.

²⁰¹ BBC Sinhala, *Opposition MPs assaulted in Parliament*, 21 November 2011, http://www.bbc.co.uk/sinhala/news/story/2011/11/111121_budget_unp_assault.shtml.

²⁰² BBC Sinhala, *Military 'apologies' for attack on Tamil MPs*, 19 June 2011, http://www.bbc.co.uk/sinhala/news/story/2011/06/110619_jaffna_tna_attack.shtml.

²⁰³ See also I.L.C.2, "Freedom of Expression".

²⁰⁴ For recent examples, see e.g.: The Sunday Leader, *Frederika Jansz, Gota goes berserk*, 13 July 2012, <http://www.thesundayleader.lk/2012/07/08/gota-goes-berserk/>; Reporters Without Borders, *Eight online journalists and an office assistant freed but investigation continues*, 4 July 2012, <http://www.unhcr.org/refworld/docid/4ffaeaf92.html>; Human Rights Watch, *Sri Lanka: Halt Harassment of Media*, 3 July 2012, <http://www.unhcr.org/refworld/docid/4ffed52.html>; Committee to Protect Journalists, *Sri Lankan police raid offices of two news websites*, 29 June 2012, <http://www.unhcr.org/refworld/docid/4ff59dbb28.html>. For a list of incidents and events representing interference with the freedom of the media in January and February 2012, see Reporters Without Borders, *No sign of progress. With media gagged or threatened, no progress for freedom of information*, 28 February 2012, http://en.rsf.org/sri-lanka-with-media-gagged-or-threatened-no-28-02-2012_41946.html. See also, The Island, *'I threw Poddala out of the country,' Mervyn boasts*, 23 March 2012, quoting the Public Relations Minister as threatening to break the limbs of those who had campaigned or reported against Sri Lanka at the March HRC session, http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=48179.

have been introduced.²⁰⁵ If these regulations are not adhered to, journalists and media professionals may find themselves at risk.²⁰⁶

Persons of the above profile are, depending on the individual circumstances of the case, likely to be in need of international refugee protection on account of their (perceived) political opinion. For Tamil journalists, ethnicity may also play an exacerbating role.²⁰⁷ Depending on the circumstances of the case, the same may apply to family members and other dependants of individuals with the above profile.

A.4 Certain Human Rights Activists

Threats to and attacks against human rights defenders, trade union activists²⁰⁸ and lawyers²⁰⁹ have been documented in numerous reports.²¹⁰ Humanitarian workers during the conflict and its immediate aftermath, particularly those who worked with or were perceived as working with human rights or protection issues, can also appropriately be considered within this profile.

²⁰⁵ See e.g. Committee to Protect Journalists, *Sri Lankan government to impose guidelines on media*, 10 November 2011, <http://www.unhcr.org/refworld/docid/4ec0efdb28.html>. See also Centre for Policy Alternatives, *Freedom of Expression on the Internet in Sri Lanka*, November 2011, <http://cpalanka.org/wp-content/uploads/2011/11/FOE-REPORT-NOV-2011-FINAL-CPA.pdf>. See also, Reporters without Borders, *With Media Gagged or Threatened, No Progress for Freedom of Information*, 28 February 2012, <http://en.rsfsf.org/sri-lanka-with-media-gagged-or-threatened-no-28-02-2012,41946.html> and Reporters without Borders, *Government-Orchestrated Threats against Exile Journalists*, 23 March 2012, <http://en.rsfsf.org/sri-lanka-government-orchestrated-threats-23-03-2012,42179.html>.

²⁰⁶ See also, Reporters without Borders, *With Media Gagged or Threatened, No Progress for Freedom of Information*, 28 February 2012, <http://en.rsfsf.org/sri-lanka-with-media-gagged-or-threatened-no-28-02-2012,41946.html> and Reporters without Borders, *Government-Orchestrated Threats against Exile Journalists*, 23 March 2012, <http://en.rsfsf.org/sri-lanka-government-orchestrated-threats-23-03-2012,42179.html>.

²⁰⁷ See e.g. how being Tamil is emphasized in the reporting on an attack of a “senior Tamil journalist” in Jaffna: Asian Human Rights Commission, *Sri Lanka: Senior Tamil journalist brutally attacked by armed men in Jaffna* - JDS News, 1 August 2011, <http://www.humanrights.asia/news/forwarded-news/AHRC-FPR-036-2011>.

²⁰⁸ See e.g. reports on attacks of trade union leader in the *Written Statement submitted by Front Line – the International Foundation for the Protection of Human Rights Defenders, a non-governmental organization in special consultative status*, Human Rights Council 19th session, 28 February 2012, A/HRC/19/NGO/122, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/109/11/PDF/G1210911.pdf?OpenElement>, p. 2. Furthermore, see also *The situation in Sri Lanka – an unsigned statement from Sri Lankan civil society – Feb 3rd 2012*, reporting the killing of an advisor on trade union affairs on page 2. The statement claims to be left unsigned “to protect the authors from retaliation” and is available on <http://www.scribd.com/director2005/d/82184215-The-Situation-in-Sri-Lanka>.

²⁰⁹ “Lawyers who defended human rights cases sometimes were under physical and verbal threats”, United States Department of State, 2011 *Country Reports on Human Rights Practices - Sri Lanka*, 24 May 2012, <http://www.unhcr.org/refworld/docid/4fc75a5eb4.html>. See also: “Lawyers who defended human rights cases sometimes were under physical and verbal threats. There was no progress in the investigation of a 2008 grenade attack on the home of J.C. Weliamuna, a local human rights lawyer and the then director of Transparency International in the country”, US Department of State, 2010 *Human Rights Report: Sri Lanka*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56d87c.html>.

²¹⁰ See e.g. FIDH, *The difficult situation of human rights defenders in Sri Lanka*, NGO report - 2nd Universal Periodic Review of Sri Lanka (November 2012), Submitted by the Observatory for the Protection of Human Rights Defenders, a joint programme of the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), 16 November 2012, <http://www.fidh.org/The-difficult-situation-of-human-12453>. A poster campaign against a prominent civil society leader is a recent example of harassment of human rights defenders, see: Colombo Telegraph, *Civil Society Condemns Poster Campaign Vilifying Dr. Saravanamuttu* 19 October 2012, <http://www.colombotelegraph.com/index.php/civil-society-condemns-poster-campaign-vilifying-dr-saravanamuttu/>. In its 2011 concluding observations, the Committee against Torture “expresses its concern at reports that human rights defenders, defense lawyers and other civil society actors, including political activists, trade unionists and independent media journalists have been singled out as targets of intimidation, harassment including death threats and physical attacks and politically motivated charges”. See Committee against Torture, 47th session, 31 October – 25 November 2011, *Consideration of reports submitted by States parties under article 19 of the Convention. Concluding observations of the Committee against Torture*, http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.LKA.CO.3-4_en.pdf. See also Amnesty International, “Human rights defenders continued to be arbitrarily arrested, abducted, attacked and threatened.”, *Annual Report 2011, The state of the world’s human rights, Sri Lanka*, accessed November 2012, <http://www.amnesty.org/en/region/sri-lanka/report-2011>. UN News Service, *After body of Sri Lankan rights defender is apparently found, UN calls for action*, 29 July 2011, <http://www.unhcr.org/refworld/docid/4e391dcb2.html>. See also: Sri Lankan NGO Collective (Centre for Human Rights and Development (CHRD), Right to Life - Human Rights Centre, International Movement Against All Forms of Discrimination and Racism (IMADR), Centre for Policy Alternatives (CPA), National Fisheries Solidarity (NAFSO), Families of the Disappeared (FOD), Rights Now Collective for Democracy, Centre for Peoples Dialogue (CPD), and INFORM Documentation Centre), *Joint alternative report from the Sri Lankan NGO Collective to the Committee Against Torture*, 14 October 2011, http://www2.ohchr.org/english/bodies/cat/docs/ngos/NGOCollective_SriLanka47.pdf, specifically on the situation of lawyers, see page 13.

