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OPERATIONAL GUIDANCE NOTE

SRI LANKA

CONTENTS

1 Introduction

1.1 This document evaluates the general, political and human rights situation in Sri Lanka and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers must refer to the relevant Asylum Policy Instructions for further details of the policy on these areas.

1.2 This guidance must also be read in conjunction with any COI Service Sri Lanka Country of Origin Information at:

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

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

1.4 A full list of source documents cited in footnotes is at the end of this note.

2 Country assessment

2.1 Following independence from Britain in February 1948, the political scene has been dominated by two parties: the United National Party (UNP) and the Sri Lanka Freedom Party (SLFP), which is now part of the People's Alliance (PA). The SLFP was founded by S

W R D Banadaranaike, who was Prime Minister until he was assassinated in 1959 by a Buddhist extremist. His widow, Sirimavo Banadaranaike, became leader of the SLFP and served as both Prime Minister and leader of the opposition.[1]

2.2 A republican constitution was adopted in 1972 and the ruling coalition, led by Sirimavo Banadaranaike, gave itself an extra two years in power. The UNP returned to power in 1978 and adopted a new constitution based on an executive presidency. It introduced for the first time elections based on proportional representation. The presidential election in 1988 was won by the UNP's Ranasinghe Premadasa, who ruled until his assassination in 1993.[2]

2.3 The SLFP became part of the People's Alliance (PA) coalition which, headed by Mrs Chandrika Kumaratunga (the daughter of S W R D and Sirimavo Bandaranaike), won general elections in August 1994. Mrs Kumaratunga then went on to win a landslide victory in the Presidential election in November 1994. The PA also won the next Parliamentary elections in October 2000. Although there were reports of violence, intimidation and voting irregularities, the EU Election Observation Mission acknowledged that the result overall reasonably reflected the opinion of the people. In 2001, less than a year after being re-elected, the PA lost their majority and new elections were held in December 2001. The United National Front coalition, lead by UNP Ranil Wickremasinghe, won with 109 seats and the President's PA came second with 77 seats, which led to an arrangement of political cohabitation between two rival parties, with the PA's leader as President and the UNP's leader as Prime Minister.[3]

2.4 In November 2003, President Kumaratunga suspended parliament, sacked three key ministers taking over their portfolios (including defence) and declared a state of emergency (which was lifted a few days later). This was done on the grounds of national security, and the actions were within her Constitutional powers. No agreement on working arrangements was reached between the President and Prime Minister, and in January 2004, the SLFP signed an alliance with the JVP forming the United People's Freedom Alliance (UPFA). In February, the President dissolved Parliament and called general elections in April.[4]

2.5 The elections in April 2004 produced a new political order with the victory of the UPFA. Support for the traditional parties dropped, and smaller parties - JVP, TNA and JHU - gained significant numbers of seats. The UPFA formed a minority government. In September 2004, the Ceylon Workers' Congress (CWC – representing Indian-origin Tamils) with 8 seats joined the government giving it a small majority. In June 2005 the JVP left the Government after the President's decision to sign a post-tsunami funding arrangement with the LTTE.[5]

2.6 Presidential elections on 17 November 2005 resulted in the election of President Mahinda Rajapakse of the UPFA to a six year term. The Prime Minister of Sri Lanka is appointed by the President and on 21 November 2005 Mr Wickremanayake was sworn-in as Prime Minister.[6]

2.7 The ethnic conflict in Sri Lanka has been going on for over 20 years as the Liberation Tigers of Tamil Eelam (LTTE) fight for an independent homeland and during this 20 year period some 70,000 people are estimated to have been killed and some one million displaced.[7] The number of killings in Sri Lanka in the two years preceding the ceasefire of 22 February 2002 was 5,973 in 2000 and 1,822 in 2001. Fifteen people were reported killed in 2002; 59 in 2003; 108 in 2004, 330 in 2005 and 3,547 from January 2006 up until 22 October 2006.[8]

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[1] FCO Country Profile on Sri Lanka: 18 May 2006
[2] FCO Country Profile on Sri Lanka: 18 May 2006
[3] FCO Country Profile on Sri Lanka: 18 May 2006
[4] FCO Country Profile on Sri Lanka: 18 May 2006
[5] FCO Country Profile on Sri Lanka: 18 May 2006
[6] COIS Sri Lanka COI Report October 2006 History
[7] FCO Country Profile on Sri Lanka; 18 May 2006
[8] South Asia Terrorism Portal: "*Fatalities District Wise 2005 and 2006*" & *"Casualties of Terrorist Violence in Sri Lanka"*

2.8 In March 1999 the Sri Lankan Army launched two major offensives in the Vanni (jungle areas in the North) and captured over 800 sq kms of territory from the LTTE. Fighting in the North intensified in late 1999 and the Vanni fell to the LTTE after some of the fiercest fighting since the conflict began. In April 2000 the LTTE carried out a major assault which led to the withdrawal of Sri Lankan troops from Elephant Pass (which links the Jaffna peninsula to the rest of Sri Lanka). With control of Elephant Pass, the LTTE continued further attacks into the Jaffna Peninsula. Fighting continued until December 2001 when the announcement of a new ceasefire by the LTTE was reciprocated by the newly-elected UNF government. A Ceasefire Agreement was signed in February 2002 by the government and LTTE. In April 2003, the LTTE suspended their participation in the peace talks.[9]

2.9 During the April 2004 election campaign, the LTTE stated their willingness to negotiate with any party which had a mandate for talks. The government, for their part, have said that restarting the peace talks is a priority for them and renewed the mandate of Norway as peace facilitators. Despite energetic shuttle diplomacy there has been no agreement on a resumption of talks and little progress made in the second half of 2004. Although it was initially hoped that the tsunami would present an opportunity for the two sides to return to the negotiating table, both the Government and the LTTE have put the peace process to one side while they deal with post-tsunami reconstruction.[10]

2.10 There has been an intensification of violence since the beginning of December 2005. After the initial period of violence in December 2005 and January 2006 the two sides agreed to direct talks in Geneva on 22 to 23 February 2006. The talks resulted in commitments by both sides to uphold the Ceasefire Agreement, and to ensure acts of intimidation and or violence cease. The LTTE committed itself to end attacks on the Government's security forces and the Government of Sri Lanka committed to prevent armed groups from operating. Both parties asked the Swiss to host a further round of talks in April 2006. However this did not happen as large-scale violence resumed in April.[11] Air strikes against rebels in the east resumed after the latest round of Geneva-based peace talks failed in late October 2006.[12]

2.11 During 2005 an increase in politically motivated killings by the LTTE was noted as was an increase in the numbers of armed clashes between the LTTE and the armed forces and between the LTTE and the Karuna group. The SLMM recorded 92 assassinations imputed to the LTTE during 2005 (12 ruled as violations and 1 as no violation)[13]. Separate figures produced by the South Asia Terrorism Portal based on information from various media reports indicate a total of 330 fatalities in 2005 and 3,547 in 2006 up to 22 October 2006 of which 808 are recorded as being civilians, 701 members of the security forces and 2,037 terrorists. The vast majority of the fatalities are recorded as taking place in the north or east of the country with 39 being recorded as taking place in the district of Colombo.[14] In January 2006 Human Rights Watch estimated 200 Tamils had died, for apparently political reasons, since the beginning of a ceasefire between the government and the Tamil Tigers in February 2002. Most of the killings have been attributed to the Tamil Tigers.[15]

2.12 As noted above there has been an intensification of violence since December 2005.[16] A Sri Lanka Monitoring Mission(SLMM) report covering the period 24 February 2006 to 28 May 2006 notes that although the level of violence decreased dramatically after the decision was taken to resume high-level talks, the situation became very tense again following the assassination of the Trincomalee District President of the Tamil Peoples Forum on 7 April 2006. This killing

[9] FCO Country Profile on Sri Lanka; 18 May 2006
[10] FCO Country Profile on Sri Lanka: 18 May 2006
[11] FCO Country Profile on Sri Lanka: 18 May 2006
[12] Reuters alertnet 'Sri Lanka jets bomb rebels in east after failed talks' 1 November 2006
[13] COIS Sri Lanka Bulletin 1/2006 para 2.09-2.11
[14] South Asia Terrorism Portal: "*Casualties of Terrorist violence in Sri Lanka since March2000" and* "*Fatalities District Wise 2005 and 2006*"
[15] Human Rights Watch Report: January 2006
[16] FCO Country Profile: 18 May 2006

triggered a resumption of attacks against the Government of Sri Lanka forces which began with hand grenade and claymore attacks in the East. This soon escalated in to more high profile attacks including the suicide attack against the Commander of the Army Lt. General Fonseka on 23 April, and the Sea Tiger attack on the Sri Lankan Navy Dvora on 11 May. SLMM report that the Government showed restraint initially but as the seriousness of the incidents increased so did their response leading to additional violence and the suffering of the civilian population. The report further noted the killing of 20 Tamils in riots in Trincomalee, more than 141 attacks on security forces and police resulting in the deaths of at least 88 sevicemen, the killing of at least 223 civilians, and the killing of an unknown number of LTTE cadres (because the LTTE had not revealed figures to the SLMM).[17]