In a number of incidents, human rights (and opposition) activists were reportedly prevented from participating in peaceful protests,²¹¹ including by being arrested and detained.²¹² A human rights defender was reported to have died after having allegedly been mistreated in public by members of the Special Task Force.²¹³ Retaliation against human rights defenders seeking to make use of UN mechanisms has been reported by different sources.²¹⁴ No mass arrests of protestors have been reported in 2012.²¹⁵

Persons of the above profile are, depending on the individual circumstances of the case, likely to be in need of international refugee protection on account of their (perceived) political opinion. Depending on the circumstances of the case, the same may apply to family members and other dependants of individuals with the above profile. There may be some overlap between this group and opposition politicians (A.2).

A.5 Certain Witnesses of Human Rights Violations and Victims of Human Rights Violations Seeking Justice

Observers have expressed concern over the absence of an effective mechanism to ensure the protection of and assistance to witnesses and victims of human rights violations and abuses.²¹⁶ The UN Committee against Torture expressed concern in its November 2011 Concluding Observations about impunity in the cases of attacks, including against witnesses.²¹⁷ This has an impact on the regular judicial system, but has also affected the LLRC proceedings.²¹⁸

Persons seeking justice after mistreatment by the police have reportedly been harassed and received threats, in an attempt to make them withdraw their cases.²¹⁹ In August 2012, a complainant of a human rights violation was reportedly arrested and tortured by the police in Negombo.²²⁰ In February

²¹¹ E.g. BBC Sinhala, *Protestors allege intimidation in the North*, 17 January 2012, http://www.bbc.co.uk/sinhala/news/story/2012/01/120117_jvp.shtml.

²¹² E.g. International Federation for Human Rights, *Sri Lanka: 42 human rights defenders and political activists detained to prevent them from participating in a peaceful protest in Jaffna on Human Rights Day*, 15 December 2011, <http://www.unhcr.org/refworld/docid/4f1021d332.html>.

²¹³ Asian Human Rights Commission: *SRI LANKA: Human Rights Defender tortured in public to death by Special Task Force of police*, 28 September 2011, <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-183-2011>.

²¹⁴ See *Written Statement submitted by Front Line – the International Foundation for the Protection of Human Rights Defenders, a non-governmental organization in special consultative status*, Human Rights Council 19th session, 28 February 2012, A/HRC/19/NGO/122, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/109/11/PDF/G1210911.pdf?OpenElement>, page 3. See also: The New York Times, *Move at U.N. on Carnage in Sri Lanka Sets Off Fury*, 19 March 2012, http://www.nytimes.com/2012/03/20/world/asia/un-panel-seeks-vote-on-carnage-in-sri-lanka.html?_r=2&ref=world. See furthermore TransCurrents, *Attacks on dissent in Sri Lanka – Incidents in 2012*, 24 February 2012, <http://transcurrents.com/news-views/archives/8602>, page 1 and page 3, and Office of the High Commissioner for Human Rights, *Briefing note on Sri Lanka / human rights defenders*, 23 March 2012, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12008&LangID=E>. See also Sunila Abeysekara, Nimalka Fernando and Dr. Paikiasothy Saravanamuttu, *Joint statement*, 23 March 2012, <http://us2.campaign-archive1.com/?u=746409e6de7b1c2a97474620a&id=c7edca391f&e=7d5a637ec2>.

²¹⁵ The last report of mass arrests at a demonstration dates back to August 2011: ColomboPage News Desk Sri Lanka, *Hundreds arrested in Sri Lanka's Jaffna city for attacking police post, residents protest*, 23 August 2011, http://www.colombopage.com/archive_11A/Aug23_1314105588KA.php.

²¹⁶ See, amongst others: International Commission of Jurists, *Authority without accountability: the crisis of impunity in Sri Lanka*, November 2012, <http://www.unhcr.org/refworld/docid/50ae365b2.html>. This report states: "It is increasingly difficult, in fact nearly impossible, for people who have suffered serious violations of their human rights to receive justice and accountability. Victims and survivors do not receive redress, and perpetrators are not brought to justice." See also e.g.: Asian Human Rights Commission, *Sri Lanka: Without Witness and Victim Protection Legislation, No Hope for Restoration of Justice in Sri Lanka*, 21 January 2011, <http://www.humanrights.asia/news/ahrc-news/AHRC-ART-006-2011/>.

²¹⁷ Committee against Torture, 47th session, 31 October – 25 November 2011, *Consideration of reports submitted by States parties under article 19 of the Convention. Concluding observations of the Committee against Torture*, http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.LKA.CO.3-4_en.doc.

²¹⁸ Asian Human Rights Commission, *Sri Lanka: Without Witness and Victim Protection Legislation, No Hope for Restoration of Justice in Sri Lanka*, 21 January 2011, <http://www.humanrights.asia/news/ahrc-news/AHRC-ART-006-2011/>.

²¹⁹ E. g. Daily Mirror, *SC grants leave to proceed in alleged torture case*, 31 May 2011. The article can no longer be accessed free-of-charge on the Daily Mirror website, but it has been republished in full on the website of a local human rights organization, Janasansadaya, see <http://www.janasansadaya.org/page.php?id=400&lang=en>.

²²⁰ Asian Human Rights Commission, *SRI LANKA: Complainant of human rights violation case is illegally arrested and severely tortured at the SP's office of Negombo*, 21 August 2012, <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-147-2012>.

2012, a Tamil businessman was reportedly abducted in Colombo, two days before the scheduled hearing in his Fundamental Rights case. He had reportedly filed a Fundamental Rights petition with the Supreme Court against the police concerning torture during 28 months of detention after his arrest in 2009. It was also reported that he had filed a petition with the Secretariat of the UN Committee Against Torture.²²¹ Before and during the session of the UN Human Rights Council (HRC) in Geneva in March 2012, harassment and intimidation of human rights defenders, activists and NGO-workers engaging with the HRC process were reported by different sources. These reports prompted the publication of a briefing note by the UN High Commissioner for Human Rights warning against any reprisals undertaken against Sri Lankan human rights defenders. The briefing note was published the day after the HRC resolution regarding accountability and reconciliation in Sri Lanka was adopted.²²²

A bill on witness and victim protection has been on the parliamentary agenda since 2007 and was reintroduced in 2008, but no progress has been made towards its adoption.²²³ Observers have also noted with concern that the LLRC lacks witness and victim protection mechanisms. Cases of hardship and subsequent harassment faced by civilians who testified before the LLRC have been reported, including the case of a witness who was summoned for an interview by the Criminal Investigation Department after having given evidence to the LLRC.²²⁴ Witnesses have reportedly been photographed by members of the security forces during LLRC sessions. In Jaffna, witnesses have reportedly been threatened by armed men.²²⁵

Persons of the above profile are, depending on the individual circumstances of the case, likely to be in need of international refugee protection on account of their (perceived) political opinion. Ethnicity may also play a role. Depending on the circumstances of each individual case, the same may apply to family members and other dependants of individuals with the above profile. It should be kept in mind that nobody can be expected or required to suppress their political views to avoid persecution. This profile may overlap with the previous profile for human rights defenders or activists who seek to make use of national legal proceedings or international human rights mechanisms.