2.13 A further SLMM report covering the period 29 May 2006 to 31 August 2006 notes that up until 25 July 2006 the high number of attacks directed towards the Government of Sri Lanka forces continued, in several cases involving injuries and deaths to civilian bystanders. The report notes several high profile attacks, notably the assassination of 13 Sinhalese workers in Wellikanda on 30 May, the claymore attack on a civilian bus killing 65 and injuring 70 in Kebitigellewa on 15 June, the attack on Pesalai church killing 8 and injuring 38 civilians on 17 June, the suicide attack on the SLA Deputy Chief of Staff outside Colombo on 26 June, the clash between SLA soldiers and 4 LTTE cadres, and finally the closing of the Mavil Aru sluice gate on 22 July leading to a major escalation of violence. Additionally the movements of Sea Tigers on the Eastern and Western coasts increased, leading to several smaller skirmishes.[18]

2.14 With regard to the period from 25 July to 31 August SLMM noted that the escalating situation on the East coast and the Northern ranges when direct fighting broke out in Trincomalee district on 26 July and in the Jaffna area on 11 August. Accusations were made by both sides as to who was responsible for the escalation, however both sides maintained that the Ceasefire Agreement was still in effect, and that military actions taken were purely defensive and not aggressive. The most notable attacks during this period were the assassination of 17 local employees of the ACF in Muttur on 4 August, the killing by claymore attack of an STF commander in Kandy in 6 August, the shelling in an area near Mavil Aru on 6 August when it was known SLMM were present, the assassination of the SCOPP Deputy General Secretary in Colombo on 12 August and the air strike on a training site in Sensoolai killing at least 40 soldiers on 14 August, and also the claymore attack on the convoy of the Pakistani High Commissionaire in Colombo on the same date.[19]

2.15 On 18 August 2005, following the killing of Foreign Minister Lakshman Kadigarmar, the government enacted emergency regulations. These permit arrests without warrant, and non-accountable detentions for up to one year without trial, and grant the power of arrest to members of the armed forces who are required to turn suspects over to the police within 24 hours. Extending the state of emergency on 21 March 2006 Prime Minister Wickremanayake told parliament that in the previous month the number of killings and attempted killings had reduced but the state of emergency needed to be extended to continue this trend.[20] The state of emergency remains in place and was most recently extended on 6 December 2006.[21] Furthermore the government announced on the same day that the Prevention of Terrorism Act (PTA) would be implemented in full force. The PTA, introduced in 1979 as a temporary measure, and permanently enacted in 1982, was not applied following the February 2002 Cease Fire Agreement (CFA) between the Government of Sri Lanka (GoSL) and the Liberation Tigers of Tamil Eelam (LTTE). The cabinet decision,

[17] SLMM Implementation of the Agreements Reached Between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam at the Geneva Talks the 22-23 February 2006
[18] SLMM Implementation of the Agreements Reached Between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam at the Geneva Talks the 22-23 February 20 Follow up report covering the period 29 May to 31 August 2006
[19] SLMM Implementation of the Agreements Reached Between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam at the Geneva Talks the 22-23 February 20 Follow up report covering the period 29 May to 31 August 2006
[20] COIS Sri Lanka Bulletin 1/2006 para 6.01-6.02
[21] Daily Mirror 6 December 2006

viewed as a major breach of the CFA, gives greater powers of arrest and detention to the Sri Lankan armed forces.[22]

2.16 The Sri Lankan government have taken steps to improve its very poor human rights record of the 1980's and 1990's. Significant improvements have been made, but problems do remain. There are continued reports of rape and torture in custody, although these have fallen since the ceasefire. The LTTE are responsible for continuing serious human rights abuses including assassinations of political opponents, recruitment of child soldiers, abductions and extortion. There have been incidents of attacks on religious minorities. Sri Lanka is a signatory to all six core human rights instruments.[23]

2.17 Child recruitment by the LTTE continued to be a problem and it was reported that 543 children were forcibly recruited by the LTTE in 2005, however it also released 202 children of which 96 were again recruited. However credible sources also indicated that the number could be higher than 543 and that at the end of 2005 more that 1,339 children remained in LTTE custody. It was reported that children were used in battlefield support and in combat. UNICEF figures documented 139 cases of child recruitment in July 2005 the highest monthly figure since late 2003. However the figure for December 2005 was 27, January 2006 42, February 2006 31 and March 2006 32.[24] The SLMM reports covering the period 24 February to 31 August 2006 noted that child abduction and recruitment increased significantly during March, and April and continued at a relatively high level in June, July and August. For March and April SLMM noted that while LTTE were responsible for most of the recruitment there were indications that armed groups such as the Karuna faction were abducting children. For June, July and August the majority of the cases were against the Karuna faction rather than the LTTE.[25]

2.18 Sri Lanka was severely affected by the tsunami on 26 December 2004 which killed some 40,000 people and displaced 400 – 500 thousand people along two thirds of the north-east, south and south-west coastline. Half the fishing fleet was destroyed, and a quarter of hotels in the affected areas sustained serious damage. **[26]**

2.19 Presidential elections took place on 17 November 2005. The campaign was generally peaceful but there was violence in the north and east and the LTTE enforced a boycott of the polls in Tamil areas under their control or which they strongly influence in the north and east. This resulted in extremely low voter participation in these areas. Mahinda Rajapakse (SLFP) was elected President with 50.3% of the vote. UNP candidate and Leader of the Opposition, Ranil Wickremesinghe took 48.4%. The President appointed a new ministerial team on 23 November. The JVP and JHU which supported Rajapakse's candidature decided not to join the Government. The SLFP will therefore be a minority administration.[27]

3 Main categories of claims

3.1 This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Sri Lanka . It also contains any common claims that may raise issues covered by the API on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment**.** It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor, and whether or not internal relocation is an option. The law and policies on

[22] Tamilnet 6 December 2006
[23] FCO Country Profile on Sri Lanka: 18 May 2006
[24] COIS Sri Lanka Bulletin 1/2006 para 8.01-8.07
[25] SLMM Implementation of the Agreements Reached Between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam at the Geneva Talks the 22-23 February 2006 and follow-up report covering the period 29th May to 31st August.
[26] FCO Country Profile on Sri Lanka: 18 May 2006
[27] FCO Country Profile on Sri Lanka: 18 May 2006

persecution, Humanitarian Protection, Discretionary Leave, sufficiency of protection and internal relocation are set out in the relevant API's, but how these affect particular categories of claim are set out in the instructions below.

3.2 Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the API on Assessing the Claim).

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

3.4 This guidance is **not** designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim)

3.5 All APIs can be accessed via the IND website at:

http://www.ind.homeoffice.gov.uk/documents/asylumpolicyinstructions/

3. 6. Former members, supporters or opponents of the LTTE fearing reprisals from LTTE

3.6.1 Many claimants will claim asylum based on ill treatment amounting to persecution at the hands of the LTTE due to their past involvement with, and/or opposition to the mainstream LTTE. Some - particularly those who have aligned themselves with the Sri Lankan army military intelligence units – state that they are targeted by the LTTE because they are perceived as "*defectors*", whilst others fear being targeted because of their association with the breakaway "*Karuna*" faction of the LTTE or because of their association with or links to the Eelam People's Democratic Party (EPDP). Others express a fear of being attacked by the LTTE in Colombo because they have engaged in - or are perceived by the LTTE to have engaged in - activity which is seen as 'disloyal' to the LTTE**.**

3.6.2 ***Treatment.*** A Ceasefire Agreement was signed in February 2002 by the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam(LTTE), with the overall objective of finding a negotiated solution to the ongoing ethnic conflict. The parties recognised the importance of bringing an end to hostilities, improving the living conditions and restoring normalcy for all inhabitants of Sri Lanka. The agreement requires both parties to abstain from hostile acts against the civilian population, including such acts as torture, intimidation, abduction, extortion and harassment. The parties also agreed that search operations and arrests under the Prevention of Terrorism Act (PTA) should not be made. Peace talks did take place in 2002 and early 2003, however in April 2003 the LTTE suspended their participation in the peace talks.[28]

3.6.3 In March 2004 the LTTE's eastern commander, Vinayagamoorthi Muralitharan - known as Colonel Karuna – broke away from the mainstream LTTE taking with him some 6,000 troops. In April 2004 thousands of LTTE troops moved into the east to engage Colonel Karuna and his supporters in battle. By 13 April 2004 the conflict between Karuna and the main LTTE faction was reported to have ended with Karuna having fled his base and gone into hiding, his forces dispersed and the LTTE resuming full control in the East..[29]

3.6.4 However incidents between the LTTE and the Karuna faction continue to be reported. In 2004 these resulted in the death of 35 Karuna supporters and 17 LTTE supporters and in 2005 24

[28] COIS Sri Lanka COI Report October 2006 History
[29] COIS Sri Lanka COI Report October 2006 History

Karuna supporters and 37 LTTE supporters. In 2006 up to 6 September 2006 at least 27 Karuna supporters and 79 LTTE supporters were reported to have been killed specifically in incidents between the two factions.[30]

3.6.5 During the April 2004 election campaign, the LTTE stated their willingness to negotiate with any party which had a mandate for talks. The government, for their part, have said that restarting the peace talks is a priority for them and renewed the mandate of Norway as peace facilitators. Although it was initially hoped that the tsunami would present an opportunity for the two sides to return to the negotiating table, both the Government and the LTTE put the peace process to one side while they deal with post-tsunami reconstruction. A *'no peace, no war'* scenario continues to prevail. The ceasefire agreement remains in place but is under pressure due to ongoing violence in the East, including political assassinations and paramilitary activity (including by the Karuna LTTE breakaway group).[31] The first session of Ceasefire Talks was held in Switzerland on 22 and 23 February 2006, however despite a reaffirmation from both sides on respecting and upholding the Ceasefire Agreement, and commitments from both sides to eradicate violent acts and hold further talks in April, these did not in fact take place.[32] Air strikes against rebels in the east reportedly resumed after the latest round of Geneva-based peace talks failed in late October 2006.[33]

3.6.6 On 22 February 2005 the head of the SLMM noting the 3rd anniversary of the Cease Fire Agreement commended the Sri Lanka Government and the LTTE's willingness to act with restraint in situations which could have escalated and confirmed that there had been no clashes between the Parties military forces since the signing of the Cease Fire Agreement, however he noted that assassinations and killings were still jeopardising the Cease Fire Agreement and urged both sides to stop the killings and for both sides to find the perpetrators and bring them to justice.[34]

3.6.7 During 2005 both the government and the LTTE frequently violated the 2002 peace accord. According to the Sri Lanka Monitoring Mission statistics the LTTE committed 14 cease-fire violations for every one committed by the government. There were numerous reports that armed paramilitary groups suspected of being linked to the government or security forces participated in armed attacks during 2005. These groups included the Karuna faction of the LTTE, the Eelam People's Democratic Party (EPDP) and the People's Liberation Organisation of Tamil Eelam(PLOTE).[35] The number of killings in Sri Lanka in the two years preceding the ceasefire of 22 February 2002 was 5,973 in 2000 and 1,822 in 2001. Fifteen people were reported killed in 2002; 59 in 2003; 108 in 2004, 330 in 2005 and 3,546 in 2006 up to 22 October 2006.[36] Most incidents having taken place in the in the north and east of Sri Lanka.[37]

3.6.8 During 2005 there were credible reports that the LTTE killed 68 members of the police and military, more than 106 members of the anti-LTTE Tamil paramilitary groups, LTTE cadres loyal to the Karuna faction, alleged Tamil informants for the security forces, and civilians. The LTTE targeted both current and former members of the anti-LTTE Tamil political parties. During 2005 18 current and past anti-LTTE Eelam People's Democratic Party (EPDP) members were killed. Credible sources reported that the LTTE killed 45 members of the breakaway military leader Karuna's group. There was also credible evidence that the LTTE killed 15 members of the military intelligence apparatus in a targeted campaign.[38]

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[30] COIS Sri Lanka COI Report October 2006 Annex H
[31] FCO Country Profile on Sri Lanka: 18 May 2006
[32] COIS Sri Lanka COI Report October 2006 History
[33] Reuters alertnet 'Sri Lanka jets bomb rebels in east after failed talks' 1 November 2006
[34] COIS Sri Lanka COI Report October 2006 History
[35] COIS Sri Lanka COI Report October 2006 History
[36] South Asia Terrorism Portal: "*Casualties of Terrorist Violence in Sri Lanka*"
[37] South Asia Terrorism Portal: "*Fatalities District Wise 2005 and 2006*" & "*Prominent Tamil political leaders assassinated since the Ceasefire Agreement"*
[38] COIS Sri Lanka Bulletin 1/2006 para 2.04

3.6.9 Both Amnesty International(AI) and Human Rights Watch(HRW) highlighted the increase in politically motivated killings during 2005 and the worsening human rights situation in 2005 taking into account these killings. They note that Tamils in opposition to the LTTE are particular targets reportedly of the LTTE but the Karuna group in particular and other Tamil armed groups are also believed to be responsible for some of these. AI particularly noted that although the LTTE reportedly continued to kill those it viewed as opponents since the signing of the ceasefire agreement the scale and scope of these killings has risen dramatically since the April 2004 split in the LTTE. AI further report that the range of people being targeted appears to be expanding; following the split most of those killed had clear links to either the LTTE or the Karuna faction but increasingly those killed are civilians with little or no evident connection to armed activity including journalists, academics, teachers and farmers as well as former members of the Tamil armed groups who have not been involved in armed activities for a long time. AI also report that the area in which the killings are taking place has expanded from Batticaloa to Ampara, Trincomalee in the east and Jaffna and other areas in the north.[39]

3.6.10 In September 2006 Human Rights Watch noted that the LTTE has directly targeted civilians with Claymore mines and suicide bombers, summarily executed persons in its custody, and in at least one instance used civilians as shields and blocked water to a civilian population. HRW noted that since the start of the ceasefire in 2002 the LTTE has been implicated in more than 200 targeted killings mostly of Tamils viewed as being political opponents. On 8 August 2006 an LTTE car bombing in Colombo injured a Tamil member of parliament and killed a bodyguard and a three year old child. On August 12 suspected LTTE gunmen shot and killed a highly respected Tamil deputy head of the government's Peace Secretariat at his home in Colombo.[40]

3.6.11 The Eelam People's Democratic Party (EPDP) is a Tamil political group formed on 1986, which has fought against the LTTE since 1990. It supports the People's Alliance and won one seat at the April 2004 elections for the National Assembly.[41] During 2004 it was reported that 10 current and past EPDP members were targeted and killed by the LTTE and 18 during 2005. The EPDP was also reported to have been responsible for killings in the north and east in 2005 and is reported to be continuing its armed operations in the islands off the Jaffna peninsula.[42]

3.6.12 The EPDP itself records some 60 attacks against its members since February 2002, 14 in 2003, 12 in 2004, 18 in 2005 and 14 in 2006 up to and including the 14 September. Only six of the attacks are recorded as having taken place in or near Colombo.[43] Additionally in August 2006 a senior EPDP member survived a bomb attack in central Colombo.[44]

3.6.13 ***Sufficiency of protection***. Following the 17 November 2005 presidential election the government eliminated the Ministry of Internal Security and placed control of the 66,000 member police force, including the 6,000 member paramilitary Special Task Force, under the Ministry of Defence. Senior officials in the police force handle complaints against the police, as does the civilian-staffed National Police Commission (NPC). Investigating agencies within the police include the Operational Command for Colombo Security (OCC), the Directorate of Internal Intelligence (DII), the Directorate of Foreign Intelligence (DFI), the Criminal Record Department (CRD), the Criminal Investigation Department (CID), and the Terrorist Investigation Department (TID). It is reported that police are recruited nationally not locally and that any Sri Lankan national including those of Tamil ethnicity is free and welcome to join the police force. However few police officers serving Tamil majority areas were Tamil and these officers generally did not speak Tamil or English which increased the level of misunderstanding and distrust. The Special Task Force is the paramilitary arm of the Sri Lankan police deployed essentially for counter Terrorist and Counter Insurgency operations within the country. They are also deployed in close protection Units providing

[39] COIS Sri Lanka Bulletin 1/2006 para 2.07,2.08 and 2.10
[40] COIS Sri Lanka COI Report October 2006 Abuses by Non-Government Armed Forces
[41] COIS Sri Lanka COI Report October 2006 Annex C
[42] COIS Sri Lanka COI Report October 2006 Abuses by Non-Governmental Armed Forces
[43] EPDP news-heroes report
[44] COIS Sri Lanka COI Report October 2005 Recent Developments

security for VIPS and at key installations. The "Tamil Eelam Police" with headquarters in Kilinochchi was formed in 1993 and reportedly has several wings including traffic, crime prevention, crime detection, information bureau, administration and a special force. LTTE cadres collect taxes, its courts administer their version of justice and the entire law and order machinery is LTTE-controlled.[45]

3.6.14 The National Police Commission (NPC), with an entirely civilian staff, was authorised to appoint, promote, transfer, discipline, and dismiss all police officers, except for the inspector general of police. The NPC also has the power to establish procedures to investigate public complaints against the police. In practice, however, the NPC devolved responsibility for discipline of less senior police officer to the inspector. During 2005 the NPC handled 187 cases of police torture. Criminal proceedings were initiated in 42 cases, while 86 others were closed due to insufficient evidence. On 22 November 2005 the three year term of the NPC lapsed and by the end of 2005 the government had not appointed new commissioners to the NPC.[46]