²²¹ A Canadian journalist described the events around the kidnapping as follows: “(...) ‘The armed men were hiding in our compound, surrounded by a brick wall. They grabbed my husband by the neck and dragged him towards the vehicle. He was screaming for help as they sped away’, his wife Shiromi told the newspapers. The abductor squad comprising seven persons were brandishing assault rifles and shot guns while bundling Prabakaran into a white van that was seen speeding off in the direction of Dehiwela. Many people in the vicinity saw the incident but were unable to intervene as they suspected the armed abductors in the white van were members of an ‘officially sanctioned unofficial state terrorist outfit’ functioning with approval of upper echelons of the Defence establishment. Prabakaran’s wife Shiromi who had noted down the white van registration number and complained to the Wellawatte Police was told that the number plates were false and the vehicle could not be traced.(...)”, D.B.S. Jeyaraj, *Tamil businessman who filed FR case against police abducted at Wellawatte by armed group in white van*, 11 February 2012, <http://dbsjeyaraj.com/dbsj/archives/4199>. The Island newspaper, generally considered as pro-Government, reported on the contrary, that “The abductors of a 42 -year-old Tamil businessman close to his house at Canal Road, Wellawatte on Saturday evening have demanded a ransom of Rs.100 million for his release and the Wellawatte police suspect it to be the work of a Tamil extortion gang.”, The Island, *Abductors demand Rs100 mn to release businessman*, 12 February 2012, http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=45148.

²²² “Sri Lankan nongovernmental organizations represented in Geneva have complained of intimidation by government delegates, saying they have repeatedly photographed the groups’ members, even inside the chambers of the rights council”, The New York Times, *Move at U.N. on Carnage in Sri Lanka Sets Off Fury*, 19 March 2012, http://www.nytimes.com/2012/03/20/world/asia/un-panel-seeks-vote-on-carnage-in-sri-lanka.html?_r=2&ref=world. See also transCurrents, *Attacks on dissent in Sri Lanka – Incidents in 2012*, 24 February 2012, <http://transcurrents.com/news-views/archives/8602>, page 1 and page 3, and UN Office of the High Commissioner for Human Rights, *Briefing note on Sri Lanka / human rights defenders*, 23 March 2012, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12008&LangID=E>. See also Sunila Abeysekara, Nimalka Fernando and Dr. Paikiasothy Saravanamuttu, *Joint statement*, 23 March 2012, <http://us2.campaign-archive1.com/?u=746409e6de7b1c2a97474620a&id=c7edca391f&e=7d5a637ec2>.

²²³ Even if implemented, the proposed victim and witness protection legislation would reportedly be inadequate to the task it nominally addresses. The Sri Lanka Centre for Policy Alternatives (CPA) wrote that it had “serious concerns that a victim and witness protection programme established under this bill would not in fact provide victims and witnesses with the required protection or help reverse the culture of impunity in Sri Lanka.” Asian Human Rights Commission, *Sri Lanka: Without Witness and Victim Protection Legislation, No Hope for Restoration of Justice in Sri Lanka*, 21 January 2011, <http://www.humanrights.asia/news/ahrc-news/AHRC-ART-006-2011/>, also published in the Huffington Post, 20 January 2011, http://www.huffingtonpost.com/rebecca-buckwalterpoza/without-witness-and-victi_b_811446.html. The 2007 CPA Commentary on the draft Bill is no longer available on-line.

²²⁴ BBC Sinhala, *LLRC witness rattled by CID summon*, 12 November 2011, http://www.bbc.co.uk/sinhala/news/story/2011/11/111112_llrcwitness.shtml.

²²⁵ Amnesty International, *When will they get justice? Failures of Sri Lanka’s Lessons Learnt and Reconciliation Commission*, September 2011, <http://www.amnesty.org/en/library/asset/ASA37/008/2011/en/76ea6500-a9f5-4946-bf2b-7fc08bc5e37a/asa370082011en.pdf>.

A.6 Women in certain circumstances²²⁶

Reports have documented high levels of sexual and gender-based violence against women and girls in the final phase of the armed conflict,²²⁷ as well as in the post-conflict phase, including in parts of the country not directly affected by the conflict. However, this type of violence remains under-reported and, if reported, inadequately investigated according to several sources.²²⁸

Rape, assault with the intention to commit rape and “grave sexual abuse not amounting to rape” are prohibited under Sri Lankan penal law. Other sex-based crimes such as trafficking and sexual harassment are also prohibited according to the Penal Code. Marital rape is not a crime in Sri Lanka unless a judge has ordered a spousal separation.²²⁹

A number of factors have been cited in various reports as contributing to increased insecurity and vulnerability of women in the north and east of Sri Lanka. The most relevant include the following: a) large numbers of female-headed households in the areas most affected by the armed conflict; b) women’s weak economic position; c) high militarization, including dependency on security forces for access to detained family members; d) impunity and weak administration of justice; e) prostitution and vulnerability to trafficking in displacement or post-relocation; and f) the vulnerable position of former female LTTE cadres and war widows.²³⁰

Sri Lanka is described as a source country for women and girls (as well as men and boys) subjected to forced labour and sex trafficking abroad. Domestically, women are also reportedly subjected to sex trafficking into brothels.²³¹ While Sri Lanka prohibits all forms of trafficking through an April 2006 amendment to its penal code, legal protection may not always be effective, including as a result of reported complicity on the part of police and other government officials.²³² Internally displaced persons, war widows, and unregistered female migrants are reported to remain particularly vulnerable to human trafficking.²³³

²²⁶ See also paragraph on “Women” in chapter II.C.2.

²²⁷ UN Secretary-General (UNSG), *Report of the Secretary General’s Panel of Experts on Accountability in Sri Lanka*, 31 March 2011, <http://www.unhcr.org/refworld/docid/4db7b23e2.html>, see in particular paragraphs 152, 153, 176(d), 214 and 220. See also, Amnesty International, *Sri Lanka: Briefing to Committee Against Torture*, October 2011, http://www2.ohchr.org/english/bodies/cat/docs/ngos/AI_SriLanka47.pdf, Case Study 3, Rape and Gender Based Violence, page 11.

²²⁸ International Crisis Group, *Sri Lanka: Women’s Insecurity in the North and East*, 20 December 2011, <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/217%20Sri%20Lanka%20-%20Womens%20Insecurity%20in%20the%20North%20and%20East%20KO.pdf>. UN Secretary-General (UNSG), *Report of the Secretary General’s Panel of Experts on Accountability in Sri Lanka*, 31 March 2011, <http://www.unhcr.org/refworld/docid/4db7b23e2.html>, see in particular paragraphs 152, 161 and 228. See also Amnesty International, *Sri Lanka: Briefing to Committee Against Torture*, October 2011, http://www2.ohchr.org/english/bodies/cat/docs/ngos/AI_SriLanka47.pdf, page 5. See also Asian Human Rights Commission, *The State of Human Rights in Sri Lanka in 2011*, chapter 2.1, 9 December 2011, <http://www.humanrights.asia/resources/hrreport/2011/AHRC-SPR-011-2011/view>. In its February 2011 Concluding Observations on Sri Lanka the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) expresses deep concern “about reports of gross violations of the human rights of women on both sides, particularly the Tamil minority group, the internally displaced women and the female ex-combatants”. CEDAW, 48th session, 17 January – 4 February 2011, *Concluding Observations, Sri Lanka*, 4 February 2011, <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-LKA-CO-7.pdf>, paragraph 40.

²²⁹ For details on the applicable domestic legal framework, see International Models Project on Women’s Rights, *Current Legal Framework: Rape and sexual assault in Sri Lanka*, last update on 27 June 2012, <http://www.impowr.org/content/current-legal-framework-rape-and-sexual-assault-sri-lanka>.

²³⁰ International Crisis Group, *Sri Lanka: Women’s Insecurity in the North and East*, 20 December 2011, <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/217%20Sri%20Lanka%20-%20Womens%20Insecurity%20in%20the%20North%20and%20East%20KO.pdf>.

Reportedly, there are up to 90,000 war widows in the conflicted-affected north and east. United Kingdom Foreign & Commonwealth Office, *Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report*, April 2012, <http://fcoidreport.readandcomment.com/wp-content/uploads/2011/02/Cm-8339.pdf>, p. 324.