3.6.15 The Human Rights Commission of Sri Lanka commenced its work in 1997 and has a mandate to investigate and inquire into violations of fundamental rights, intervene in court proceedings with the permission of the court, monitor the welfare of detainees through regular inspections of places of detention, undertake research on human rights issues and public education programmes on human rights and summon persons before the Commission to procure evidence including documentary evidence and to summon witnesses. There are concerns about the effectiveness of the HRC which in 2005 did not have enough staff to take forward the 16,305 pending complaints in its caseload. Additionally the terms of the Commissioners ended on 3 April 2005 and since then they have been appointed directly by the President without recommendation from the Constitutional Council an arrangement which has been criticised.[47]

3.6.16 Commenting on the situation during the period 24 February 2006 to 28 May 2006, the SLMM noted that the Government of Sri Lanka remained unwilling to implement all of its commitments under the Ceasefire Agreement and instead denied even the mere presence of armed groups in their areas. In a further report covering the period 29 May 2006 to 31 August 2006 SLMM further noted the Government's commitment to take all necessary measures in accordance with the Ceasefire Agreement to ensure that no armed group or person other than Government security forces will carry arms of conduct armed operations in Government areas has not been implemented. The Government is responsible for maintaining law and order in all Government controlled areas and this included preventing operations by criminal, paramilitary and other unofficial armed groups.[48]

3.6.17 However following the introduction of the Emergency Regulations in August 2005 and particularly in December 2005 some round ups and arrests of Tamils have taken place and the Government has suggested that this were aimed at attempting to find the killers of Foreign Minister Kadirgamar. The HRC said they did not oppose these types of operations which were a necessary part of security; the Security Forces had an obligation to protect the state and citizens and during the ceasefire. For further information see also paras 3.7.6 and 3.7.7.[49]

3.6.18 As noted above, violent attacks by the LTTE on its opponents and former members continue to take place which the Sri Lankan authorities have been unable to counter entirely, particularly in the north and east. However, the Sri Lankan authorities do seek to investigate and prosecute those who commit violent acts within Sri Lanka and whilst they can be seen to have responded to some extent to the recent increase in such political killings attributed to the LTTE it is clear that in the face of the increasing violence they have been unable to ensure that armed groups

[45] COIS Sri Lanka COI Report October 2006 Security Forces
[46] COIS Sri Lanka COI Report October 2006 Security Forces
[47] COIS Sri Lanka COI Report October 2006 Security Forces
[48] SLMM Implementation of the Agreements Reached Between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam at the Geneva Talks the 22-23 February 2006 and follow-up report covering the period 29th May to 31st August.
[49] COIS Sri Lanka COI Report October 2006 Security Forces

do not operate in the area they control, particularly in the north and east. It can be considered that the authorities are willing and capable of providing sufficient of protection for Tamils in areas they control, who do not support the LTTE and/or whose level of opposition has not brought them to the specific attention of the LTTE. However it is clear that in areas the government does not control the authorities are not able to adequately protect low or non-LTTE affiliated Tamils. Meanwhile for high profile Tamils anywhere in the country the LTTE are able to seek out and take action against some particular individuals (see also the findings in *PS* summarised at 3.6.21). For people in this category there will not be a sufficiency of protection.

3.6.19 ***Internal relocation***. The Sri Lankan Constitution grants every citizen "freedom of movement and of choosing his residence" and the Government generally respected these rights in practice. However during 2005 it restricted the movement of Tamils. Tamils are no longer required to obtain police passes to move around the country as they were during the war but are still required to present special passes for fishing and transiting through high security zones in the north and east, and are frequently harassed at checkpoints in those areas. The Sri Lankan authorities often require households in predominantly Tamil areas to register all residents. These lists are then used in cordon and search operations to identify people who the police consider need to give a fuller explanation of why they are residing or travelling in a location. However following a big push on the completion of these forms in November and December 2005 the authorities have become more relaxed about this. There was public discussion of island-wide police registration in June 2006 but nothing has come of this.[50]

3.6.20 Occasional cordon and search operations still take place, mainly where there are Tamil pockets in predominantly Sinhalese or Muslim areas. In July 2006 the government published large advertisements in the press reminding security officials of their responsibilities when they detain anyone. This is a partial response to complaints that those detained in cordon and search operations were not being treated according to the law.[51]

3.6.21 The Sri Lankan authorities often require households in predominantly Tamil areas to register all residents. These lists are then used in cordon and search operations to identify people who the police consider need to give a fuller explanation of why they are residing or travelling in a location. Normally the police detain those who have not registered, for further questioning. After a big push in November and December 2005, when police registration forms were distributed throughout Colombo and which culminated in Operation Strangers Night II, the authorities have become more relaxed about this. There is no uniformity in the implementation of the police registration. After the new Government took over in Nov 2005, police visited households and issued forms to be completed by the head of the household, asking them to take full responsibility for the information provided and the persons on the list. Generally the police do not say that they are targeting only Tamil households, but collection of completed forms / booklets are only strictly enforced when it comes to Tamil concentrations. The main purpose of these booklets is to assist the Police, when they launch cordon and search operations, to identify visitors or undeclared persons in the area.[52]

3.6.22 Claimants who fear persecution at the hands of the LTTE in LTTE dominated areas are able to relocate to Colombo, or other Government controlled areas and it would not normally be found to be unduly harsh for claimants to relocate in this way.

3.6.23 ***Caselaw.***

[2002] UKIAT 04427 The IAT held that whilst the claimant had a real risk of persecution at the hands of the LTTE in his home area against which the Sri Lankan authorities could not protect him, it was not unduly harsh for him to relocate to Colombo.

[50] COIS Sri Lanka COI Report October 2006 Freedom of movement
[51] COIS Sri Lanka COI Report October 2006 Security forces
[52] COIS Sri Lanka COI Report October 2006 Freedom of movement

[2003] UKIAT 00150 SN (Sri Lanka) CG (Scarring - Bribes - LTTE - Reprisals) The Appellant feared the LTTE and the Sri Lankan authorities. He claimed that he was forced to give information to the Sri Lankan authorities and as a result of this the LTTE came looking for him. The Tribunal found that it was unlikely that the LTTE would look for him on his return as if that were the case "it would impact on the circumstances of probably thousands of young Tamil men who had been forced by the authorities to identify LTTE members in the past in similar circumstances." The Appellant would be returned to Colombo where there was a sufficiency of protection.

Oppilamani [2004] EWCH 348 (Admin). The claimant feared reprisals from the LTTE because she joined and worked for the EPDP for a year and a half and because of her husband's defection from the LTTE. The claimant assisted in promoting the EPDP by organising meetings, recruiting members and making pro-EPDP speeches. She was not considered to be a high-profile political opponent. Also it was concluded that, on the facts of the case, there was a sufficiency of protection.

Mylvaganam [2005] EWHC 98 (Admin). The claimant was found not to be a true high profile opposition activist to the LTTE. The claimant was a member of the SLFP and chief organiser in the Batticaloa district, a member of a human rights task force in 1998 and appointed as a member of Batticaloa General Hospital Committee in 1999. He contested elections in Batticaloa in 2000 on behalf of the SLFP. This case is fact specific but it demonstrates what the courts take into account when considering whether an individual has a high political profile.

PS [2004] CG 00297 The Tribunal:

- restated that Tamils from the north and east of Sri Lanka, under the direct control of the LTTE, and from those areas where the degree of control has fluctuated, can in general terms safely relocate to Colombo to avoid localised fear of the LTTE. Travel restrictions have been greatly and progressively eased since the ceasefire, with a reduction in the numbers of checkpoints.

- accepted that it is physically possible for LTTE members to travel to Colombo although, in times when they have provoked public concern by their actions there, they would face heightened security measures, albeit not on the scale of the former cordon and search operations regularly carried out prior to the ceasefire. Nevertheless, it is clear that they do not choose to do so on an indiscriminate basis in order to find all those against whom they may harbour some suspicion.

- concluded that "*As we have already observed, those who the LTTE has on the objective evidence targeted in Colombo since the ceasefire have all been high profile opposition activists, or those whom they would see are renegades or traitors to the LTTE*" (p71) and for those who are not high profile "there is no arguable basis for saying that the Sri Lankan state does not provide a sufficiency of protection to the generality of Tamils having a localised fear of the LTTE in their home area" (p72).

Sinnarasa [2005] EWHC 1126 (Admin). Although the High Court found that it was not necessarily just high profile individuals who may be targeted in Colombo, the detailed findings of the judgment nonetheless establish a challenging threshold for Karuna type cases. The high profile of the claimant's associates and the court's finding that she came "very close indeed to the borderline" of what could be rightly regarded as a clearly unfounded claim means that few claimants will establish that their association to the Karuna faction gives rise to a fear that is not clearly unfounded. The features of the claimant's account that took her just over the borderline were as follows:

(i) she was an intelligence operative;
(ii) she had associated herself with Colonel Karuna for a significant period of time, and that association could lead the majority LTTE to identify her as a close associate of Colonel Karuna and not simply someone caught up in the schism;
(iii) she fled with a Brigade Commander or similarly high ranking official, who was undoubtedly high profile within the LTTE;
(iv) there was evidence that she was being sought by the LTTE;
(v) there was evidence that there was an increasingly insistent demand that she report to the LTTE for an interview
(vi) there was an expert report

Nadanasikamani [2006] EWCA Civ 173. The court found that nothing in Sinnarasa unseated the reasoning in PS.