²³¹ United States Department of State, *2012 Trafficking in Persons Report - Sri Lanka*, 19 June 2012, <http://www.unhcr.org/refworld/docid/4fe30c9432.html>.

²³² “(...) Government employees’ complicity in trafficking remained a problem. There were allegations that police and other officials accepted bribes to permit brothels to operate; some of the brothels exploited trafficking victims. Many recruitment agencies were run by politicians or were politically connected. Some sub-agents cooperated with Sri Lankan officials to procure forged or modified documents, or real documents with false data, to facilitate travel abroad. There were no reported law enforcement actions taken against officials complicit in human trafficking.” United States Department of State, *2012 Trafficking in Persons Report - Sri Lanka*, 19 June 2012, <http://www.unhcr.org/refworld/docid/4fe30c9432.html>.

²³³ United States Department of State, *2012 Trafficking in Persons Report - Sri Lanka*, 19 June 2012, <http://www.unhcr.org/refworld/docid/4fe30c9432.html>.

Information from different sources²³⁴ on the situation of women, including the CEDAW Concluding Observations,²³⁵ indicate that state protection, both in law and in practice, is not necessarily available or accessible to all women throughout the country.²³⁶

Women in the circumstances described above may, depending on the individual case, be in need of international refugee protection for reason of belonging to a particular social group, possibly linked to their ethnicity.

A.7 Children in certain circumstances²³⁷

Former child soldiers are reportedly facing difficulty reintegrating in society, both as a result of the psychological impact of their experiences and reluctance in their communities to accept them back into society.²³⁸ Children, including former child soldiers, may also fall in the risk profile of persons suspected of certain links with the LTTE (see A.1).

In 2010, 359 cases of sexual violence against children were recorded in the Vanni. This number is, according to the authorities, comparable with figures elsewhere in the country, where incidents of sexual violence against children have also been reported recently. Reportedly, in 2011 police recorded the highest number ever of child abuse and rape cases in Sri Lanka.²³⁹ The prosecution of child abuse cases was reported to take long with the average waiting time for a ruling reported to have been six years in 2010.²⁴⁰ Incest rates are reported to be high and some 40,000 children are reportedly exploited as commercial sex workers. Child prostitutes, including children trafficked into brothels²⁴¹ and working in the sex tourism industry, are vulnerable to punishment under certain legislative provisions.²⁴² Boys are reportedly more likely than girls to be forced into prostitution, generally in coastal areas for domestic sex tourism.²⁴³

The reported rate of underage marriage in Sri Lanka is comparatively low within the region, but cases are being reported. At present, the practice of underage marriages appears limited to Sri Lanka's Muslim community, since Muslim personal laws allow girls to be married below the age of 12 years. In the north and east, underage marriages were reported in the past as a means to avoid recruitment by the LTTE.²⁴⁴

Although in Sri Lanka the child labour rates are also low compared to other countries in the region, children are reportedly involved in child labour in agriculture, domestic service and as street vendors.

²³⁴ See e.g. details on availability of state protection in: Immigration and Refugee Board of Canada, *Sri Lanka: Sexual and domestic violence, including legislation, state protection, and services available for victims*, 25 January 2012, LKA103947.E, <http://www.unhcr.org/refworld/docid/4f4f3322.html>.

²³⁵ CEDAW, 48th session, 17 January – 4 February 2011, *Concluding Observations, Sri Lanka*, 4 February 2011, <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-LKA-CO-7.pdf>, paragraphs 14,16, 22, 24 and 26.

²³⁶ For further details, see paragraph on “Women” in chapter II.C.2.

²³⁷ See also paragraph on “Children” in chapter II.C.2.

²³⁸ For further details see paragraph on “Children” in chapter II.C.2.

²³⁹ United Kingdom Foreign & Commonwealth Office, *Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report*, April 2012, <http://fcohrdreport.readandcomment.com/wp-content/uploads/2011/02/Cm-8339.pdf>, p. 325.

²⁴⁰ Integrated Regional Information Networks (IRIN), *Sri Lanka: Child abuse cases stalled*, 24 September 2012, <http://www.unhcr.org/refworld/docid/5062c3422.html>.

²⁴¹ It has been reported previously that this was particularly the case in Anuradhapura; a major transit point for members of the Sri Lankan Armed Forces, heading north. See: United States Department of State, *2011 Trafficking in Persons Report - Sri Lanka*, 27 June 2011, <http://www.unhcr.org/refworld/docid/4e12ee4832.html>.

²⁴² For further details see paragraph on “Children” in chapter II.C.2.

²⁴³ United States Department of State, *2012 Trafficking in Persons Report - Sri Lanka*, 19 June 2012, <http://www.unhcr.org/refworld/docid/4fe30c9432.html>.

²⁴⁴ For further details see paragraph on “Children” in chapter II.C.2.

There are reports of children in bonded labour situations in dry zone farming areas and on plantations, and in the fireworks and fish drying industries.²⁴⁵

Information available from some sources²⁴⁶ on the situation of children with specific profiles or in specific circumstances indicates that state protection is not necessarily available or accessible to all children throughout the country.

Depending on the details of their claims, children in the circumstances described above may, depending on the specifics of their case, be in need of international refugee protection on account of belonging to a particular social group or their (perceived) political opinion, possibly linked to their ethnicity. Asylum claims lodged by children, including the examination of exclusion considerations for former child soldiers, need to be assessed carefully and in accordance with UNHCR guidance on child asylum claims.²⁴⁷

A.8 Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Individuals in certain circumstances

“Homosexual conduct” is criminalized in Sri Lanka and punishable by fines and imprisonment for a maximum of 10 years for acts between adults, and ranging from 10 to 20 years for acts involving a child below the age of 16.²⁴⁸ While few cases have ever been prosecuted, blackmail, violent threats, employment discrimination, rejection by friends, family, the police and society at large are regularly reported. Negative societal attitudes are reported to affect Sinhala, Muslim and Tamil members of the LGBTI community.²⁴⁹ Cases of physical assault, harassment, detention and police violence are reportedly not uncommon.²⁵⁰ LGBT activists raised concerns over increased negative media coverage.²⁵¹ In autumn 2011, a Sinhala newspaper²⁵² published a series of articles accusing a gay rights group involved in HIV/AIDS prevention activities, “Companions on a Journey” (CoJ), of promoting homosexuality. The articles also reportedly published pictures and personal details of gay

²⁴⁵ For further details see paragraph on “Children” in chapter II.C.2.

²⁴⁶ See e.g. details on availability of state protection for women victims of sexual violence, applying equally to children victims of sexual violence, in: Immigration and Refugee Board of Canada, *Sri Lanka: Sexual and domestic violence, including legislation, state protection, and services available for victims*, 25 January 2012, LKA103947.E, <http://www.unhcr.org/refworld/docid/4f4f3322.html>. See also United States Department of Labor, *2010 Findings on the Worst Forms of Child Labor - Sri Lanka*, 3 October 2011, <http://www.unhcr.org/refworld/pdfid/4e8c398fc.pdf>.

²⁴⁷ UN High Commissioner for Refugees, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08, <http://www.unhcr.org/refworld/docid/4b2f4f6d2.html>.

²⁴⁸ Articles 365 and 365A of the Penal Code of Sri Lanka, Ordinance No. 2 of 1883, as last amended by Ordinance No. 16 of 2006, 1 January 1885, [http://www.idpsrilanka.lk/html/Children/Domestic/1883 No 2 Penal code.pdf](http://www.idpsrilanka.lk/html/Children/Domestic/1883%20No%20Penal%20code.pdf). Article 365A, which was introduced by the Penal Code (Amendment) Act (No. 22 of 1995), http://www.commonlii.org/lk/legis/num_act/pca22o1995213/, prohibits acts of “gross indecency” and was interpreted to encompass sexual acts between women; see Human Rights Watch, *This Alien Legacy: The Origins of “Sodomy” Laws in British Colonialism*, December 2008, <http://www.unhcr.org/refworld/docid/494b5e4c2.html>.

²⁴⁹ The Immigration and Refugee Board of Canada (IRB) reports, on the basis of December 2011 correspondence between the Research Directorate and the Executive Director of Equal Ground, that the Equal Ground Director expressed the opinion that LGBTIQ people in the Tamil or Muslim communities may face greater difficulties because these groups are “ultra conservative”. However, she also noted that the LGBTIQ community is “increasingly” threatened by Sinhalese Buddhist nationalists, among others, who claim that “homosexuality is a western value which erodes Sri Lankan culture, morals and family values” (ibid.). See Immigration and Refugee Board of Canada, *Sri Lanka: Treatment of sexual minorities, including legislation, state protection, and support services*, 13 January 2012, LKA103948.E, <http://www.unhcr.org/refworld/docid/4f435fa52.html>.

²⁵⁰ A video with a detailed account of serious mistreatment / torture [of allegedly gay men including sex-workers] in police detention in the Southern Sri Lankan city of Galle was posted on the internet, see International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), *Two new videos on persecution in South Asia. Codified homophobia in Sri Lanka and its oppressive side-effects*, 18 January 2012, <http://ilga.org/ilga/en/article/nmndNzq1FT>. See also United States Department of State, *2011 Country Reports on Human Rights Practices - Sri Lanka*, 24 May 2012, <http://www.unhcr.org/refworld/docid/4fc75a5eb4.html>: “In recent years human rights organizations reported that, while not actively arresting and prosecuting lesbian, gay, bisexual, or transgender (LGBT) persons, police harassed and extorted money or sexual favors from those persons and assaulted gays and lesbians in Colombo and other areas. This led to underreporting of crimes against members of the LGBT community.”

²⁵¹ United Kingdom Foreign & Commonwealth Office, *Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report*, April 2012, <http://fcohrdreport.readandcomment.com/wp-content/uploads/2011/02/Cm-8339.pdf>, p. 321.

²⁵² The articles were published in Rivira, a Sinhala weekly newspaper. The online version of Rivira can be accessed at www.rivira.lk.

rights activists, including of a man working in a counseling centre in Colombo operated by the organization. In a subsequent interview with another newspaper, the man indicated that, as a result of this exposure, his landlord made him leave his boarding house and he has been ostracized by his extended family.²⁵³ After the publication of the articles, it was reported that the office premises of CoJ had been searched by the police. Persons present in the office were reportedly questioned for several hours and intimidated. It was furthermore reported that, as a result of threats and harassment, the organization is no longer functioning.²⁵⁴ There are two other organizations reported to be working on LGBT rights: Equal Ground and the Women's Support Group. In addition, there are reportedly two smaller groups which were established in the last few years: the Diversity and Solidarity Trust (DAST) and Sakhi Collective. These groups are described as an LGBT rights movement "in a nascent stage".²⁵⁵

Unsanctioned societal discrimination and violence against lesbians and bisexual women in rural Sri Lanka were documented in the period April 2010 – May 2011.²⁵⁶ A 2011 publication based on interviews with 17 "queer" women in Sri Lanka²⁵⁷ described that all participants reported "facing homophobic violence of differing intensities: verbal, psychological and/or physical. Some of the abusive behaviours experienced were verbal abuse in public spheres, harassment by police and armed forces personnel, and physical violence faced in public places."²⁵⁸ An NGO shadow report,²⁵⁹ prepared for the February 2011 48th session of CEDAW, described discrimination in law and societal discrimination against lesbians and bisexual women and transgender persons in Sri Lanka. In its *Concluding Observations*, the CEDAW expressed concern that the criminalization of same sex relationships results in women being completely excluded from legal protection.²⁶⁰

Persons undergoing gender reassignment procedures have reportedly had difficulty in amending government documents to reflect those changes.²⁶¹

Although no specific information on the situation of intersex persons in Sri Lanka has been found, and the availability of precise and specific information on the treatment of transgender persons is limited, the reported absence of legal safeguards against discrimination based on sexual orientation or gender identity²⁶² also affects intersex and transgender persons. The absence of precise and specific information or reported incidents relating to the treatment of these persons should not be understood as indicating an absence of risk of serious harm.²⁶³

²⁵³ See LakkimaNews, Ranga Jayasutiya, *Homophobia alive and well*, October 2011, http://www.lakbimanews.lk/index.php?option=com_content&view=article&id=3107:disgraceful-media-bigots-hound-a-gay-man&catid=35:news-features&Itemid=37.

²⁵⁴ UN Human Rights Council, *Written Statement submitted by Front Line – the International Foundation for the Protection of Human Rights Defenders, a non-governmental organization in special consultative status*, 28 February 2012, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/109/11/PDF/G1210911.pdf?OpenElement>.

²⁵⁵ TRANS/SIGN Report of Research Findings, edited by Saskia E. Wieringa, *Women-loving-women in Africa and Asia*, 2011, <http://www.isiswomen.org/phocadownload/print/isispub/Women-Loving-Women.pdf#page=6>, p.492.

²⁵⁶ Equal Ground, *Struggling against Homophobic Violence and Hate Crimes, A Report on the Documentation and Research conducted by Equal Ground from April 2010 – June 2011*, documenting 17 stories of lesbian or bisexual women in the appendix, www.equal-ground.org, accessed 6 December 2011.

²⁵⁷ Women of different ethnic, religious, educational and occupational backgrounds, mostly living in the south of the country.

²⁵⁸ TRANS/SIGN Report of Research Findings, edited by Saskia E. Wieringa, *Women-loving-women in Africa and Asia*, 2011, <http://www.isiswomen.org/phocadownload/print/isispub/Women-Loving-Women.pdf#page=6>, p.499.

²⁵⁹ Women's Support Group, Sri Lanka, *The Status of Lesbians, Bisexual Women and Transgendered Persons in Sri Lanka. NGO Shadow Report to the Committee on the Elimination of All Forms of Discrimination Against Women*, January 2011, http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/WSG_SriLanka48.pdf.

²⁶⁰ CEDAW, 48th session, 17 January – 4 February 2011, *Concluding Observations, Sri Lanka*, 4 February 2011, <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-LKA-CO-7.pdf>, paragraph 24.

²⁶¹ United States Department of State, *2011 Country Reports on Human Rights Practices - Sri Lanka*, 24 May 2012, <http://www.unhcr.org/refworld/docid/4fc75a5eb4.html>. See also other sources mentioned in: Immigration and Refugee Board of Canada, *Sri Lanka: Treatment of sexual minorities, including legislation, state protection, and support services*, 13 January 2012, LKA103948.E, <http://www.unhcr.org/refworld/docid/4f435fa52.html>.

²⁶² United States Department of State, *2011 Country Reports on Human Rights Practices - Sri Lanka*, 24 May 2012, <http://www.unhcr.org/refworld/docid/4fc75a5eb4.html>.

²⁶³ "(...) the absence of information – for example about the enforcement of criminalisation, or about the position of lesbians, trans or intersex people – should not be taken to mean that there is no risk. In such cases, more information must be gathered, for example from grass roots LGBTI organisations in the country of origin, or – if that is impossible – decisions should take into account the lack of accurate information, in particular by relying on the principle of 'the benefit of the doubt'", COC Nederland and Vrije Universiteit

LGBTI individuals may, depending on the individual circumstances of the case, be in need of international refugee protection often, but not exclusively, on account of belonging to a particular social group. Depending on the circumstances of the case, the same may apply to partners and other dependants of individuals with the above profile. LGBTI individuals cannot be expected to be discreet about their sexual orientation or gender identity in order to avoid persecution.²⁶⁴

B. Internal Flight or Relocation Alternative

A detailed analytical framework for assessing the availability of an internal flight or relocation alternative (IFA/IRA) is contained in the UNHCR *Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*.²⁶⁵

Where the agent of persecution is the state itself or associated with it, UNHCR considers that no IFA/IRA is possible elsewhere in the country, as the agent of persecution would be able to pursue the individual throughout the territory.