Yogachandran [2006] EWHC 392 (Admin). The court found that nothing in any of the subsequent materials brought to the attention of the court throws the slightest doubt on the continuing validity of the factual analysis so carefully undertaken in PS.

Martin [2006] EWHC 799 (Admin). The court found that whilst the situation in Colombo had deteriorated since the Tribunal decided PS even taking into account Dr Smith's report at its highest in favour of this claimant it does not in this type of case or in this particular case invalidate the essential thrust of the reasoning on the Tribunal in PS. On the Dr Smith report the court noted that even in a certification case and even in the case of an expert of the obvious expertise and integrity of Dr Smith the Sec of State is not compelled to accept every pronouncement by an expert. The more general, unsourced and unparticularised the report, the easier it may be for the Sec of State to say that a case is clearly unfounded; the more detailed, sourced and particularised the report, the more significant the report will be.

Suganthini [2006] EWHC 2524 (Admin). The claimant's fear centred on her being of continuing adverse interest to the LTTE as result of her partner, an EDPD member who was assassinated in the East. She had ceased her low-level activities for the EDPD in mid-2004. The court was not satisfied that her profile was raised as a result of the relationship and looked at evidence of recent cease-fire breaches to decide whether they arguably created a real risk of persecution or Article 3 ill-treatment for the generality of Tamils in Colombo:

- "there is no picture of sustained attacks upon low level Tamils who may be opposed to the LTTE for political reasons or personal reasons who are living in Colombo." (Paragraph 12)

- "Mr Martin makes the submission: that may well be because they are insignificant enough not to be reported and their fate is not known to their loved ones or anyone else who is able to report them. He points out a recent report in the BBC of yesterday's date *[27 September 2006]* suggesting that some Tamils were concerned about abductions. The difficulty of basing a submission upon a piece of raw news material of that sort is that it has not really been analysed, digested and tested, but certainly that report does mention the abduction of journalists. There is insufficient information in that report to suggest that, of itself, that is evidence that is likely to change the mind of an immigration judge in respect of the general assessment of safety of Tamils in Colombo when looking at the individual case of the claimant." (Paragraph 13)

- "There is an absence of a volume of material suggesting that the activities of the LTTE were significantly different in recent months in 2006 due to the impending breakdown of their cease-fire with the government. By "the activities", I mean activities directed at Tamils who are not members of the Sri Lankan Government or prominent members of any of the political parties linked with the Sri Lankan Government or otherwise identified as an opponent of the LTTE." (Paragraph 14)

3.6.24 ***Conclusion.*** In addition to carefully establishing the claimants previous involvement with, and/or level of opposition to the mainstream LTTE, caseworkers also must take care to distinguish between claimants expressing fear of LTTE persecution on the grounds that (a) the claimant is regarded by the LTTE as a '*defector*', 'traitor' or '*renegade*'; (b) those who are political opponents of the LTTE including EPDP membership or affiliation; and (c) those closely associated with the internal LTTE schism as supporters of Colonel Karuna. Caseworkers should note that members of the LTTE and the EPDP have been responsible for serious human rights abuses, some of which amount to war crimes and crimes against humanity. If it is accepted that a claimant was an active operational member or combatant for the LTTE or EPDP and the evidence suggests he/she has been involved in such actions, then caseworkers should consider whether one of the Exclusion clauses is applicable. Caseworkers should refer such cases to a Senior Caseworker in the first instance.

3.6.25 *Low level* supporters or members of a Tamil, including the EPDP, or non-Tamil, political party opposed to the LTTE who have never had a previous association with the LTTE are unlikely to be the target of reprisals by the LTTE. Those whom the LTTE has on the objective evidence targeted in Colombo since the ceasefire have all been high profile opposition activists. In the event that the claimant did consider themselves at risk, the Sri Lankan Government are both willing and able to provide a sufficiency of protection. Most applications under this category therefore are likely to be clearly unfounded and as such fall

to be certified, however applicants who additionally have past links to the LTTE may attract additional attention from the LTTE and are unlikely to be clearly unfounded.

3.6.26 *Prominent* past supporters or members of Tamil political parties including the EPDP who have aligned themselves with the government against the LTTE and who have consciously and publicly opposed the LTTE are likely to attract the adverse interest from the LTTE in Colombo. In such circumstances the Sri Lankan Government are both willing and generally able to provide sufficient protection. Whilst claims in this category are likely to be refused, it is unlikely that the claims will fall to be certified as clearly unfounded. However, where an individual claimant is able to demonstrate that they are of such high political profile that they would be unable to obtain sufficient protection or move to another location within Sri Lanka, they should be granted asylum.

3.6.27 Former low level members or supporters of the LTTE who have now aligned themselves with the government against the LTTE, (or who are perceived by the LTTE to be opponents, whether or not they actually are) are unlikely to be the target of reprisals by the LTTE. There is no evidence that the LTTE pursue people who refuse to carry out low level ancillary activities (such as cooks, book keepers etc) for the mainstream LTTE. Those whom the LTTE has on the objective evidence targeted in Colombo since the ceasefire have all been high profile opposition activists. In the event that the claimant did consider themselves at risk, the Sri Lankan Government are both willing and able to provide a sufficiency of protection. Applications under this category therefore are likely to be clearly unfounded and as such fall to be certified.

3.6.28 In cases involving LTTE '*defectors*', '*traitors*' or '*renegades*' , caseworkers need to carefully establish which of these terms applies to the claimant. '*Defectors*' who have assisted the Sri Lankan authorities at a strategic level (for example those who have aligned themselves with the Sri Lankan army military intelligence units) are at risk of being targeted by the LTTE in Colombo. In such circumstances the Sri Lankan Government are both willing and are generally able to provide sufficient protection. Whilst claims in this category are likely to be refused, it is unlikely that the claims will fall to be certified as clearly unfounded. However, where an individual claimant is able to demonstrate that they are of such high political profile that they would be unable to obtain sufficient protection or move to another location within Sri Lanka, they should be granted asylum. If the claimant has never been an LTTE member and their actions do not involve leaving the LTTE and subsequently joining another organisation, or the claimant cannot demonstrate significant previous commitment to the LTTE or subsequent formal membership or ongoing and regular assistance to LTTE opposition groups or the Sri Lankan security forces, then the claimant's activities are unlikely to result in them being targeted by the LTTE in Colombo and such applications under this category therefore are likely to be clearly unfounded and as such fall to be certified. The terms '*traitor*' or '*renegade*' are used in relation to those persons who fear being attacked by the LTTE in Colombo because they have engaged in – or the LTTE think they have been engaged in – activity which is seen as disloyal to the LTTE. Those whom the LTTE have targeted in Colombo since the ceasefire have all been high profile activists. It is not the case that all those who have committed or are thought to have committed any "treacherous" act or acts damaging to the LTTE are at risk of being targeted. Claims made by former members of the LTTE who have merely provided information under duress or those refusing to carry out low level ancillary activities for the mainstream LTTE are therefore likely to be clearly unfounded and as such fall to be certified as such. However, where an individual claimant is able to demonstrate that they are an activist of such high profile that they would be unable to obtain sufficient protection or move to another location within Sri Lanka, they should be granted asylum.

3.6.29 Those who fear persecution by the LTTE because of their association to the Karuna faction are unlikely to establish a need for international protection unless the claimant's association was close and could lead the mainstream LTTE to identify them as a close associate of Colonel Karuna and not someone simply caught up in the schism. If a claimant did not have regular contact with the Karuna faction leaders, particularly after the divisions occurred, and their role was one that did not go beyond basic logistical support, then they are unlikely to be at risk. Few claimants therefore are likely to establish that their

association to the Karuna faction gives rise to a fear that is not clearly unfounded. However, where an individual claimant is able to demonstrate that they were closely associated with Karuna that they would be unable to obtain sufficient protection or move to another location within Sri Lanka, they should be granted asylum.

3. 7. Fear of persecution by the Sri Lankan authorities

3.7.1 Many claimants will claim asylum based on ill treatment amounting to persecution at the hands of the Sri Lankan authorities due to their past involvement with the LTTE or other political organisations opposed to the Government.

3.7.2 ***Treatment.*** A Ceasefire Agreement was signed in February 2002 by the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam(LTTE), with the overall objective of finding a negotiated solution to the ongoing ethnic conflict. The parties recognised the importance of bringing an end to hostilities, improving the living conditions and restoring normalcy for all inhabitants of Sri Lanka. The agreement requires both parties to abstain from hostile acts against the civilian population, including such acts as torture, intimidation, abduction, extortion and harassment. The parties also agreed that search operations and arrests under the Prevention of Terrorism Act (PTA) should not be made. Peace talks did take place in 2002 and early 2003, however in April 2003 the LTTE suspended their participation in the peace talks.[53]

3.7.3 On 18 August 2005 parliament approved Emergency Regulations following the assassination of the foreign minister. These Regulations give power of arrest to members of the armed forces, who are required to turn suspects over to the police within 24 hours. Individuals arrested under the Emergency Regulations may be detained for up to a year without trial.[54] According to the US Department of State report there were no confirmed reports of politically motivated killings by the government during 2005; however, it was often alleged that paramilitary groups, sometimes with the aid of the government, engaged in targeted killings of political opponents. The government and the army denied the allegations. The HRC reported 25 instances of politically motivated disappearances at the hands of the security forces during 2005, and 10 instances by paramilitary forces allegedly tied to the government.[55]

3.7.4 Following the declaration of a State of Emergency, Tamil communities, in all three eastern districts, told Amnesty International that they had experienced increased harassment by the security forces and additional roadblocks caused delays in transporting aid and difficulties accessing LTTE controlled areas.