For Sri Lankans fleeing persecution or serious harm by a non-state agent, an IFA/IRA could be considered. This could, for example, be the case for persons having undergone “rehabilitation” on account of links with the LTTE who fear not to be accepted back by their community after having completed the rehabilitation process. Women or children fearing domestic violence or other forms of sexual or gender-based violence within the community and LGBTI persons may also face serious harm by non-state agents.

Whereas a particular non-state agent of persecution may not be able to pursue an individual throughout the territory, the impact of discriminatory legislation, policies or practices and unsanctioned societal discrimination is not limited to certain parts of the country. In such a situation, the willingness and ability of the authorities to protect the individual in the relocation area needs to be assessed but cannot be taken for granted.²⁶⁶ Based on available information,²⁶⁷ this applies to a number of the profiles

Amsterdam, *Fleeing Homophobia, Asylum Claims Related to Sexual Orientation and Gender Identity in Europe*, September 2011, available at: <http://www.unhcr.org/refworld/docid/4ebba7852.html>.

²⁶⁴ See UNHCR, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 23 October 2012, HCR/GIP/12/01, <http://www.unhcr.org/refworld/docid/50348afc2.html>. The right to freedom of opinion and expression encompasses “the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means, as well as the freedom to seek, receive and impart information and ideas of all kinds, including with regard to human rights, sexual orientation and gender identity, through any medium and regardless of frontiers”; see Principle 19 of the Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity, March 2007, <http://www.unhcr.org/refworld/docid/48244e602.html>. As recognized by numerous national jurisdictions, persecution does not cease to be persecution for the purpose of the 1951 Convention because those persecuted can eliminate the harm by taking avoiding action within the country of nationality or habitual residence. See, e.g., *HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department*, [2010] UKSC 31, 7 July 2010 (UK Supreme Court), <http://www.unhcr.org/refworld/docid/4c3456752.html>; and *Appellant S395/2002 v. Minister for Immigration and Multicultural Affairs*; *Appellant S396/2002 v. Minister for Immigration and Multicultural Affairs*, [2003] HCA 71, 9 December 2003 (High Court of Australia), para 81, <http://www.unhcr.org/refworld/docid/3fd9eca84.html>.

²⁶⁵ The assessment of the availability of an IFA/IRA requires two main sets of analysis, namely its (i) relevance and its (ii) reasonableness. In cases where a well-founded fear of persecution has been established in some localized part of the country of origin, the determination of whether the proposed internal flight or relocation area is an appropriate alternative for the individual concerned requires an assessment over time, taking into account not only the circumstances that gave rise to the risk feared, and that prompted flight from the area of origin, but also whether the proposed area provides a safe and meaningful alternative in the future. The personal circumstances of the individual applicant and the conditions in the area of relocation need to be considered; see UNHCR, *Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.unhcr.org/refworld/docid/3fd9eca84.html>.

²⁶⁶ Evidence of the state’s inability or unwillingness to protect the claimant in the original persecution area will be relevant. It can be presumed that if the state is unable or unwilling to protect the individual in one part of the country, it may also not be able or willing to extend protection in other areas. This may apply in particular to cases of gender-related persecution; see UNHCR, *Guidelines on*

described earlier. For claimants with a well-founded fear of persecution by a non-state agent in one part of the country, an IFA/IRA may thus not necessarily be **relevant**.

In addition to considering relevance, a reasonableness analysis is necessary. Whether an IFA/IRA is “reasonable” must be determined on a case-by-case basis, taking into account not only the personal circumstances of the individual, but also the security, human rights and humanitarian situation in the prospective area of relocation at the time of decision. To this end, the following elements are important: (i) personal circumstances, including the availability of traditional support mechanisms, such as communities, relatives and/or friends willing and able to host or otherwise support the displaced individuals; (ii) safety and security; (iii) respect for human rights; and (iv) economic survival, including the socio-economic circumstances and livelihood opportunities in the proposed relocation area. If the proposed relocation area hosts IDPs, the reasons for continued displacement need also to be taken into account.

Relocation to the north or east

When assessing the reasonableness of an IFA/IRA in the north of Sri Lanka, the following elements continue to be important factors to consider: the lack of basic infrastructure and inadequacy of essential services²⁶⁸ affecting access to water, food,²⁶⁹ sanitation, health care, including psychosocial support,²⁷⁰ housing²⁷¹ and education, combined with limited livelihood opportunities;²⁷² the continued presence of landmines and unexploded ordnance;²⁷³ as well as continued economic and security restrictions affecting access to and use of land, such as the presence of Special Economic Zones and HSZ, which prevent civilians from accessing locations used for agriculture, fishing, cattle grazing and other livelihood activities.²⁷⁴

Sri Lanka’s northern region in particular is not likely to qualify as a reasonable relocation alternative for women. The many factors that contribute to women’s vulnerability and insecurity in these parts of the country include: the large numbers of female-headed households; women’s weak economic position; high militarization, including dependency on the military to access detained family members;

International Protection No. 4: “Internal Flight or Relocation Alternative” Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees, HCR/GIP/03/04, 23 July 2003, para 15, <http://www.unhcr.org/refworld/docid/3f2791a44.html>.

²⁶⁷ See chapter II.C.2 (“Women”, “Children”) and chapter III.A (in particular Risk Profiles A.6, A.7 and A.8).

²⁶⁸ See e.g. the absence of services and weak infrastructure in rural areas in the Vannim described in: Integrated Regional Information Networks (IRIN), *Sri Lanka: Uneven development in former war zone*, 11 October 2012, <http://www.unhcr.org/refworld/docid/5085254e2.html>.

²⁶⁹ In its 2011 Food Security Assessment Report, the World Food Programme found that over 60 percent of households in the Northern Province were food insecure (46 percent moderately food insecure and 15 percent severely food insecure). See World Food Programme, *Food Security in Northern, East and North Central Provinces. A Food Security Assessment report. Sri Lanka 2011*, April 2011, <http://documents.wfp.org/stellent/groups/public/documents/ena/wfp243519.pdf>.

²⁷⁰ With the Presidential Task Force on Resettlement, Reconstruction and Security in the Northern Province (PTF) having imposed severe restrictions on psycho-social programming, in the north, psychological support and trauma counselling are reportedly not available to all those who may need it. See for details: ICG, *Sri Lanka’s North II: Rebuilding under the Military*, 16 March 2012, <http://www.unhcr.org/refworld/docid/4f6453832.html>, page 11 - 12.

²⁷¹ The International Crisis Group reports on the housing shortage in the north, see: ICG, *Sri Lanka’s North II: Rebuilding under the Military*, 16 March 2012, <http://www.unhcr.org/refworld/docid/4f6453832.html>, page 7. See also: Integrated Regional Information Networks (IRIN), *Sri Lanka: Former IDPs want more than leaking shacks*, 2 November 2012, <http://www.unhcr.org/refworld/docid/5098e3772.html>.