3.7.5 In September 2005 it was reported that there had been serious harassment of Tamils with some 500 detentions documented by a political party representing Tamils in Colombo. A separate report noted some 1,798 arrests while the Emergency Regulations were in force in 2005, although most of those arrested were released in a few days and 1,236 within only 12 hours. In late 2005 a number of "cordon and search" operations in Colombo lead to the arrest and brief detention of about 1,000 people. The HRC undertook some investigation into these arrests pointing out that the ethnic balance of those arrested, mostly Tamil, showed this was a security operation and that the police should have informed the HRC within 48 hours of the arrests even if the suspects were released. The Attorney General agreed with this analysis and accepted there had been some lapses which he explained were due to the security forces being out of practice in complying with Human Rights regulations during the ceasefire when they had not been conducting security operations. The HRC said they did not oppose these types of operations which were a necessary part of security; the Security Forces had an obligation to protect the state and citizens and during the ceasefire the LTTE had abused the lower security presence to transport arms, ammunition and operatives to Colombo. The HRC described the conditions of detention as

[53] COIS Sri Lanka COI Report October 2006 History
[54] COIS Sri Lanka COI Report October 2006 Arrest and Detention-Legal Rights
[55] COIS Sri Lanka COI Report October 2006 Security Forces

"broadly OK" and there was no evidence of torture in any of the cases they had investigated since the outbreak of violence. In August 2006 it was reported that occasional cordon and search operations were still taking place mainly where there are pockets of Tamils in predominantly Sinhalese and Muslim areas. In July 2006 the government published large advertisements in the press reminding security officials of their responsibilities when detaining people in partial response to complaints that those detained in cordon and search operations were not being treated according to the law.[56]

3.7.6 In September 2005 the Government (Marasinghe, Legal Director Secretariat for Co-ordinating the Peace Process) said that in the "chaos" after the assassination of Kadirgamar some members of the Police had gone too far and had detained "everybody they could find". However the situation was settling down and the ERs were aimed at finding the killers and not at suppressing legitimate political activity." In August 2006, it was reported that a pattern of enforced disappearance by state agents was re-emerging following the introduction of new Emergency Regulations in August 2005 that granted sweeping powers to the security forces. Sixty-two cases of enforced disappearance in the north of the country have been registered by the Human Rights Commission of Sri Lanka over the past year. The Commission is also investigating the status of 183 other individuals who are still missing under unknown circumstances.[57]

3.7.7 At the end of September 2006 members of the minority Tamil community in Colombo appealed for government help to tackle recent abductions. They say the police and government have not done enough to investigate the kidnappings of nearly 50 Tamils in recent weeks. Campaigners met Sri Lanka's president to request more protection. Those kidnapped include an eminent Tamil journalist working for a private media network in Colombo. Nevertheless, due to the still relatively small number of abductions that have taken place in the Colombo area since August 2006, together with the professional background of many of those abducted, with either high informatory or financial value, the the vast majority of the Tamil population in Colombo are not at real risk of abduction in Colombo. [58]

3.7.8 ***Sufficiency of protection.*** Where this category of claimants fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.

3.7.9 Some individuals may fear the actions of state officials or the police. Information on the avenues of complaint against the actions of the police available within Sri Lanka is included in paras 3.6.14 and 3.6.15 above. With regard to the Human Rights Commission in a letter to the Home Office of 7 July 2006, the British High Commission in Colombo noted that "The Human Rights Commissioners were appointed directly by the President in May. Several donors have indicated they are considering withdrawing their assistance because they believe the HRC is illegally constituted. The HRC still officially functions, but independent NGOs we have spoken to say that the volume of reports coming in is significantly reducing the Commission's effectiveness." [59]

3.7.10 Impunity, particularly for cases of police torture was reported to be a severe problem in 2005, the Inspector General of Police refused the NPC's recommendation to suspend or indict 96 police officers for acts of torture. By the end of 2005 61 of those officers had been reprimanded and transferred to other stations and 35 were removed or had left the police. Reporting on his mission to Sri Lanka from 28 November 2005 to 6 December 2005 the UN Special Rapporteur noted that significant levels of police brutality and impunity were reported to him by a wide range of sources. As an underlying cause he noted that more than two thirds of police officers were "reserve" rather than regular and had never received significant training in criminal detection and investigation. He also noted that during the

[56] COIS Sri Lanka COI Report October 2006 Security Forces
[57] COIS Sri Lanka COI Report October 2006 Security Forces
[58] COIS Sri Lanka COI Report October 2006 Security Forces
[59] COIS Sri Lanka COI Report October 2006 Avenues of Complaint

armed conflict police operations were subject to "emergency" legislation that permitted prolonged detention without habeas corpus, the admission into evidence of confessions which would be inadmissible under the ordinary law of evidence, and the disposal of the bodies of persons killed by the armed forces of the police without formal request. These emergency provisions are now back in force as a result too many police officers are accustomed to "investigating" by forcibly extracting confessions and to operating without meaningful disciplinary procedures or judicial review.[60]

3.7.11 The law makes torture a punishable offence but does not implement several provisions of the UN Convention against Torture. According to the Human Rights Commission and other credible sources the use of torture to extract admissions and confessions was endemic and committed with impunity, and the Emergency Regulations make confessions obtained under any circumstance including by torture sufficient to hold a person until the individual is brought to court. Government officials generally recognised that torture is widespread and did not dispute that in police stations physical mistreatment is frequently used to extract confessions, sometimes resulting in death. The UN Special Rapporteur noted a nationwide pattern of custodial torture in Sri Lanka.[61]

3.7.12 In a statement dated 23 June 2006 the Asian Human Rights Commission (AHRC) stated that it is now acknowledged that there is endemic torture practised at all police stations as the routine method of criminal investigation, which it said was acknowledged by UN agencies in international reports. The AHRC stated that the Sri Lankan government has admitted the problem along with high-ranking police officers including the Inspector General of Police. The AHRC suggests that nothing has been done to eliminate this practice.[62]

3.7.13 Whilst torture in police custody is a problem in Sri Lanka the government has undertaken steps aimed at reducing this practice and there are avenues for complaint available via the HRC or the NPC, although as at April 2006 there were concerns about the ongoing governance of these organisations. More recent concerns have highlighted that the measures being taken cannot be said to be ensuring that there are adequate means of redress or protection against torture in police custody. As a result there cannot be said to be a sufficiency of protection for those fearing police actions or who can show that they face a serious risk from the police in Sri Lanka.

3.7.14 ***Internal relocation.*** Claimants with a well founded fear of persecution by the authorities would not be able to internally relocate to another part of the country controlled by the Sri Lankan government to escape any such risk.

3.7.15 General information on freedom of movement is at para 3.6.18.

3.7.16 The LTTE has effective control on the ground in large sections of the north and east of the country and operates a parallel administration that includes schools, hospitals, courts, and police and other law enforcement personnel.[63] Claimants who fear persecution at the hands of the Sri Lankan government in areas controlled by the government are able to relocate to LTTE controlled areas and it would not normally be found to be unduly harsh for claimants to relocate in this way. Similarly where the risk relates to the actions of police officers individuals will be able to relocate to escape the attention of the police officer concerned either to another area under government control or to areas under LTTE control.

3.7.17 ***Caselaw.***

[2003] UKIAT 00096 VK (Sri Lanka) CG (Risk-Release-Escapes LTTE) , YP (Maintenance-Detention Records) Sri Lanka CG [2003] UKIAT 000145 and V [2004] UKIAT 00012 clearly established in the cases that the peace process in Sri Lanka is well established and is being observed and as a result the situation and risk to Tamils is greatly changed. As stated in V, "it has

[60] COIS Sri Lanka COI Report October 2006 Security Forces
[61] COIS Sri Lanka COI Report October 2006 Security Forces
[62] COIS Sri Lanka COI Report October 2006 Security Forces
[63] Freedom House "*Freedom in the World 2005*" Aug 2005

for some time now been the case that there has been international acceptance of the appropriateness of return of failed asylum seekers, unless there are clear reasons for considering that they may be particularly at risk".

Thampibillai v The Netherlands [2004] ECHR 39. The European Court of Human Rights (ECtHR) said that in the current climate in Sri Lanka it is unlikely that a returning LTTE supporter will face a real risk of being subjected to ill-treatment by the State. "No round-ups and no large-scale and/or arbitrary arrests of Tamils have taken place and Tamils no longer require permission before travelling to certain areas … persons who are arrested on suspicion of membership of, or involvement in, the LTTE are not subjected to ill-treatment and torture as has occurred in the past".

Venkadajalasarma v The Netherlands [2004] ECHR 40. The ECtHR confirmed its position with regard to the safety of returning LTTE supporters.

3.7.18 ***Conclusion.*** Following the announcement of the cease-fire in February 2002, the Sri Lankan authorities de-proscribed the LTTE and suspended arrests made under the Prevention of Terrorism Act (PTA). Emergency Regulations imposed in August 2005 which continue to be in place allow the arrest of individuals by members of the armed forces and that those detained may be detained for up to one year. However the number who continued to be in detention following arrests in Colombo in December 2005 is relatively small. Although the majority of those arrested in December were Tamils, detainees included Sinhalese and Muslims, and taking this into account and the fact that the majority were released within 12 hours it can still be said that generally the authorities in Sri Lanka are not concerned with those individuals with past low-level support for the LTTE. Taking these events into account there continues to be no evidence that the authorities in Sri Lanka are concerned with <u>those individuals with past low-level support for the LTTE</u>. Claims under this category are therefore likely to be clearly unfounded and fall to be certified as such.

3.7.19 Those individuals who may be of continuing interest to the authorities would be those wanted for serious offences. These cases will be exceptional, and will normally be <u>high-profile members of the LTTE who are still active and influential, and wanted by the authorities</u>. Such individuals may face prosecution on return, although there is no evidence to suggest that they would not be treated fairly and properly under Sri Lankan law. Claims made under this category are therefore not likely to lead to a grant of asylum or Humanitarian Protection but taking into account the continuing interest of the authorities in those of high profile, and the introduction of the Emergency Regulations such claims cannot be considered to be clearly unfounded. Caseworkers should note that the LTTE have been responsible for numerous serious human rights abuses, some of which amount to war crimes. If it is accepted that a claimant was an active operational member or combatant for the LTTE and has been involved in such actions, then caseworkers should consider whether one of the Exclusion Clauses is applicable. Caseworkers should refer such cases to a Senior Caseworker in the first instance.

3.7.20 There cannot be said to be a general sufficiency of protection available to those claimants who express <u>fear of state officials</u> after having made complaints to the Sri Lankan authorities with regard to, for example, the use of torture. However, internal relocation to LTTE areas may be an option where, in the particular circumstances of the claimant it is not considered unduly harsh for the victim to exercise this. The grant of asylum or Humanitarian Protection is unlikely therefore to be appropriate where there is an option of internal relocation. Such claims should only be certified as clearly unfounded if internal relocation is clearly an option.

3.8. General country situation

3.8.1 Some individuals might make an asylum or human rights application based on the general country situation in light of the recent fighting between Sri Lankan government forces and the LTTE.

3.8.2 During 2005 the Human Rights Commission (HRC) reported 25 instances of politically motivated disappearances at the hands of the security forces and 10 instances by

paramilitary forces allegedly tied to the Government. In September 2006 the HRC reported it had received 419 complaints of disappearances in Jaffna peninsula since December 2005 and had begun investigations on the complaints received. The security forces were accused of 60 disappearances, 54 others were released after initial investigations by the police, 23 others were detained by the police. No information was available on what happened to 245 others, but it is suspected that 183 were abducted by "some other militant group". The Commission also said that it would initiate investigations into media reports of 30 disappearances in the Colombo.[64]

3.8.3 ***Treatment.*** There has been an intensification of violence since December 2005.[65] A Sri Lanka Monitoring Mission (SLMM) report covering the period 24 February 2006 to 28 May 2006 notes that although the level of violence decreased dramatically after the decision was taken to resume high-level talks, the situation became very tense again following the assassination of the Trincomalee District President of the Tamil Peoples Forum on 7 April 2006. This killing triggered a resumption of attacks against the Government of Sri Lanka forces which began with hand grenade and claymore attacks in the East. This soon escalated in to more high profile attacks including the suicide attack against the Commander of the Army Lt. General Fonseka on 25 April, and the Sea Tiger attack on the Sri Lankan Navy Dvora on 11 May. SLMM report that the Government showed restraint initially but as the seriousness of the incidents increased so did their response leading to additional violence and the suffering of the civilian population. The report further noted the killing of 20 Tamils in riots in Trincomalee, more than 141 attacks on security forces and police resulting in the deaths of at least 88 servicemen, the killing of at least 223 civilians, and the killing of an unknown number of LTTE cadres (because the LTTE had not revealed figures to the SLMM).[66]

3.8.4 A further SLMM report covering the period 29 May 2006 to 31 August 2006 notes that up until 25 July 2006 the high number of attacks directed towards the Government of Sri Lanka forces continued, in several cases involving injuries and deaths to civilian bystanders. The report notes several high profile attacks, notably the assassination of 13 Sinhalese workers in Wellikanda on 30 May, the claymore attack on a civilian bus killing 65 and injuring 70 in Kebitigellewa on 15 June, the attack on Pesalai church killing 8 and injuring 38 civilians on 17 June, the suicide attack on the SLA Deputy Chief of Staff outside Colombo on 26 June, the clash between SLA soldiers and 4 LTTE cadres, and finally the closing of the Mavil Aru sluice gate on 22 July leading to a major escalation of violence. Additionally the movements of Sea Tigers on the Eastern and Western coasts increased, leading to several smaller skirmishes.[67]

3.8.5 In the period from 25 July to 31 August SLMM noted the escalating situation on the East coast and the Northern ranges when direct fighting broke out in Trincomalee district on 26 July and in the Jaffna area on 11 August. Accusations were made by both sides as to who was responsible for the escalation, however both sides maintained that the Ceasefire Agreement was still in effect, and that military actions taken were purely defensive and not aggressive. The most notable attacks during this period were the assassination of 17 local employees of the ACF in Muttur on 4 August, the killing by claymore attack of an STF commander in Kandy in 6 August, the shelling in an area near Mavil Aru on 6 August when it was known SLMM were present, the assassination of the SCOPP Deputy General Secretary in Colombo on 12 August and the air strike on a training site in Sensoolai killing at least 40 on 14 August, and also the claymore attack on the convoy of the Pakistani High Commissionaire in Colombo on the same date.[68]

3.8.6 In an Amnesty International press release of 30 August 2006, there were fears that a pattern of enforced disappearance by state agents is re-emerging in Sri Lanka following the introduction of new Emergency Regulations in August 2005 that granted sweeping powers to the security forces. Sixty-two cases of enforced disappearance in the north of the country

[64] COIS Sri Lanka COI Report October 2006 Security Forces
[65] FCO Country Profile: 18 May 2006
[66] COIS Sri Lanka COI Report October 2006 Recent Developments
[67] COIS Sri Lanka COI Report October 2006 Recent Developments
[68] COIS Sri Lanka COI Report October 2006 Recent Developments

have been registered by the Human Rights Commission of Sri Lanka over the past year. The Commission is also investigating the status of 183 other individuals who are still missing under unknown circumstances. Based on disappearances that have taken place since 1989, Sri Lanka has one of the highest levels of unresolved enforced disappearances in the world.[69] On 5 September 2006, the United Nations Office at Geneva (UNOG) reported that the United Nations Special Rapporteur on extra-judicial executions, Philip Alston, today welcomed the announcement by Sri Lanka's President Mahenda Rajapakse of his intention to invite an international commission to inquire into recent killings, disappearances and abductions in Sri Lanka.'This is a potentially very important initiative' said Alston. 'A truly independent international inquiry holds out the prospect of resolving some of the horrendous events of recent weeks and months and bringing the country back from the abyss'. The challenge now, according to Alston, is to ensure that the commission is independent, credible, effective, and empowered to make a difference. 'If the commission does not meet these requirements the initiative will fail and set back the cause of peace. If the requirements are taken seriously the move will prove to be courageous and could break the vicious circle that currently grips the country'.[70]

3.8.7 At the end of September 2006 members of the minority Tamil community in Colombo appealed for government help to tackle a spate of abductions. They say the police and government have not done enough to investigate the kidnappings of nearly 50 Tamils in recent weeks. Campaigners met Sri Lanka's president to request more protection. Those kidnapped include an eminent Tamil journalist working for a private media network in Colombo. Nevertheless, due to the still relatively small number of abductions that have taken place in the Colombo area since August 2006, together with the professional background of many of those abducted, with either high informatory or financial value, the the vast majority of the Tamil population in Colombo are not at real risk of abduction in Colombo. [71]

3.8.8 ***Sufficiency of protection.*** As this category of claimants' fear is of mistreatment on the basis of the general country situation and not particular state or non-state agents, the availability of sufficient state protection is not relevant.

3.8.9 ***Internal relocation.*** As this category of claimants' fear is of mistreatment on the basis of the general country situation and not particular state or non-state agents, the availability of a viable internal relocation alternative is not relevant. However, while the general security situation has deteriorated in the course of 2006 as a result of heightened conflict between the Government and LTTE, the main incidents of insecurity continue to be reported in the north and east of the country.