²⁷² The following was reported by M.A. Sumanthiran MP (Attorney-at-Law and Member of Parliament for the Tamil National Alliance) in a report describing the situation in north-eastern Sri Lanka submitted to the Parliament on 21 October 2011: “(...) According to the Sri Lanka Central Bank Chairman, a minuscule US\$2 million was allocated by the government for livelihood development, much of it in the form of cash for work programmes. Much of the government and donor focus on infrastructure projects do nothing to assist local communities. The limited opportunities available are consistently given to individuals of the labour workforce from the South. Estimates suggest that unemployment in the Northern Province is between 20 % to 30 % in the Northern Province, compared to a national average of 4.3%. (...)”, M.A. Sumanthiran MP, *Situation in North-Eastern Sri Lanka: A series of serious concerns*, 23 October 2011, <http://dbsjeyaraj.com/dbsj/archives/2759>. Furthermore, joblessness in the Northern Province is believed to be high, in particular amongst returnees, see Integrated Regional Information Networks (IRIN), *Sri Lanka: Legacy of war - unemployment and homelessness*, 21 May 2012, <http://www.unhcr.org/refworld/docid/4fbb84f02.html>. See also: Integrated Regional Information Networks (IRIN), *Sri Lanka: “Lot of talking and not much improvement” in the north*, 3 July 2012, <http://www.unhcr.org/refworld/docid/4ffec6f02.html>.

²⁷³ See “Mines and unexploded ordnance” in Chapter C.2, “Selected other developments”. See also: Integrated Regional Information Networks (IRIN), *Sri Lanka: Mine clearance could take 10 years or more*, 6 February 2012, <http://www.unhcr.org/refworld/docid/4f337ced2.html>.

²⁷⁴ Centre for Policy Alternatives, Bhavani Fonseka and Mirak Raheem, *Land in the Northern Province. Post-war Politics, Policy and Practices*, December 2011, <http://cpalanka.org/wp-content/uploads/2011/12/Land-Issues-in-the-Northern-Province-Post-War-Politics-Policy-and-Practices-.pdf>.

impunity and weak administration of justice; prostitution and vulnerability to trafficking in displacement or post-relocation; and the vulnerable position of former female LTTE cadres and war widows.²⁷⁵

The east is still affected by the presence of mines,²⁷⁶ although to a lesser extent than the north. Whereas residual problems remain, in particular in comparison to parts of the country which have not been affected by the former armed conflict, services and infrastructure in the east are generally of a higher standard than in the north. Cordon and search operations in Trincomalee, particularly affecting Tamils, continue to be reported according to Tamil news sources.²⁷⁷

All the above factors need to be taken into account when assessing whether, in an individual case in which internal relocation to the north or east has been assessed as relevant, such relocation would also be reasonable.

Relocation to Colombo (or other former non-conflict-affected areas)

Currently there is no specific requirement for Tamils or persons of any other ethnicity to register with the police if they take up residence in Colombo. Cordon and search operations in Colombo, particularly affecting Tamils, were occasionally reported in Tamil news sources.²⁷⁸ In 2011, in some parts of town like Weliswatta which has a large Tamil population, a process for registration of Tamil youth was introduced.²⁷⁹ However, due to community protests, this process was discontinued soon after.²⁸⁰ Registration with the *Grama Niladhari*²⁸¹ in one's place of residence is required of anyone, in any part of the country, in order to be recognized as a resident of the area and to be entered into the electoral list for that area. Since the end of the armed conflict, the number of security checkpoints in Colombo has been reduced.

The livelihood challenges described earlier may not arise if a Tamil from the former conflict-affected areas were to relocate to Colombo or other cities or smaller municipalities in non-conflict-affected areas. The relocation of a person with such a profile, in particular if he or she were not to have family connections or a support network in the proposed area of relocation, could, however, raise suspicions in the local community and potentially constitute major obstacles to relocation.

If the relevance criteria are met, determining whether Colombo (and other former non-conflict-affected areas) may be considered as a reasonable internal flight or relocation alternative will depend

²⁷⁵ International Crisis Group, *Sri Lanka: Women's Insecurity in the North and East*, 20 December 2011, <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/217%20Sri%20Lanka%20-%20Womens%20Insecurity%20in%20the%20North%20and%20East%20KO.pdf>.

²⁷⁶ See "Mines and unexploded ordnance" in Chapter C.2, "Selected other developments".

²⁷⁷ See e.g.: "(...) in a systematic combing operation launched by the special units of Colombo's military and police establishments, up to 300 Tamil males and females have been 'arrested' and sent to military detention camps in Welikanda and Vavuniya since last Saturday". Tamilnet, "UK deportee killed while Tamil Nadu returnees arrested in Trincomalee", 28 April 2012, <http://www.tamilnet.com/art.html?catid=13&artid=35136>; For other examples, see Tamilnet, "220 Tamils arrested in SLA combing in Trincomalee", 25 April 2012, <http://www.tamilnet.com/art.html?catid=13&artid=35125>; Tamilnet, "SL military conducts search operations in Trincomalee, 10 Tamils detained", 7 April 2012, <http://www.tamilnet.com/art.html?catid=13&artid=35075>; Tamilnet, "SLA, Police launch cordon, search in Trincomalee city", 5 January 2012, <http://www.tamilnet.com/art.html?catid=13&artid=34766>; Tamilnet, SL Army, "Police search Tamil residences in Trinco city", 7 June 2011, <http://www.tamilnet.com/art.html?catid=13&artid=34037>.

²⁷⁸ See e.g.: Tamilnet, "Search operation intensified in Colombo, residents asked to register", 21 February 2011, <http://www.tamilnet.com/art.html?catid=13&artid=33575>; Tamilnet, "Sri Lanka police arrest 52 Jaffna Tamils in Colombo", 15 March 2011, <http://www.tamilnet.com/art.html?catid=13&artid=33675>.

²⁷⁹ See e.g. TamilNet, *SL Army begins registering Tamils in Colombo*, 22 August 2011, <http://www.tamilnet.com/art.html?catid=13&artid=34331>.

²⁸⁰ Information available to UNHCR.

²⁸¹ Sri Lankan public official appointed by the central government to carry out administrative duties in a *grama niladhari* division, which is a subunit of a divisional secretariat.

on the individual circumstances of the case.

C. Exclusion from International Refugee Protection

Since the issuance of the July 2010 guidelines, testimonies and footage have been released in the public domain with credible information on serious violations by all parties of international human rights and international humanitarian law during the conflict in Sri Lanka.²⁸² The findings of the UN panel of experts concluded that both government forces and the LTTE conducted military operations “with flagrant disregard for the protection, rights, welfare and lives of civilians and failed to respect the norms of international law.”²⁸³ Mistreatment or torture in detention facilities or police stations both during and after the conflict is also documented in recently published reports.²⁸⁴

In light of the above, exclusion considerations under Article 1F of the 1951 Convention may arise in individual claims by Sri Lankan asylum-seekers. Exclusion considerations may be triggered if there are elements in the applicant’s claim that suggest that he or she may have been associated with or involved in the commission of criminal acts that fall within the scope of Article 1F. Given the potentially serious consequences of exclusion from international refugee protection, exclusion clauses need to be applied on the basis of a full assessment of the circumstances of the individual case.²⁸⁵

Potential exclusion due to involvement in the commission of war crimes and serious violations of human rights, pursuant to Article 1F(a), is of particular relevance in the context of Sri Lanka.²⁸⁶ Acts reportedly committed by the parties to the armed conflict in Sri Lanka include, *inter alia*, abductions and enforced disappearances; indiscriminate attacks on civilians; forced displacement; torture and other cruel, inhuman and degrading treatment; murder, including political assassinations; mass killings; extrajudicial and summary executions; rape; and forced recruitment for the commission of attacks and/or military service and/or labour, including recruitment (sometimes through abduction) of children.

For exclusion to be justified, individual responsibility must be established in relation to a crime within the scope of Article 1F. Such responsibility may flow from a person having committed or participated in the commission of a criminal act, or on the basis of command/superior responsibility for persons in positions of authority. Adjudicators considering exclusion also need to consider defences to criminal responsibility, if any, as well as considerations related to proportionality. As such, current or past

²⁸² See above, in para II.C.1.

²⁸³ UN Secretary-General (UNSG), *Report of the Secretary General’s Panel of Experts on Accountability in Sri Lanka*, 31 March 2011, <http://www.unhcr.org/refworld/docid/4db7b23e2.html>, para. 421, page 115.

²⁸⁴ E.g.: Asian Human Rights Commission, *Police Torture Cases, 1998 – 2011, Sri Lanka*, <http://www.humanrights.asia/resources/special-reports/AHRC-SPR-001-2011-SriLanka.pdf>, Freedom from Torture, *Freedom from Torture submission to the Committee against Torture for its examination of Sri Lanka in November 2011*, undated, accessed 3 November 2011, http://www2.ohchr.org/english/bodies/cat/docs/followup/FFT_SriLanka47.pdf, Amnesty International, *Sri Lanka: Urgent need to prosecute security agents involved in torture*, 7 November 2011, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=printdoc&docid=4eb8fd2b2>.

²⁸⁵ Detailed guidance on the interpretation and application of Article 1F of the 1951 Convention can be found in UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, HCR/GIP/03/05, 4 September 2003, <http://www.unhcr.org/refworld/docid/3f5857684.html>; and *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.unhcr.org/refworld/docid/3f5857d24.html>.

²⁸⁶ War crimes are serious violations of international humanitarian law (IHL) which entail individual criminal responsibility directly under international law (customary or conventional). Although war crimes were originally considered to arise only in the context of an international armed conflict, it is now generally accepted that war crimes may be committed in non-international armed conflict as well. In the case of *Tadic* before the International Criminal Tribunal for the former Yugoslavia (ICTY), the defence argued, unsuccessfully, that the accused could not be tried for violations of the laws or customs of war under the ICTY Statute because such violations could only be committed in the context of an international armed conflict. The ICTY examined State practice and *opinio juris* on this question and found it to be confirmed that customary international law imposes criminal liability for serious violations of common Article 3 of the 1949 Conventions, as well as relevant provisions of Additional Protocol II and rules of customary international law; see *Prosecutor v. Dusko Tadic aka “Dule”*, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, IT-94-1, 2 October 1995, para. 134, <http://www.unhcr.org/refworld/docid/47fd520.html>.

membership of the LTTE, the police or security forces or pro-government or anti-government paramilitary groups is not a sufficient basis in itself to exclude an individual from refugee status. It is necessary to consider whether the individual concerned was personally involved in acts of violence or other excludable acts, or knowingly contributed in a substantial manner to such acts. A credible explanation regarding the individual's non-involvement in the commission of, or disassociation from, any excludable acts should, in the absence of reliable evidence to the contrary, remove the individual from the scope of the exclusion clauses.

In the context of Sri Lanka, exclusion considerations may arise in the cases of asylum-seekers with certain backgrounds and profiles. Careful consideration needs to be given in particular to the following profiles (in no particular order):²⁸⁷

- (i) Certain (former) government officials, including in functions with responsibilities relating to the conduct of war during the final phases of the conflict, and those posted in the conflict-affected areas during the conflict's final phase and thereafter;
- (ii) Certain (former) members of the Sri Lankan Army and other state security forces;
- (iii) Certain (former) members of the Sri Lanka Police Service (SLPS), including the Criminal Investigation Division (CID), the Terrorist Investigation Department (TID) and the Special Task Force (STF);
- (iv) Certain former members of the LTTE, in particular former combatants;
- (v) Certain (former) members of the 'Tamil Makkal Viduthali Pulikal' (TMVP),²⁸⁸ including the Karuna faction and the Inya Barathi Group;
- (vi) Certain (former) members of the Eelam People's Democratic Party (EPDP);²⁸⁹
- (vii) Certain (former) members of the People's Liberation Organisation of Tamil Eelam (PLOTE),²⁹⁰ and

²⁸⁷ War crimes and other serious human rights abuses by persons within the profiles (i), (ii), (iii) and (iv) are, amongst others, described in the Secretary-General's Panel of Experts Report, including:

LTTE: para 422: "The credible allegations involving conduct by the LTTE associated with the final stages of the war reveal six core categories of potential serious violations: (i) using civilians as a human buffer; (ii) killing civilians attempting to flee LTTE control; (iii) using military equipment in the proximity of civilians; (iv) forced recruitment of children; (v) forced labour; and (vi) killing of civilians through suicide attacks." See also para 259.

Government officials: para 422 specifies: "The credible allegations involving conduct by the Government of Sri Lanka fall into five core categories of potential serious violations of international humanitarian and human rights law: (i) killing of civilians through widespread shelling; (ii) shelling of hospitals and humanitarian objects; (iii) denial of humanitarian assistance; (iv) human rights violations suffered by victims and survivors of the conflict, including both internally displaced persons (IDPs) and suspected LTTE cadre; and (v) human rights violations outside the conflict zone, including against the media and other critics of the Government." See also para 259.

STF: The STF of the police is, amongst others, implicated in so-called "white van" operations between 2006 and the end of the war. The Secretary-General's Panel of Experts describes in para 63 of its report how white vans were used to abduct and often disappear critics of the Government or those suspected of links with the LTTE: "Those abducted were removed to secret locations, interrogated and tortured in a variety of ways, including through beatings, forced nudity, suffocation with plastic bags, partial drowning, extraction of finger or toe nails, or administering electric shocks. Many were killed and their bodies disposed of secretly".

Police, CID, TID and SLA: "Rapes of suspected LTTE cadres are also reported to have occurred, when they were in the custody of the Sri Lankan police (CID and TID) or the SLA." (para 153).

See UN Secretary-General (UNSG), *Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka*, 31 March 2011, <http://www.unhcr.org/refworld/docid/4db7b23e2.html>.

²⁸⁸ The TMVP has been accused of, amongst others, child recruitment, torture, extrajudicial killings, kidnapping for ransom and extortion. For details, see UNHCR, *UNHCR eligibility guidelines for assessing the international protection needs of asylum-seekers from Sri Lanka*, April 2009, <http://www.unhcr.org/refworld/pdfid/49de0b6b2.pdf>. Specifically on child recruitment, see also: "Since 2006, the United Nations has documented 597 children recruited by TMVP, including 2 girls," Security Council, *Report of the Secretary-general on children and armed conflict in Sri Lanka*, S/2011/793, 21 December 2011, <http://www.un.org/Docs/sc/sgrep11.htm>.

²⁸⁹ The EPDP has been accused of, amongst others, extrajudicial killings, torture, kidnappings, forced recruitment, arbitrary detention and extortion. For details, see UNHCR, *UNHCR eligibility guidelines for assessing the international protection needs of asylum-seekers from Sri Lanka*, April 2009, <http://www.unhcr.org/refworld/pdfid/49de0b6b2.pdf>.

(viii) Certain (former) members of any other pro- or anti-government militias and paramilitary groups.²⁹¹

²⁹⁰ The PLOTE has been accused of, amongst others, extrajudicial killings, torture, kidnappings, forced recruitment, arbitrary detention and extortion. For details, see UNHCR, *UNHCR eligibility guidelines for assessing the international protection needs of asylum-seekers from Sri Lanka*, April 2009, <http://www.unhcr.org/refworld/pdfid/49de0b62.pdf>.

²⁹¹ See South Asia Terrorism Portal, *Sri Lanka Terrorist Groups*, List updated until 18 December 2011, <http://www.satp.org/satporgtp/countries/shrilanka/terroristoutfits/index.html>. The SATP list only includes Tamil militant groups. For pro-government militias, see: Sabine C. Carey, Neil J. Mitchell, Will Lowe, *A new database on pro-government militias*. The database itself is password-protected, but the article refers to pro-Government armed groups active in the 80s including “the Green Tigers, the Black Cats, the Yellow Cats, and the Eagles of the Highlands(...)” <http://www.sowi.uni-mannheim.de/militias/wp-content/uploads/2011/05/Data-Paper.pdf>.