3.8.10 General information on freedom of movement is at para 3.6.18.

3.8.11 Claimants who fear mistreatment on the basis of the general country situation, specifically in the north and east, are able to relocate outside these areas to Colombo, or other areas in the south and it would not normally be found to be unduly harsh for claimants to relocate in this way.

3.8.12 ***Caselaw.***

Martin [2006] EWHC 799 (Admin). On considering the numbers and locations of Tamil fatalities in the context of a) the Tamil population as a whole and b) former members, operatives or associates of the LTTE, the following findings were made about incidents in Colombo: "The third thing which was significant is the comparatively limited number in absolute terms of the incidents which Dr Smith describes. Now, Ms Weston, appropriately if I may say so, cautions me against too vigorous a tallying-up of the numbers. She makes the point, which for present purposes I entirely accept, that there is, as I have mentioned, very significant under-reporting of such incidents. But as to that, I would make this observation: the point being made by the Tribunal in **PS** was not that because there

[69] COIS Sri Lanka COI Report October 2006 Security Forces
[70] COIS Sri Lanka COI Report October 2006 Security Forces
[71] COIS Sri Lanka COI Report October 2006 Security Forces

were only 25 deaths amongst the Tamil population of 400,000 or 450,000 that the risk was a risk to be evaluated arithmetically by a comparison of 25 with 450,000, but that the order of magnitude was very small indeed. Putting the same point the other way round, however much one inflates Dr Smith's list having regard to under-reporting, one is, it seems to me, concerned with numbers which overall are, on any basis, almost vanishingly small when contrasted with the overall population, not of Tamils in Colombo but of former members, operatives or associates of the LTTE in Colombo, that being, of course, the relevant and true comparison." [emphasis added] (para 21)

Suganthini [2006] EWHC 2524 (Admin). The claimant's fear centred on her being of continuing adverse interest to the LTTE as result of her partner, an EDPD member who was assassinated in the East. She had ceased her low-level activities for the EDPD in mid-2004. The court was not satisfied that her profile was raised as a result of the relationship and looked at evidence of recent cease-fire breaches to decide whether they arguably created a real risk of persecution or Article 3 ill-treatment for the generality of Tamils in Colombo:

- "there is no picture of sustained attacks upon low level Tamils who may be opposed to the LTTE for political reasons or personal reasons who are living in Colombo." (Paragraph 12)

- "Mr Martin makes the submission: that may well be because they are insignificant enough not to be reported and their fate is not known to their loved ones or anyone else who is able to report them. He points out a recent report in the BBC of yesterday's date *[27 September 2006]* suggesting that some Tamils were concerned about abductions. The difficulty of basing a submission upon a piece of raw news material of that sort is that it has not really been analysed, digested and tested, but certainly that report does mention the abduction of journalists. There is insufficient information in that report to suggest that, of itself, that is evidence that is likely to change the mind of an immigration judge in respect of the general assessment of safety of Tamils in Colombo when looking at the individual case of the claimant." (Paragraph 13)

- "There is an absence of a volume of material suggesting that the activities of the LTTE were significantly different in recent months in 2006 due to the impending breakdown of their cease-fire with the government. By "the activities", I mean activities directed at Tamils who are not members of the Sri Lankan Government or prominent members of any of the political parties linked with the Sri Lankan Government or otherwise identified as an opponent of the LTTE." (Paragraph 14)

3.8.13 ***Conclusion.*** The general security situation has deteriorated in the course of 2006 as a result of heightened conflict between the Government and LTTE. The main incidents of insecurity continue to be reported in northern and eastern districts. While violent confrontations between the two sides have escalated with fatalities and disappearances also reported in other regions, the Government in September 2006 invited an international commission to investigate reports of extrajudicial and disappearances. This move is seen as an important step towards restoring country-wide security and improving its citizen's recourse to justice.

3.8.14 A state of civil instability and/or where law and order has sometimes broken down, as has happened in Sri Lanka at times in 2006, does not of itself give rise to a well-founded fear of persecution for a Convention reason. The claimant can only demonstrate a well-founded claim where they can demonstrate they are at risk of adverse treatment on Convention grounds over and above the risk to life and liberty, which occurs during such instability/ insecurity. A general risk of violence based on Government-LTTE conflict will not in itself be sufficient to bring claimants within the Humanitarian Protection or Discretionary Leave provisions; as conditions within Sri Lanka are not sufficiently poor that they would amount to a breach of the ECHR for those returning to Sri Lanka. Claims under this category are likely to be clearly unfounded and fall to be certified as such.

3.8.15 The grant of Humanitarian Protection on account of generalised violence will only be appropriate where the circumstances of the individual are such that their return will breach Article 3. Refer to the API on Humanitarian Protection for more information..

3.9 Prison conditions

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

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

3.9.3 ***Consideration.*** It is reported that prison conditions do not meet international standards due to acute overcrowding and a lack of sanitary facilities. In some cases, juveniles are not held separately from adults. Pre-trial detainees are not held separately from those convicted. The government permitted visits by independent human rights observers, and during 2005 the International Committee of the Red Cross (ICRC) conducted 192 visits to 24 permanent places of detention, including prisons and some police stations. The national office of the HRC did not provide information on visits to detention centres.[72]

3.9.4 During 2005 the ICRC conducted 22 visits to 3 LTTE-controlled prison facilities and 53 visits to 17 LTTE-operated police stations. Credible observers reported that conditions in these prisons were on par with local standards.[73]

3.9.5 ***Conclusion*** Whilst prison conditions in Sri Lanka are poor with acute overcrowding and lack of sanitary facilities being a particular problem conditions are unlikely to reach the Article 3 threshold. Therefore even where claimants can demonstrate a real risk of imprisonment on return to Sri Lanka a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

4 Discretionary Leave

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

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

4.3 Minors claiming in their own right

4.3.1 The policy on minors claiming in their own right is set out in the API on Children. Unaccompanied minors who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place.

[72] COIS Sri Lanka COI Report October 2006 Prison Conditions
[73] COIS Sri Lanka COI Report October 2006 Prison Conditions

4.3.2 Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, and who do not qualify for leave on any more favourable grounds, should be granted Discretionary Leave for a period of twelve months or until their 18th birthday, whichever is the shorter period

4.4 Medical treatment

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

4.4.2 In Sri Lanka, the traditional Western medical structure of general practitioners, specialists and hospitals with operating theatres and emergency units, co-exists with the traditional practice of ayurvedic (herbal) medicine. The country has its own National Health Service, which is available to everyone. In the Colombo area and one or two of the larger centres such as Kandy, there are many well-reputed hospitals, staffed by physicians, most of whom are very experienced and internationally trained. There is an extensive range of specialist care found in Colombo, both in the private and government sectors. Specialist care would include treating such conditions as cardiac, gastro-intestinal, dermatological, urological, orthopaedic and general surgery.[74]

4.4.3 Most medications are available in Colombo, under various generic and company labels. The prices for medications bought in Sri Lanka range widely, but as a comparison, most drugs would be cheaper than in the United Kingdom for prescription and dispensing charges. On the whole, medical care is affordable for the average person, and government hospitals generally charge a lesser fee than private hospitals.[75]

4.4.4 Almost 60% of Sri Lanka's population relies on the public health care system, with some 95% of inpatient health care being provided by the public sector. Health care in the public sector provides both Western and Ayurvedic systems of health care although the majority of the population seeks treatment from Western medicine. Three tiers of public medical institutions provide curative health care. There are also 26,522 health units headed by medical officers that deliver preventive health services.[76]

4.4.5 ***Caselaw***

[2002] UKIAT 04269 PR (Sri Lanka) CG (Medical Facilities): Adequate medical facilities are available in Sri Lanka, particularly in Colombo and the other centres.

4.4.6 The Article 3 threshold will not be reached in the great majority of medical cases and a grant of Discretionary Leave will usually not be appropriate. Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 a grant of discretionary leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5 Returns

5.1 Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

[74] COIS Sri Lanka COI Report October 2006 Medical Issues
[75] COIS Sri Lanka COI Report October 2006 Medical Issues
[76] COIS Sri Lanka COI Report October 2006 Medical Issues

5.2 On 31 December 2004 the forced return of persons to areas that had been directly affected by the tsunami were temporarily suspended. In the case of Sri Lanka, removals were temporarily suspended to the coastal areas of the north, east, south and south-west.

5.3 Following improvement in conditions in the tsunami affected areas, the temporary suspension of forced returns was ended on 10 November 2005 and the normal practice was resumed of taking forward all forced removals on an individual basis taking full account of any reason a person puts forward for not being removed.

5.4 Assistance is provided for those that wish to return voluntarily and permanently through the Voluntary Assisted Return and Reintegration Programme (VARRP) run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Sri Lankan nationals wishing to avail themselves of this opportunity for assisted return should be advised to contact the IOM by telephone: 020 7233 0001 or by email: www.iomlondon.org.

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